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February 25, 2013

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

RE: Kathleen Wakefield v. PECO Energy Company
PUC Docket No.: C-2013-2349188

Dear Ms. Chiavetta:

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

- Answer
- Answer & New Matter
- Motion
- Motion for Judgment on the Pleadings
- Preliminary Objection
- Exceptions
- Reply Exceptions
- Main Brief
- 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**

KATHLEEN WAKEFIELD	:	
Complainant	:	
v.	:	DOCKET NO. C-2013-2349188
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

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

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

1. On February 22, 2013, PECO Energy was served with a formal complaint filed by Kathleen Wakefield (hereafter “Complainant”). A copy of the Complaint is attached hereto as Exhibit “1”.

2. In her complaint, the Complainant states that she resides at 26 Water Street, Apartment 2, Christiana, PA 17509 in Lancaster County, Pennsylvania. See Exhibit “1”.

3. The Complainant provides PECO Energy as the utility company about which she is complaining and the company on her bill. See Exhibit “1”.

4. The Complainant does not list the PECO Energy utility account number at issue. See Exhibit “1”.

5. In her reasons for the complaint, the Complainant checks the boxes “the utility is threatening to shut off my service or has already shut off my service”; “I would like a payment agreement”; and “Incorrect charges are on my bill.” See Exhibit “1”.

6. Specifically, the Complainant states in her formal complaint:

Correct bill and on tract reinstated at previous amount of 68.00/month, increased to \$138.00 monthly. More than double when income has not changed to reflect the difference between both amounts.

See Exhibit "1".

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

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

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

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

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

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

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

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

² 2006 Pa. PUC Lexis 111, *7.

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

⁴ *Id.* at 7-8.

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

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

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

16. In order to be legally sufficient, the Complainant must set forth an “act or thing done or omitted to be done or about to be done or omitted to be done by the respondent in violation, or claimed violation, of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission.” 52 Pa. Code § 5.22(a)(4).

17. In order to satisfy her burden of proof, the Complainant must show that the named utility is responsible or accountable for the problem described in the Complaint. Patterson v. Bell Telephone Co. of Pa., 72 Pa. PUC 196 (1990); Feinstein v. Philadelphia Suburban Water Co., 50 Pa. PUC 300 (1976).

18. The statute at 66 Pa. C.S. § 1403 defines a customer as follows:

“Customer.” A natural person in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for the service or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested.

19. In this case, PECO Energy does not provide utility service to the property alleged in the Complaint – 26 Water Street, Apartment 2, Christiana, in Lancaster County, Pennsylvania.

20. Additionally, the Complainant does not have an account for utility service with PECO Energy.

21. Accordingly, the Complainant is not a “customer” as defined by 66 Pa. C.S. § 1403.

22. Upon information and belief, the Complainant has alleged the incorrect utility in her complaint.

23. Consequently, PECO Energy has not committed any act or thing done or about to be done that violated any duty or obligation in the company's tariff.

24. Accordingly, the Complainant's formal complaint against PECO Energy is legally insufficient.

25. For the reasons set forth above, all of the Complainant's claims against PECO Energy should be dismissed.

REQUEST FOR RELIEF

WHEREFORE, for the reasons set forth above, PECO Energy Company respectfully requests that your Honorable Commission summarily dismiss the Complainant's formal complaint as legally insufficient.

Respectfully submitted,



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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

KATHLEEN WAKEFIELD

Complainant

v.

PECO ENERGY COMPANY

Respondent

:
:
:
:
:

DOCKET NO. C-2013-2349188

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: February 25, 2013

Shawane L. Lee

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

KATHLEEN WAKEFIELD	:	
Complainant	:	
v.	:	DOCKET NO. C-2013-2349188
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

CERTIFICATE OF SERVICE

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

Kathleen Wakefield
26 Water Street, Apartment 2
Christiana, PA 17509

Dated at Philadelphia, Pennsylvania, February 25, 2013



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

EXHIBIT "1"

PENNSYLVANIA PUBLIC UTILITY COMMISSION

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.*

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 Kathleen Whitefield

Street/P.O. Box 24 Water St. Apt # 2

City Christiana State PA Zip 17509

County Lancaster

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

(610) 593-6180 (home) (484) 401-2128 (mobile)

E-mail Address (optional): _____

Utility Account Number (from your bill) _____

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 _____

Street/P.O. Box _____

City _____ State _____ Zip _____

RECEIVED
2010 FEB 11 AM 10:56
P.U.C.
SECRETARY'S BUREAU

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.

Correct bill and On tract reinstated at previous amount of \$68.00/month, increased to \$138.00 monthly. More than double when income has not changed to reflect the difference between both amounts.

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.

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.

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.

Verification:

Kathleen Wakefield, 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).

Kathleen Wakefield
(Signature of Complainant)

2.7.13
(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:

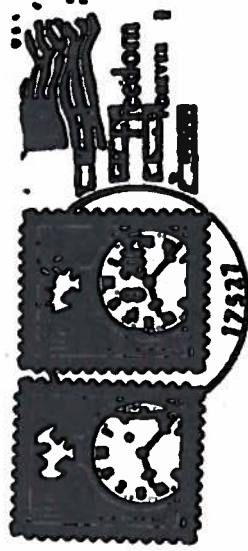
Secretary Pennsylvania Public Utility Commission P.O. Box 3265 Harrisburg, PA 17105-3265	Secretary Pennsylvania Public Utility Commission 400 North Street Commonwealth Keystone Building, 2 nd Floor Harrisburg, Pennsylvania 17120
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Note: Formal Complaints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

K. Wakefield
216 Water St.
Christiana, PA



Secretary
Pennsylvania Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

171053265

