

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

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MICHAEL LeCLAIRE VS. PECO ENERGY COMPANY :C-20054978
Billing dispute.
Initial hearing. Call of the Docket

Pages 1 through 70

DOCKETED
DEC 08 2005

Hearing Room One
State Office Building
Philadelphia, Pennsylvania

Tuesday, November 8, 2005

Met, pursuant to notice, at 1:30 p.m.

BEFORE:

Marlane R. Chestnut, Administrative Law Judge

APPEARANCES:

MICHAEL LeCLAIRE
30 Highgate Circle,
Spring City, Pennsylvania 19475
(Pro se)

LISA LUTZ, ESQUIRE
2301 Market Street
Philadelphia, Pennsylvania 19103
(Counsel for PECO)

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1 P R O C E E D I N G S

2 ADMINISTRATIVE LAW JUDGE MARLANE R. CHESTNUT:

3 This is the hearing scheduled at Docket C-20054978. For the
4 record let me state that I am Administrative Law Judge Marlane
5 R. Chestnut. I note the following appearances for the record:
6 Lisa Lutz, representing PECO, Michael LeClaire representing
7 himself. Anything preliminary to discuss?

8 MS. LUTZ: We have nothing to report.

9 JUDGE CHESTNUT: You attempted to work it out
10 before the hearing?

11 MS. LUTZ: Yes, we did. We were unsuccessful.

12 JUDGE CHESTNUT: Mr. LeClaire, stand up please and
13 raise your right hand.

14 MICHAEL LeCLAIRE,

15 having been duly sworn, testified as follows:

16 JUDGE CHESTNUT: Give and spell your name for the
17 record.

18 MR. LeCLAIRE: Michael M-I-C-H-A-E-L, LeClaire,
19 L-E C-L-A-I-R-E.

20 JUDGE CHESTNUT: Your address?

21 MR. LeCLAIRE: 30 Highgate Circle, Spring City, PA
22 19475.

23 JUDGE CHESTNUT: Mr. LeClaire, I will take your
24 testimony. It would be helpful if you would state what the
25 issues are that you're raising.

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DIRECT TESTIMONY

MR. LeCLAIRE: Good afternoon, Your Honor, Counsel. I am before you today seeking relief from charges erroneously made by PECO at my home at 30 Highgate Circle. I am further requesting from PECO that they be required to install a new meter at my home.

Additionally, I'm seeking the PUC to provide my home with an alternative energy manufacturer and provider and that the PUC either sanction or fine PECO for failing in its legal obligation to provide fair and accurate account records and its failure to ever produce requested documents.

JUDGE CHESTNUT: You understand the Commission certainly can't order you to be served by any alternative supplier. You're certainly free to avail yourself of whatever choices there are, but let's be realistic here. Did you want to respond or go ahead?

MS. LUTZ: Mr. LeClaire, do you have any further evidence of the allegations in your complaint?

MR. LeCLAIRE: I do.

JUDGE CHESTNUT: It was just an opening statement.

MR. LeCLAIRE: Just my opening.

JUDGE CHESTNUT: That's it?

MR. LeCLAIRE: That was my opening.

JUDGE CHESTNUT: Did you discuss -- I don't see why you can't give him a new meter as part of the settlement.

1 MS. LUTZ: We did offer to do that, Your Honor.

2 JUDGE CHESTNUT: Then it takes us to incorrect
3 charges, I believe you said was the first issue. Did you go
4 over the charges?

5 MS. LUTZ: Yes.

6 JUDGE CHESTNUT: Specifically what charges are you
7 contesting, Mr. LeClaire?

8 MR. LeCLAIRE: All of the charges, Your Honor,
9 from day one.

10 JUDGE CHESTNUT: Well, when is that?

11 MR. LeCLAIRE: 9-10-01 to the present.

12 JUDGE CHESTNUT: Well, is that being very
13 realistic?

14 MR. LeCLAIRE: Yes.

15 JUDGE CHESTNUT: Okay. You have a functioning
16 meter, then those charges probably are correct, right?

17 MR. LeCLAIRE: No, I don't believe it's a fully
18 functioning meter. I don't believe that the charges from day
19 one are correct. I have had two different meters at my house.

20 JUDGE CHESTNUT: Why don't you present your
21 testimony in a clear, logical format?

22 MR. LeCLAIRE: I just opened. I thought that is
23 what the procedure was for me to open.

24 JUDGE CHESTNUT: Usually it's an opportunity to
25 discuss the issues to see if there could be resolution on them.

1 MR. LeCLAIRE: I'll go forward with my complaint.
2 On or about 9-29-02, again on or about 10-25-02, 3-26-03, and
3 7-28-03. . .

4 JUDGE CHESTNUT: Wait a minute.

5 MR. LeCLAIRE: I'm sorry. 10-02-03, 3-16-04,
6 8-10-04, and finally 10-19-04 I placed billing complaint calls,
7 each time requested usage and billing documents from 9-10-01.
8 That's the day we moved in until the present. I was told on all
9 occasions that I would be given them. Until 10-19-04 I never
10 received any usage or billing documents from PECO.

11 JUDGE CHESTNUT: Are you saying you didn't get
12 monthly bills?

13 MR. LeCLAIRE: I did. I requested a statement.

14 JUDGE CHESTNUT: Is this something in addition?

15 MR. LeCLAIRE: I requested this, which I never
16 received.

17 JUDGE CHESTNUT: Okay.

18 MR. LeCLAIRE: On 10-19-04 I received from Kim
19 Chavez from PECO records of 10-25-02 to the present at that
20 time, 10-19-04. I was told by Kim that the remainder of the
21 documents I requested were on microfiche and would be retrieved
22 and sent to me. I told Ms. Chavez that I was informed by PECO
23 on seven previous attempts that I would be given this
24 information and I was not. Ms. Chavez told me it would only be
25 a little bit longer. The documents were never sent.

1 Finally around five p.m. last night I was sent via
2 fax to my office billing documents that we had requested, these
3 documents. If you would like I could enter these as Exhibit A.
4 I have four copies.

5 JUDGE CHESTNUT: Okay. Ms. Lutz.

6 MS. LUTZ: If I could just see a copy of that
7 please.

8 MR. LeCLAIRE: Finally, around five p.m. --

9 JUDGE CHESTNUT: Hold on please. You said you
10 want it marked Exhibit A?

11 MR. LeCLAIRE: Yes.

12 JUDGE CHESTNUT: Is what you received last night?

13 MR. LeCLAIRE: Yes.

14 JUDGE CHESTNUT: This is the Account Statement?

15 MR. LeCLAIRE: Yes.

16 JUDGE CHESTNUT: 9-27-01 through what?

17 MR. LeCLAIRE: Actually from 9-10-01 through the
18 present.

19 JUDGE CHESTNUT: What is the present? What is the
20 last date?

21 MR. LeCLAIRE: Fifth page, 10-27 of '05.

22 MS. LUTZ: I have no objection to this exhibit.

23 JUDGE CHESTNUT: Okay.

24 (Whereupon, the aforementioned Account Statement
25 was marked as Exhibit A for identification.)

1 MR. LeCLAIRE: Finally around five p.m. last
2 night I was sent via fax to my office the documents that we
3 had been requested for the better part of this year.

4 JUDGE CHESTNUT: Isn't that what this is?

5 MR. LeCLAIRE: It's part of the whole paragraph
6 I was just reading. I was only able to briefly review the
7 documents before this hearing, as they were only picked up by
8 myself at my office just before noon today. We received this
9 document from Mr. DuBois, who contacted us for the first time
10 last Thursday, November third, 2005. We made him aware at that
11 time of our request for these documents for the last three years
12 and of my growing frustration with not being able to have access
13 to these documents.

14 MS. LUTZ: *Your Honor, I would object at this*
15 *time. Mr. LeClaire, I believe you indicated you did in fact*
16 *receive, in your testimony, a statement on August -- in August*
17 *of '04. Did you not state you did receive a statement?*

18 MR. LeCLAIRE: October of '04 an incomplete
19 statement.

20 MS. LUTZ: You received a statement for several
21 years, correct?

22 MR. LeCLAIRE: I received a statement for
23 24 months.

24 MS. LUTZ: You did receive a two-year statement
25 October of '04?

1 MR. LeCLAIRE: I did.

2 MS. LUTZ: So your testimony is not correct that
3 you have not received records prior to the Account Statement
4 that was faxed to you last evening, correct?

5 MR. LeCLAIRE: I have not received documents that
6 I requested initially from 9-10-01 to the present. I received
7 documents from 10-25-02, to the present. So I did not receive
8 documents from 9-10-01 until 10-25-02 until Mr. DuBois faxed
9 them to my office.

10 MS. LUTZ: You did receive the data for the other
11 months, correct?

12 MR. LeCLAIRE: I did, but important data was data
13 that I needed was data I just received.

14 JUDGE CHESTNUT: Isn't it the data that's on your
15 bills?

16 MR. LeCLAIRE: Correct.

17 JUDGE CHESTNUT: So it's not like you didn't have
18 access to this information?

19 MR. LeCLAIRE: Your Honor.

20 JUDGE CHESTNUT: You had it every month.

21 MR. LeCLAIRE: We paid the bills and discarded it
22 afterwards.

23 JUDGE CHESTNUT: That's your problem.

24 MR. LeCLAIRE: When we're going back this far and
25 I am requesting the information, why didn't they provide it?

1 JUDGE CHESTNUT: If you had taken the time to
2 familiarize yourself with the Commission's procedures you would
3 have--

4 MR. LeCLAIRE: I did.

5 JUDGE CHESTNUT: You did not, because I didn't see
6 any evidence that you filed written discovery on PECO. Had you
7 done that, and had they failed to respond you would have filed a
8 Motion to Compel, which I would have addressed.

