

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

December 4, 2012

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

**Re: Gina Burke for J. Cabot Catering, Inc. v.
PECO Energy Company
PUC Docket No.: C-2012-2329615**

Dear Ms. Chiavetta:

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

<input type="checkbox"/>	Answer
<input type="checkbox"/>	Answer & New Matter
<input type="checkbox"/>	Motion to Dismiss
<input checked="" type="checkbox"/>	Motion for Judgment on the Pleadings
<input 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**

GINA BURKE FOR	:	
J. CABOT CATERING, INC.	:	
v.	:	DOCKET NO. C-2012-2329615
	:	
PECO ENERGY COMPANY	:	

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 Motion for Judgment on the Pleadings of PECO Energy Company within 10 days from service of this notice, a decision may be rendered against you. All pleadings, such as a Reply to Motion for Judgment on the Pleadings, 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:
Rosemarie Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

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

Dated at Philadelphia, PA, December 4, 2012



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street S-23
Philadelphia, PA 19101-8699
215-841-6863
Shawane.Lee@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GINA BURKE FOR	:	
J. CABOT CATERING, INC.	:	
v.	:	DOCKET NO. C-2012-2329615
	:	
PECO ENERGY COMPANY	:	

**RESPONDENT, PECO ENERGY COMPANY'S
MOTION FOR JUDGMENT ON THE PLEADINGS**

Respondent, PECO Energy Company (“PECO Energy”), pursuant to 52 Pa. Code § 5.102(a) respectfully petitions this Honorable Commission to dismiss the instant Complaint for the following reasons:

I. PROCEDURAL HISTORY:

1. On or about October 9, 2012, Complainant, Gina Burke on behalf of J. Cabot Catering, Incorporated, filed a Formal Complaint with the Pennsylvania Public Utility Commission (“PUC”).

2. On October 17, 2012 PECO Energy was served the above-mentioned Formal Complaint. A copy of Complainant’s Formal Complaint is attached hereto as (Exhibit 1).

3. On October 24, 2012, PECO Energy filed an Answer & New Matter to the Formal Complaint. A copy of PECO Energy’s Answer & New Matter is attached hereto as (Exhibit 2).

4. Pursuant to 52 Pa. Code § 5.63, Complainant had twenty days from the filing date of PECO’s New Matter on October 24, 2012, to respond.

5. To date, over twenty (20) days have passed since PECO filed its New Matter on October 24, 2012. As Complainant has failed to timely respond to the New Matter, PECO is filing this Motion seeking Judgment on the Pleadings.

II. RELEVANT FACTS:

6. In the Complaint, the Complainant alleges that she operates a business at 21 East Glenside Avenue, Glenside, PA 19038.

7. The Complainant alleges that she has been doing business with PECO Energy for over 12 years under a company name – J. Cabot Catering, Incorporated.

8. The Complainant alleges that PECO Energy requested a deposit of \$2,565 for Complainant's electric service and \$1,800 for gas service.

9. The Complainant alleges that J. Cabot Catering received a termination notice in the amount of \$3,224.32.

10. The Complainant alleges that she was told to pay \$534.66 immediately and she made the payment on October 2, 2012 by email and cash at an authorized dealer.

11. The Complainant alleges that on October 3, 2012, she was told that J. Cabot Catering defaulted on the payment agreement with PECO Energy because the payment was not made by September 29, 2012,

12. The Complainant alleges that she called PECO Energy and asked for a supervisor and no one ever called her back.

13. The Complainant alleges that J. Cabot Catering should not be in default of the payment agreement.

14. The Complainant alleges that J. Cabot Catering should not have to pay a deposit.

15. The Complainant requests that the Public Utility Commission (“PUC”) determine that J. Cabot Catering does not have to pay the deposit on the accounts and that they are not in default of the payment agreement with PECO Energy.

III. LEGAL ARGUMENT

A. Standard of Review

16. The Commission’s regulations at 52 Pa. Code §5.102(a) permits any party to move for summary judgment or judgment on the pleadings after the pleadings are closed, but within such time as to not delay a hearing.

17. Under 52 Pa. Code §5.102(d)(1), the presiding officer will grant the motion if the pleadings, depositions, answers to interrogatories, admissions and affidavits show that there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law.

18. The moving party bears the burden of showing that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. The Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. First Mortgage Co. of Pennsylvania v. McCall, 459 A.2d 406 (Pa. Super. 1983).

