



Exelon®

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Exelon Business Services Company

Legal Department

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March 12, 2014

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

**RE: Mexico on the Square v. PECO Energy Company**  
**PUC Docket No.: C-2014-2408664**

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
<u>X</u>	<b><u>Preliminary Objection</u></b>
—	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

cc: Mexico on the Square, c/o *Kyong Sun Cho*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>MEXICO ON THE SQUARE</b>	:	
<b>Complainant</b>	:	
	:	
v.	:	<b>DOCKET NO. C-2014-2408664</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, March 12, 2014



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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>MEXICO ON THE SQUARE</b>	:	
<b>Complainant</b>	:	
	:	
v.	:	<b>DOCKET NO. C-2014-2408664</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</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 March 6, 2014, PECO Energy was served with a formal complaint filed by Mexico on the Square (hereafter “Complainant”).

2. In the formal complaint, the Complainant requests a payment agreement. See Formal Complaint, attached hereto as Exhibit “1”.

3. Specifically, in the Complainant’s request for relief, the Complainant checks the box:

**I would like a payment agreement.**

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

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

6. 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>

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

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

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

10. 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).

11. Here, the facts in this matter include the following:

a. The Complainant is a restaurant with a fictitious name registered with the Pennsylvania Department of State. See Exhibit "1".

b. The Complainant is a restaurant that does business at 1511 Pine Street Philadelphia, PA 19102. See Mexico on the Square website page, attached hereto as Exhibit "2".

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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. PI LEXIS 167, \*3.

- c. The Complainant has electric service at 1511 Pine Street, Philadelphia, PA 19102. See Account Activity Statement, attached hereto as Exhibit “3”.
- d. The Complainant lists on the formal complaint that the utility account number at issue is electric commercial service account number 96252-39017. See Exhibit “3”.
- e. The Complainant requests a payment agreement from PECO Energy for the balance incurred for service at 1511 Pine Street, Philadelphia, PA 19102.

12. In effect, the sole basis of the Complainant’s formal complaint is a request for the Commission to order PECO Energy to issue a payment agreement.

13. Assuming all of the Complainant’s allegations are true, the Complainant is not entitled to relief under the law.

14. It is well-established law that commercial customers are not entitled to the payment agreement provisions codified under of 66 Pa.C.S §1405 and 52 Pa. Code.Chp 56.

15. While the Commission is authorized under the Public Utility Code to establish payment arrangements that provide for the eventual payment of a residential customer’s entire outstanding balance, Mill v. Pa. Public Utility Commission, 67 Pa. Commonwealth Ct. 597, 602, n. 4, 447 A.2d. 1100 (1982), neither the Commission’s regulations nor the Public Utility Code establishes a similar right for a commercial or industrial customer.

16. In this case, the Complainant is a business and commercial customer, requesting a payment agreement on an outstanding balance.

17. The sole basis of the Complainant’s complaint is a request for a payment agreement.

18. Accordingly, the Complainant's complaint should be dismissed as the PUC has no jurisdiction to order PECO Energy to give the Complainant a payment agreement.

**REQUEST FOR RELIEF**

WHEREFORE, for all of the reasons stated herein, PECO respectfully requests that your Honorable Commission dismiss the instant complaint with prejudice.

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**

<b>MEXICO ON THE SQUARE</b>	:	
<b>Complainant</b>	:	
	:	
v.	:	<b>DOCKET NO. C-2014-2408664</b>
	:	
<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: March 12, 2014



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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>MEXICO ON THE SQUARE</b>	:	
<b>Complainant</b>	:	
	:	
v.	:	<b>DOCKET NO. C-2014-2408664</b>
	:	
<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 Preliminary Objection in the above matter upon all interested parties by mailing a copy, properly addressed and postage prepaid to:

Mexico on the Square  
Attention: Kyong Sun Cho  
1511 Pine Street  
Philadelphia, PA 19102