9 MR. LeCLAIRE: I wasn't aware we had to file a
10 Motion to Compel for billing statements. I would have. We
11 would have done that.

12 JUDGE CHESTNUT: Well, you didn't.

13 MR. LeCLAIRE: For billing documents to be forced
14 -- it's my records, why shouldn't I be allowed upon request to
15 be granted access to that?

16 JUDGE CHESTNUT: This is your complaint, that it
17 took you a while to get billing records?

18 MR. LeCLAIRE: It's the startup. What I request
19 right now in light of just receiving these documents be given
20 additional time under the PA Code for review and study to
21 prepare our case.

22 JUDGE CHESTNUT: Don't say the PA Code to me,
23 Mr. LeClaire, when you have not followed it. Had you done
24 so it would have been different.

25 MR. LeCLAIRE: I don't understand.

1 JUDGE CHESTNUT: Mr. LeClaire, I don't want to get
2 into a discussion -- I have already told you there is a process
3 in the Commission's regulations that deals with discovery. You
4 didn't choose to avail yourself of it. You have to take the
5 consequences.

6 MR. LeCLAIRE: I contacted PECO and requested
7 those documents. Amazingly they never got them to me until
8 today.

9 JUDGE CHESTNUT: Mr. LeClaire, please continue or
10 we can terminate this now.

11 MR. LeCLAIRE: Under the PA Code I would like
12 additional time to study and prepare in light of the fact that I
13 just received documents.

14 JUDGE CHESTNUT: *Your request is denied.*

15 MR. LeCLAIRE: It's my understanding Ms. Lutz
16 spoke with you this morning requesting a continuance.

17 MS. LUTZ: I object.

18 JUDGE CHESTNUT: Absolutely.

19 MR. LeCLAIRE: That's the information I got from
20 Mr. DuBois.

21 MS. LUTZ: I approached her about that and asked
22 -- she actually faxed a copy to me and indicated that I had not
23 been contacted. I indicated we were trying to reach you this
24 morning, and Mr. DuBois was going to be talking with you to
25 further discuss the matter.

1 MR. LeCLAIRE: Did you indicate to me that you
2 thought Mrs. Lutz discussed --

3 JUDGE CHESTNUT: Excuse me. This is getting out
4 of hand. Go ahead with your testimony. Don't talk to anybody.

5 MR. LeCLAIRE: In view of the fact -- I don't know
6 what you want me to do.

7 JUDGE CHESTNUT: I want you to present your case.

8 MR. LeCLAIRE: There is nothing more to be said
9 about that, it didn't happen?

10 JUDGE CHESTNUT: Go ahead and present your case,
11 Mr. LeClaire.

12 MR. LeCLAIRE: I'm trying to. Honestly I'm trying
13 to. I am finding it increasingly difficult to do that.

14 JUDGE CHESTNUT: Mr. LeClaire, this is the
15 process.

16 MR. LeCLAIRE: There is also a process for review
17 of documents.

18 JUDGE CHESTNUT: Mr. LeClaire, I'm not going to
19 get into it again. I told you several times.

20 MR. LeCLAIRE: Right.

21 JUDGE CHESTNUT: You have to do a better job of
22 listening. I'm not going to repeat myself again.

23 MR. LeCLAIRE: Both sides requested a continuance.

24 JUDGE CHESTNUT: Mr. LeClaire, nobody requested a
25 continuance, but you, I said.

1 MR. LeCLAIRE: Mr. DuBois told me--

2 JUDGE CHESTNUT: Mr. LeClaire--

3 MR. LeCLAIRE: --That Ms. Lutz would do the same.

4 JUDGE CHESTNUT: I'm going to stop this if you
5 can't control yourself.

6 MR. LeCLAIRE: I'm not trying to do anything.
7 It's what I heard from him.

8 JUDGE CHESTNUT: You're not being a good listener,
9 not at all.

10 MR. LeCLAIRE: I will continue on. Because of my
11 continued frustrations caused by PECO's unwillingness to comply
12 I decided enough is enough and on July 7th, 2005 I filed a
13 formal complaint against PECO with the PUC. The Complaint was
14 finally answered on September 14, 2005 by Attorney Lutz. The
15 statute requires counsel to respond within a certain period of
16 time.

17 JUDGE CHESTNUT: Mr. LeClaire, do you know when
18 the complaint was served on PECO? It's not when you file your
19 complaint that the time runs.

20 MR. LeCLAIRE: It was August 20th.

21 JUDGE CHESTNUT: Mr. LeClaire, so what, they were
22 a couple days late filing the answer.

23 MR. LeCLAIRE: They were.

24 JUDGE CHESTNUT: So what? I just don't
25 understand.

1 MR. LeCLAIRE: Why am I held to such a higher
2 standard? Why do I have to know everything correct but they can
3 be late in answering my response? Under PA Code -- I don't
4 understand, they had a certain amount of time to respond and
5 they didn't.

6 JUDGE CHESTNUT: Mr. LeClaire, Go ahead.

7 MR. LeCLAIRE: Because of that we request an
8 immediate judgment in our favor. Don't they have to respond in
9 a timely manner?

10 JUDGE CHESTNUT: Go ahead, Mr. LeClaire.

11 MR. LeCLAIRE: That's denied too?

12 JUDGE CHESTNUT: Of course.

13 MR. LeCLAIRE: Finally, a prehearing order was
14 *received with instructions to both parties to comply with*
15 *certain instructions of requirements in an unsuccessful attempt*
16 *to continue the case we're in part denied because of the*
17 *perceived failure to comply exactly with these instructions.*
18 *This case may well have been resolved if PECO had been held to*
19 *the instructions. If the utility would have contacted me one*
20 *week prior to discuss a possible settlement. As mentioned*
21 *before we were never contacted directly by counsel. We only*
22 *received a phone call message from Mr. DuBois at our home on*
23 *November third, 2005, and never spoke to each other until the*
24 *following day. PECO failed to do as instructed and, therefore,*
25 *we request another immediate judgment in our favor.*

1 JUDGE CHESTNUT: No.

2 MR. LeCLAIRE: They didn't comply with your
3 prehearing order.

4 JUDGE CHESTNUT: That's true, but it doesn't give
5 any kind of grounds to sustain your complaint. They should have
6 contacted you Tuesday instead of Thursday.

7 MR. LeCLAIRE: They should have filed the answer
8 not late, five days late, when they should have gotten you the
9 information.

10 JUDGE CHESTNUT: I tell you for someone who
11 refuses to comply with procedures you're certainly demanding
12 that PECO meet a very high standard, Mr. LeClaire. I don't
13 understand why they don't apply to you but the company,
14 especially since the way that I see it, the company's actions
15 have been very minor and have not disadvantaged you in the
16 least. So they filed the answer two days late, you are not
17 disadvantaged by that.

18 MR. LeCLAIRE: It was later, and they never
19 contacted me to discuss settlement.

20 JUDGE CHESTNUT: Two days later, but they
21 discussed it.

22 MR. LeCLAIRE: But aren't they required to do
23 that?

24 JUDGE CHESTNUT: I will chastise them.

25 MR. LeCLAIRE: Is that it?

1 JUDGE CHESTNUT: It does not affect the substance
2 of your complaint in the least.

3 MR. LeCLAIRE: The request for continuance could
4 be granted.

5 JUDGE CHESTNUT: I gave you reasons why I denied
6 it.

7 MR. LeCLAIRE: I'm talking about now.

8 JUDGE CHESTNUT: Mr. LeClaire, you have to be
9 ready to go, and so far I have not heard anything.

10 MR. LeCLAIRE: I have not brought anything up. I
11 have not brought anything up. I am asking for a request for a
12 continuance.

13 JUDGE CHESTNUT: Why don't you concentrate on what
14 is important.

15 MR. LeCLAIRE: I'm trying to do that Your Honor,
16 but I'm also trying to protect what I believe are my rights.

17 JUDGE CHESTNUT: You don't need to protect your
18 rights, Mr. LeClaire, this is not a criminal trial.

19 MR. LeCLAIRE: I have no rights?

20 JUDGE CHESTNUT: Mr. LeClaire, why don't you
21 present the substance of your complaint, if you have anything
22 to present. If you don't, that's okay.

23 MR. LeCLAIRE: I do. I want to hear if you're
24 going to deny my request because of their failures because of
25 their lateness.

1 JUDGE CHESTNUT: Go ahead with putting on the
2 testimony you want to present. If you don't do it we'll adjourn
3 this hearing.

4 MR. LeCLAIRE: I just wanted to hear from you that
5 you will deny that. My whole argument here I guess would go
6 back to my opening. Based on the document that I gave you from
7 9-10-01 until 10-2-02 our usage and its subsequent charges never
8 exceeded 1,000 kilowatt hours per month. From the time period
9 bills were delayed for questionable readings and corrected to
10 show actual less usage. During the next year and a half our
11 usage accelerated to an average range of 700 to 1300 kilowatts
12 per month, kilowatt hours per month. Then our usage dramatically
13 increased with no change in lifestyle or requirements to
14 justify such.