19. The provision at 52 Pa. Code §5.102(c) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of the

case exists, a hearing is unnecessary. Lehigh Valley Power Committee v. Pennsylvania Public Utility Commission, 563 A.2d. 557 (Pa. Cmwlth. 1989).

B. The Complainant's Complaint should be dismissed because it is a commercial customer; and the Complainant is required to be represented by counsel.

20. The Complainant is a commercial customer operating a catering business at the address at issue. See Web Advertisement, attached hereto as (Exhibit 3).

21. The Complainant was incorporated on October 19, 2000. See Complainant's corporate registration with the Pennsylvania Department of State, attached hereto as (Exhibit 4).

22. As a commercial customer and corporation, Complainant is required to be represented by counsel in adversarial proceedings before the Commission.

23. The proceedings become adversarial at the time when respondent files an Answer. A Complaint filed by a corporation will be dismissed for failure to be represented by an attorney in an adversarial proceeding. 52 Pa. Code §1.8; 1.21-§ 1.23; In Re: Checker Cab, 49 Pa. PUC 159, 160 (1975), Moore v. I. Berman and Cross, Inc., Pa. PUC 427, 428 (1975).

24. On October 24, 2012, PECO Energy filed an Answer with New Matter to the Complainant's Complaint. See (Exhibit 2).

25. Once PECO Energy filed the Answer with New Matter the current PUC matter became adversarial. See 52 Pa. Code §1.8; 1.21-§ 1.23; In Re: Checker Cab, 49 Pa. PUC 159, 160 (1975), Moore v. I. Berman and Cross, Inc.

26. To date, the Complainant Corporation has not had counsel enter an appearance for this matter.

27. Accordingly, PECO Energy requests that the Commission dismiss the Complainant's Complaint for failure to be represented by counsel.

C. The Complainant's portion of the Complaint, requesting a payment agreement should be dismissed because it is a commercial customer and the PUC cannot issue payment agreements to commercial customers.

28. In the Formal Complaint, the Complainant is requesting that the PUC order PECO Energy to provide Complainant with a payment agreement. See (Exhibit 1).

29. With regard to the Complainant's payment agreement, the Complainant states "I should not be in default." See (Exhibit 1).

30. The Complainant requests that the PUC order PECO Energy to determine that the Complainant is not in default of a company issued payment agreement.

31. Thus, in essence the Complainant is requesting that the PUC order PECO Energy to reinstate a commercial payment agreement.

32. It is well-established law that commercial customers are not entitled to the payment agreement provisions codified under of 66 Pa.C.S §1405 and 52 Pa. Code.Chp 56.

33. While the Commission is authorized under the Public Utility Code to establish payment arrangements that provide for the eventual payment of a residential customer's entire outstanding balance, Mill v. Pa. Public Utility Commission, 67 Pa. Commonwealth Ct. 597, 602, n. 4, 447 A.2d. 1100 (1982), neither the Commission's regulations nor the Public Utility Code establishes a similar right for a commercial or industrial customer.

34. In this case, the Complainant is a corporation and commercial customer, requesting a payment agreement on an outstanding balance.

35. The Complainant's request for a payment agreement should be dismissed as the Complainant is a commercial customer and the PUC has no jurisdiction to order PECO Energy to give the Complainant a payment agreement.

36. PECO Energy avers that this Honorable Commission should dismiss this portion of the Complainant's Complaint.

IV. CONCLUSION

37. PECO Energy has not been served with a response to its New Matter, and therefore it requests that the facts stated therein be deemed admitted. 52 Pa.Code §5.63(b) (providing that facts in new matter may be deemed admitted if there is no reply).

38. Because no factual dispute exists and the Complaint fails to state a claim for which relief can be granted, PECO is entitled to judgment as a matter of law.

WHEREFORE, PECO Energy Company respectfully requests that your Honorable Commission dismiss the Complainant's Complaint because Complainant is not legally entitled to the relief requested.