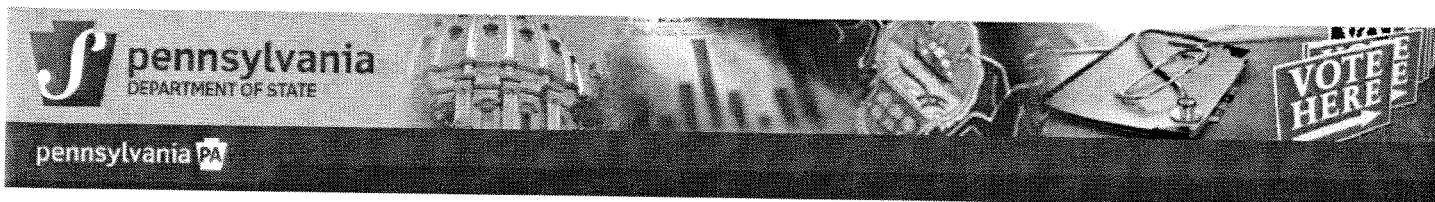
Dated at Philadelphia, Pennsylvania, March 12, 2014



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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

**EXHIBIT “1”**



### Corporations

[Online Services](#) | [Corporations](#) | [Forms](#) | [Contact Corporations](#) | [Business Services](#)

- Search
- By Business Name
- By Business Entity ID
- Verify
- Verify Certification
- Online Orders
- Register for Online Orders
- Order Good Standing
- Order Certified Documents
- Order Business List
- My Images
- Search for Images

#### Business Entity Filing History

**Date:** 3/12/2014 (Select the link above to view the Business Entity's Filing History)

#### Business Name History

Name	Name Type
MEXICO ON THE SQUARE RESTAURANT	Current Name

#### Fictitious Names - Domestic - Information

**Entity Number:** 3929466  
**Status:** Active  
**Entity Creation Date:** 1/19/2010  
**State of Business.:** PA  
**Principal Place of Business:** 1511 Pine Street  
 Philadelphia PA 19102  
**Mailing Address:** No Address

#### Owner Information

**Owner(s) for:** MEXICO ON THE SQUARE RESTAURANT

#### Owners

**Name:** Cho, Kyong Sun  
**Mailing Address:** 3714 Bonsall Ave  
 Drexel Hill PA 19026

**Name:** Espinosa, Fernando  
**Mailing Address:** 8263 Eden Ln  
 Pennsauken NJ 08110

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# **EXHIBIT “2”**

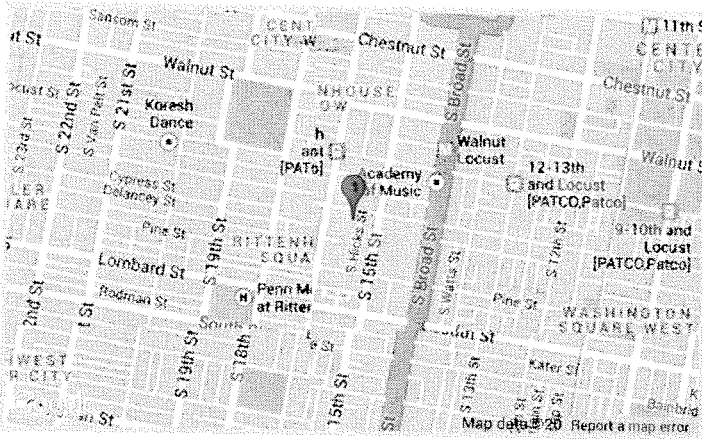
# Mexico On The Square



(215) 732-1907 | 1511 Pine St., Philadelphia, PA 19102

Mexican Delivery in Philadelphia

- Menu
- Order Online
- Location
- About



### Delivery Hours

Mon:	11:00 AM to 9:30 PM
Tue:	11:00 AM to 9:30 PM
Wed:	11:00 AM to 9:30 PM
Thu:	11:00 AM to 9:30 PM
Fri:	11:00 AM to 9:30 PM
Sat:	11:00 AM to 9:30 PM
Sun:	Closed

### Ordering Info

<b>Min Order:</b>	\$20
<b>Delivery Charge:</b>	Free
<b>Payment Options:</b>	 
<b>Serving:</b>	Sandwiches Chicken Vegetarian Mexican

