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December 30, 2013

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

RE: Michael Dellaquila v. PECO Energy Company
PUC Docket No.: F-2013-2396386

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
- X** **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 **X Not Call of the Docket**

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MICHAEL DELLAQUILA	:	
Complainant	:	
v.	:	DOCKET NO. F-2013-2396386
	:	
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 30, 2013



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**

MICHAEL DELLAQUILA	:	
Complainant	:	
v.	:	DOCKET NO. F-2013-2396386
	:	
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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 20, 2013, PECO Energy was served with a formal complaint filed by Michael Dellaquillo (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 529 King Street, 1st Rear, Pottstown, PA. See Exhibit “1”.

3. In his formal complaint, the Complainant attached a statement dated November 25th outlining the allegations of his formal complaint. See Exhibit “1”.

4. In his formal complaint, the Complainant states that he does not “contest the point of ‘foreign wiring’ in the panel box of Apartment #1”. Instead, he is contesting “the amount of the bill that is being charged.” See Exhibit “1”.

5. The Complainant states that when he received notice there was foreign wiring he called his electrician who “came out and fixed it within 2 days.” See Exhibit “1”.

6. The Complainant states that the foreign wiring consisted of “5 CFL light bulbs. Three in a stairway and two in the basement. ...The other issue was an electric receptacle that has a heat tape plugged into 5 months of the year. (November – March). The heat tape has a power draw of \$.02 a day.” See Exhibit “1”.

7. The Complainant states that he “cannot believe that those items in a 30 day billing period warrant a bill of \$4577.98.” See Exhibit “1”.

8. The Complainant alleges that “he may be liable for a small amount of the bill, but not the entire amount.” See Exhibit “1”.

9. PECO Energy filed the instant Preliminary Objection.

10. 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).

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

12. 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

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

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

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.

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

16. 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.

17. 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).

18. 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.

19. 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).

20. The Complainant does not dispute that he is the owner of 529 King Street, 1st Rear, Pottstown, PA.

21. The Complainant avers that he is being held responsible for his tenant’s balance in the amount of \$4577.98. See Exhibit “1”.

22. The Complainant questions the amount transferred because the foreign wiring condition found was for “5 CFL light bulbs” and “an electric receptacle that has a heat tape plugged into 5 months of the year. (November – March).”

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

23. In section 5, requested relief, the Complainant seeks the following relief: **Remove \$4577.98 from bill.**

See Exhibit “1”.

24. 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.

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

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

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

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

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

30. 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 \$4577.98 balance because he feels that it is excessive as the balance is attributable to 5 CFL light bulbs and an electric receptacle with a heat tape.

31. 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 5 CFL light bulbs and electric receptacle).

32. 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.

33. 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]."**

34. 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.

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

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

37. 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 tenants.

38. 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.

39. 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.

40. 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
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MICHAEL DELLAQUILA	:	
Complainant	:	
v.	:	DOCKET NO. F-2013-2396386
	:	
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 30, 2013



Shawane L. Lee

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

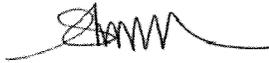
MICHAEL DELLAQUILA	:	
Complainant	:	
v.	:	DOCKET NO. F-2013-2396386
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

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:

Michael Dellaquila
160 Walnut Street
Spring City, PA 19475

Dated at Philadelphia, Pennsylvania, December 30, 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
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December 30, 2013

Michael Dellaquila
160 Walnut Street
Spring City, PA 19475

RE: Michael Dellaquila v. PECO Energy Company
PUC Docket No.: F-2013-2396386

Dear Mr. Dellaquila:

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

SL/lo
Encl.

EXHIBIT “1”

timely

BCS: 3131768
PECO ENERGY
Must be returned by DECEMBER 9, 2013

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.

RECEIVED
2013 DEC -2 PM 10:46
PA. P.U.C.
SECRETARY'S BUREAU

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 Michael G Dellaquila Sr
Street/P.O. Box 160 Walnut Street Apt # _____
City Spring City State PA Zip 19475
County Chester

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

(484) 948 7940 (home) (484) 948 7940 (mobile)

E-mail Address (optional): mcDellaquila@yubco.com

Utility Account Number (from your bill) 33298-70030

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 PATTI DELLAQUILA
Street/P.O. Box 529 King St 1st Flr
City Pottstown State PA Zip 19464

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):

- | | |
|--|---|
| <input checked="" type="checkbox"/> ELECTRIC | <input type="checkbox"/> WASTEWATER/SEWER |
| <input type="checkbox"/> GAS | <input type="checkbox"/> TELEPHONE/TELECOMMUNICATIONS (local, long distance) |
| <input type="checkbox"/> WATER | <input type="checkbox"/> MOTOR CARRIER (e.g. taxi, moving company, limousine) |
| <input type="checkbox"/> 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.

remove \$4577.98 from Bill.
5 CFL light bulbs - not on all the time &
1 outlet with a heat tape plugged in 5 mos
of the year, that draws \$0.02 a day 2015
not even come close to that amount.
tenant has history of extremely high
bills and shut offs. The tenant has been
in that apartment for 5 years.
1548 08 - present

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.

25 November 2013

The reason for the complaint isn't to contest the point of "foreign wiring" in the panel box of Apartment # 1, it is to contest the amount of the bill that is being charged to my wife's account. The account is the house account.

When the building was purchased, I made it a point to ask the seller if all common areas were wired to the house meter. I was told yes. I had no reason not to believe the seller.

When the building was purchased, I made a point of asking the seller if all common areas were wired to the house. I was told that it was. I had no reason not to believe the seller.

The tenant in Apartment #1 is the third tenant that has resided there. No one else has ever asked or said anything to me about the wiring of that building.

The tenant in Apartment #1 has been there since 1 September 2008. No mention to wiring by her was made to me in all this time. It was brought up this time because her electric was being shut off. She complained

to an excessively high bill and wanted someone from PECO to come out and check. I know that this was not the first time that she has had the electric shut off.

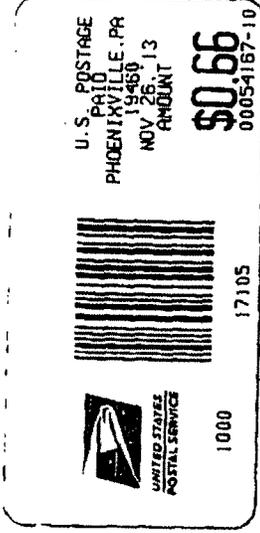
When I received notice from PECO about the "foreign wiring", I called the electrician I use and he came out and fixed it within 2 days.

The "foreign wiring" consisted of 5 CFL light bulbs. Three in a stairway and two in the basement. None of these lights are on all the time. The other issue was an electric receptacle that has a heat tape plugged into 5 months of the year. (November-March) The heat tape has a power draw of \$.02 a day.

I cannot believe that those items in a 30 day billing period warrant a bill of \$4577.98. I may be liable for a small amount of the bill, but not the entire amount.

Thank you

Michael C. Dellaquila Sr.
Patti L. Dellaquila
180 Walnut St.
Spring City, PA 19475



*Secretary
PA. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265*

171053265