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GINA BURKE FOR	:	
J. CABOT CATERING, INC.	:	
v.	:	DOCKET NO. C-2012-2329615
	:	
PECO ENERGY COMPANY	:	

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: December 4, 2012

Shawane L. Lee

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GINA BURKE FOR	:	
J. CABOT CATERING, INC.	:	
v.	:	DOCKET NO. C-2012-2329615
	:	
PECO ENERGY COMPANY	:	

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:

J. Cabot Catering, Inc.
Attention: Gina Burke
21 East Glenside Avenue
Glenside, PA 19038

Dated at Philadelphia, Pennsylvania, December 4, 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

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

December 4, 2012

J. Cabot Catering, Inc.
Attention: Gina Burke
21 East Glenside Avenue
Glenside, PA 19038

**RE: Gina Burke for J. Cabot Catering, Inc. v.
PECO Energy Company
PUC Docket No.: C-2012-2329615**

Dear Ms. Burke:

Enclosed is a copy of PECO Energy Company's response to the formal complaint filed in the above-referenced docket. The law requires PECO Energy to file an answer to your Public Utility Commission complaint. Keep these papers for your records. This is not a decision on your complaint. PECO's response may include a New Matter, Motion or Preliminary Objection. Please note that if you do not respond to a New Matter, Motion, or Preliminary Objection an unfavorable decision may be rendered against you. Responses to New Matters and Motions must be filed within 20 days. Responses to Preliminary Objections must be filed within 10 days. If there is no New Matter, Motion or Preliminary Objection included, no response is required.

Soon, the Public Utility Commission will schedule either a settlement conference or a hearing on your complaint. The Commission will let you know by mail whether there will be a conference or a hearing and will include instructions on what to do next. If the matter is set for hearing, the notice will provide you with information about the date, time and place of the hearing. If we are unable to resolve your complaint and have to proceed with a hearing, a judge will be at the hearing and will decide your complaint. You must call the Public Utility Commission if you have any questions about the hearing or if you cannot attend the hearing.

Thank you for your time and attention on this matter.

Very truly yours,



Shawane Lee
Counsel for PECO Energy Company
Enc.
SL/lo

EXHIBIT “1”

PENNSYLVANIA PUBLIC UTILITY COMMISSION

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 Gina BURKE

Street/P.O. Box 21 E. GLENSIDE AVE Apt #

City GLENSIDE State PA Zip 19038

County MONTGOMERY

Daytime Telephone Number Where We Can Contact You: 615 884-9900

E-mail Address (optional): JCA BOT CATERING@aol.com

Utility Account Number 36-137-69022 (from your bill)

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

Name

Street/P.O. Box

City State Zip

2. FULL NAME OF UTILITY COMPANY (RESPONDENT):

PECO

3. TYPE OF UTILITY (check one)

[X] ELECTRIC

[] STEAM HEAT

[X] GAS

[] WASTE WATER

[] WATER

[] MOTOR CARRIER

(e.g., taxi, moving company, limousine)

[] TELEPHONE

(local, long distance)

RECEIVED
2012 OCT -9 AM 11:31
PA P.U.C.
SECRETARY'S BUREAU

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.

Filed a previous complaint about deposit. I've been doing business with Peco for 12⁺ years under company name. Peco requested a dep. of \$2565 for my electric AND \$1800 for my gas. ON 9/18/2012 received shut off notice for \$3224.32. Called on 9/19/2012, Rep gave me an extension to have everything paid by 10/3. Received a letter from Peco stating I needed to pay \$534.66 immediately, received this letter on 9/28/2012. Paid all payments by 10/2 by email AND by cash at authorized dealer. Called on 10/3, put on hold AND lost call, called again, I was told I defaulted the agreement because \$534.66 WASN'T PAID by 9/29. I WAS NEVER told I

NEEDED to have it paid by 9/29, I
was told 10/3. My letter does NOT
have a date on it. I asked for a
supervisor, I was told TONYA, SUPER-
VISOR will call me back ^(NO ONE CALLED ME BACK), ON 10/4 I
called PECO again, they told me
I WAS ISSUED A SHUTOFF NOTICE FOR
\$534.46, I asked to speak to a
supervisor again, I WAS PUT ON
HOLD AND THEN DISCONNECTED. I SHOULD
NOT be in default of our agreement
I MADE good on our agreement AND
I SHOULD NOT have to pay a deposit.
I AM FED UP with PECO AND its
lack of credibility with the consumers.
Who is monitoring the phones of this
company. Company Rep's CAN SAY what
they WANT. AND there is NO supervision.

10/4 called back ^{Peel} AFTER CALLED PUC
because I wanted to make sure I
wasn't going to be turned off. They
SAID I WAS SENT A SHUT OFF NOTICE
BUT I NEVER RECEIVED ONE.