### About Mexico On The Square

<http://mexiconthesquare.com/>

Come in or take out any of our delicious authentic Mexican dishes. We use the freshest ingredients to create wonderful flavors to satisfy every appetite. Try our carnitas sopos: deep fried pork, garnished with refried beans, oxaca cheese, lettuce, pico de gallo and sour cream. Our burritos, tortas and picaditas include choices of sausage, steak, fried or roast pork and shredded chicken. We also have burgers, cheese steaks, hoagies and sandwiches. Of course you may want to try one of our famous al pastor tacos or carne asada taco along with your main dish. We open Mon-Sat from 11 a.m. for lunch and dinner, closed on Sundays. Call or order online for pickup or free delivery with a minimum order of \$10.

### Delivery Area

Center City, Chinatown, Fitter Square, Logan Square, Market East, Moore College of Art, Peirce College, Restaurants, Rittenhouse, Thomas Jefferson University, University of the Arts, Washington Square

3 Like 26

### Restaurant Takeout

Philadelphia Food Delivery  
Mexican Delivery

**25,000 Restaurants. Free Online Ordering.**  
**Discover who else delivers to you.**

powered by: Eat24 - Food Delivery

PECO ENERGY  
EXHIBIT 2

**EXHIBIT “3”**

CUAR038

PECO Account Actvity Statement

Date: 03/10/14

\*\*\* Account Information \*\*\*

\*\*\* Current Account Status \*\*\*

Account Number: 96252-39017  
 Account Status: Active  
 Requested By: MEXICO ON THE SQUARE  
 MEXICO ON THE SQUARE  
 (215)732-1907 Extension:

Mail To:  
 MEXICO ON THE SQUARE  
 1511 PINE ST  
 1ST FL  
 PHILADELPHIA PA 19102

Current Bill: \$480.23  
 Billed Prior: \$1794.91  
 Balance Due: \$2275.14  
 Service Address:  
 1511 PINE ST  
 1ST FL  
 PHILADELPHIA PA 19102

Credit Amount: \$0.00  
 Deposit Requested: \$985.00  
 Deposit On-Hand: \$985.00  
 Meter Bill Grp: 02  
 Rate: Supplier Electric Commercial Serv 0-100kW

DATE	CHARGE TYPE	BILLING PERIOD	READ	METER #	CHARGE AMOUNT	CREDIT AMOUNT	TOTAL BILL	BALANCE FORWARD	DUE DATE	RWH	CCF	KW
03/14/12	Payment					\$300.00						
04/03/12	Late Payment Charge	03/04/12 04/02/12	31710	0794442638	\$17.48		\$1474.07	\$1210.14	04/26	2197		6
04/04/12	ELECTRIC SERVICE				\$66.42							
04/04/12	ELE-Verde Energy USA				\$197.51							
04/04/12	Regular Bill											
05/01/12	Late Payment Charge	04/02/12 05/01/12	33955	0794442638	\$21.44		\$1764.12	\$1495.51	05/25	2245		6
05/03/12	ELECTRIC SERVICE				\$66.78							
05/03/12	Regular Bill											
05/30/12	Late Payment Charge	05/01/12 06/01/12	36997	0794442638	\$201.83							
06/05/12	ELECTRIC SERVICE				\$25.47							
06/05/12	ELE-Verde Energy USA				\$71.74							
06/05/12	Regular Bill				\$273.48							
07/02/12	Deposit Interest					\$2.93	\$2134.81	\$1789.59	06/27	3042		5
07/03/12	Payment Agreement					\$2134.81						
07/03/12	INSTALLMENT PAYMENT AGREEMENT											
07/05/12	ELECTRIC SERVICE	06/01/12 06/29/12	40348	0794442638	\$1067.40		\$1459.07		07/27	3351		9
07/05/12	ELE-Verde Energy USA				\$93.35							
07/05/12	Regular Bill				\$301.25							
07/18/12	Payment					\$1070.00						
08/01/12	Late Payment Charge	06/29/12 07/30/12	44945	0794442638	\$5.84							
08/03/12	ELECTRIC SERVICE				\$102.22							
08/03/12	ELE-Verde Energy USA				\$413.27							
08/03/12	INSTALLMENT PAYMENT AGREEMENT				\$545.75							
08/24/12	Regular Bill					\$390.00	\$1456.15	\$394.91	08/27	4597		9
09/04/12	ELECTRIC SERVICE	07/30/12 08/30/12	49220	0794442638	\$97.64							
09/04/12	ELE-Verde Energy USA				\$384.32							
09/04/12	INSTALLMENT PAYMENT AGREEMENT				\$545.74							
09/04/12	Late Payment Charge				\$15.68							
09/13/12	Regular Bill											
09/13/12	Payment Agreement											
09/13/12	INSTALLMENT PAYMENT AGREEMENT											
09/25/12	Payment					\$1054.76	\$2109.53	\$1081.83	09/26	4275		8
10/04/12	ELECTRIC SERVICE	08/30/12 10/01/12	52259	0794442638	\$84.57							
10/04/12	ELE-NRG Retail Solutions				\$261.95							
10/04/12	INSTALLMENT PAYMENT AGREEMENT				\$539.28							
10/04/12	Regular Bill											
10/31/12	Late Payment Charge				\$21.37		\$1440.56		10/26	3039		8
11/01/12	Payment					\$21.37						
11/01/12	ELECTRIC SERVICE	10/01/12 10/27/12	55035	0794442638	\$70.26							
11/01/12	ELE-NRG Retail Solutions				\$239.28							
11/01/12	INSTALLMENT PAYMENT AGREEMENT				\$539.28							
11/01/12	Late Payment Charge				\$13.87							
11/19/12	Regular Bill											
12/03/12	Payment Agreement					\$400.00	\$1803.25	\$954.43	11/26	2776		5
12/03/12	ELECTRIC SERVICE	10/27/12 11/29/12	58165	0794442638	\$79.36							
12/03/12	ELE-NRG Retail Solutions				\$269.79							
12/03/12	INSTALLMENT PAYMENT AGREEMENT				\$701.63							

