



Exelon Business Services Company

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September 9, 2013

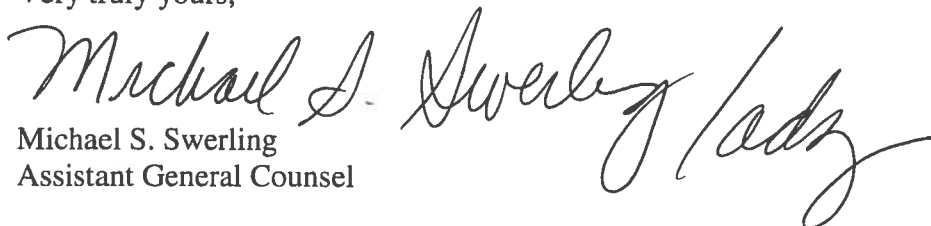
ALJ Angela T. Jones  
Pennsylvania Public Utilities Commission  
801 Market Street  
Philadelphia, PA

**Re: Edward Ferguson v. PECO Energy Company**  
**Docket No. C-2013-2360708**

Dear ALJ Jones:

Attached is the Memorandum of PECO Energy Company in the above referenced case.

Very truly yours,

A handwritten signature in black ink, reading "Michael S. Swerling / adz". The signature is written in a cursive style with a large, sweeping "S" and a trailing "adz".

Michael S. Swerling  
Assistant General Counsel



resolve Complainant's informal complaint. PECO also did not violate 52 Pa.Code § 56.14, because it issued Complainant a credit, not a bill for previously unbilled service.

## **BACKGROUND**

The Complainant, Edward Ferguson, was being billed on the R Rate. (Transcript at 69). He also received the Customer Assistance Program ("CAP") discount. (Transcript at 51).

On June 20, 2013, a PECO representative visited 5122 Malcolm Street, Philadelphia to investigate a high bill dispute initiated by the Complainant. (Transcript at 64). The results of the field visit determined that Complainant was properly billed. (Transcript at 64-65). The meter reading obtained onsite was in line with the actual readings that PECO billed Complainant. (Transcript at 65.) The representative performed an appliance analysis, which justified the potential for the billed usage. (Id.) A passing load test was also performed on the meter, which determined that the meter was accurately measuring the usage at the property. (Id.)

During the investigation, the representative discovered that Complainant used 16 feet of electric baseboard to heat the residence during the winter. (Transcript at 65). This was the first time PECO became aware that Complainant used electric baseboard as his primary source of heating. (Transcript at 70). The Complainant did not previously contact the Company inquiring to be placed on the RH Rate. (Transcript at 82). The representative explained that because the customer used electric heating, he qualified for PECO's Residential Heating Rate ("RH Rate"). (Id.).

The RH Rate provides a \$1.94 per kWh discount off the variable distribution charge for the R Rate during the winter months. (See Table 1 below, which incorporates and compares information from PECO's Residential Rate Tariff Rider (See Exhibit A) and RH Rate Tariff

Rider (See Exhibit B)).

**Table 1**

<b>Rate Comparison</b>	<b>Rate R</b>	<b>Rate RH</b>	<b>Discount</b>
<b>Fixed Dist Charge</b>	\$7.09	\$7.09	\$-
<b>Variable Dist Charge (Summer) Per kWh</b>	\$6.10	\$6.10	\$-
<b>Variable Dist Charge (Winter) Per kWh</b>	\$6.10	\$4.16	\$1.94

The representative also explained that the Company would switch Complainant to the RH Rate and retroactively apply the RH Rate discount to Complainant's bills back to September 2011<sup>1</sup> as a courtesy to benefit the customer. (Transcript at 65, 70 and 81). PECO followed up with a letter to Complainant dated August 13, 2013, which also explained the billing adjustment. (See PECO Exhibit No. 6).

Although PECO was not required to provide Complainant with a retroactive rate credit<sup>2</sup>, it did so as a courtesy in an effort to settle the Bureau of Consumer Services ("BCS") Complaint<sup>3</sup> filed by Mr. Ferguson. (Transcript at 64-65).

After the field visit completed, the PECO representative submitted the information for the retroactive rate credit to the billing department. (Transcript at 77). The billing department

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<sup>1</sup> The Company only went back to September 2011, because it did not know when the baseboard heating was installed and the customer did not provide any proof thereof. (Transcript at 82-84).