NOW THIS CUSTOMER REP TELLS ME THAT
THEY ARE ONLY GOING TO HOLD \$2030.34

FOR A DEPOSIT, THEY WILL EXCUSE \$534.66
OF THE DEPOSIT AND I ONLY HAVE MY
OCTOBER 16, 2012 BILL DUE. OF \$1038.00.

STILL DON'T UNDERSTAND HOW THEY CAN SAY
I ONLY PAID \$2030.34, MY RECORD SHOWS
I PAID \$2565.00 DEPOSIT AND THE BALANCE
OF \$534.66 IS IN AGREEMENT FOR MY ELECTRIC.

I AM AMAZED HOW QUICKLY AFTER MY
FILING THIS WAS DETERMINED WITHIN 10
MINUTES. THIS SHOULD HAVE NEVER COME
DOWN TO THIS.

5. RELIEF

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

I SHOULD NOT be in default
I SHOULD NOT have to PAY a
DEPOSIT ON MY ACCOUNTS. I
have a long STANDING relationship
with PECO. DONT that count for
something.

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.

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) _____

PECO

1-888-480-1533

72-HOUR SHUT-OFF NOTICE
(Aviso Suspension De Servicio En 72 Horas)
For PECO Charges Only

802 558-947

Name: J CABOT CATERING CORP
Addr: 21 E GLENSIDE AV 1ST BSMT
GLENSIDE PA 19038

Date: 09/18/2012
Account: 36137-69022

YOUR GAS / ELECTRIC SERVICE WILL BE SHUT OFF !

*10/2 \$200.00
3.50*

We will shut off your PECO Service on or after 8:00 a.m. on 09/21/2012 because: *#*

You have a PAST DUE amount of PECO charges in the amount of \$ 3,224.32 as of 09/18/2012

Other: 2724.32

We will **NOT** shut off your gas/electric service if you do **ONE** of the following:

- Pay \$ 3,224.32 in full **BEFORE** 09/21/2012. This includes any amount you owe on your payment plan.
- This notice is effective for **60 days**.
- Show us a paid receipt for the past due amount.
- Call **1-888-480-1533 right away** if you dispute this bill or to provide us with household income and occupant information. You may be eligible for a payment agreement or special assistance programs.
- **To talk about your bill or ten day notice, please call our office at 1-888-480-1533**

WE MUST RECEIVE YOUR PAYMENT BEFORE THE SHUT-OFF DATE. WE WILL NOT ACCEPT PAYMENTS AT YOUR PROPERTY!

If we shut off your gas/electric service, you may have to pay all of the following before we can turn your service on:

- Past Due Amount of	\$	<u>1,069.32</u>	; and
- Deposit Past Due Amount of	\$	<u>2,155.00</u>	<i>1655</i>
- Agreement Unbilled Balance	\$	<u>.00</u>	
- **Total	\$	<u>3,224.32</u>	<i>2724.32</i>

*9/19 8:30 AM 10/3
534.66
1655.00
2189.66 by*

If your service is shut off, you may be required to pay any additional bills that have become past due to restore your service.

****If your service is shut off, you may have to make substantial payments in order to have your service restored. In addition to any balance owed, you will have to pay a Reconnection charge of between \$70.00 and \$1,700.00. This fee amount is set by PECO's tariff and based on how much work is needed to restore your service. You may also be required to pay a deposit equal to two times your average monthly usage.**

1334.66 1038.10/16

2372.66

MEDICAL EMERGENCY NOTICE

Let us know if you or anyone presently and normally living in your home is **SERIOUSLY ILL**. WE WILL NOT SHUT OFF YOUR SERVICE during such an illness provided you:

1. Have your licensed physician or nurse practitioner certify by phone and in writing that such an illness exists and that it may be aggravated if your service is shut off, phone certification must be followed by written certification within 7 days.
2. Make arrangements to pay this bill. You must provide us with household income and occupant information to determine your payment terms while protected under the medical certification.

IMPORTANT TO KNOW

*855
534.66*

Before we shut off your utility service please read the back of this notice. You may be eligible for certain protections from shut off.

Atencion! Este es un mensaje muy importante. Si usted no lo entiende, favor de llamar a

1-888-480-1533.

SEE OTHER SIDE FOR MORE INFORMATION.