DATE	CHARGE TYPE	BILLING PERIOD	READ	METER #	CHARGE AMOUNT	CREDIT AMOUNT	TOTAL BILL	BALANCE FORWARD	DUE DATE	KWH	CCF	KW
12/03/12	Regular Bill											
01/04/13	ELECTRIC SERVICE	11/29/12 01/02/13	61415	079442638	\$86.50		\$1050.78		12/26	3130		7
01/04/13	ELE-NRG Retail Solutions				\$280.14							
01/04/13	INSTALLMENT PAYMENT AGREEMENT				\$358.73							
02/05/13	ELECTRIC SERVICE	01/02/13 02/03/13	64564	079442638	\$83.63		\$1776.15	\$1050.78	01/28	3250		8
02/05/13	ELE-NRG Retail Solutions				\$271.43							
02/05/13	INSTALLMENT PAYMENT AGREEMENT				\$358.72							
02/14/13	Regular Bill											
02/14/13	Payment Agreement											
03/05/13	INSTALLMENT PAYMENT AGREEMENT						\$2489.93	\$1776.15	02/27	3149		8
03/05/13	Payment				\$1244.96							
03/06/13	ELECTRIC SERVICE	02/03/13 03/04/13	67178	079442638	\$81.85		\$400.00					
03/06/13	ELE-NRG Retail Solutions				\$225.31							
03/06/13	INSTALLMENT PAYMENT AGREEMENT				\$323.00							
04/02/13	Regular Bill						\$1475.12		03/28	2614		8
04/02/13	Late Payment Charge				\$19.54							
04/05/13	Payment											
04/05/13	ELECTRIC SERVICE	03/04/13 04/02/13	69868	079442638	\$82.85		\$700.00					
04/05/13	ELE-NRG Retail Solutions				\$231.87							
04/05/13	INSTALLMENT PAYMENT AGREEMENT				\$323.00							
04/05/13	Regular Bill											
04/16/13	Returned Electronic Check				\$700.00		\$1432.38	\$794.66	04/29	2690		8
04/16/13	RETURNED CHECK NSF CHARGE				\$20.00							
04/22/13	Payment											
04/25/13	Payment											
04/30/13	Payment											
05/06/13	ELECTRIC SERVICE	04/02/13 05/01/13	72750	079442638	\$71.43		\$500.00					
05/06/13	ELE-NRG Retail Solutions				\$248.41							
05/06/13	INSTALLMENT PAYMENT AGREEMENT				\$323.00							
05/06/13	Late Payment Charge				\$9.35							
05/13/13	Regular Bill											
05/13/13	Payment											
06/04/13	Late Payment Charge						\$1326.57	\$663.73	05/28	2882		6
06/05/13	ELECTRIC SERVICE	05/01/13 06/02/13	76304	079442638	\$9.75							
06/05/13	ELE-NRG Retail Solutions				\$58.84							
06/05/13	INSTALLMENT PAYMENT AGREEMENT				\$306.34							
06/05/13	Regular Bill				\$323.00							
06/12/13	Payment											
07/02/13	Deposit Interest											
07/02/13	Late Payment Charge											
07/05/13	ELECTRIC SERVICE	06/02/13 07/01/13	79260	079442638	\$10.25		\$670.00					
07/05/13	ELE-NRG Retail Solutions				\$59.74							
07/05/13	INSTALLMENT PAYMENT AGREEMENT				\$254.80							
07/05/13	Regular Bill											
08/06/13	ELECTRIC SERVICE	07/01/13 08/01/13	83237	079442638	\$57.69		\$1019.96	\$705.42	07/29	2956		8
08/06/13	ELE-NRG Retail Solutions				\$342.80							
08/06/13	Regular Bill											
08/06/13	ELECTRIC SERVICE	08/01/13 08/29/13	85861	079442638	\$54.90		\$1420.45	\$1019.96	08/28	3977		8
08/06/13	ELE-NRG Retail Solutions				\$317.97							
09/04/13	Regular Bill											
09/04/13	Regular Bill											
10/01/13	Late Payment Charge											
10/03/13	ELECTRIC SERVICE	08/29/13 09/27/13	88463	079442638	\$11.27		\$1798.99	\$1426.12	09/26	2624		7
10/03/13	ELECTRIC SERVICE				\$50.66							
10/03/13	ELE-NRG Retail Solutions				\$315.30							
10/03/13	Regular Bill											
10/08/13	Payment											
10/10/13	Payment											
10/30/13	Late Payment Charge											
11/04/13	ELECTRIC SERVICE	09/27/13 10/29/13	90940	079442638	\$11.61		\$2176.22	\$1810.26	10/25	2602		6
11/04/13	ELECTRIC SERVICE				\$37.49							
11/14/13	Regular Bill											
11/14/13	Payment											
11/18/13	Payment Agreement											
							\$1875.32	\$1837.83	11/26	2477		4
							\$1725.32					