<sup>2</sup> See Rule 11.3 of PECO's Electric Service Tariff attached as Exhibit C, which explains that after notice of a customer's request to change to another rate that they qualify for, PECO is not required to make any Base Rate change retroactive.

<sup>3</sup> On April 20, 2013, Complainant filed an informal complaint with the BCS at case number 003078207 (See PECO Exhibit No. 7).

recalculated the bill during the relevant period on the RH Rate, including the appropriate CAP discount. (Id). The credit spanned the 15-month period between September 11, 2011 and June 20, 2013 (Transcript at 65 and 73). The credit amounted to \$196.75 (Transcript at 78). The \$196.75 credit was applied to the account in July 2013 (Id).

## ANALYSIS

### **A. PECO complied with 66 Pa.C.S. § 1303 when it switched Complainant from the R Rate to the RH Rate.**

PECO acted in accordance with the requirements set forth in 66 Pa.C.S. § 1303 when it switched Complainant from the R Rate to the RH Rate. 66 Pa.C.S. § 1303 states in relevant part:

Any public utility, having more than one rate applicable to service rendered to a patron, shall, after notice of service conditions, compute bills under the rate most advantageous to the patron.

The Commonwealth Court in *Springfield Township v. PAPUC*, 676 A.2d (May 17, 1996) emphasized that under Section 1303, utilities are not required to bill customers on the most advantageous rate until after it receives notice of service conditions. Specifically, the Commonwealth Court held:

Under Section 1303 of the Code, the public utility has an obligation to compute the bills under the rate most advantageous to its customers “after notice of service conditions.”

It should also be noted that utilities do not have an affirmative duty to monitor customer usage patterns to determine the most appropriate rate for customers.<sup>4</sup>

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<sup>4</sup> [U]tilities do not have an affirmative obligation to monitor the usage characteristics of their ratepayers and determine therefrom the proper rate to be charged. I.D. at 11-12. Instead, the responsibility is upon the ratepayer to

PECO also complied with the applicable sections of its Electric Service Tariff, when it switched Complainant to the RH Rate:

**11.1 CHOICE OF RATE.** When the class of service-supply or conditions of use are such that two or more Base Rates are available, a customer shall select the Base Rate on which the customer will be billed.

**11.2 COMPANY ASSISTANCE.** The Company upon request will, to a reasonable extent, assist customers in selecting the most advantageous Base Rate or rate application (i.e., Base rate together with applicable riders).

**11.3 RATE CHANGES.** A customer may not change Base Rates during the "initial contract term" as defined in the "Definition of Terms and Explanation of Abbreviations" section above unless the Company agrees to permit the change. At any other time, a customer may change to a firm rate for which the customer qualifies upon 30 days notice to the Company. Customer ownership and obligation to maintain customer owned transformation facilities and equipment, as well as the point of delivery, will be unaffected by any Base Rate change initiated by the customer.

A customer may request that the Company modify the terms of its contract, other than the customer's Base Rate, but the Company will only allow such modification when, in the Company's sole judgment, the modification does not conflict with the Company's Tariff and is not detrimental to the Company.

The Company will not make any Base Rate change retroactive, unless, in the Company's sole judgment, the Company failed to adequately respond to a customer's request for assistance or modification at the time of such request.

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provide the utility company with actual notice of a change in service conditions before the utility must determine and supply service at the most advantageous rate.

*The Victory Condominium Association v. PECO Energy Company*, 2010 WL 6087518, Docket No. C-2011-2268126 (September 27, 2012).

Mr. Ferguson had more than one applicable rate (the R Rate and the RH Rate). The most advantageous applicable rate was the RH Rate. Complainant was not billed on the most advantageous rate prior to the June 30, 2013 field visit, because PECO did not have notice of his service conditions prior to that date. The Complainant did not previously place PECO on actual notice of his service conditions despite PECO witness, Mr. Thomas Lerro's, testimony that PECO has issued bill inserts apprising customers of the electric heating rate and that it is the responsibility of the ratepayer to contact the Company to see if they qualify for the rate discount. (Transcript at 85). PECO was also not required to review the Complainant's account to determine the most advantageous rate.

The Commonwealth Court further explained in *Springfield Township* that utilities must have "actual knowledge" of service conditions before computing bills under the most advantageous rate:

We hold, therefore, that under Section 1303 of the Code, the public utility must have actual knowledge of service conditions before it is required to compute the most favorable rate for its customers.