800.00 10/3



Confirm Payment Receipt

Your payment has been authorized. Your confirmation number is 967813895

Your PECO account will be updated within two business days to reflect this payment. If an email was provided, an email receipt will be sent to you shortly. If you have any questions or need assistance, please call the PECO Energy Customer Care Center at 1-800-494-4000. If you are a business customer, please call PECO Energy's Business Customer Service Center at 1-800-220-7326.

Please print the following summary information for your records:

Account Number	3613769022
Checking Account Name	TreVi Pizza Pasta BYOB
Payment Method	ACH
Checking Account Number	*****8919
Payment Amount	\$600.00
Fee Amount	\$3.50
<hr/>	
Total Amount	\$603.50

[Make Another Payment](#)

Thank you for using the online bill payment system!



TR Electric



Confirm Payment Receipt

Your payment has been authorized. Your confirmation number is 967272693

Your PECO account will be updated within two business days to reflect this payment. If an email was provided, an email receipt will be sent to you shortly. If you have any questions or need assistance, please call the PECO Energy Customer Care Center at 1-800-494-4000. If you are a business customer, please call PECO Energy's Business Customer Service Center at 1-800-220-7326.

Please print the following summary information for your records:

Account Number	3613769022
Checking Account Name	Trevi Pizza Pasta BYOB
Payment Method	ACH
Checking Account Number	*****8919
Payment Amount	\$534.66 <i>df</i>
Fee Amount	\$3.50
<hr/>	
Total Amount	\$538.16
	<u>Make Another Payment</u>

Thank you for using the online bill payment system!



JC Elected



Confirm Payment Receipt

Your payment has been authorized. Your confirmation number is 967270680

Your PECO account will be updated within two business days to reflect this payment. If an email was provided, an email receipt will be sent to you shortly. If you have any questions or need assistance, please call the PECO Energy Customer Care Center at 1-800-494-4000. If you are a business customer, please call PECO Energy's Business Customer Service Center at 1-800-220-7326.

Please print the following summary information for your records:

Account Number	3613789022
Checking Account Name	j cabot catering
Payment Method	ACH
Checking Account Number	*****5822
Payment Amount	\$855.00 ✓
Fee Amount	\$3.50
<hr/>	
Total Amount	\$858.50

[Make Another Payment](#)

Thank you for using the online bill payment system!



EXHIBIT “2”

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GINA BURKE FOR	:	
J. CABOT CATERING, INC.	:	
v.	:	DOCKET NO. C-2012-2329615
	:	
PECO ENERGY COMPANY	:	

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 of PECO Energy Company within 10 days from service of this notice, a decision may be rendered against you. All pleadings, such as a Reply to Preliminary Objection, 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:
Rosemarie Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

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

Dated at Philadelphia, PA, October 24, 2012



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street S-23
Philadelphia, PA 19101-8699
215-841-6863
Shawane.Lee@exeloncorp.com

PECO ENERGY
EXHIBIT 2

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GINA BURKE FOR	:	
J. CABOT CATERING, INC.	:	
v.	:	DOCKET NO. C-2012-2329615
	:	
PECO ENERGY COMPANY	:	

ANSWER & NEW MATTER OF RESPONDENT
PECO ENERGY COMPANY

PECO Energy Company ("PECO Energy"), pursuant to 52 Pa. Code § 5.61, responds to the Complaint and states:

1. Admitted.
2. Admitted.
3. Admitted.
4. Denied. Unless specifically admitted herein, PECO Energy denies all material allegations of fact and conclusions of law in the instant Complaint. In her Complaint, the Complainant, on behalf of J. Cabot Catering, Incorporated alleges that she has been doing business with PECO Energy for years under the company name J. Cabot Catering. She claims that PECO Energy requested a deposit for her gas and electric and advised her that she had defaulted on a payment agreement. PECO Energy avers that the company properly assessed a deposit for poor payment history and the Complainant is not entitled to a payment agreement because her company has a commercial account.

Preliminarily, PECO Energy avers that the Complainant is a commercial customer operating a business at the premises. The Complainant was incorporated on October 19, 2000. See Complainant's corporate registration with the Pennsylvania Department of State,

attached hereto as Exhibit "1". As a commercial customer, Complainant is required to be represented by counsel in adversarial proceedings before the Commission.¹

J. Cabot Catering Corporation has an account for service at 21 East Glenside Avenue, 1st Basement, Glenside, PA under account number 36137-69022. See Account Activity Statement, attached hereto as Exhibit "2".

