

**BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

MARGARET ANTHONY

v.

PECO ENERGY COMPANY

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DKT. NO. C-2014-2408057

**MARGARET ANTHONY’S RESPONSE TO MOTION OF PECO COMPANY
OBJEJECTING TO COMPLAINANT’S PROPOSED LATE FILED EXHIBIT**

Margraret Anthony, by and through her attorney, David Denenberg, Esquire, hereby files a Response to PECO’s Motion Objecting to Complainant’s Proposed Late Filed Exhibit and in support thereof avers as follows:

1. Admitted
2. Admitted. By way of further response, Administrative Law Judge Marta Guhl, requested that Complainant, Margaret Anthony, submit the invoice for the electrical work done at her property at 2018 W. Master St., which she has done, and to which PECO Energy Company is now objecting. Exhibit “A”, Invoice.
3. Admitted in part and denied in part. It is admitted that Elsa Leung testified at the hearing that PECO had no record of Complainant contacting the company to report that foreign wiring repairs had been made. It is denied that no such record exists, and it is further denied that the repairs were not made. Exhibit “A”, Invoice.
4. Admitted.
5. Admitted. By way of further response, the work was done almost four years ago and the contact information on the Invoice for Larry’s Electric has changed over that period of time.

6. Admitted. By way of further response, most small contractors use form invoices purchased at places like Walmart or Staples. Not every business has the luxury of being the size of PECO with the resources of a large company at its disposal. This does not mean that the invoice is not a business record generated in the regular course of business.

7. Admitted in part and denied in part. It is admitted that PECO objects to the Invoice. It is further admitted that the Invoice was submitted late. However, the Invoice was submitted at the request of the Administrative Law Judge and there is no prejudice to PECO by its late introduction.

8. Denied. This is a legal conclusion to which no response is necessary and it is therefore denied. By way of further denial, “whether documents should be admitted under the ‘business records’ records exception to the hearsay rule is within the discretionary power of the trial court, provided that such discretion is exercised within the Uniform Business Records of Evidence.” *Commonwealth Fin. Sys. v. Smith*, 2010 Pa. Dist. Cnty. Dec. LEXIS 212, *36 (Jan. 26, 2010) (citing *Boyle v. Steiman*, 429 Pa. Super. 1, 631 A.2d 1025, 1032 (1993)). Pursuant to that Act, it is not “essential . . . to produce either the person who made the entries or custodian of the record at the time the entries were made, nor does the law require a witness qualifying business records have personal knowledge of the facts reported in the business record.” *Id.* at *37. In the instant case, Margaret Anthony submitted the invoice she was presented and paid for the electrical work at the above address. That is sufficient to establish it as a business record.

9. Denied. This is a legal conclusion or statement of law to which no response is necessary and it is therefore denied.

10. Denied. This is a legal conclusion or statement of law to which no response is necessary and it is therefore denied.

11. Denied. This is a legal conclusion or statement of law to which no response is necessary and it is therefore denied. By way of further denial, while the Invoice is being introduced to prove that the foreign wiring condition was repaired on November 3, 2010, and, accordingly, the Complainant is not responsible for the balance that accrued over several years, it qualifies as a “business record” and therefore is admissible pursuant to Pa. R. Evid. 803(6).

12. Denied. This is a legal conclusion or statement of law to which no response is necessary and it is therefore denied. By way of further denial, while the Invoice is being introduced to prove that the foreign wiring condition was repaired on November 3, 2010, and, accordingly, the Complainant is not responsible for the balance that accrued over several years, it qualifies as a “business record” and therefore is admissible pursuant to Pa. R. Evid. 803(6). By way of further denial, the business world, and documents created “in the course of a regularly conducted business activity”, are not divided into those who use form invoices and those with more formal invoices that have a company logo and are presented on company letterhead, with only the latter being admissible as business record pursuant to Pa. R. Evid. 803(6). The fact that the invoice was on a standard form that could be purchased at Walmart or Staples has no bearing on its admissibility under the Rules of Evidence, nor should it.

13. Denied. This is a legal conclusion or statement of law to which no response is necessary and it is therefore denied. By way of further denial, the Administrative Law Judge requested the Invoice, and the Complainant has produced it.