15 From 7-28-03 until the present our usage went to a
16 range from 700 to 1300 kilowatt hours per month to an average of
17 1200 to 3200 kilowatt hours per month, with an average usage of
18 1700 kilowatt hours per month. For the first 29 months we lived
19 in our property we never exceeded 1300 kilowatt hours in any
20 month yet now our average is more than 30 percent higher.

21 Further complicating the billing statements we
22 received from PECO our meter was changed September of '03. The
23 month of August '03 we were billed twice, one for the old meter,
24 one for the new meter. One bill was \$429.93, then again we
25 were billed 202.76. The following month we were billed 245.99.

1 The same time the meter was changed. This amounts to a usage
2 calculation rate of over 3100 kilowatt hours a month, almost a
3 50 percent increase from the year before, and all almost a full
4 100 percent increase from the two years prior.

5 We were billed erroneously twice during the same
6 billing cycle. This usage level charged is incorrect. We request
7 immediate relief from all charges reflecting these overages.
8 Our calculation reflects an over billing for the time period in
9 the amount of 1,977.28. We request such relief.

10 In fact, since the new meter has not operated
11 properly we additionally request a new meter that you have
12 granted.

13 JUDGE CHESTNUT: I didn't grant that.

14 MR. LeCLAIRE: *They've granted, that you requested.*

15 JUDGE CHESTNUT: I think they said they would do it
16 as part of a settlement.

17 MR. LeCLAIRE: We would then request a new meter
18 be installed and an independent audit and inspection of a new
19 meter. We also request to be notified of the change of the
20 meter since the last time it was done without our direct
21 knowledge or consent. That's all I have.

22 JUDGE CHESTNUT: You haven't given me anything
23 about how many people use the electricity, what pattern of life
24 is or anything to show, aside from some mathematical
25 calculation, that there has been an over charge.

1 MR. LeCLAIRE: I explained how the bills went up
2 from one year or another. I don't know what you want me to tell
3 you.

4 JUDGE CHESTNUT: The copy of Exhibit A is cut off
5 at the end, Ms. Lutz, do you have the same document?

6 MS. LUTZ: Yes.

7 JUDGE CHESTNUT: I will look at theirs instead of
8 yours. Is that okay, Mr. LeClaire?

9 MR. LeCLAIRE: Yes.

10 JUDGE CHESTNUT: Thank you. Ms. Lutz, do you
11 have questions for Mr. LeClaire?

12 CROSS-EXAMINATION

13 BY MS. LUTZ:

14 Q. Mr. LeClaire, you indicated you were not receiving your
15 Account Statements that you requested from PECO, that you filed
16 your formal complaint in July of '05. Do you have with you a
17 copy of your formal complaint?

18 A. Yes.

19 Q. Could you tell me where you're indicating in there that
20 PECO did not send you an Account Statement, and that was a
21 substantive issue in your complaint today?

22 A. Yes. Number six.

23 Q. "No explanation given for increase"?

24 A. Right.

25 Q. Is that a request for an Accounting Statement?

1 A. Sure, if that's what you want to call it.

2 Q. That's not clearly a request for an Accounting Statement.
3 And you did indicate you were receiving your bills every month,
4 but you requested that PECO provide you a second copy, an
5 Account Statement after you did receive those bills with that
6 same information each month, correct?

7 A. I asked you to send me a new statement, yes.

8 MS. LUTZ: Your Honor, at this time I have no
9 further questions for Mr. LeClaire. I would like to call to
10 testify Ms. Lori Messere.

11 JUDGE CHESTNUT: Okay. Mr. LeClaire, I will
12 swear her in, she will give testimony, then you will have a
13 chance to question her.

14 LORI MESSERE,
15 having been duly sworn, testified as follows:

16 JUDGE CHESTNUT: Give and spell your name for the
17 record.

18 THE WITNESS: Lori, L-O-R-I, Messere,
19 M-E-S-S-E-R-E.

20 JUDGE CHESTNUT: Go ahead, Ms. Lutz.

21 DIRECT EXAMINATION

22 BY MS. LUTZ:

23 Q. Ms. Messere, would you please state your business
24 address?

25 A. 2301 Market Street, Philadelphia, PA 19101.

1 Q. By whom are you employed?

2 A. PECO Energy.

3 Q. What position do you have with PECO Energy?

4 A. High bill field consultant.

5 Q. How long have you been employed by PECO?

6 A. Thirty-one years.

7 Q. Could you please explain your duties as a high bill field
8 consultant?

9 A. I'm responsible for taking an analysis of use in the
10 field of a customer's appliance load and to verify the meter's
11 accuracy.

12 Q. In the course of your employment have you reviewed and
13 become familiar with the property that PECO serves at Highgate
14 Circle under the LeClaire name?

15 A. Yes, I have.

16 Q. In reviewing your records do you indicate that you
17 performed a field visit to this property in 2004?

18 A. Yes, I did.

19 Q. Would you tell us when you visited the property in 2004?

20 A. I visited the property on August 25th, and I did a field
21 investigation.

22 Q. Why were you called to this property?

23 A. For a high billing.

24 Q. What did you observe at the property?

25 A. I took a meter reading and I verified the last billed

1 reading was correct. I went through the property.

2 JUDGE CHESTNUT: How did you verify the last
3 reading was correct?

4 THE WITNESS: By taking a new reading. I then
5 went through the property and did an analysis of use and was
6 able to justify the customer's use. I had the customer unplug
7 the appliance load and the customer witnessed, and the meter
8 stopped, an idle disk, then I performed a passing load.

9 JUDGE CHESTNUT: Hold on a second. When you say
10 customer, do you mean Mr. or Mrs. LeClaire?

11 THE WITNESS: It was Mrs. LeClaire.

12 JUDGE CHESTNUT: Mrs. LeClaire was there?

13 THE WITNESS: Yes.

14 JUDGE CHESTNUT: *So you unplugged the appliances,*
15 *then what?*

16 THE WITNESS: Mrs. LeClaire witnessed an idle
17 disk, and then I performed a passing load test of the meter and
18 found it accurate.

19 JUDGE CHESTNUT: What did you use for the passing
20 load test?

21 THE WITNESS: I don't have that on me. I don't
22 have that record.

23 JUDGE CHESTNUT: Go ahead.

24 BY MS. LUTZ:

25 Q. When you were at the property and surveyed appliances,

1 did you reveal that the potential was there for the billed usage
2 that was being billed at this property?

3 A. Yes, I did.

4 MR. LeCLAIRE: Objection.

5 JUDGE CHESTNUT: What is the objection?

6 MR. LeCLAIRE: How can she calculate?

7 JUDGE CHESTNUT: That's what you will ask when you
8 have a chance to do so.

9 MR. LeCLAIRE: She's not an expert.

10 JUDGE CHESTNUT: Go ahead, Ms. Lutz.

11 BY MS. LUTZ:

12 Q. Ms. Messere, when you were at the property what
13 appliances did you observe at the property?

14 A. I observed lighting, T.V., a refrigerator, a coffee
15 maker, central air, a sump pump, computer, well, fax machine.

16 JUDGE CHESTNUT: Wait a second.

17 THE WITNESS: I'm sorry.

18 JUDGE CHESTNUT: Lighting, T.V., refrigerator,
19 coffee maker, sump pump, central air, what else?

20 THE WITNESS: Computer, a well, fax machine and a
21 copier.

22 BY MS. LUTZ:

23 Q. When you refer to lighting what was the size of the
24 property?

25 A. Forty-five windows I counted at the property.

1 Q. You counted 45 windows on this home?

2 A. Yes.

3 Q. So, in your estimation there was average or beyond
4 average use of lighting at this large property?

5 A. Large.

6 Q. What about air-conditioning, was there one
7 air-conditioner for this large property?

8 A. Two air-conditioners.

9 Q. Two air-conditioning units for the large property?

10 A. Yes.

11 Q. When you reviewed all of those could you tell us--

12 JUDGE CHESTNUT: Did you say central or separate
13 air-conditioning units?

14 THE WITNESS: Two central air units.

15 BY MS. LUTZ:

16 Q. Could you tell us how you come up with the potential for
17 the billed usage based on the appliances that you observed at
18 the property?

19 A. We add up the appliances based on what they represent in
20 wattage, and just simply add them up and divide by 30 days.

21 Q. Did you have any other occasions to visit this property?

22 A. Yes, I did.

23 Q. Why did you visit the property again a second time?

24 A. A high bill complaint.

25 Q. When did you visit the property a second time?

1 A. August 16, 2005.

2 Q. So the first visit was in '04, and the second visit was
3 in '05, correct?

4 A. That's correct.

5 Q. Your visit in '04 you actually tested the meter, and it
6 tested accurate; is that your testimony?

7 A. That's correct.

8 Q. When you visited the property in August of '05, what did
9 you do at the property at that time?

10 A. I reviewed the appliance load with the customer, and
11 I offered to have the customer, which was Mister, unplug the
12 appliance load to do another passing load test, and I was
13 refused.

14 Q. I see you're referring to a report. Can I direct you to
15 your report marked PECO Exhibit Three, is that the report you're
16 looking at?

17 A. Yes.

18 (Whereupon, the aforementioned report was marked
19 as PECO Exhibit 3 for identification.)

20 BY MS. LUTZ:

21 Q. Could you tell us on the first page, could you review
22 this report where you have the check marks on the columns at the
23 top?