I. Prior Formal and Informal Complaints

Since the Complainant has had an account with PECO Energy, the company has filed two prior formal complaints and three prior informal complaints. All of the complaints raise an issue with PECO Energy's deposit requirement. The Complainant filed an informal complaint at Bureau of Consumer Services ("BCS") Case number 002329846 on December 7, 2007, raising an issue with the deposit requirement. See BCS Case Details Report #002329846, attached hereto as Exhibit "3". The BCS issued a decision report on September 10, 2008, stating:

The company was charging her a deposit of \$1,785.00 but then she made a payment of \$600.00 on 12/04 and the company then waived the deposit. Customer states that the company did not waive the deposit. I stated that the report and the account statement say the company cancelled the deposit.

See BCS Decision Report #002329846, attached hereto as Exhibit "4".

The second informal complaint was filed on October 16, 2009, raising the same issue with a \$1,350.00 deposit. See Case Details Report #002607425, attached hereto as Exhibit "5". The BCS issued a decision on October 22, 2009, stating:

The company is in compliance with their tariff in charging the \$1,370.00 deposit. BCS has limited jurisdiction over commercial accounts.

¹ The proceedings become adversarial at the time when respondent files an Answer. A Complaint filed by a corporation will be dismissed for failure to be represented by an attorney in an adversarial proceeding. 52 Pa. Code §1.8; 1.21-§ 1.23; In Re: Checker Cab, 49 Pa. PUC 159, 160 (1975), Moore v. I. Berman and Cross, Inc., Pa. PUC 427, 428 (1975). Accordingly, PECO request that the Commission establish a date certain by which Complainant is required to have an attorney enter an appearance in this matter.

See BCS Decision Report #002607425, attached hereto as Exhibit "6".

The first formal complaint was filed at docket number C-2009-2142462 where J. Cabot Catering raised an issue with a deposit requirement. The complaint was settled on January 4, 2010. As a part of the settlement, the Complainant agreed to withdraw the complaint in exchange for PECO Energy waiving a \$1,370.00 deposit. See Settlement Letter, attached hereto as Exhibit "7". The Complainant filed another complaint at docket number SB-2301721 raising an issue with the deposit requirement. PECO Energy and the Complainant resolved the complaint with a payment agreement. See Settlement Letter, dated 5/20/12, attached hereto as Exhibit "8". Under the agreement, the Complainant was to pay the deposit and the past due balance of \$1,471.66 in three monthly installments beginning June 2012.

II. Payment Agreements

On May 30, 2012, PECO Energy processed a payment agreement consistent with the settlement reached. On June 4, 2012, the company received an \$811.67 payment. See Exhibit "1". On June 25, 2012, the Complainant received a monthly bill requesting \$2,958.72, which was due by July 17, 2012. The company received a payment of \$1,038.00 on July 2, 2012, which did not cover the entire bill amount requested. On August 23, 2012, another monthly bill was sent requesting \$5,738.04 due by September 14, 2012. PECO Energy received a payment of \$538.00 on August 24, 2012.

On August 27, 2012, Gina Burke called and negotiated another payment agreement. Under the agreement, the Complainant was to pay a down payment of \$461.48 per month due by September 10, 2012. Thereafter, the Complainant was to pay \$235.94 per month for

two months. The down payment was not received by the due date. Accordingly, the agreement was not processed.

On September 18, 2012, PECO Energy issued a 72 hour notice for a past due balance of \$2,724.33. On September 19, 2012, Ms. Burke called regarding the account and another agreement was processed on a balance of \$1,069.32. Under the agreement, the Complainant was to pay a down payment of \$534.66 due by October 3, 2012. Thereafter, a payment of \$273.36 was to be paid in two installments.

III. Deposits

PECO Energy has assessed deposit requirements to the Complainant's account because of a poor payment history. Specifically, the company assessed a deposit on June 25, 2012 in the amount of \$855.00. See Exhibit "1". Another deposit was assessed to the account on July 24, 2012 in the amount of \$855.00. See Exhibit "1". An additional deposit installment in the amount of \$855.00 was assessed to the account on August 23, 2012. See Exhibit "1".

PECO Energy avers that the security deposit is proper. 66 Pa.C.S. 1404(a), states:

In addition to the right to collect a deposit under any commission regulation or order, the commission shall not prohibit a public utility, prior to or as a condition of providing utility service, from requiring a cash deposit in an amount that is equal to one-sixth of the applicant's estimated annual bill, at the time the public utility determines a deposit is required.

