



Exelon Business Services Company
Legal Department
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December 17, 2012

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

**RE: Dat Nguyen v. PECO Energy Company
PUC Docket No.: C-2012-2338739**

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 type="checkbox"/> | Motion for Judgment on the Pleadings |
| <input checked="" type="checkbox"/> | Preliminary Objection |
| <input type="checkbox"/> | Exceptions |
| <input type="checkbox"/> | Reply Exceptions |
| <input type="checkbox"/> | Main Brief |
| <input type="checkbox"/> | Reply Petition |

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

Very truly yours,

Shawane Lee
Counsel for PECO Energy Company
SL/lo

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|----------------------------|---|----------------------------------|
| DAT NGUYEN | : | |
| Complainants | : | |
| v. | : | DOCKET NO. C-2012-2338739 |
| | : | |
| PECO ENERGY COMPANY | : | |
| Respondent | : | |

NOTICE TO PLEAD

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

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

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

Dated at Philadelphia, PA, December 17, 2012



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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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| DAT NGUYEN | : | |
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**PRELIMINARY OBJECTION OF RESPONDENT,
PECO ENERGY COMPANY**

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

1. On December 12, 2012, PECO Energy was served with a formal complaint filed by Dat Nguyen (hereafter “Complainant”). A copy of the Complaint is attached hereto as Exhibit “1”.
2. In his Complaint, Complainant alleges there was a foreign wiring condition found at his rental property located at 525 Welsh Street, 1st Floor Rear, Chester, PA 19016. See Exhibit “1”.
3. The Complainant alleges that his tenant, Lency Whitaker, moved into his rental unit in November 2011. See Exhibit “1”.
4. The Complainant alleges that his tenant, Mr. Whitaker, did not raise an issue with foreign wiring until March 2012. See Exhibit “1”.

5. The Complainant alleges that Mr. Whitaker's balance was transferred to him. See Exhibit "1".
6. The Complainant alleges that he corrected the foreign wiring condition affecting his tenant. See Exhibit "1".
7. The Complainant disputes the tenant's balance transferred to him. See Exhibit "1".
8. The Complainant questions why his tenant did not report the foreign wiring condition sooner. See Exhibit "1".
9. The Complainant disputes the fact that PECO Energy will not permit him to pay for the portion of the foreign wiring bill that is attributable to the hallway light. See Exhibit "1".
10. PECO Energy simultaneously filed an Answer and the instant Preliminary Objection.
11. Pursuant to 52 Pa. Code § 5.101, preliminary objections may be filed against a complaint and dismissed for legal insufficiency. 52 Pa. Code § 5.101(a)(4).
12. Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil procedure.¹
13. In deciding preliminary objections, the Public Utility Commission must determine, based on the factual pleadings of the petitioner, if relief or recovery is possible.²
14. A complaint must be able to recover under the law to survive a preliminary objection.³

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

² 2006 Pa. PUC Lexis 111, *7.

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

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

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

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

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

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

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

21. The Complainant is the owner of 525 Welsh Street, Chester, PA 19013. See Complaint at page 5.

22. The Complainant avers that his tenant, Lency Whitaker's balance was transferred to him. The Complainant questions the amount transferred because the foreign wiring condition found was a single hallway light on a motion detector, which consumes only 20 Watts of power. See Complaint at page 6.

⁴ *Id.* at 7-8.

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

23. The Complainant also questions why his tenant did not report the foreign wiring issue to PECO Energy sooner so that he could have had the condition corrected sooner.

24. The Complainant seeks the following relief:

The fact that the only electrical device that is not in the tenant's apartment is the ceiling light in the hallway leading to her apartment's front entrance. The sole purpose of this light is to be used by this apartment unit. This light is only consumed about 20 Watts of power and equipped with motion detector. My assumption is most of the electrical power consumed in this bill is coming from the electrical heaters that the tenant used in past winter months. Based on these assumptions, **I would like for you to put this into your consideration that we will only pay for the portion of the bill based on the hallway light usage.**

See Complaint at page 7.