24 A. Yes.

25 Q. Does that mean that's what you observed at the property?

1 A. Yes.

2 JUDGE CHESTNUT: From 8-16-05?

3 MS. LUTZ: Yes.

4 THE WITNESS: Yes.

5 JUDGE CHESTNUT: What would you call this, a
6 report of some kind?

7 THE WITNESS: Cost estimate.

8 BY MS. LUTZ:

9 Q. Ms. Messere, on page two of that report, your first name
10 is indicated on there. Did you actually complete the report?

11 A. Yes.

12 Q. Is that the date of the investigation, 8-16-05, is that
13 correct?

14 A. Yes.

15 Q. At the top of that second page you have some check marks
16 on one, two, and three. Could you review those please?

17 A. Yes. When I arrived at the property I took a reading of
18 the meter, that reading verified the last billed reading was
19 correct. And when I entered the property with the customer I
20 offered a drop load, and that was refused, and the passing load
21 test was also refused. They are the check marks.

22 Q. When you indicated the drop load and passing load, does
23 that mean to test the meter? Is that what--

24 A. Yes.

25 Q. Is that why they're performed?

1 A. Yes.

2 Q. The second visit you didn't check the meter?

3 A. That's correct.

4 Q. That's because the customer refused for you to do that?

5 A. That's correct.

6 Q. If you could review your additional report comments at
7 the bottom.

8 A. Recorded the appliance load, I justified the summer use
9 and explained hot seasonal effects on central air increased the
10 usage. I actually compared the usage to prior use, and I had
11 also explained that it was hotter and more humid this year.

12 MR. LeCLAIRE: Objection.

13 THE WITNESS: I also did an analysis--

14 MR. LeCLAIRE: Your Honor--

15 JUDGE CHESTNUT: Your objection is overruled.

16 THE WITNESS: --of the winter usage, and also
17 justified that and reviewed it with the customer.

18 BY MS. LUTZ:

19 Q. You did in fact review your analysis at that time, that
20 there were seasonal usage changes on this account?

21 A. Yes. At that time the customer informed me that the
22 air-conditioning was set at 73.

23 Q. During the summer it's set at 73. Ms. Messere, what kind
24 of heat did you observe at the property?

25 A. Propane.

1 Q. Propane heat for the home. On the first page where you
2 have some under the lighting box, you have approximate lighting
3 200 and some recessed, could you explain that?

4 JUDGE CHESTNUT: I don't see where it is. I see,
5 in the middle column?

6 MS. LUTZ: Yes.

7 THE WITNESS: Recessed lighting that I observed,
8 recessed lighting is set into a ceiling. So the lighting was
9 close together in order to provide light. With any recess
10 lighting, it's going to increase the lighting load.

11 BY MS. LUTZ:

12 Q. Could you explain at the bottom of page one, you have
13 some comments, there is a row under, looks like meter number,
14 *there is a meter number in the bottom box?*

15 A. Yes. That would be the reading that was obtained August
16 16th.

17 Q. Okay.

18 A. I subtracted that from the previous reading and for
19 twenty days the customer had used 2142 kilowatt hours.

20 Q. Where is that?

21 A. Third box.

22 Q. Go ahead.

23 A. Or 107 kilowatt hours a day. Estimated use for a monthly
24 bill if that daily average use continued, would indicate a
25 thirty month bill of 3213 kilowatt hours. I clocked the meter,

1 and I obtained the wattage 6480 watts at the time of the visit.

2 Q. What was the daily average use at the property at that
3 time, Ms. Messere?

4 A. 107 a day.

5 JUDGE CHESTNUT: Based on bills or what?

6 THE WITNESS: Based on my reading that day.

7 JUDGE CHESTNUT: Where is the average?

8 THE WITNESS: Average multiplying that by 30 days
9 to give an idea to the customer if they continued at this rate.

10 JUDGE CHESTNUT: So the average daily use is
11 derived from 2142?

12 THE WITNESS: No, that's 2142 kilowatt hours were
13 divided by 20 days, and the previous billing was 20 days prior
14 that he received.

15 JUDGE CHESTNUT: Okay.

16 THE WITNESS: I took 816 reading, subtracted it
17 from previous reading, counted the days and divided into it.

18 MS. LUTZ: Your Honor, I have no further questions
19 for Ms. Messere.

20 JUDGE CHESTNUT: Do you have any questions for the
21 witness, Mr. LeClaire?

22 MR. LeCLAIRE: Sure.

23 CROSS-EXAMINATION

24 BY MR. LeCLAIRE:

25 Q. When were you notified of today's hearing?

1 MS. LUTZ: Objection. What is the relevance?

2 JUDGE CHESTNUT: What is the relevance of that?

3 MR. LeCLAIRE: I wanted to know.

4 JUDGE CHESTNUT: I don't see a point to it. If
5 you have questions about her testimony, then ask her.

6 MR. LeCLAIRE: I can only ask her questions about
7 her testimony?

8 JUDGE CHESTNUT: Yes.

9 BY MR. LeCLAIRE:

10 Q. You said you observed two air-conditioning units. What
11 electricity is needed to power the unit? What is powering the
12 unit by electricity, a fan and blower?

13 A. Compressor and a fan.

14 Q. *So, the compressor and fan is operated to produce air?*

15 A. That's correct.

16 Q. That's all, a compressor and a fan? Do you know how much
17 power that needs to generate, kilowatts?

18 A. Watts, approximately 4500 watts per unit.

19 Q. Per unit per day, per month?

20 A. Per unit, the appliance itself.

21 Q. Just to operate it for a minute, a second?

22 A. The rating of the appliance is 4500 watts.

23 Q. You mentioned an analysis of use, how did you come about
24 that conclusion again, the analysis of our use?

25 A. Your appliance load.

1 Q. That was at that particular time or that was the average
2 that most household use appliances?

3 A. Your appliance load.

4 Q. At that time?

5 A. Yes.

6 Q. The entire appliance load being operated all at the same
7 time?

8 A. Based on information provided.

9 Q. Our use analysis, what you observed we had that we could
10 possibly use at any given time, what things that are needed to
11 run on electricity?

12 A. Basic load, refrigeration is a flat rate based on
13 on time and off time, freezing time, falling of the unit.
14 The air-conditioning I base it on temperature setting.

15 Q. Your analysis of use, you said there -- you made an
16 analysis of our use. Is that what you saw, the appliances we
17 had, that you listed central air, sump pump, computer?

18 A. Yes.

19 Q. That's what you mean by analysis?

20 A. Yes.

21 Q. You mentioned an idle disk, performing a passing load,
22 you don't know what you used?

23 A. I don't have that record.

24 Q. There is no way to verify you performed a passing load
25 test or the results of it?

1 A. Your wife was there and witnessed it.

2 Q. The passing load test?

3 A. Yes.

4 Q. The results of that?

5 A. She was right there during the test, yes.

6 Q. Does it explain the results or explain results from the
7 passing load test?

8 A. Yes, they were.

9 Q. What was the explanation?

10 A. That your meter was accurate. There wasn't a ground or
11 short at the time of my visit when she witnessed the meter had
12 stopped and that the passing load test found the meter accurate.

13 Q. You mentioned the analysis of our use encompassed certain
14 appliances such as lighting, T.V, refrigeration, central air,
15 sump pump, a computer, a well, fax machine and copier; is that
16 correct?

17 A. Yes.

18 Q. Were there any other appliances that you noticed or any
19 other analysis of our use that you noticed?

20 A. Microwave, coffee maker, washer, ceiling fan.

21 JUDGE CHESTNUT: How about the dryer?

22 THE WITNESS: Gas, propane dryer.

23 JUDGE CHESTNUT: Did you count any usage for the
24 washer and dryer?

25 THE WITNESS: Washer, not the dryer. There is a

1 little electric in a dryer for a timer, but the energy driving
2 the unit is propane.

3 JUDGE CHESTNUT: That's what you have listed in
4 the final column?

5 THE WITNESS: Third row over.

6 BY MR. LeCLAIRE:

7 Q. Most of these things you say -- let me go back. Is it
8 under your impression our house is a newly constructed house?
9 Do you have that knowledge, because of meter and changes that
10 occurred when the meter was installed?

11 A. I could obtain that record.

12 Q. Did you know that prior to it?

13 A. I knew you had the service turned on in 2001.

14 Q. That was the first time the service was ever turned on at
15 that location?

16 A. That was your turn-on date.

17 Q. But prior to that there was no other. . .

18 A. I wouldn't have that information.

19 Q. So you didn't know if there was anyone using it prior to
20 it or new construction?

21 A. All I investigated was what applied to you.

22 Q. You also noticed two central air units?

23 A. Yes.

24 Q. You came up with a potential billed usage -- you added up
25 the appliances?

1 A. Yes.

2 Q. You came up with potential bill usage by adding up
3 our appliances and the potential that we could use them?

4 A. I tried to get as exact.

5 Q. But potential, on what kind of frequency did you use? Is
6 there a certain calculation that we use our microwave five times
7 and use central air 30 times? How did you come up with that
8 potential billed usage?

