

Legal Department

Fax 215.568.3389
www.exeloncorp.com

Exelon Business Services Company
2301 Market Street/S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699

Direct Dial: 215.841.6841

November 8, 2012

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

**Re: Gus Pashalis v. PECO Energy Company
PUC Docket No.: C-2012-2331934**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are the following documents in the matter referenced above.

<input type="checkbox"/>	Answer
<input checked="" type="checkbox"/>	Answer & New Matter
<input type="checkbox"/>	Motion to Dismiss
<input type="checkbox"/>	Motion for Judgment on the Pleadings
<input checked="" type="checkbox"/>	Preliminary Objection
<input type="checkbox"/>	Exceptions
<input type="checkbox"/>	Reply Exceptions
<input type="checkbox"/>	Main Brief
<input type="checkbox"/>	Reply Petition

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Thank you for your time and attention on this matter.

Very truly yours,



Shawane Lee
Counsel for PECO Energy Company
SL/lo

Scheduling Recommendation: **Call of the docket** Non Call of the docket

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GUS PASHALIS	:	
Complainants	:	
v.	:	DOCKET NO. C-2012-2331934
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

NOTICE TO PLEAD

Pursuant to 52 Pa. Code §§ 5.101 and 5.62(c), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Preliminary Objection within 10 days from service of this notice, a ruling may be entered against you. Your response must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Shawane L. Lee, and where applicable, the Administrative Law Judge presiding over the issue.

File with:
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

With a copy to:
Shawane L. Lee
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103

Dated at Philadelphia, PA, November 15, 2012



Shawane L. Lee
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103
(215) 841-6481
Shawane.Lee@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GUS PASHALIS	:	
Complainants	:	
v.	:	DOCKET NO. C-2012-2331934
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

**PRELIMINARY OBJECTION OF RESPONDENT,
PECO ENERGY COMPANY**

Respondent, PECO Energy Company (“PECO Energy”), pursuant to 52 Pa. Code § 5.101(a)(4) respectfully petitions this Honorable Commission to dismiss the instant Complaint as legally insufficient.

1. On November 2, 2012, PECO Energy was served with a formal complaint filed by Gus Pashalis (hereafter “Complainant”). A copy of the Complaint is attached hereto as Exhibit “1”.

2. In his Complaint, Complainant alleges that on February 6, 2012, a PECO Energy technician went to the Complainant’s rental property at 3378 Red Lion Road, Philadelphia, PA and determined that there was a foreign wiring condition at the premises. See Exhibit “1”.

3. The Complainant alleges that the tenant’s electric bill which had been accumulated “over a couple months” in the amount of \$434.38 was transferred to his name. See Exhibit “1”.

4. The Complainant states that he had to pay the \$434.38 or it would be referred to a collection agency. See Exhibit “1”.

5. The Complainant alleges that he is willing to pay the cost of the electric garage door opener usage on the tenant's account for the time span of "5 years at 30 minutes of constant use a day." The Complainant calculates the total amount he owes is \$18.05. See Exhibit "1".

6. PECO Energy simultaneously filed an Answer and the instant Preliminary Objection.

7. Pursuant to 52 Pa. Code § 5.101, preliminary objections may be filed against a complaint and dismissed for legal insufficiency. 52 Pa. Code § 5.101(a)(4).

8. Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil procedure.¹

9. In deciding preliminary objections, the Public Utility Commission must determine, based on the factual pleadings of the petitioner, if relief or recovery is possible.²

10. A complaint must be able to recover under the law to survive a preliminary objection.³

11. All of the non-moving party's averments must be taken as true for the sake of deciding the preliminary objection.⁴

12. The court does not, however, need to accept, "unwarranted inferences from facts, argumentative allegations, or expressions of opinions."⁵

¹ *Equitable Small Transportation Interveners v. Equitable Gas Co.*, 1994 Pa.PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994)

² 2006 Pa. PUC Lexis 111, *7.

³ *Milliner v. Enck*, 709 A.2d 417, 418 (Pa. Super. Ct. 1998) ("preliminary objection should be sustained only where it appears with certainty that, upon the facts averred, the law will not allow the plaintiff to recover").

⁴ *Id.* at 7-8.

⁵ *Feingold v. McNulty*, 2009 Phila. Ct. Com. Pl LEXIS 167, *3.

13. Section 703 of the Public Utility Code, 66 Pa. C.S.A. § 703(b) provides that the Commission may dismiss any complaint without a hearing of, in its opinion, a hearing is not necessary to the public interest.

