



Exelon Business Services Company
Legal Department
2301 Market Street/S23-1
Philadelphia, PA 19103
215 568 3389 Fax
www.exeloncorp.com

Direct Dial: 215.841.6841

December 19, 2013

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

**RE: Alliance of Youth Mission Ministries v. PECO Energy Company
PUC Docket No.: C-2013-2358115**

Dear Ms. Chiavetta:

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

—	Answer
—	Answer & New Matter
—	Motion Objecting to Continuance Request
—	Motion for Judgment on the Pleadings
—	Motion to Admit Exhibits
—	Motion to Consolidate
—	Preliminary Objection
—	Exceptions
<u>X</u>	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

cc: Robert L. Simmons, Esquire

REPLY EXCEPTIONS

PECO Energy Company (“PECO Energy”) hereby replies to the Exceptions filed by Alliance of Youth Mission Ministries, Inc. (“Complainant”) in the above-referenced matter on December 17, 2013. On April 3, 2013, Complainant filed a formal complaint against PECO Energy. In the formal complaint, Complainant alleged that they purchased the building at 3030 North 22nd Street, Philadelphia, PA in January 2012. The Complainant alleged that they did not occupy the premises until June 2012. The Complainant alleged they applied for service at that time and their application was approved. However, approximately two weeks later, PECO Energy billed them for usage at the premises from January 2012 to May 31, 2012. The Complainant averred they are not responsible for the usage charges from January to May 31, 2012.

Respondent, PECO Energy filed an Answer on April 29, 2013, denying the allegations in the complaint and averred that the Complainant is responsible for the utility charges from January to May 31, 2012, as well as any periods prior to the sale of the property as the Complainant simply changed the corporate name to avoid a previous debt incurred by their former corporate entity – NPO International/Dillard House.

A hearing was held before Administrative Law Judge Christopher Pell on July 22, 2013. During the hearing, PECO Energy presented one witness from the Revenue Management Department and sixteen exhibits. The sixteen exhibits included the submission of a Deed for the property dated January 17, 2012 and Section 5.1 of PECO Energy’s Tariff. The Complainant, who was represented by Robert Simmons, Esquire, presented the testimony of one witness and four exhibits. ALJ Pell issued an Initial Decision on November 27, 2013, wherein he held inter alia:

The complainant's witness' testimony that another organization, N.P.O./Dillard House, occupied the service address and should be held responsible for all charges that occurred during this period was unconvincing. First, the record demonstrates that Dominique Dixon, a member of the complainant's board of directors, applied for service on Alliance's behalf and ultimately accepted responsibility for the balance that accrued after January 17, 2012 when she entered into a payment agreement with PECO to pay down the balance. The record further demonstrates that not only was Ms. Dixon an Alliance board member, she was also affiliated with N.P.O./Dillard House, the organization that occupied the service address immediately prior to Alliance. In addition to Ms. Dixon's affiliation with both organizations, Earnestine Oliver Brown was the Executive Director for N.P.O./Dillard House as well as the founder of Alliance of Youth Mission Ministries. Clearly, based upon a board member's acceptance of responsibility for this debt on Alliance's behalf as well as the personnel overlap between these two organizations, PECO properly billed Alliance for electric service provided to the service address after January 17, 2012.

See ALJ Pell, Initial Decision, pp. 7-8, dated 11/27/13.

The Commission should sustain the initial decision of ALJ Pell. ALJ Pell properly reviewed the testimony and evidence presented at the hearing and his Initial Decision contains well-reasoned findings. The record clearly demonstrates that Complainant is attempting a "Corporate Name Game" to prevent responsibility for \$35,404.42 in electric service charges incurred at the property by NPO International/Dillard and an additional \$8,292.92 debt incurred between January 17, 2012 and May 31, 2012.