9 A. The central air hours were based on the setting of 73.

10 Q. Besides the central air, everything else?

11 A. Refrigeration that is documented on the analysis.

12 Q. I don't have the analysis in front of me. I was never
13 given that.

14 JUDGE CHESTNUT: Look in the exhibit that
15 Ms. Lutz handed to you.

16 MS. LUTZ: The exhibit package.

17 MR. LeCLAIRE: That you just gave me. Sorry,
18 I didn't know that I had it.

19 JUDGE CHESTNUT: The package she handed to you.

20 MR. LeCLAIRE: I don't believe you gave me one.

21 MS. LUTZ: Let me give you another copy.

22 MR. LeCLAIRE: Okay.

23 BY MR. LeCLAIRE:

24 Q. You came up with potential billed usage, and did it by
25 adding up all the appliances that we have?

1 A. Correct.

2 Q. You don't know how much we use those appliances?

3 A. A refrigerator has its own standard.

4 Q. Besides the refrigerator and air-conditioning, my AC was
5 set at 73 degrees, the rest of the household, there is really no
6 way to tell the frequency of usage of the existing appliances?

7 A. Actually there weren't too many appliances left that
8 didn't fall in that category.

9 Q. Light, T.V. So most of my usage was from the
10 refrigerator and central air?

11 A. High point summertime, yes, that's correct.

12 Q. All of the usage?

13 A. Highest usage for appliance using the most.

14 Q. Right.

15 A. Anything that heats or cools.

16 Q. You're assuming how much we use when you come up with
17 potential billed usage, potentially our bill could be this, if
18 we used it so many certain times. Where are you coming up with
19 the figures the bills that we're billed by PECO are accurate?

20 A. Well actual potential of 142 a day if you take a look at
21 that sheet is higher than what you were billed. So, if you took
22 the T.V. out, and I don't know, even the lighting. . .

23 Q. You're assuming how much I'm using anything, basically
24 even air-conditioning?

25 A. No.

1 Q. You're assuming how much I'm home and using my
2 appliances?

3 A. No, the air-conditioning is based on the outdoor
4 temperature and indoor setting.

5 Q. Okay. At that given moment?

6 A. It's what you told me, that it was set at 73.

7 Q. Is that at any given moment that's why you could see what
8 was going on in the house, but it was for that given moment?

9 A. It's what you provided me. I couldn't base it on
10 anything else.

11 Q. Most of it came from refrigeration and air-conditioning,
12 which we had from the beginning. How then did we use so much
13 less energy the first two years?

14 A. You actually did not because I have a bill that was
15 issued to you in September 25th, 2002 where you used 97.2
16 kilowatt hours a day.

17 Q. We were billed \$839 that month, do you recognize it?

18 A. Yes, you used it.

19 Q. That was cancelled, it was the wrong bill, were you aware
20 of that? I understand what we were billed. I'm going back to
21 the first year, the average daily use was no more than 50
22 kilowatt hours per month, from 9-10-01 until 9-25-02. For an
23 entire year my kilowatt hour usage never exceeded 50. Now
24 you're telling me I have the potential to use 140 kilowatt
25 hours?

1 A. Based on what I found at the time of the visit, and I
2 wasn't at the property in '02.

3 Q. But most of it came from central air and refrigerator?

4 A. At the time of the visit that's what I found.

5 Q. Central air and refrigerator was absolutely in the house
6 at the time.

7 A. I can base upon what I found at the time of the visit,
8 that's what I found, and I justified it.

9 Q. How do you justify then our residence never used above 50
10 kilowatt hours --

11 MS. LUTZ: I object.

12 JUDGE CHESTNUT: Mr. LeClaire, please move on.

13 MR. LeCLAIRE: My whole point, there is no way
14 she can come up with these potential usage average based on
15 assumptions, assumptions based on what we use, how much we use.
16 It's not consistent with the past.

17 JUDGE CHESTNUT: Mr. LeClaire, do you have any
18 other questions?

19 MR. LeCLAIRE: Yes.

20 BY MR. LeCLAIRE:

21 Q. You explained to me, compared usage to prior years was
22 based on a warmer weather cycle, correct?

23 A. What was that?

24 Q. You indicated you had compared usage to prior years, and
25 you indicated to me it was because of warm weather?

1 A. 2005's usage was higher because of heat and humidity
2 in 2005 that exceeded, primarily the humidity exceeded--

3 JUDGE CHESTNUT: Wait, 2005 was higher than 2004?

4 THE WITNESS: That's correct. However, PECO
5 Energy does not measure the humidity level. I wish they did.

6 BY MR. LeCLAIRE:

7 Q. How do you know that?

8 A. Because it's my job.

9 Q. How do you know the humidity level from 2005 to 2004?

10 A. Because it's my job. I live and breathe doing these
11 investigations. I do retain that in 2005 the humidity levels
12 consistently were higher than 2004. KYW provides reports.

13 Q. What if I told you that information was inaccurate based
14 on the Weather Channel report that 2004 was in fact a much more
15 hot and humid year than 2005?

16 A. I would disagree.

17 Q. And there were less sunny days in 2005 than there were in
18 2004?

19 A. I was not looking at sunny. I was looking at humidity
20 levels.

21 Q. You claim we also had 45 windows in our property?

22 A. Yes, I counted them.

23 Q. Now 45 windows, is that a large amount of windows or
24 small?

25 A. Large.

1 Q. So with such a large amount of windows letting in a lot
2 of light your statement there was large usage of lighting for 45
3 windows is that accurate, we need a large amount of lighting?

4 A. You have the lighting. You had recess lighting.

5 Q. You stated a large usage of lighting was required for our
6 house with 45 windows?

7 A. Because of the recessed lighting, yes.

8 Q. You said we would need a large usage. . .

9 A. I didn't say need.

10 Q. You said that we would require a large usage of lighting
11 for our house. How many windows describe. . .

12 JUDGE CHESTNUT: Why don't you let her answer.

13 MR. LeCLAIRE: I'm trying to let her answer.

14 THE WITNESS: I said you have recessed lighting.

15 Therefore that is a large amount, for example light bulbs, if
16 you had two lamps compared to five to six recessed lighting it's
17 large lighting. Recess lighting is into the ceiling. So you do
18 not get the same response. Therefore, they are closer together
19 and more required for and to provide the same amount of light if
20 it were not in the ceiling.

21 BY MR. LeCLAIRE:

22 Q. But if we have 45 windows, it would not be a necessity to
23 have that amount?

24 A. Why would you have recess lighting?

25 Q. It's more attractive. That's why we have it.

1 A. Potential to use a light when it turns on more than one
2 light it's going to come on.

3 Q. You also mentioned you clocked the meter. How did you
4 do that?

5 A. A passing load test at the time of the visit is taken,
6 there is a rating of a meter and that rating is the size of the
7 disk. And I took a revolution of that disk, one revolution, I
8 clocked the seconds, there are 3600 seconds in an hour. PECO
9 Energy measures in kilowatt hours. So one revolution of that
10 disk clocked four seconds or 6480 watts or registering for that
11 4 second period.

12 Q. That's what our average use is?

13 A. That's the appliance load that was running when I got to
14 *the property, 6480 watts.*

15 Q. At that particular time?

16 A. At the second that I clocked it.

17 Q. It's not an indication of anything really?

18 A. It's an indication those are the appliances that were
19 running at the time of the visit.

20 Q. That's all?

21 A. Yes.

22 Q. You can't base your assumption on that?

23 A. I would never base any assumption on that.

24 Q. Even coming up with potential billed usage?

25 A. It had nothing to do with clocking.

1 Q. But adding up appliances at the time it was used?

2 A. Nothing to do with that, no.

3 Q. So, from the appliances that were taken there is the
4 potential we will use that amount, this is where we can justify
5 what the bills are?

6 A. Yes, and they are in line.

7 MR. LeCLAIRE: I have nothing further.

8 JUDGE CHESTNUT: Redirect?

9 MS. LUTZ: Yes.

10 REDIRECT EXAMINATION

11

12 BY MS. LUTZ:

13 Q. Ms. Messere, is this the industry standard, to check a
14 *property when you visit such a property?*

15 A. Yes.

16 Q. Is there any way for you to determine what they have used
17 a day before or a week before or what they could have used a
18 year before your actual visit?

19 A. No.

20 Q. You can only test what is at the property when you are
21 physically at the property?

22 A. That's correct.

23 Q. That's an industry standard to use it on the day of your
24 visit?

25 A. That's correct we try to get information, for example,

1 a bigger appliance like central air does depend on a setting.
2 That's why I indicated that the customer told me it was set at
3 73 degrees.

4 MS. LUTZ: Thank you. No further questions.

5 JUDGE CHESTNUT: Any further questions based on
6 her additional questions?

7 MR. LeCLAIRE: No.

8 JUDGE CHESTNUT: Thank you very much. You're
9 excused.

10 MS. LUTZ: At this time I would like to call
11 Mr. Louis DuBois.

12 LOUIS DUBOIS,
13 having been duly sworn, testified as follows:

14 JUDGE CHESTNUT: Please give and spell your name
15 for the record.

16 THE WITNESS: L-O-U-I-S D-U-B-O-I-S.

17 DIRECT EXAMINATION

18 BY MS. LUTZ:

19 Q. Mr. DuBois, would you please state your business address?

20 A. 2301 Market Street, Philadelphia, PA.

21 Q. By whom are you employed?

22 A. PECO Energy Company.

23 Q. How long have you been employed by PECO?

24 A. 28 years.

25 Q. What is your current position at PECO?

1 A. Regulatory assessor.

2 Q. Would you please describe your duties as a regulatory
3 assessor?

4 A. I review cases with the Public Utility Commission and
5 customers and investigate those.

6 Q. In the course of your employment have you had an
7 opportunity to review the account of Mr. and Mrs. LeClaire?

8 A. Yes.

9 Q. Could I refer you to what has been marked PECO Exhibit
10 One?

11 A. Yes.

12 Q. Would you please describe this exhibit for us?

13 JUDGE CHESTNUT: Mr. LeClaire, are you following
14 this?

15 MR. LeCLAIRE: Yes.

16 (Whereupon, the aforementioned Account Statement
17 was marked PECO Exhibit Number One for identification.)