14. A hearing is required only when there is a disputed question of fact, and is not required to resolve questions of law. Dee-Dee Cab, Inc. v. Pa.Pub. Util. Comm'n, 817 A.2nd 593 (Pa.Commw. Ct. 2003), petition for allowance of appeal denied, 836 A.2d 123 (Pa. 2003).

15. Here, there are no genuine issues of fact and PECO Energy is entitled to judgment as a matter of law with respect to all of the allegations in the Complaint.

16. The Commission has held that a landlord must pay the utility for any account balance, including arrearages, once a foreign load or wiring has been found. 66 Pa. C.S. §§ 1529.1(a), (c); and Ace Check Cashing Inc. v. Phila. Gas Works, Final Order, (May 21, 2010). See also Santos v. Metro. Edison Co., No. C-00967757 (Pa. P.U.C. Aug. 7, 1997).

17. The Complainant is the owner of 3378 Red Lion Road, Philadelphia, PA. See Complaint at Exhibit "1".

18. The Complainant avers that PECO transferred the arrearage and current charges into his name, which he maintains should be the responsibility of the tenant. See Complaint at Exhibit "1".

19. The Complainant requests that the PUC permit him to pay \$18.05 (the cost he estimates is the usage of the garage door opener) as opposed to the balance transferred into his name. See Complaint at Exhibit "1".

20. As previously explained by the Legislature and this Commission, upon discovering the existence of a foreign load a public utility is required to list the account, including any arrearages, in the name of the landlord. 66 Pa. C.S. §§ 1529.1(a), (c). See also Santos v.

Metro. Edison Co., No. C-00967757 (Pa. P.U.C. Aug. 7, 1997). The landlord is responsible for paying the utility bills until the foreign load is corrected. Santos at 16. Once the foreign load is corrected by the landlord and verified by the utility, the utility will place the account back in the name of the tenant and the arrearage, if any, will remain the landlord's responsibility. Id. To the extent any dispute regarding the financial responsibility of the parties exists, that is a matter to be resolved in the Court of Common Pleas as it is outside the Commission's jurisdiction. Edmund v. Corazzini v. UGI Penn Natural Gas, Inc., No. F-2009-2101282, Opinion and Order adopted July 15, 2010 at 7.

21. The Complainant does not allege that the property is not a rental property or that he is not the owner of the property.

22. The Complainant does not allege that PECO Energy incorrectly determined a foreign wiring condition at his property.

23. The Complainant does not allege that PECO Energy transferred an incorrect amount from his tenant's account to his account.

24. The Complainant's Complaint simply alleges that foreign wiring was found at his property, and he wants to pay a portion of the balance as opposed to the balance that was on his tenant's account when the foreign wiring condition was found.

25. Indeed, consistent with Ace Check Cashing, Inc. vs. Philadelphia Gas Works, Docket No. C-2008-2056428, the Commission cannot consider what the Complainant proposes (i.e., to determine the portion of the foreign wiring that is attributable to the garage door opener.).

26. In Ace Check Cashing, Inc., the Commission reversed the Initial Decision in Afshari v. PPL Electric Utilities Corporation, Docket No. C-20055547 (Order entered April 9, 2008) (Afshari) relating to foreign load situations.

27. In the Commission's decision, they stated:

The key determination in *Afshari* is that, when foreign load is found, per operation of Subsection (c), the landlord shall be responsible only for the portion of the tenant's arrearage that is related to foreign load. However, Commission precedent, such as *Elizabeth Santos v. Met Ed*, Docket No. C-00967757 (Order entered August 7, 1997), holds that Subsection (c) operates to place both current bills and all arrearages in the landlord's name if the landlord failed to provide the notice required by Subsection (a). In interpreting Subsection (c), the decision in *Afshari* sought to avoid an unreasonably harsh result for the landlord in that it does not require the owner to be responsible for the tenant's potentially large arrearages, especially where the foreign load is *de minimus*. **However, the approach in *Afshari* lessens the incentive for the landlord to correct the foreign load situation that is due to a wiring, plumbing or piping problem for which the landlord is responsible.** While the language in Subsection (c) can be viewed as ambiguous enough to allow some latitude for Commission interpretation, **a determination that the landlord's financial responsibility for arrearages is strictly limited to the foreign load portion of the arrearage is problematic. This is because the statutory remedy for failure to provide notice provided in Subsection (c) refers back to Subsection (b) which clearly mandates that the landlord "shall thereafter be responsible for the payment for the utility services rendered [to the rental property]."**

28. As stated above, the landlord shall be responsible for payment for the utility services rendered to the rental property, not just the portion attributable to the foreign wiring condition.