The fact that it is unsigned does not bear on its admissibility as a business record. Many documents produced on computers “in the course of a regularly conducted business activity” are unsigned and are admissible under Pa. R. Evid. 803(6).

14. Denied. This is a legal conclusion or statement of law to which no response is necessary and it is therefore denied. By way of further denial, Complainant denies that the Invoice was fraudulently produced for purposes of the instant dispute and takes offense at being accused of fraud, especially in light of the fact that PECO does not have one shred of evidence supporting the allegation.

15. Admitted in part and denied in part. It is admitted that the PECO printout provides that Murray Steaks occupies 2900 North 22nd Street. It is denied that this fact leads to the conclusion that the Complainant forged an invoice, and did not have the electrical work done on the property in November of 2010 by “Larry’s Electric”, or that the invoice is inadmissible for the purpose of demonstrating that the work was done.


16. Denied. The Invoice speaks for itself. Exhibit “A”, Invoice.

17. Denied. The work was done in November of 2010, almost 4 years ago. Telephone numbers change, and today most people, including small contractors, rely upon cell phones and not landlines.

18. Denied. This is a legal conclusion or statement of law to which no response is necessary and it is therefore denied. By way of further denial, while the Invoice is being introduced to prove that the foreign wiring condition was repaired on November 3, 2010, and, accordingly, the Complainant is not responsible for the balance that accrued over several years, it qualifies as a “business record” and therefore is admissible pursuant to Pa. R. Evid. 803(6).

WHEREFORE, Complainant respectfully requests that this Honorable
Commission deny the Complainant's Motion to Preclude the Invoice.

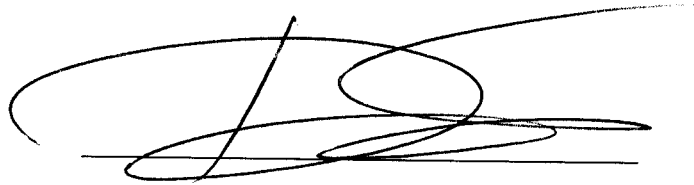
RESPECTFULLY SUBMITTED,



BY: _____
DAVID DENENBERG, ESQUIRE
ATTORNEY FOR COMPLAINANT
1315 Walnut St., 12th Floor
Philadelphia, PA 19107
215-546-1345
Fax: 215-546-5355

V E R I F I C A T I O N

The facts contained in the foregoing are true and correct to the best of the signers knowledge, information and belief; this statement is made subject to the penalties of 18 Pa. C.S. 4904 relating to unsworn falsification to authorities.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

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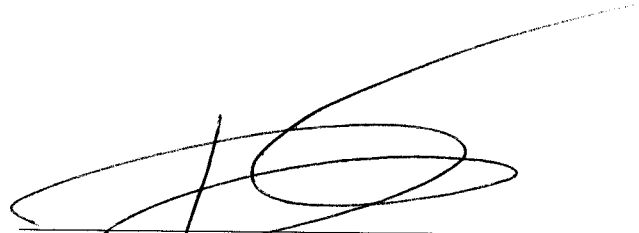
DKT. NO. C-2014-2408057

CERTIFICATE OF SERVICE

I, David Denenberg, Esquire, hereby certify that on May 8, 2014, I served a true and correct copy of Complainant's a Response to PECO's Motion Objecting to Complainant's Proposed Late Filed Exhibit via first class mail, postage prepaid, on the following:

Shawane L. Lee, Esquire
2301 Market St., S23-1
Philadelphia, PA 19101-8699\

Date: May 8, 2014



DAVID DENENBERG, ESQUIRE

NCT8745 invoice for services



carbonless • 3-part • numbered

INVOICE NO. 297601

Invoice

BILL TO

ADDRESS Margaret Anthony

CITY, STATE, ZIP Phila. Pa. 19121

CUSTOMER ORDER NO.

SOLD BY

SERVICE PERFORMED AT

ADDRESS Larry's Electric

CITY, STATE, ZIP Phila Pa 19132

TERMS Labor and material

DATE

11-03-2010

11 03 10

1 Separated First Floor wires to it's own unit.

2 Separated second Floor wires to it's own unit.

3 Separated hot water tank and Hall lights on it own break box

Total amount \$ 450.00