18 BY MS. LUTZ:

19 Q. Would you please describe this exhibit for us?

20 A. PECO Exhibit One is an Account Statement listing usage,
21 bills rendered and payments made for the account of Anita
22 LeClaire in Spring City, PA, starting with the first bill issued
23 9-27-2001 through current bill issued on 10-27-05.

24 Q. What service does PECO provide to this customer?

25 A. Residential electric.

1 Q. Does the customer participate in the CAP Rate Program?

2 A. No.

3 Q. Mr. DuBois, you heard the testimony of Mr. LeClaire.
4 Could I please refer you to the billing period of 8-26-03.
5 Could you please find that on the statement?

6 A. Yes, on page three, three quarters of the way down.

7 Q. Mr. LeClaire indicated that he was -- one of the issues
8 in his complaint he was double billed for the month of August
9 '03. Could you please review the billing period for August of
10 '03?

11 A. Certainly. On 8-26-03 there was a bill issued on an
12 estimated reading, and then when we got a reading the first bill
13 was cancelled and a second bill was issued. So, only one bill
14 issued for that billing period.

15 Q. On the first line noted 8-26-03?

16 A. Yes.

17 Q. Where the meter reading indicated as estimated it says
18 PECO bill amount 429.93?

19 A. Correct.

20 JUDGE CHESTNUT: Are you talking about the August
21 period?

22 MS. LUTZ: August 26, 2003.

23 BY MS. LUTZ:

24 Q. The PECO bill in the amount of 429.93, was that bill
25 actually corrected? Was it cancelled?

1 A. Yes.

2 Q. He was not charged for the bill?

3 A. That's correct.

4 Q. There was a corrected bill sent to him?

5 A. Yes.

6 Q. What was the amount of the corrected bill?

7 A. 202.76. If you go further across that line, on
8 8-26-03, it shows \$895.58 was indeed cancelled.

9 MR. LeCLAIRE: Where does it say that?

10 THE WITNESS: 8-26-03, if you go across to the
11 payment column where the asterisk is.

12 MR. LeCLAIRE: What does it say?

13 THE WITNESS: 895.58.

14 MR. LeCLAIRE: *It appears it shows it was a*
15 *payment; am I incorrect?*

16 JUDGE CHESTNUT: Mr. LeClaire, you can't ask
17 questions now.

18 MR. LeCLAIRE: Okay.

19 JUDGE CHESTNUT: Go ahead.

20 BY MS. LUTZ:

21 Q. Mr. DuBois, would you review the comment section of when
22 the bill was cancelled at that time?

23 A. It shows that -- the asterisk indicates what figure we're
24 talking about. So the question about 895.58 would be, that is
25 the amount that was cancelled, no payment during that month.

1 Q. So, there was no double billing during that month as he
2 referred to?

3 A. That's correct.

4 Q. He also questioned a bill for September of '03. Could
5 you direct us to the billing period of September '03?

6 A. Yes.

7 Q. Could you review the billing for September of '03?

8 A. Well, the first at the bottom of page three of the
9 billing statement no bill was issued for that period, it shows
10 the previous amount 244.50 that was due, plus a late charge of
11 52 cents. That's where the total amount of 245.02 comes from.
12 Then if you go to the next page--

13 JUDGE CHESTNUT: There is no bill because use was
14 zero?

15 THE WITNESS: A question on usage. If you go to
16 the next page it shows what was billed for that period, 245.99.

17 JUDGE CHESTNUT: That was based on an actual
18 reading?

19 THE WITNESS: That's correct.

20 BY MS. LUTZ:

21 Q. Mr. DuBois, on that page it indicates there was a meter
22 change in September of '03, correct?

23 A. That's correct.

24 Q. Do your records indicate that was reviewed with the
25 customer?

1 A. I don't understand the question.

2 Q. Was an explanation given to the customer of the meter
3 change?

4 A. The fact that we changed the meter?

5 Q. Yes.

6 A. Yes.

7 Q. Mr. DuBois, what is the current average monthly bill
8 amount on this account?

9 A. I think 246.

10 JUDGE CHESTNUT: For what period? Before you
11 answer that, why was the meter changed; do you know?

12 THE WITNESS: AMR change out.

13 JUDGE CHESTNUT: Automatic meter was installed?

14 THE WITNESS: Yes. Current average bill is 240
15 dollars per month.

16 BY MS. LUTZ:

17 Q. Mr. DuBois, what is the current average monthly bill
18 amount for the customer?

19 A. \$240.

20 JUDGE CHESTNUT: For what period, as of the last 12
21 months?

22 THE WITNESS: As of the last billing statement we
23 calculate average bills.

24 JUDGE CHESTNUT: Using the last 12 months, you
25 said 240?

1 THE WITNESS: 240.

2 BY MS. LUTZ:

3 Q. Mr. DuBois, what is the current account balance on this
4 account?

5 A. Current account balance \$1,726.26.

6 Q. When was the last time a payment was made on this account
7 and in what amount?

8 A. \$250 was paid August first, '05.

9 Q. Mr. DuBois, in your analysis of use of these billing
10 periods, you heard Ms. Messere's testimony, that the use is
11 consistent with seasonal usage for increases at this property.
12 correct?

13 A. Yes, I did.

14 Q. According to these records are there any other billing
15 periods that look to be out of line with the usage at this
16 property?

17 A. No, I thought usage was pretty consistent showing
18 a marked increase in summer months, probably due to the
19 air-conditioning.

20 Q. Mr. DuBois, specifically the period 9-27-01 through '02
21 period?

22 JUDGE CHESTNUT: 9-27-01, is that through
23 September '02?

24 MS. LUTZ: Through September of '02.

25 JUDGE CHESTNUT: Okay.

1 BY MS. LUTZ:

2 Q. Are some of these months lower than after usage when the
3 meter was changed at this property?

4 A. Yes, I would say so.

5 Q. Is there any way for you to determine the type of usage
6 at the property during that period from September of '01 through
7 September of '02?

8 A. As far as what kind of appliances?

9 Q. Exactly.

10 A. No.

11 Q. Is there any way for you to indicate that the billing was
12 not correct at that time?

13 A. No.

14 Q. Now, Mr. DuBois, Ms. Messere had indicated that the
15 air-conditioning may use a lot of electricity at this property.
16 On the summer months after your review of the account, are the
17 summer months in line with each other on all of the billing
18 years that you have on this statement?

19 A. I would say all of the billing years except the first
20 year.

21 Q. Okay.

22 A. It was a little bit less at that point. But if you look
23 at what the daily average use is during those summer months,
24 it's pretty much the same throughout, 8-26-03, on page three of
25 six, showing 101.7 daily average use. If you go down to 8-26-04

1 it's like 81.7. The following year July was 100.9, and 2005
2 talking about August, 91.5. So it indicates to me a pretty
3 steady daily average usage as far as air-conditioning.

4 Q. That's since the time the meter was changed and tests?

5 A. Before that. If you look at the Account Statement page
6 three of six the meter was changed 9-8 of '03. If you look at
7 the summer period before that there is usage during that period,
8 which would indicate the air-conditioner.

9 (Whereupon, BCS decision was marked PECO Exhibit
10 Number Two for identification.)

11 BY MS. LUTZ:

12 Q. Mr. DuBois, can I refer you to what has been marked PECO
13 Exhibit Number Two. Could you please explain this exhibit?

14 A. Yes, PECO Exhibit Two is a copy of the verbal close that
15 was issued by the Pennsylvania Public Utility Commission. This
16 was issued 7-12-05.

17 Q. What was the resolution at that time?

18 A. Customer's bills based on actual readings. Customer
19 advised about the transition charges. Customer not satisfied,
20 sent formal complaint forms.

21 Q. Thank you. What is PECO's final position relative to
22 this account?

23 A. PECO's final position, the bills are correct as rendered.

24 MS. LUTZ: Thank you. Your Honor, I have no
25 further questions.

1 JUDGE CHESTNUT: Mr. LeClaire, do you have
2 questions for this witness?

3 MR. LeCLAIRE: I do.

4 CROSS-EXAMINATION

5 BY MR. LeCLAIRE:

6 Q. Mr. DuBois, are you a billing authority?

7 A. Explain the question.

8 Q. Are you authorized to detail bills?

9 A. I don't understand the question.

10 Q. If I had a question about my bill could I come to you?

11 A. I'm not a billing rep. I prepared the billing statement.

12 Q. Attorney Lutz had referred to page three of the billing
13 statement, 8-26-03 when we were billed \$429.93, also 202.76.

14 *Was there a double billing?*

15 A. No, because one of the bills was cancelled.

16 Q. Was I billed twice? Was I sent two separate bills?

17 A. I don't know that by this billing statement. I see a
18 bill, it was cancelled.

19 Q. You don't know if I was issued one or two bills, if there
20 was double billing?

21 A. I can testify from the Statement of Account there was a
22 bill in the amount of 429.93, and that was cancelled, and then
23 another bill was issued in the amount of 202.76.