25. As previously explained by the Legislature and this Commission, upon discovering the existence of a foreign load a public utility is required to list the account, including any arrearages, in the name of the landlord. 66 Pa. C.S. §§ 1529.1(a), (c). See also Santos v. Metro. Edison Co., No. C-00967757 (Pa. P.U.C. Aug. 7, 1997). The landlord is responsible for paying the utility bills until the foreign load is corrected. Santos at 16. Once the foreign load is corrected by the landlord and verified by the utility, the utility will place the account back in the name of the tenant and the arrearage, if any, will remain the landlord's responsibility. Id. To the extent any dispute regarding the financial responsibility of the parties exists, that is a matter to be resolved in the Court of Common Pleas as it is outside the Commission's jurisdiction. Edmund v. Corazzini v. UGI Penn Natural Gas, Inc., No. F-2009-2101282, Opinion and Order adopted July 15, 2010 at 7.

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

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

28. The Complainant does not allege that PECO Energy delayed investigating his tenant's foreign wiring concerns.

29. The Complainant does not allege that PECO Energy transferred an incorrect amount to his account.

30. The Complainant does not allege that PECO Energy delayed their field investigation to verify the foreign wiring had been corrected.

31. The Complainant's formal complaint simply alleges that foreign wiring was found at his property and he feels that he should not be held responsible for the entire balance but only the portion of the balance attributable to the 20 Watt bulb hallway lighting.

32. The Complainant also feels that had his tenant reported the condition sooner, he could have corrected the condition sooner.

33. Indeed, consistent with Ace Check Cashing, Inc. vs. Philadelphia Gas Works, Docket No. C-2008-2056428, the Commission cannot consider what the Complainant proposes (i.e., to determine the portion of the foreign wiring that is attributable to the 20 Watt bulb hallway light).

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

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

The key determination in *Afshari* is that, when foreign load is found, per operation of Subsection (c), the landlord shall be responsible only for the portion of the tenant's arrearage that is related to foreign load. However, Commission precedent, such as *Elizabeth Santos v. Met Ed*, Docket No. C-00967757 (Order entered August 7, 1997), holds that Subsection (c) operates to place both

current bills and all arrearages in the landlord's name if the landlord failed to provide the notice required by Subsection (a). In interpreting Subsection (c), the decision in *Afshari* sought to avoid an unreasonably harsh result for the landlord in that it does not require the owner to be responsible for the tenant's potentially large arrearages, especially where the foreign load is *de minimus*. **However, the approach in *Afshari* lessens the incentive for the landlord to correct the foreign load situation that is due to a wiring, plumbing or piping problem for which the landlord is responsible.** While the language in Subsection (c) can be viewed as ambiguous enough to allow some latitude for Commission interpretation, **a determination that the landlord's financial responsibility for arrearages is strictly limited to the foreign load portion of the arrearage is problematic. This is because the statutory remedy for failure to provide notice provided in Subsection (c) refers back to Subsection (b) which clearly mandates that the landlord "shall thereafter be responsible for the payment for the utility services rendered [to the rental property]."**

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

37. Additionally, the fact that the tenant did not report the foreign wiring issue to PECO Energy sooner does not raise any issue the company violated. The company has no control over when a tenant reports a foreign wiring condition.

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

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

40. The PUC is not the forum for the Complainant to raise what is essentially a dispute, regarding the foreign wiring balance that should be attributable to him as opposed to the amount attributable to his tenant, Lency Whitaker.

41. As stated in Edmund v. Corazzini, *supra* that is a matter to be resolved in the Court of Common Pleas as it is outside the Commission's jurisdiction.

42. Because the Complaint relates to a dispute about the assignment of financial responsibility for a foreign load in a building he owns, as well as the portion of the balance

owed attributable to the foreign wiring condition, this complaint should be dismissed as a matter of law.

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

REQUEST FOR RELIEF

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

Respectfully submitted,



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

**BEFORE THE
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| PECO ENERGY COMPANY | : | |
| Respondent | : | |

VERIFICATION

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



Date: December 17, 2012

Shawane L. Lee

**BEFORE THE
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| Respondent | : | |

CERTIFICATE OF SERVICE

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

Dat Nguyen
2035 Midnight Lane
Houston, TX 77047

Dated at Philadelphia, Pennsylvania, December 17, 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



Exelon Business Services Company
Legal Department
2301 Market Street/523-1
Philadelphia, PA 19103
215 568 3389 Fax
www.exeloncorp.com

Direct Dial: 215 841-6841

December 15, 2012

Dat Nguyen
2035 Midnight Lane
Houston, TX 77047

**RE: Dat Nguyen v. PECO Energy Company
PUC Docket No.: C-2012-2338739**

Dear Mr. Nguyen:

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,

A handwritten signature in black ink, appearing to read "Shawane Lee", with a stylized flourish at the end.

