

Legal Department

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**January 10, 2013**

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

**RE: Suong Tran v. PECO Energy Company  
PUC Docket No.: F-2012-2340655**

**Dear Ms. Chiavetta:**

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

—	<b>Answer</b>
—	<b>Answer &amp; New Matter</b>
—	<b>Motion to Dismiss</b>
—	<b>Motion for Judgment on the Pleadings</b>
<u>X</u>	<b>Preliminary Objection</b>
—	<b>Exceptions</b>
—	<b>Reply Exceptions</b>
—	<b>Main Brief</b>
—	<b>Reply Petition</b>

**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**

<b>SUONG TRAN</b>	:	
<b>Complainants</b>	:	
<b>v.</b>	:	<b>DOCKET NO. F-2012-2340655</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

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**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, January 10, 2013



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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>SUONG TRAN</b>	:	
<b>Complainants</b>	:	
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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 27, 2012, PECO Energy was served with a formal complaint filed by Suong Tran (hereafter “Complainant”). A copy of the Complaint is attached hereto as Exhibit “1”.

2. In her Complaint, the Complainant alleges there was a foreign wiring condition found at her rental property located at 215 Glenside Avenue, 1<sup>st</sup> Floor, Holmes, PA 19043. See Exhibit “1”.

3. The Complainant alleges that her tenant accrued a \$2,874.14 balance while the foreign load existed at the premises. See Exhibit “1”.

4. The Complainant alleges that she gave her tenant a \$50.00 credit off the tenant’s rent to compensate the tenant for the common area lighting. See Exhibit “1”.

5. The Complainant also alleges that the Lease Agreement with her tenant stipulates the tenant is to be compensated for the common lighting area. See Exhibit “1”.

6. The Complainant requests that the tenant’s \$2,874.14 balance be transferred back to the tenant’s account. See Exhibit “1”.

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

8. 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).

9. Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil procedure.<sup>1</sup>

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

11. A complaint must be able to recover under the law to survive a preliminary objection.<sup>3</sup>

12. All of the non-moving party’s averments must be taken as true for the sake of deciding the preliminary objection.<sup>4</sup>

13. The court does not, however, need to accept, “unwarranted inferences from facts, argumentative allegations, or expressions of opinions.”<sup>5</sup>

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

<sup>2</sup> 2006 Pa. PUC Lexis 111, \*7.

<sup>3</sup> *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”).

<sup>4</sup> *Id.* at 7-8.

<sup>5</sup> *Feingold v. McNulty*, 2009 Phila. Ct. Com. Pl LEXIS 167, \*3.

14. 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.

15. 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.2<sup>nd</sup> 593 (Pa.Comm. Ct. 2003), petition for allowance of appeal denied, 836 A.2d 123 (Pa. 2003).

16. 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.

17. 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).

18. The Complainant is the owner of 215 Glenside Avenue, Holmes, PA 19043. See Complaint at page 1.

19. The Complainant avers that she is not in violation of section 1529.1(b) as her tenant signed a lease agreement, agreeing to pay the utilities in the common areas for which the tenant would be compensated \$50.00 off the rent. See Complaint at page 3.

20. The Complainant seeks the following relief:

I'm asking your honor to look into this case regarding tenant's previous balance of \$2,874.14 accrued while there was foreign load on public lighting..... I'm asking for your consideration of transfer back the balance to my tenant.

21. 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.

22. The Complainant does not allege that the property is not a rental property or that she is not the owner of the property.

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

24. The Complainant does not allege that PECO Energy transferred an incorrect amount to her account.

25. The Complainant's Complaint simply alleges that foreign wiring was found at her property and she feels that she is not in violation of the foreign wiring statute because she has a lease agreement with her tenant that states the tenant will be responsible for the common area utilities and will receive a \$50.00 credit off the rent.

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

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

28. The PUC is not the forum for the Complainant to raise what is essentially a contract dispute, regarding whether the Complainant or her tenant under the lease agreement is responsible for electric service in the common areas.

