



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

July 1, 2014

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

RE: John Blasko v. PECO Energy Company
PUC Docket No.: C-2014-2426779

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *PECO Energy Company's Preliminary Objections* with regard to the matter referenced above.

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,

A handwritten signature in black ink, appearing to read "Shawane Lee", with a long, sweeping underline.

Shawane Lee
Counsel for PECO Energy Company

sl/LO

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JOHN BLASKO	:	
Complainant	:	
v.	:	DOCKET NO. C-2014-2426779
	:	
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, July 1, 2014



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**

JOHN BLASKO	:	
Complainant	:	
v.	:	DOCKET NO. C-2014-2426779
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

**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 June 16, 2014, PECO Energy was served with a formal complaint filed by John Blasko (hereafter “Complainant”).

2. In the Complainant’s formal complaint, he states the reason for his complaint by checking the box “Other.” See the Complainant’s formal complaint, attached hereto as Exhibit “1”.

3. Specifically, the Complainant states “”As original owners (1988) of the house on 134 Mallard Drive we were told that the all electric house was energy efficient and we would be classified in a special group for pricing with the all electric energy efficient home. This reduced rate would continue forever.”

4. The Complainant states: “As you are aware two years ago the rates and my electric bill increased substantially. I called PECO customer service and was told that the PUC granted a rate adjustment and was eliminating this class of billing rates.”

5. For relief, the Complainant requests “that the original rates and classifications be restored and [he] be rebated the payments for the last 2 plus years when the rates changed.”

6. In his formal complaint, the Complainant disputes the elimination of PECO’s discounted OP rate.

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

8. Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil procedure.²

9. In deciding preliminary objections, the Public Utility Commission must determine, based on the factual pleadings of the petitioner, if relief or recovery is possible.³

10. A complaint must be able to recover under the law to survive a preliminary objection.⁴

11. All of the non-moving party’s averments must be taken as true for the sake of deciding the preliminary objection.⁵

12. The court does not, however, need to accept, “unwarranted inferences from facts, argumentative allegations, or expressions of opinions.”⁶

13. 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 if, in its opinion, a hearing is not necessary in the public interest.

² *Equitable Small Transportation Interveners v. Equitable Gas Co.*, 1994 Pa.PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994)

³ 2006 Pa. PUC Lexis 111, *7.

⁴ *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”).

⁵ *Id.* at 7-8.

⁶ *Feingold v. McNulty*, 2009 Phila. Ct. Com. Pl LEXIS 167, *3.

14. 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. Commw. Ct. 2003), petition for allowance of appeal denied, 836 A.2d 123 (Pa. 2003).

15. Here, there are no genuine issues of fact and PECO Energy is entitled to judgment as a matter of law. Therefore, the complaint is legally insufficient and should be dismissed.

16. The Complainant disputes the phase out of PECO Energy's OP rate. The elimination of PECO Energy's OP rate was approved by the Commission as part of PECO's Default Service Program and Rate Mitigation Plan on June 9, 2009, docket number P-2008-2062739. The plan was previously approved by the Commission and is just, reasonable and lawful.

17. By way of background, in 1996 the Pennsylvania General Assembly enacted the Electricity Generation Customer Choice and Competition Act (Act), 66 Pa.C.S. §§2801-15. The Act allows Pennsylvanians to buy electric generation supply from licensed alternative suppliers by unbundling the generation portion of electric rates from the transmission and distribution portions.

18. The Act capped the generation portion of electric rates to ease the transition to competitive markets at 1996 levels. The rate cap was initially established under Section 2804 of the Act, and, after much litigation, settlements were reached in which the rate cap would expire for all PECO customers at the end of 2010.⁷

19. On September 10, 2008, PECO Energy filed its Default Service Program and Rate Mitigation Plan (DSP Petition) to establish rates, terms and conditions for the provision of default service for the period of January 1, 2011 through May 31, 2014, for those customers

⁷ The Commission has already ruled that it lacks the authority to extend the expired rate caps. See *Tshundy v. PPL Electric Utilities Cor.*, Docket No. C-2009-2092230 (Order entered August 21, 2009)(citing 66 Pa.C.S. 2804(4)).

who do not take service from an alternative electric generation supplier (EGS) or whose contracted generation is not delivered.