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

EXHIBIT “1”

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint Form

RECEIVED
2012 DEC 11 AM 9:56
PA.P.U.C.
SECRETARY'S BUREAU

Please print in ink or type.

1. CUSTOMER (COMPLAINANT) INFORMATION

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

Name DAT NGUYEN

Street/P.O. Box 2035 MIDNIGHT LN Apt # _____

City HOUSTON State TX Zip 77047

County HARRIS

Daytime Telephone Number Where We Can Contact You: (713) 214-7579

E-mail Address (optional): dat.nguyen@invo.com

Utility Account Number 12360-25023
(from your bill)

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

Name Lency Whitaker

Street/P.O. Box 525 WELSH ST - 1 FL New

City Chester State PA Zip 19016

2. FULL NAME OF UTILITY COMPANY (RESPONDENT):

PECO

3. TYPE OF UTILITY (check one)

ELECTRIC

GAS

WATER

TELEPHONE
(local, long distance)

STEAM HEAT

WASTE WATER

MOTOR CARRIER

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

~~RECEIVED~~
2012 NOV 26 AM 10:48
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.

First and foremost I would like to thank you for your time looking into this matter. After reviewing your investigation there are still a few lingering questions that I PECO have not responded to me. These questions are listed below:

(a) I have requested that PECO provide the detail breakdown of how they come up with \$1,008.58, the amount that is being transferred from Lency Whitaker. This had not been provided to me. The fact that the only electrical device that is not in the tenant's apartment is the ceiling light in the hallway leading to her apartment's front entrance. The sole purpose of this light is to be used by this apartment unit. This light is only consumed about 20 Watts of power and equipped with motion detector. My assumption is most of the electrical power consumed in this bill is coming from the electrical heaters that the tenant used in past winter months. Based on these assumptions, I would like for you to put this into your consideration that we will only pay for the portion of the bill based on the hallway light usage.

(b) I also have requested that PECO provide an explanation as to why my tenant, Lency Whitaker, who moved into the 1 Floor Rear in November 2011 and that she didn't file the report of the foreign wiring at that point. The issue had not been brought to my attention March 2012, four months after she had moved in. I have not received an adequate response from PECO on this regard.

(c) When the issue is brought to me March 22, 2012, I have this issue resolve within two months, by May 29th, 2012. I have shown that when issue is brought to me, I will have it resolve. It is a frustration to me that the issue not brought up sooner so that it get corrected sooner.

I would like for you to kindly follow up with PECO and provide an adequate explanation on above. I also would like for you to take above facts, as well as the response from PECO for above questions and factor into a recommendation that you think is the best path that I should take.

Again, I would like to thank you for your time. I am looking forward in your response.

5. **RELIEF**

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

The fact that the only electrical device that is not in the tenant's apartment is the ceiling light in the hallway leading to her apartment's front entrance. The sole purpose of this light is to be used by this apartment unit. This light is only consumed about 20 Watts of power and equipped with motion detector. My assumption is most of the electrical power consumed in this bill is coming from the electrical heaters that the tenant used in past winter months. Based on these assumptions, I would like for you to put this into your consideration that we will only pay for the portion of the bill based on the hallway light usage.

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) _____

9. VERIFICATION AND SIGNATURE

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

Verification:

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


(Signature)

11/20/2012
(Date)

PROPERTY OWNER
Title of authorized employee or officer

10. FILING

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

If using U.S. Postal Service:

If using overnight delivery service:

| | |
|---|--|
| Secretary Pennsylvania Public Utility Commission P.O. Box 3265 Harrisburg, PA 17105-3265 | Secretary Pennsylvania Public Utility Commission 400 North Street Commonwealth Keystone Building, 2 nd Floor Harrisburg, Pennsylvania 17120 |
|---|--|

Facsimiles and/or electronic filings of the complaint will not be accepted.

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

Keep a copy of your complaint for your records.