Additionally, PECO Energy's Commission approved tariff provides in relevant part:

5.3 GUARANTEE OF PAYMENTS. The Company may charge a security deposit before it will render service to an applicant or before the Company will continue to render service to a customer for whom the Company provides Consolidated EDC Billing or Separate EDC Billing. The Company may charge deposits to applicants and customers if they have bad credit, lack creditworthiness or as otherwise permitted by Commission

statutes, rules, regulations, and as required by Federal Bankruptcy Law. The applicant or customer may be required to provide a cash deposit, letter of credit, surety bond, or other guarantee, satisfactory to the Company. The Company will hold the deposit as security for the payment of final bills and in compliance with the Company's Rules and Regulations. ...

5.4 AMOUNT OF DEPOSIT. For residential customers the deposit will be equal to one-sixth of the applicant's or customer's estimated annual bill for Company charges, based on applicable rates. A deposit from a residential customer shall conform to the requirements of 66 Pa. C.S. 1404(c) and applicable Pennsylvania Public Utility Commission regulations. ...

5.5 RETURN OF DEPOSIT. Deposits secured from a residential customer shall either be applied with interest to the customer's account or returned to the customer with interest in accordance with 66 Pa. C.S. § 1404(C) and applicable Pennsylvania Public Utility Commission regulations. In cases of discontinuance or termination of service, deposits will be returned with accrued interest upon payment of all service charges and guarantees or with deduction of unpaid accounts. ...

In this case, PECO Energy determined that based on the Complainant's poor payment history, and credit risk assessment, a deposit was required. PECO Energy properly assessed the deposit to the Complainant's account. Accordingly, PECO Energy denies the Complainant's allegations concerning the security deposit.

The Complainant's current balance is \$2,076.00. See Exhibit "2". PECO Energy avers that the Complainant's complaint should be dismissed. The Complainant requests that the PUC order PECO Energy to give the Complainant a payment agreement on the balance. It is well-established law that commercial customers are not entitled to the payment agreement provisions codified under of 66 Pa.C.S §1405 and 52 Pa. Code.Chp 56. While the Commission is authorized under the Public Utility Code to establish payment arrangements that provide for the eventual payment of a residential customer's entire outstanding balance, Mill v. Pa. Public Utility Commission, 67 Pa. Commonwealth Ct. 597, 602, n. 4, 447 A.2d. 1100 (1982), neither the Commission's regulations nor the Public Utility Code establishes a

similar right for a commercial or industrial customer. Therefore, Complainant's request for payment terms should be dismissed.

This paragraph is a request for relief and no answer is required.

5. Admitted.

6. Admitted.

8. PECO Energy neither admits nor denies the allegations in paragraph 8. PECO is without knowledge or information sufficient to form a belief as to the truth of this averment and, therefore, such allegation is deemed denied.

9. Paragraph 9 is a Verification and Signature to which no response is required.

10. Paragraph 10 contains information regarding Filing, to which no response is required.

NEW MATTER OF RESPONDENT, PECO ENERGY COMPANY

PECO Energy, pursuant to 52 Pa. Code § 5.62(b), further responds to the Complaint and states:

1. The Complainant is a commercial customer operating a business at the address at issue. See Pennsylvania Department of State Corporate Search, attached hereto as Exhibit "1".

2. The Complainant was incorporated on October 19, 2000. See Complainant's corporate registration with the Pennsylvania Department of State, attached hereto as Exhibit "1".

3. It is well-established law that commercial customers are not entitled to the payment agreement provisions codified under of 66 Pa.C.S §1405 and 52 Pa. Code.Chp

56. While the Commission is authorized under the Public Utility Code to establish payment arrangements that provide for the eventual payment of a residential customer's entire outstanding balance, Mill v. Pa. Public Utility Commission, 67 Pa. Commonwealth Ct. 597, 602, n. 4, 447 A.2d. 1100 (1982), neither the Commission's regulations nor the Public Utility Code establishes a similar right for a commercial or industrial customer.

4. Therefore, the Complainant's request for payment terms should be dismissed.

5. Likewise, as a commercial customer, the Complainant is required to be represented by counsel in adversarial proceedings before the Commission. The proceedings become adversarial at the time when respondent files its Answer.