29. PECO Energy properly transferred the tenant's utility account, including arrearages, to the Complainant's name.

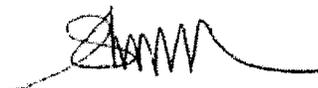
30. PECO Energy's actions are consistent with Pennsylvania law.

31. Accordingly, PECO Energy requests that the Commission dismiss the Complaint for legal insufficiency.

REQUEST FOR RELIEF

WHEREFORE, for the reasons set forth above, PECO Energy Company respectfully requests that your Honorable Commission summarily dismiss the Complainants' Complaint.

Respectfully submitted,



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
(215) 841-6841
Fax: 215.568.3389
Shawane.Lee@exeloncorp.com

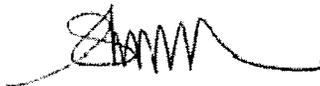
**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GUS PASHALIS	:	
Complainants	:	
v.	:	DOCKET NO. C-2012-2331934
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

VERIFICATION

I, Shawane L. Lee, hereby declare that I am counsel for PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. § 4904 pertaining to false statements to authorities.

Date: November 8, 2012



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
(215) 841-6841
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Shawane.Lee@exeloncorp.com

**BEFORE THE
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	:	
PECO ENERGY COMPANY	:	
Respondent	:	

CERTIFICATE OF SERVICE

I, Shawane L. Lee, hereby certify that I have this day served a copy of PECO Energy Company's Answer in the above matter upon all interested parties by mailing a copy, properly addressed and postage prepaid to:

Gus Pashalis
532 S. 19th Street, 2nd Floor
Philadelphia, PA 19146

Dated at Philadelphia, Pennsylvania, November 8, 2012



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
(215) 841-6841
Fax: 215.568.3389
Shawane.Lee@exeloncorp.com

EXHIBIT “1”

PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED
2012 OCT 11 AM 10:49
PA P.U.C.
SECRETARY'S BUREAU

Formal Complaint Form

Please print in ink or type.

1. CUSTOMER (COMPLAINANT) INFORMATION

Your name, mailing address, county, telephone number, utility account number and service address:

Name Gus Pashalis

Street/P.O. Box 532 S. 19th St. Apt # 2FL

City Phila. State PA Zip 19146

County Phila.

Daytime Telephone Number Where We Can Contact You: (267) 918-7718

E-mail Address (optional): gpashalis@gmail.com

Utility Account Number 01358-24065
(from your bill)

If your complaint involves utility service provided to a different address than your mailing address, please list this information below.

Name Gus Pashalis

Street/P.O. Box 3378 Red Lion Rd 1st FL

City Phila. State PA Zip 19114

2. FULL NAME OF UTILITY COMPANY (RESPONDENT):

PECO

3. TYPE OF UTILITY (check one)

- ELECTRIC
- GAS
- WATER
- STEAM HEAT
- WASTE WATER
- MOTOR CARRIER

TELEPHONE (e.g., taxi, moving company, limousine)
(local, long distance)

4. **COMPLAINT** (check one)

A. In general, what is your complaint?

- I want to oppose the company's proposed rate increase.
- There are incorrect charges on my bill.
- There is a reliability, safety or quality problem with my utility service.
- I received a notice that my utility service is being terminated.
- I would like a payment agreement.
- Other (explain).

B. State the facts of your complaint.

Include any specific dates, times or places that may be important. If the complaint is about a bill, tell us about any charges that you believe are not correct. Use additional paper if you need more space. Provide copies of all relevant documents you believe will support your complaint.

Greetings Sir or Madam,

This complain is in regards to PECO energy account # 01358-24065

Address: 3378 Red Lion Rd Philadelphia PA 19114 (property is 2 units)

On 2/6/12 a PECO high bill field technician went out to the property and found the garage door opener plugged into the first floor which also uses the garage. Therefore by law an electric bill (which was accumulated over a couple months) to an amount of \$434.38 was transferred to my name the landlord(I don't reside there).

The issue was remedied on 3/19/12 and transferred back to the tenant at a **ZERO** balance while I had to pay the balance of \$434.38 with threats of notifying a credit agency if I didn't.