PECO received actual knowledge of Complainant's service conditions when it visited the property on June 20, 2013 and noticed the electric baseboard equipment. The Complainant in this case did not previously contact the Company inquiring that the Company investigate whether he could be placed on the RH Rate. (Transcript at 82). Since PECO did not have actual notice of service conditions until June 20, 2013, it was not required to compute bills on the most advantageous rate prior to June 20, 2013.

**B. PECO appropriately issued this credit to resolve Complainant's informal complaint.**

Although PECO was not required to provide Complainant with a retroactive rate credit<sup>5</sup>, it did so as a courtesy in an effort to settle the Bureau of Consumer Services ("BCS") Complaint<sup>6</sup> filed by Mr. Ferguson. (Transcript at 64-65). As previously stated, 66 Pa.C.S. § 1303, Springfield Township and its progeny and PECO tariff rules 11.10 through 11.13 did not require PECO to issue Complainant any retroactive rate relief. That being said, PECO was still allowed to issue Complainant reasonable rate relief in an effort to resolve Complainant's BCS complaint. Not knowing exactly when the baseboard heating was installed at Complainant's residence, PECO acted reasonably when it decided to issue Complainant a retroactive credit spanning the period between September 2011 and June 2013.

**C. 52 Pa.Code § 56.14 does not apply to the facts of this case because PECO issued a credit not an under-billing.**

52 Pa.Code § 56.14 does not apply to the facts of this case because PECO issued Complainant a credit, it did not require Complainant to pay more than what was previously billed. 52 Pa.Code § 56.14 only applies in situations where (for the reasons stated therein) the utility fails to bill the customer, fixes the bill, and then makes the customer pay for the amount not previously billed. According to 52 Pa.Code § 56.14:

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<sup>5</sup> See Rule 11.3 of PECO's Electric Service Tariff attached as Exhibit C, which explains that after notice of a customer's request to change to another rate that they qualify for, PECO is not required to make any Base Rate change retroactive.

<sup>6</sup> On April 20, 2013, Complainant filed an informal complaint with the BCS at case number 003078207 (See PECO Exhibit No. 7).

**52 Pa. Code § 56.14. Previously unbilled public utility service.**

When a public utility renders a make-up bill for previously unbilled public utility service which accrued within the past 4 years resulting from public utility billing error, meter failure, leakage that could not reasonably have been detected or loss of service, for four or more consecutive estimated bills and the make-up bill exceeds the otherwise normal estimated bill for the billing period during which the make-up bill is issued by at least 50% or at least \$50, whichever is greater:

- (1) The public utility shall explain the bill to the customer and make a reasonable attempt to amortize the bill.
- (2) The period of the amortization may, at the option of the customer, extend at least as long as:
  - (i) The period during which the excess amount accrued.
  - (ii) Necessary so that the quantity of service billed in any one billing period is not greater than the normal estimated quantity for that period plus 50%.

This section of the Code was not triggered because the billing adjustment did not involve a makeup bill for previously unbilled service. Instead, Complainant received a credit, which reduced previously billed amounts. Therefore, PECO did not violate any of the essential elements of 52 Pa.Code § 56.14, and, as such, the Commission should find that PECO acted appropriately.

## CONCLUSION

For the reasons set forth herein, PECO respectfully requests that Administrative Law Judge, Angela T. Jones, find that PECO acted in accordance with all relevant authority.



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Michael S. Swerling (Pa. No. 94748)

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**EDWARD FERGUSON** :  
 :  
 v. : **Docket No. C-2013-2360708**  
 :  
 :  
 **PECO ENERGY COMPANY** :

**CERTIFICATE OF SERVICE**

I hereby certify that I am this day serving copies of the foregoing document upon the person and in the manner indicated below which service satisfies the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

**VIA ELECTRONIC MAIL AND FEDERAL EXPRESS**

Honorable Angela T. Jones  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
801 Market Street, Suite 4063  
Philadelphia, PA 19107  
ajones@pa.gov

Edward Ferguson  
5122 Malcolm Street  
Philadelphia, PA 19143



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Michael S. Swerling  
PA Attorney I.D. No. 94748

Dated: September 9, 2013

Counsel for PECO Energy Company