6. A Complaint filed by a corporation will be dismissed for failure to be represented by an attorney in an adversarial proceeding. 52 Pa. Code §1.8; 1.21-§ 1.23; In Re: Checker Cab, 49 Pa. PUC 159, 160 (1975), Moore v. I. Berman and Cross, Inc., Pa. PUC 427, 428 (1975).

WHEREFORE, PECO Energy Company respectfully requests that your Honorable Commission establish a date certain by which Complainant is required to have an attorney enter an appearance in this matter. Additionally, the complaint should be dismissed because Complainant is not legally entitled to relief requested.

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GINA BURKE FOR	:	
J. CABOT CATERING, INC.	:	
v.	:	DOCKET NO. C-2012-2329615
	:	
PECO ENERGY COMPANY	:	

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: October 24, 2012

Shawane L. Lee

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GINA BURKE FOR	:	
J. CABOT CATERING, INC.	:	
v.	:	DOCKET NO. C-2012-2329615
	:	
PECO ENERGY COMPANY	:	

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:

Gina Burke
J. Cabot Catering, Inc.
21 E. Glenside Avenue
Glenside, PA 19038

Dated at Philadelphia, Pennsylvania, October 24, 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 “3”



- [About Us](#)
- [Corporate Catering Menu](#)
- [Cocktail Receptions & Celebrations](#)
- [Weddings by J.Cabot](#)
- [Photo Gallery](#)
- [Locations & Contact Us](#)

About Us

What distinguishes our services:

- Our Chef and his staff prepare custom menus that are long remembered for beautiful presentation and flavorful food.
- As event specialists we listen carefully and ask the right questions to determine what is most important to you.
- The staff of J. Cabot Catering are thoroughly versed in all aspects and details of your event.
- We coordinate a versatile team of servers, chefs, bakers, musicians, floral designers, lighting designers, ice sculpture, and rental companies.
- Whatever your needs are, we accommodate to make your event run as smoothly as possible.
- Corporate Catering, Wedding Catering, House Parties, Bar/Bat Mitzvah, Birthday Celebrations, Anniversary Parties, Lunch Catering, BBQ Catering, whatever your celebrations is, we're here to cater to you.
- J. Cabot's "Gourmet Review"
[Click here to view](#)
- Testimonials

“Thank you Gina for making our wedding simply the most perfect day! ”

— Corrine and Kate 6-2010@ Bartrums Garden

Next quote »

- Chef's Corner
 - [Tomato and Corn Salsa](#)
 - [Chicken Piccata](#)
 - [Orecchiette Carbonara with Leeks](#)

PECO ENERGY
EXHIBIT 3



- [About Us](#)
- [Corporate Catering Menu](#)
- [Cocktail Receptions & Celebrations](#)
- [Weddings by J.Cabot](#)
- [Photo Gallery](#)
- [Locations & Contact Us](#)

Locations & Contact Us

Contact Info



J. Cabot Catering

21 E. Glenside Ave

Glenside PA 19038

info@jcabotcatering.com

Phone: 215 884-9900

Fax: 215 884-9010

Locations

These are our exclusive sites. Contact us to find out more information on other locations.

[Abington Art Center](#)

[Atwater Kent Museum](#)

[Bartram's Garden](#)

[Belmont Mansion](#)

[Camden County Boat House](#)

[Moorestown Community House](#)

EXHIBIT "4"



Corporations

[Online Services](#) | [Corporations](#) | [Forms](#) | [Contact Corporations](#) | [Business Services](#)

- Search
- By Business Name
- By Business Entity ID
- Verify
- Verify Certification
- Online Orders
- Register for Online Orders
- Order Good Standing
- Order Certified Documents
- Order Business List
- My Images
- Search for Images

Business Entity Filing History

Date: 12/4/2012 (Select the link above to view the Business Entity's Filing History)

Business Name History

Name	Name Type
J. CABOT CATERING CORP.	Current Name

Business Corporation - Domestic - Information

Entity Number: 2968473
Status: Active
Entity Creation Date: 10/19/2000 12:02:31 PM
State of Business.: PA
Registered Office Address: 301 CALLOWHILL ST
 PHILADELPHIA PA 19123-0
 Philadelphia
Mailing Address: No Address

Copyright © 2002 Pennsylvania Department of State. All Rights Reserved.
[Privacy Policy](#) | [Security Policy](#)

PECO ENERGY
EXHIBIT 4