29. 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.

30. Because the Complaint relates to a dispute about the assignment of financial responsibility for foreign load in a building she owns, this complaint should be dismissed as a matter of law.

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

**REQUEST FOR RELIEF**

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

Respectfully submitted,



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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

**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: January 10, 2013

\_\_\_\_\_  
Shawane L. Lee

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>SUONG TRAN</b>	:	
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	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

**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:

Suong Tran  
7861 Anita Drive  
Philadelphia, PA 19111

Dated at Philadelphia, Pennsylvania, January 10, 2013



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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  
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**January 10, 2013**

**Suong Tran  
7861 Anita Drive  
Philadelphia, PA 19111**

**RE: Suong Tran v. PECO Energy Company  
PUC Docket No.: F-2012-2340655**

**Dear Ms. Tran:**

**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

Filing this form begins a legal proceeding and you will be a party to the case. If you do not wish to be a party to the case, consider filing an informal complaint.

TIME  
RECEIVED  
2012 DEC 24 AM 11:01  
SECRETARY'S BUREAU  
PA P.U.C.

To complete this form, please type or print legibly in ink.

1. Customer (Complainant) Information

Provide your name, mailing address, county, telephone number(s), e-mail address and utility account number:

Name SUONG TRAN

Street/P.O. Box 7861 Anita Dr. Apt # \_\_\_\_\_

City Philadelphia State PA Zip 19111

County Philadelphia

Telephone Number(s) Where We Can Contact You During the Day:

(215) 425-9212 x 236 (home) (215) 531-4460 (mobile)

E-mail Address (optional): Suetran66@gmail.com

Utility Account Number (from your bill) A/c # 49676-70215

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

Name SUONG TRAN

Street/P.O. Box 215 Glenside Ave

City Holmes State PA Zip 19043

2. Name of Utility or Company (Respondent)

Provide the full name of the utility or company about which you are complaining. The name of your utility or company is on your bill.

PECO

**3. Type of Utility Service**

**Check the box listing the type of utility service that is the subject of your complaint (check only one):**

- ELECTRIC                       WASTEWATER/SEWER  
 GAS                                       TELEPHONE/TELECOMMUNICATIONS (local, long distance)  
 WATER                                       MOTOR CARRIER (e.g. taxi, moving company, limousine)  
 STEAM HEAT

**4. Reason for Complaint**

**What kind of problem are you having with the utility or company? Check all boxes below that apply and state the reason for your complaint. Explain specifically what you believe the utility or company has done wrong. Provide relevant details including dates, times and places and any other information that may be important. If the complaint is about billing, tell us the amount you believe is not correct. Use additional paper if you need more space. Your complaint may be dismissed without a hearing if you do not provide specific information.**

- The utility is threatening to shut off my service or has already shut off my service.
- I would like a payment agreement.
- Incorrect charges are on my bill. Provide dates that are important and an explanation about any amounts or charges that you believe are not correct. Attach a copy of the bill(s) in question if you have it/them.
- I am having a reliability, safety or quality problem with my utility service. Explain the problem, including dates, times or places and any other relevant details that may be important.
- Other (explain).

Note: If your complaint is only about removing or modifying a municipal lien filed by the City of Philadelphia, the Public Utility Commission (PUC) cannot address it. Only local courts in Philadelphia County can address this type of complaint. The PUC can address a complaint about service or incorrect billing even if that amount is subject to a lien.

In addition, the PUC generally does not handle complaints about cell phone or Internet service, but may be able to resolve a dispute regarding voice communications over the Internet (including the inability to make voice 911/E911 emergency calls) or concerns about high-speed access to Internet service.

5. Requested Relief

How do you want your complaint to be resolved? Explain what you want the PUC to order the utility or company to do. Use additional paper if you need more space.

Informal complaint was dismissed.