24 Q. So, from what the Account Statement says did you issue
25 two bills?

1 A. I can't tell you whether you received that bill or not.

2 Q. You said it looks like you issued one and then cancelled
3 it and issued another one?

4 JUDGE CHESTNUT: Stop trying to twist his answer.
5 He said he doesn't know when the second bill went out.

6 THE WITNESS: I don't know if you were sent a
7 bill before it was cancelled.

8 BY MR. LeCLAIRE:

9 Q. Why was the account credited \$895.58?

10 A. Because the bills were questioned and when we got actual
11 readings we billed correctly.

12 Q. So it was billed incorrectly?

13 A. I don't understand the question.

14 Q. Was I billed incorrectly \$895?

15 A. Bills were based on estimated readings, and when we got
16 actual readings we billed correctly.

17 Q. So the estimated readings and subsequent billing by PECO
18 was incorrect?

19 A. It was correct based on what information we had at the
20 time.

21 Q. Then when you further went and had actual readings you
22 found out it was actually incorrect?

23 A. That's correct.

24 Q. Your estimate for 8-26-03 was for 2951 kilowatts for the
25 month?

1 JUDGE CHESTNUT: Kilowatt hours?

2 MR. LeCLAIRE: 2951 kilowatt hours for that month
3 estimated, correct?

4 THE WITNESS: Yes.

5 BY MR. LeCLAIRE:

6 Q. The actual was 1433 kilowatt hours per month?

7 A. That's correct.

8 Q. So the difference was more than -- it was greater than
9 twice the difference in actual than estimated?

10 A. No, it's not completely -- if you go down a further
11 column it's a 61-day bill. We cancelled two month's worth of
12 usage. As you notice in the right-hand corner it says bills
13 cancelled 6-26-03 to 8-26-03. So we cancelled, 465.65 and
14 429.93. When we did the investigation, figured out how to get
15 the correct reading, we re-billed the account for that amount.

16 Q. So the actual billing for 7-28-03 is incorrect?

17 A. No.

18 Q. Wasn't it an estimated reading?

19 A. No, it was an actual reading.

20 Q. So the actual reading of \$465.65 is the actual reading,
21 and you cancelled that?

22 JUDGE CHESTNUT: I think what he's trying to ask,
23 why did you go back to June to rebill.

24 MR. LeCLAIRE: I'm trying to understand.

25 JUDGE CHESTNUT: Why don't you answer that.

1 THE WITNESS: Because of the questionable reading
2 we cancelled 895.98, cancelled the entire amount. That's all it
3 tells me. I can't tell you what I think.

4 BY MR. LeCLAIRE:

5 Q. Based on that, I wasn't billed correctly?

6 A. I think you were billed correctly once we sent you the
7 corrected bill.

8 Q. Once you sent me the corrected bill, but initially we
9 weren't billed correctly?

10 A. I don't know how to answer.

11 JUDGE CHESTNUT: I think it's been answered. He
12 has already told you what he knows.

13 BY MR. LeCLAIRE:

14 Q. You said the current average bill amount is 246?

15 A. 240.

16 Q. What was it for the first 12 months?

17 A. I don't have that information, sir, the first 12 months
18 you lived in the property.

19 Q. So, 240 is based on current actual 12 months?

20 A. Most recent data available in the computer. Everyday you
21 go into the account to look at it, it will tell you the average.

22 Q. Calculated for the present 12 months?

23 A. Yes.

24 Q. You don't know what it was for the first 12 months?

25 JUDGE CHESTNUT: He already said he didn't.

1 BY MR. LeCLAIRE:

2 Q. Do you know for the second 12 months?

3 A. I don't have that information.

4 Q. How about the third 12 months?

5 A. No.

6 Q. You don't have any information, what is presently the
7 average?

8 A. I have information on the billing statement from every
9 bill that was issued, I could tell you what the daily average
10 usage was.

11 Q. What is the first 12 months?

12 JUDGE CHESTNUT: I'm not going to take the time to
13 have him sit here and calculate that.

14 MR. LeCLAIRE: She asked him what is the average
15 usage now. It goes to argument.

16 JUDGE CHESTNUT: We can all calculate what that
17 numerical figure is.

18 BY MR. LeCLAIRE:

19 Q. Would you agree it's lower than it is now?

20 A. First 12 months?

21 Q. Yes.

22 A. By looking at the billing statement I would say, yes, but
23 I have no idea what appliances you had on for the time period.

24 Q. I didn't ask that. I just asked if it was lower.

25 Attorney Lutz asked if any of our billing usage was out of line,

1 and you said no.

2 A. Based on my review of the Account Statement.

3 Q. Based on the Account Statement, so the average daily use
4 is correct then?

5 A. It is what it is.

6 Q. Is this information correct here, average daily usage
7 correct, for the first 12 months?

8 A. Daily average use.

9 Q. Usage meter reading.

10 A. It's based upon what you used, yes.

11 Q. So, that's accurate?

12 A. That's correct.

13 Q. So, you had said no other -- the billing usage was not
14 out of line, the attorney asked if it's out of line, you said
15 no?

16 A. As per my review.

17 Q. Attorney Lutz asked 9-27-01 through nine of '02, you said
18 -- she asked are some lower. You said, yes. Could you explain
19 your contradiction?

20 A. Certainly. I established a pattern of use based on
21 summer usage. The first year was lower than following time
22 period up to the current date.

23 Q. Do you know why?

24 A. No, I don't know what appliances you had on the first
25 year. As I said before, I would say usage based upon the

1 billing statement, shows your usage goes up drastically in the
2 summer months. I would assume because of air-conditioning.

3 It's consistent through '03, '04 and '05.

4 Q. But '01, '02 it was not consistent?

5 A. '02 was consistent.

6 Q. '02, July of '02 a usage of only 658 kilowatts for the
7 whole month, average daily use 23.5, but the next years, as you
8 go through the usage, is up to over 100 kilowatts, more than
9 three times that amount.

10 A. If you look at page two of the billing statement, billing
11 statement, 9-25-02, a 63-day bill, and you see usage, 6125,
12 kilowatt hours come out daily to 97.2, that's from what I
13 understand basically the first summer period you were in the
14 house you moved in September of '01. So, usage I would say is
15 pretty in line with usage the following years around 100, 2003
16 around 99, 100, '04 around the same.

17 Q. So from June, 23 kilowatt hours and July and August it
18 went up to over 100?

19 A. Talking '02?

20 Q. 2002.

21 A. I don't know. You could have been away for a month.

22 Q. Then we wouldn't have used any air-conditioning?

23 A. Not necessarily, air-conditioning could have been on at a
24 higher temperature.

25 Q. If we go back to the first summer, you said the summer

1 months are in line except for the first year. You just said to
2 Attorney Lutz that they were a little less, but they are in
3 line. Here with me you're stating they're only a little bit
4 less in line. I'm not really seeing it here.

5 MS. LUTZ: I would object. The questions are
6 repetitive.

7 JUDGE CHESTNUT: Absolutely. Mr. LeClaire, please
8 move on.

9 MR. LeCLAIRE: I'm trying to figure out the
10 accuracy of the bill.

11 JUDGE CHESTNUT: If you're not willing to accept
12 the witness's answer, you need to move on.

13 MR. LeCLAIRE: I'm willing to accept it.

14 JUDGE CHESTNUT: No, you're not.

15 BY MR. LeCLAIRE:

16 Q. You also indicated it was reviewed with the customer, the
17 meter change. When was that reviewed?

18 A. I assume when the question was asked, when we talked
19 about the billing statement, it shows in there meter changed
20 9-8-03.

21 Q. So it wasn't reviewed prior to the meter change or
22 immediately afterward?

23 A. What do you mean by reviewed?

24 Q. Wasn't discussed, told to the customer it happened.

25 A. I don't have a record.

1 Q. Is it typical?

2 A. The meter is property of the utility company. If we deem
3 a meter to be replaced or if it's an AMR change out we did send
4 out notices about AMR initiatives.

5 Q. So nothing specific?

6 A. I would say it's notification.

7 Q. Nothing specific, a certain time or date?

8 A. Possibly could. I don't know.

9 Q. You also say you reviewed the account prior to this
10 hearing. How long were you able to do that?

11 A. I don't understand the question.

12 Q. Attorney Lutz asked initially were you able to review the
13 account?

14 A. That's correct.

15 Q. How long have you been able to review my account?

16 MS. LUTZ: Objection.

17 JUDGE CHESTNUT: The question doesn't make sense.
18 Please restate it.

19 BY MR. LeCLAIRE:

20 Q. When did you have access to the entire account?

21 A. When did I start reviewing it?

22 Q. Yes.

23 A. About a week and a half ago.

24 Q. If you had the entire account a week and a half ago, why
25 did it take so long to get it to me?

1 A. Because I saw nothing in your complaint that you wanted
2 billing records back to 2001. When I reviewed the account I saw
3 that you had received billing statements back to 2002.

4 Q. When we discussed it on Friday did I ask you for this
5 additional information?

6 A. Yes.

7 Q. Why didn't you fax it right then?

8 A. I explained to you that it was on microfiche and the
9 microfiche wasn't in front of me, I needed to have it pulled, to
10 pull the information off of microfiche.