5. RELIEF

How do you want your complaint to be resolved? Use additional paper if you need more space.

I'm willing to pay the electric cost of the garage door opener for the time span of 5 years at 30 minutes of constant use a day. Below is the electricity calculation according to the garage door opener specs of 200watts and real cost per kWh of \$.0992.

Device Name	Garage Opener	Cost Per Hour	\$0.019840
Wattage of Device	200	Cost Per Day	\$0.009920
Kilowatt Hour Cost	.0992	Cost Per Week	\$0.069
Hours of use per day	0.5	Cost Per Month	\$0.28
		Cost Per Year	\$3.61
<input type="button" value="Calculate Cost"/>			

The cost per year comes out to $\$3.61 \times 5 \text{ years} = \18.05 is what I'm willing to pay for the whole buildings use of a garage door opener.

Please I humbly ask for fairness in this matter as this was an abuse of the law from the tenant.

Kind Regards,

Gus Pashalis (landlord of 3378 Red Lion Rd)

gpashalis@gmail.com

267-918-7718

6. PROTECTION FROM ABUSE

Answer the following question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility **AND** your complaint is about a billing problem, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection from Abuse" order for your personal safety or welfare?

YES

NO

7. PRIOR UTILITY CONTACT

Answer the following question only if you are a residential customer and your complaint is against an electric distribution utility, natural gas distribution utility or a water distribution utility.

Have you spoken to a utility company representative about this complaint?

YES (includes appeals of BCS determinations)

NO

If you tried to, but could not speak to a utility company representative about your complaint, please explain why.

Attached

8. LEGAL REPRESENTATION (IF ANY)

If you are represented by a lawyer in this matter you must provide your lawyer's name, address, telephone number, and e-mail address, if known.

Lawyer's Name _____

Street _____

City _____ State _____ Zip _____

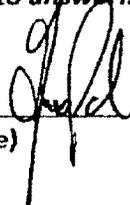
Area Code/Phone Number _____

E-mail Address (If Known) _____

9. **VERIFICATION AND SIGNATURE**

You must print or type your name below on the line provided for the verification paragraph, and you must sign and date (in ink) this form on the lines provided.

Verification: 1 Gus Pashalis, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

 (Signature) 10-7-12 (Date)

Title of authorized employee or officer

10. **FILING**

Please return the completed form to one of the addresses listed below:

If using U.S. Postal Service:

If using overnight delivery service:

Secretary Pennsylvania Public Utility Commission P.O. Box 3265 Harrisburg, PA 17105-3265	Secretary Pennsylvania Public Utility Commission 400 North Street Commonwealth Keystone Building, 2 nd Floor Harrisburg, Pennsylvania 17120
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Facsimiles and/or electronic filings of the complaint will not be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

Keep a copy of your complaint for your records.



An Exelon Company

PECO
Customer Relations
2301 Market Street, N5-1
Philadelphia, PA 19101-8699

www.peco.com

CEIC# 2965948

Mr. Vlk

UTILITY COMPANY REPORT
Reporte De La Compania Utilidades

Date: 5/1/12

Name: GUS PASHALIS
Service Address: 3378 RED LION RD, 1ST FL PHILADELPHIA PA 19114
Post Office: PHILADELPHIA PA 19114
Account Number: 01358-24065

Phone Home: 267-918-7718	Phone Work:
Gus Pashalis 3378 RED LION RD 1ST FL PHILADELPHIA PA 19114	

Problem As You Described It:

You contacted our office stating you should not be responsible for your bill.

Our Response:

Dear GUS PASHALIS:

Thank you for your recent inquiry.

I telephoned the above number on 04/25/12. Unfortunately there was no answer but a message was left for you. On 05/01/12 we spoke about the foreign wiring that existed at your property. A letter was sent to you on 04/25/12 asking you to contact me.

Upon review of account and our discussion it was determined that the billing at your property was applied correctly. On 02/06/12 a PECO high bill field technician discovered foreign wiring existed at this property. The foreign wiring that was found was a two car garage door opener which was connected to the tenant's meter. When a foreign wiring situation is discovered at a property the tenant's bills are transferred to the landlord's account in accordance with Pennsylvania state law. On 03/19/12 a PECO technician found that this situation had been repaired.

In answering the dispute we must provide you with the information necessary for you to make a decision on whether you need to proceed further with this matter.