An entity called Dillard House a/ka/ NPO International Nursing Services, Incorporated ("NPO International") established electric service at 3040 North 22nd Street, Philadelphia, PA from March 15, 2009 to June 28, 2012. While at the premises, NPO International rarely, if ever, paid any electric bills and avoided termination despite the company's best efforts to terminate service. NPO International incurred over \$35,404.42 in unpaid electric service charges. On or about October 3, 2011, NPO International entered into a Stipulation of Judgment with PECO

Energy in the amount of \$35,404.42, arising from litigation concerning unpaid utility bills. The Stipulation in the matter PECO Energy vs. NPO International Nursing Services, Inc. was docketed in the Philadelphia Court of Common Pleas at June Term 2010, No. 02449. Richard Simmons, Esquire (Complainant's counsel for the formal complaint case) represented NPO International for this matter. NPO International never paid any funds to PECO Energy under the Stipulation of Judgment and continued to be delinquent on their monthly electric bill. In February 2012, PECO Energy made attempts to collect the outstanding judgment and began collection activity.

On June 13, 2012, Dominique Dixon, President and corporate officer of the Complainant came into PECO Energy's main office building to apply for service at 3040 North 22nd Street. Ms. Dixon provided a copy of the deed for the building with a purchase date of January 17, 2012; an Employee Identification number, photo identification; and Delaware corporation documentation. PECO Energy advised Ms. Dixon that there was a large unpaid balance on the existing account; and therefore, an investigation would be conducted to determine if the Complainant was responsible for any of the unpaid charges. PECO Energy approved the service request for the Complainant and established a new account. On June 28, 2012, the Complainant was back-billed for service in the amount of \$8,292.92 from January 17, 2012, as this was the date the deed was issued.

On July 27, 2012, Dominique Dixon requested a payment agreement on the balance. PECO Energy processed an agreement on a balance of \$4,951.40 with a down payment of \$2,475.70 and two installments of \$1,265.77. Complainant made three payments to the account by check in the amount of \$300.00, \$700.00 and \$6,865.34. All of the payments were returned for insufficient funds, with the exception of the \$700.00 payment. Subsequently, the account

went into collection and PECO Energy began the process to terminate service. Thereafter, Complainant filed the instant formal complaint.

Complainant has filed these Exceptions to ALJ Pell's Initial Decision, in which they claim that ALJ Pell "capriciously disregarded facts", including: (1) NPO International occupied the premises for five years prior (2) NPO International continued to occupy the property after January 17, 2012 when Complainant purchased the property and were billed for the usage; and (3) PECO Energy transferred the bill incurred by NPO International from January 17, 2012 through May 31, 2012 to Complainant. In addition, Complainant argues that ALJ Pell abused his discretion by permitting Section 5.1 of PECO Energy's Tariff into evidence. The Complainant makes some additional arguments concerning the burden of proof being placed on Complainant.

ALJ Pell correctly considered all the facts in this case, including the fact that the executive officers Dominique Dixon and Earnestine Brown of NPO International are also the executive officers of Complainant's organization – Alliance of Youth Mission. Complainant would have the Commission believe that it is an entirely innocent separate corporate entity with no relation or affiliation to NPO International that occupied the premises and incurred a \$35,404.42 debt. As ALJ Pell stated in his Initial Decision:

The record further demonstrates that not only was Ms. Dixon an Alliance board member, she was also affiliated with N.P.O./Dillard House, the organization that occupied the service address immediately prior to Alliance. In addition to Ms. Dixon's affiliation with both organizations, Earnestine Oliver Brown was the Executive Director for N.P.O./Dillard House as well as the founder of Alliance of Youth Mission Ministries.

See ALJ Pell, Initial Decision, pp. 7-8, dated 11/27/13. Notwithstanding the fact that NPO International and Complainant are clearly the same entity, Complainant got away with a "Corporate Name Game". Complainant completely avoided the \$35,404.42 debt owed for

electric service charges by simply changing their corporate name and identity. Now, Complainant is attempting to avoid \$8,292.92 in electric service charges incurred from the time they purchased the property until they applied for service.

ALJ Pell correctly articulated in his Initial Decision that it is Complainant that has the burden of proof pursuant to 66 Pa.C.S.A. § 332(a), and it is incumbent upon the Complainant to establish that PECO Energy violated its tariff, the Public Utility Code, or a Commission Order or regulation. Complainant failed to present any evidence at all whatsoever that they are not responsible for the \$8,292.92 in electric charges. Complainant did not present a Lease Agreement between NPO International and Complainant, demonstrating there was a Lease in place during the time period at issue or any other proof they should not be responsible for the charges after they purchased the property. Yet, PECO offered proof, *inter alia*, that Complainant's corporate officer (Dominique Dixon) who had applied for service on behalf of Complainant also accepted the \$8,292.92 in charges by entering into a payment agreement with the company.