11 Q. You observed it on microfiche, you didn't observe it in
12 paper form?

13 MS. LUTZ: Objection. I'm not sure of the
14 *relevance of this.*

15 JUDGE CHESTNUT: What is the point?

16 MR. LeCLAIRE: I'm wondering how long he had the
17 information before I got it. It goes to my whole review of the
18 documents, and not having enough time.

19 THE WITNESS: I had it yesterday and prepared it
20 and faxed it to you yesterday.

21 BY MR. LeCLAIRE:

22 Q. Why was it that I wasn't contacted until one week prior
23 to discuss settlement?

24 JUDGE CHESTNUT: Mr. LeClaire, we went over this
25 already.

1 BY MR. LeCLAIRE:

2 Q. I'm wondering why didn't you call two weeks in advance,
3 why didn't you call me three weeks? Why did you wait until
4 Thursday?

5 A. Sir, I don't know how to answer. I called you Thursday
6 and sent a letter.

7 Q. Did you receive a prehearing order?

8 A. Yes.

9 Q. Did you understand in Statement Two that you were
10 required to call me?

11 A. I apologize. I was two days late. I don't know what to
12 say.

13 Q. I'm asking you, why the delay?

14 A. You could have called the company, too.

15 Q. I did numerous times, as I stated.

16 A. Okay.

17 Q. No explanation?

18 MS. LUTZ: Your Honor, I object.

19 JUDGE CHESTNUT: Mr. LeClaire, you're beating it
20 to death.

21 MR. LeCLAIRE: Nobody is answering as to the delay.

22 JUDGE CHESTNUT: It's not like it was some big
23 plot by PECO not to get it to you. Mr. LeClaire, move on. Do
24 you have anything further?

25 MR. LeCLAIRE: I do. I have a lot.

1 BY MR. LeCLAIRE:

2 Q. Are you obligated to contact me one week prior?

3 JUDGE CHESTNUT: Mr. LeClaire, I don't want to
4 hear anything else about it.

5 MR. LeCLAIRE: I would like to know, what are his
6 obligations to me.

7 JUDGE CHESTNUT: Did you fail to respond to any
8 discovery, Ms. Lutz?

9 MS. LUTZ: No.

10 MR. LeCLAIRE: They didn't answer my requests.

11 JUDGE CHESTNUT: You didn't request them in
12 writing.

13 MR. LeCLAIRE: Seven times I requested documents.

14 JUDGE CHESTNUT: No, you didn't.

15 BY MR. LeCLAIRE:

16 Q. In your investigation why I had not received the
17 information on microfiche, did you find anywhere where I had
18 requested information on microfiche?

19 A. In your complaint?

20 Q. In your investigation of this, when I spoke to you, and
21 I said I have been requesting this seven times for three years,
22 and they said it's on microfiche, did you uncover that I did in
23 fact call?

24 A. As we discussed on Friday, when we had the phone
25 conversation, I said I looked through the contact history and

1 I saw in August that you did request an Account Statement.

2 Q. August of?

3 A. '05. I explained at the time it wasn't requested from
4 me. I saw nothing in the formal complaint where you said you
5 needed that information.

6 Q. There was a request for information in August of '05?

7 A. Yes.

8 Q. Do you know why that was not fulfilled?

9 A. No.

10 MS. LUTZ: Objection.

11 JUDGE CHESTNUT: This is ridiculous, Mr. LeClaire.
12 If you can't move on, we will terminate this hearing.

13 MR. LeCLAIRE: It appears you want to do it. I
14 have a lot of other questions.

15 JUDGE CHESTNUT: If you have relevant questions
16 ask them.

17 MR. LeCLAIRE: I'm trying.

18 JUDGE CHESTNUT: If you have relevant questions
19 directed to the substance of the complaint, then ask them.

20 MR. LeCLAIRE: My whole complaint is that I never
21 received information.

22 JUDGE CHESTNUT: We know. Don't bring it up again.

23 BY MR. LeCLAIRE:

24 Q. Does PECO present information where bills are kept on
25 microfiche?

1 MS. LUTZ: Objection.

2 JUDGE CHESTNUT: What is the relevance?

3 MR. LeCLAIRE: The past bills on microfiche, I'm
4 going directly to how will I know bills are on microfiche, if
5 I'm asking for documents.

6 JUDGE CHESTNUT: Mr. LeClaire, this hearing is
7 going to terminate. You did not avail yourself of the discovery
8 process, and now you're complaining that you weren't given
9 documents. If you want to focus on substantive issues about
10 billing, that's fine. One more word, and that's it. I don't
11 know why you're not willing to abide by the instructions. But I
12 have just about had it.

13 BY MR. LeCLAIRE:

14 Q. *Did you offer me a settlement?*

15 A. We discussed having a meter tested again and payment
16 terms.

17 Q. For withdrawal of the complaint?

18 A. That I would talk about it.

19 Q. Did you say to me if you withdraw the complaint we will
20 come and do a meter test?

21 A. When I spoke to you on Friday you said you would try to
22 get a continuance. I said I don't know if a continuance will be
23 granted.

24 MS. LUTZ: Objection.

25 JUDGE CHESTNUT: No, he's waiving privilege.

1 I can't see that it's damaging to you.

2 THE WITNESS: I was going to say I would get
3 microfiche and I would agree at the time to have the meter
4 tested.

5 BY MR. LeCLAIRE:

6 Q. To have the meter tested, was that the settlement?

7 A. It wasn't the settlement, but an option.

8 Q. Just an option?

9 A. I don't know how to answer. From what I remember you
10 were not ready to proceed with the case. You were trying to a
11 get continuance.

12 Q. So not talking about withdrawal of my complaint for --

13 A. I said it's something you would have to do.

14 Q. I would have to do, withdraw my complaint?

15 A. When we discuss a case we always try to settle. I
16 thought your concerns, once you told me -- I didn't see it in
17 the written complaint, that you wanted billing information. So
18 I said if I can agree to give you a billing explanation, get the
19 microfiche pulled, prepare a statement, have the meter tested
20 I said an option, if you can't get a continuance, you could
21 withdraw, and I would say it's part of the settlement, that we
22 could agree to a settlement and have the meter tested.

23 Q. That was what was discussed?

24 A. That's what I offered.

25 Q. Is that typical of a settlement when you contact--

1 MS. LUTZ: Your Honor--

2 JUDGE CHESTNUT: Don't answer that.

3 BY MR. LeCLAIRE:

4 Q. What is typical?

5 JUDGE CHESTNUT: You can't ask what a typical
6 settlement is.

7 MS. LUTZ: Objection.

8 JUDGE CHESTNUT: That's not a proper question.

9 BY MR. LeCLAIRE:

10 Q. When I spoke with you on the phone earlier this morning
11 were you under the impression that Attorney Lutz asked for a
12 continuance?

13 A. No. What I said she was going to discuss the case with
14 the Judge, because she had another case this morning, to see if
15 there was any progress.

16 Q. I asked if we were denied a continuance, your answer?

17 A. I wasn't sure about a continuance. I said I had a
18 conversation with the PECO attorney.

19 Q. About getting a continuance?

20 A. She told me you had tried to get a continuance and it was
21 turned down.

22 Q. Do you believe the request for a continuance was
23 unreasonable?

24 MS. LUTZ: Objection, Your Honor.

25 JUDGE CHESTNUT: Don't answer that.

1 BY MR. LECLAIRE:

2 Q. Did you answer that question for me on the phone?

3 MS. LUTZ: Objection.

4 JUDGE CHESTNUT: Don't answer that.

5 MR. LeCLAIRE: I have nothing further.

6 JUDGE CHESTNUT: Anything on redirect?

7 MS. LUTZ: No, Your Honor. I would move to admit
8 PECO Exhibits One through Three into the record.

9 JUDGE CHESTNUT: They are admitted. Since that
10 includes Exhibit A, that won't be separately admitted.

11 (Whereupon, the documents marked as PECO Exhibits
12 Nos. 1, 2, & 3 were received in evidence.)

13 JUDGE CHESTNUT: Anything further?

14 MS. LUTZ: *Nothing further.*

15 MR. LeCLAIRE: Nothing further.

16 JUDGE CHESTNUT: Since Mr. LeClaire didn't
17 make another statement, there is nothing to respond to.
18 Mr. LeClaire, I will get the transcript in about three or four
19 weeks. I will write a decision and send it to you and the other
20 parties. You can take it from there. Any questions about the
21 procedure?

22 MR. LeCLAIRE: No.

23 JUDGE CHESTNUT: Mr. LeClaire, I would strongly
24 suggest that you still talk to PECO. Like I said, it will be a
25 number of weeks until I write my decision. You may get more

1 satisfaction, they can do things for you that I might not be
2 able to do. So, I would strongly suggest that perhaps, Ms. Lutz
3 you contact Mr. LeClaire and see if you can resolve it. If you
4 can't I will go ahead and write the decision. Mr. LeClaire,
5 take that advice seriously.

6 If there is nothing else, then this hearing is
7 adjourned.

8 MS. LUTZ: Thank you.

9 MR. LeCLAIRE: Thank you.

10 (Whereupon, at 3:20 p.m. the hearing was
11 adjourned.)

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C E R T I F I C A T E

I hereby certify, as the stenographic reporter,
that the foregoing proceedings were taken stenographically by
me, and thereafter reduced to typewriting by me or under my
direction; and that this transcript is a true and accurate
record to the best of my ability.

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