To date, all of my attempts to contact you have been unsuccessful.

The balance due on your account is \$525.43 as of 05/01/12. The amount due by 05/17/12 to avoid delinquency is \$525.43.

The investigation is being closed at this time. If you have any further questions or would like to make payment arrangements, please contact me at 215-841-4271.

We at PECO want you to be completely satisfied.

Cordially,
William Adams
Customer Relations



Emergency and Repairs: 1-800-841-4141. This is the number to call to report power outages, gas leaks or odors, and safety hazards related to PECO equipment. For all other business, call 1-800-494-4000.

Name: GUS PASHALIS
 Account Number: 01358-24065
 Phone Number: 267-918-7718
 Service Address: 3378 RED LION RD, 1ST FL,
 PHILADELPHIA

Billing Summary

Bill Date	03/09/2012
Connection charge - standard	\$6.00
Charges from previous bill	\$434.48
Late payment charge	\$6.51
Total Other Charges	\$446.99
Current Period Charges	
Electric	\$70.86
Total New Charges	\$70.86
Total Amount Due on 04/02/2012	\$517.85

General Information

Next scheduled meter reading: April 9, 2012
 PECO, 2301 Market St, Philadelphia, PA 19103-1380. If you have any questions or concerns, please call 1-800-494-4000 before the due date.

- Customer Self Service - Manage Your Account 24/7**
- www.peco.com/ebill - Go paperless: receive and pay your bill
 - www.peco.com/service - Start, stop and transfer your service
 - www.peco.com/SmartIdeas - Save energy and money
 - Pay by phone with credit/debit card at 1-877-432-9384 (\$3.50 fee)

Message Center

New charges contain estimated total state taxes of \$4.63, including \$4.18 for State Gross Receipts Tax.
 Your electric price to compare is \$0.0992 per kWh.

When paying in person, please bring the entire bill.

(continued on next page)

Return only this portion with your check made payable to PECO. Please write your account number on your check.



- Check here to enroll in Power Pay automatic account debit and complete form on reverse side.
- Check here to pledge a donation to MEAF and complete form on reverse side.

To pay by phone call 1-877-432-9384.
 A convenience fee will apply.

01358 2406 50000 0000

10724 1 AV 0.347 10724010724021080 042 01 GXDUCW 1 03102012
 GUS PASHALIS
 3378 RED LION RD 1ST FL
 PHILADELPHIA PA 19114-1224



Account Number
01358-24065 Payment Receipt Stan

Payment Amount

Please pay this amount by 04/02/2012 **\$517.8**

00000070860000043448

PECO - PAYMENT PROCESSING
 PO BOX 37629
 PHILADELPHIA PA 19101-0629



013582406500005178520930517854



0003

GUS PASHALIS
3378 RED LION RD 1ST FL
PHILADELPHIA PA 19114-1224

Questions

1-800-494-4000

www.peco.com

8:30 am - 5:00 pm, Mon - Fri

Account Number: 0135824065

Date: April 16, 2012

Service Address:

3378 RED LION RD
1ST FL
PHILADELPHIA PA 19114

Final demand

You have not paid your past due bill of \$517.85.
Please pay the full amount now.

If you do not pay

If you do not pay the full amount immediately we will pass your account to a debt-collection agency. This could affect your credit rating.

If you have paid your bill in the last few days, please ignore this letter.

Please pay \$517.85 immediately to avoid a poor credit rating.

For ways to pay:

To pay by phone, simply call 1-877-432-9384 or pay online at www.peco.com

Did you know...?

Installing a programmable thermostat could save up to 30% on your heating, air conditioning and cooling bills.

When paying in person, please bring the entire bill.

Return only this portion with your check made payable to PECO. Please write your account number on your check.



An Exelon Company

- Check here to enroll in Power Pay automatic account debit and complete form on reverse side.
- Check here to pledge a donation to MEAF and complete form on reverse side.

Monday through Friday 8:30 a.m. to 5:00 p.m.
1-800-494-4000

74 1 AT 0.371 1951000074001951 001 01 GXDYA3 1 04172012

GUS PASHALIS
3378 RED LION RD 1ST FL
PHILADELPHIA PA 19114-1224



Account Number

01358-24065

Payment Receipt St:

Payment Amount

Please pay this amount immediately.

\$517.85

00000000000000000000

PECO Energy Co.
PO BOX 13439
Philadelphia PA 19162-0439



013582406500000000021210000005