Further, PECO Energy presented Section 5.1 of the company tariff which states the following:

5.1 PAYMENT OBLIGATION. The Company may, at its discretion, determine liability for a past due balance by:

- 1) Use of Company records that contain information previously provided to the Company;
- 2) Information contained on a valid mortgage, lease, deed or renter's license;
- 3) Use of commercially available public records databases;
- 4) Government and property ownership records

In this case, PECO Energy reviewed the deed Complainant presented to apply for service and determined that Complainant purchased the property on January 17, 2012. Complainant

was properly back-billed from January 17, 2012 until May 21, 2012 when they finally decided to apply for service.

Complainant argues that ALJ Pell should not have permitted Section 5.1 of the Tariff into evidence. Section 5.1 of the Tariff is available to the public on PECO Energy's website. Thus, this information was readily available to Complainant's counsel. Further, PECO Energy attached Section 5.1 to the company's Answer to Complainant's formal complaint and wrote the entire tariff section in the Answer. The company fails to see how ALJ Pell could possibly have erred by permitting a tariff section into evidence. Complainant has not specifically articulated in what way ALJ Pell erred in this regard. Accordingly, this Exception is no basis to overturn ALJ Pell's Initial Decision.

Complainant additionally argues that ALJ Pell allowed double hearsay testimony from PECO Energy's witness, Michelle Browne-Cathey a Revenue Management, Commercial Account Supervisor. Complainant also argues that ALJ Pell admitted hearsay testimony and documents upon which he based his findings. At the hearing, Ms. Browne-Cathey testified that she has had direct dealings with Complainant's corporate officer Earnestine Brown. Further, Ms. Browne-Cathey supervises all commercial accounts, maintains the account records at issue, and reviewed PECO Energy's business records to testify at the hearing. The business record exception to hearsay under Pennsylvania Rule of Evidence 803(6) permits Ms. Browne-Cathey to testify concerning the company's business records kept in the ordinary course of business. Pa.R.E. 803(6). Otherwise, formal complaint hearings would become quite cumbersome, requiring each call center taker that ever took a call; and customer service representative or analyst who dealt with Complainant's accounts to be called in to testify to each entry in a

business record. Clearly, Complainant's counsel is aware of Rule 803(6); and therefore, this Exception has no basis.

ALJ Pell correctly concluded that the Complainant has not met their burden of proof pursuant to 66 Pa. C.S. § 332(a). As ALJ stated: "the Complainant has not met their "burden of demonstrating that Rule 5.1 of [PECO Energy's] Tariff Electric – Pa.P.U.C. No. 4 is unreasonable, nor has it met its burden of proving that PECO improperly billed it for electric services provided to the service address between January 17, 2012 and May 31, 2012. Accordingly, ALJ Pell's decision to dismiss the Complainant's case against PECO Energy should be upheld.

For the reasons set forth above, PECO respectfully requests that the Commission deny the Exceptions and issue an Order upholding the Initial Decision in its entirety.

Respectfully submitted,



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
Direct Dial: 215.841.6841
Fax: 215.568.3389

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**ALLIANCE OF YOUTH MISSION
MINISTRIES**

COMPLAINANT

v.

PECO ENERGY COMPANY,

RESPONDENT

:
:
:
:
:
:
:
:
:
:
:
:

Docket No. C-2013-2358115

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 19, 2013

Shawane L. Lee

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ALLIANCE OF YOUTH MISSION MINISTRIES	:	
	:	
	:	
COMPLAINANT	:	
	:	Docket No. C-2013-2358115
v.	:	
	:	
PECO ENERGY COMPANY,	:	
	:	
RESPONDENT	:	

CERTIFICATE OF SERVICE

I, Shawane L. Lee, hereby certify that I have this day served a true copy of the foregoing Reply Exceptions upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**Alliance of Youth Mission
Attention: Robert L. Simmons, Esquire
3700 Gateway Drive, Suite 324
Philadelphia, PA 19145**

Dated at Philadelphia, Pennsylvania, December 19, 2013



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
Direct Dial: 215.841.6841;
Fax: 215.568.3389