I'm asking your honor to look into this case regarding Tenant's previous balance of \$ 2,874.14 accrued while there was foreign load on public lightning of which I give a credit of \$50 off total rent to compensate for common lighting which stipulated in the lease contract & Tenants are fully aware of this and would like to transfer his balance back into his A/c.

I'm fully responsible for any pub. lighting which is in my name Ac# 49676-70215.

I'm asking for your consideration of transfer back the balance to my tenant. Your decision would be greatly appreciated. Thank You. *Sue [Signature]*

Note: The PUC can decide that a customer was not billed correctly and can order billing refunds. The PUC can also fine a utility or company for not following rules and can order a utility or company to correct a problem with your service. Under state law, the PUC cannot decide whether a utility or company should pay customers for loss or damages. Damage claims may be sought in an appropriate civil court.

- c. If you tried to speak to a utility company representative about your complaint but were not able to do so, please explain why.

**Note:** Even if you are not required to contact the utility or company, you should always try to speak to a utility or company representative about your problem before you file a Formal Complaint with the PUC.

8. **Legal Representation**

If you are filing a Formal Complaint as an individual on your own behalf, you are not required to have a lawyer. You may represent yourself at the hearing.

If you are represented by a lawyer in this matter, provide your lawyer's name, address, telephone number, and e-mail address, if known. Please make sure your lawyer is aware of your complaint. If represented by a lawyer, both you and your lawyer must be present at your hearing.

Lawyer's Name \_\_\_\_\_

Street/P.O. Box \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Area Code/Phone Number \_\_\_\_\_

E-mail Address (if known) \_\_\_\_\_

**Note:** Corporations, associations, partnerships, limited liability companies and political subdivisions are required to have a lawyer represent them at a hearing and to file any motions, answers, briefs or other legal pleadings.

9. **Verification and Signature**

You must sign your complaint. Individuals filing a Formal Complaint must print or type their name on the line provided in the verification paragraph below and must sign and date this form in ink. If you do not sign the Formal Complaint, the PUC will not accept it.

6. **Protection from Abuse**

Has a court granted a "Protection from Abuse" order that is currently in effect for your personal safety or welfare? The PUC needs this information to properly process your complaint so that your identity is not made public.

Note: You must answer this 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 problem involving billing, 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

If your answer to the above question is "yes," attach a copy of the current Protection for Abuse order to this Formal Complaint form.

7. **Prior Utility Contact**

a. Is this an appeal from a decision of the PUC's Bureau of Consumer Services (BCS)?

YES

NO

Note: If you answered yes, move to Section 8. No further contact with the utility or company is required. If you answered no, answer the question in Section 7 b. and answer the question in Section 7 c. if relevant.

b. If this is not an appeal from a BCS decision, have you spoken to a utility or company representative about this complaint?

YES

NO

Note: You must contact the utility first if (1) you are a residential customer, (2) your complaint is against a natural gas distribution utility, an electric distribution utility or a water utility AND (3) your complaint is about a billing problem, a service problem, a termination of service problem, or a request for a payment agreement.

**Verification:**

I SUONG TRAN, 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] 12/21/12  
(Signature of Complainant) (Date)

\_\_\_\_\_  
Title of authorized employee or officer (only applicable to corporations, associations, partnerships, limited liability companies or political subdivisions)

Note: If the Complainant is a corporation, association, partnership, limited liability company or political subdivision, the verification must be signed by an authorized officer or authorized employee. If the Formal Complaint is not signed by one of these individuals, the PUC will not accept it.

**10. Filing**

You may electronically file your Formal Complaint with the PUC. To do so, you need to establish an account on the PUC's eFiling system, which may be accessed at <http://www.puc.pa.gov/efiling/default.aspx>.

If you do not electronically file your Formal Complaint, mail the completed form (along with any attachments) 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 <sup>nd</sup> Floor Harrisburg, Pennsylvania 17120
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Note: Formal Complaints sent by fax or e-mail 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 Formal Complaint for your records.**