PECO Account Activity Statement

Date: 03/10/14

DATE	CHARGE TYPE	BILLING PERIOD	READ	METER #	CHARGE AMOUNT	CREDIT AMOUNT	TOTAL BILL	BALANCE FORWARD	DOE DATE	KWH	CCF	KW
11/18/13	INSTALLMENT PAYMENT AGREEMENT				\$862.66							
12/03/13	Payment					\$300.00						
12/04/13	ELECTRIC SERVICE	10/29/13 12/01/13	92988	079442638	\$39.21							
12/04/13	ELE-NRG Retail Solutions				\$434.91							
12/04/13	INSTALLMENT PAYMENT AGREEMENT				\$441.06							
12/09/13	Regular Bill						\$1477.84		12/26	2048		4
12/09/13	Payment					\$200.00						
12/31/13	Late Payment Charge				\$18.98							
01/08/14	ELECTRIC SERVICE	12/01/13 01/02/14	94760	079442638	\$57.03							
01/08/14	INSTALLMENT PAYMENT AGREEMENT				\$441.06							
01/08/14	Regular Bill						\$1794.91		01/30	1772		5
02/04/14	Late Payment Charge				\$26.36							
02/10/14	ELECTRIC SERVICE	01/02/14 02/04/14	96457	079442638	\$52.23							
02/10/14	ELE-NRG Retail Solutions				\$401.64							
02/10/14	Regular Bill						\$2275.14	\$1821.27	03/04	1697		4