20. PECO Energy's DSP plan is designed to ensure that PECO's default service customers have access to a reliable supply of generations and to help them manage the transition from capped generation rates to market-priced rates that were to occur on January 1, 2011. PECO's DSP Petition was assigned Commission Docket P-2008-2062739.

21. The phase out of the residential OP was included as part of PECO's DSP Plan.

22. After extensive discovery, hearings, and the filing of testimony and rebuttal testimony in this matter, on March 10, 2009, a Joint Petition for Settlement was filed to request approval of PECO's DSP Plan as modified by the settlement.

23. By Order entered June 2, 2009 the Commission approved the Settlement and PECO's DSP Plan, as modified by the settlement.

24. The Commission has only those duties, powers, responsibilities and jurisdiction that were expressly or by necessary implication given to it by the Legislature. *Rogoff v. The Buncher Company*, 395 Pa. 477, 151 A.2d 83 (1959).

25. As the Commission recognized in *Tshundy v. PPL Electric Utilities Corp.*, Docket No. C-2009-2092230 (Order entered August 21, 2009), the Commission may not extend the rate caps, which expired in 2010, in order to prevent a generation rate increase.

26. Additionally, the Competition Act provides that default service rates must be based on prevailing market prices, not promotional discounts or subsidies; offering reduced rates for winter heating customers would require other default service customers to subsidize the Rate OP customers to cover the difference, and therefore would violate the Public Utility Code.

27. Commission precedent is clear and unambiguous on this issue. In *Dunham v. PPL*

Electric Utilities Corporation, Docket No. C-2010-2155056, the Commission stated:

In *Diehl v. PPL Electric Utilities Corporation*, Docket No. C-2009-2149261 (Order entered April 1, 2011) (*Diehl*), we discussed the circumstances surrounding PPL's phase out of the RTS rate schedule:

In 2004, at Docket No. R-00049255, PPL filed a distribution rate case with the Commission. The Commission's decision in that case on rate allocation among customer classes was appealed to the Commonwealth Court. As part of its review, the Commonwealth Court interpreted the Competition Act as requiring that rates for transmission, distribution and generation each be set separately, based on the cost of serving each separate class of customers. 66 Pa. C.S. § 2804(3). The Court ruled that subsidized rates (*e.g.*, the RTS rate) which do not cover their costs of service must be transitioned to cost-based rates. *See, Lloyd v. Pennsylvania Public Utility Commission, et al.*, 904 A.2d 1010 (Pa. Cmwlth. 2006). Thus, the RTS rate as it existed in the 1980s, at the time the Complainant constructed his home, could no longer continue to be offered.

Dunham Opinion and Order, entered July 1, 2011, at 4.

28. Similar conclusions were reached in several complaints before the Commission.

See also, *Kupchinskas v. PECO Energy Company*, Docket No. C-2011-2253896; *Herting v PPL Electric Utilities Corporation*, Docket No. C-2010-2153688, Commission Final Order entered October 6, 2011; *Brickner v PPL Electric Utilities Corporation*, Docket No. C-2009-2105583, Commission Opinion and Order entered May 21, 2010; *Laudenslager v. Duquesne Light Company*, Docket No. C-2010-2156300, Commission Final Order entered June 29, 2011; *Sowatskey v Duquesne Light Company*, Docket No. C-2009-2144804, Commission Final Order entered January 11, 2011.

29. As the instant case involves the same legal question, the outcome should be the same. The complaint should be dismissed as legally insufficient under 52 Pa.Code §5.101(a)(4).

30. Additionally, the Complainant requests that PECO Energy refund him money for the payments he made “for the last 2 plus years when the rates changed.”

31. In effect, Complainant is requesting that the Commission award him damages for the rates he paid as a result of the phase out of the OP rate.

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

33. The Commission lacks jurisdiction to award damages pursuant to 52 Pa. Code § 5.101(a)(1).

34. The only remaining purported infractions in the Complainant’s formal complaint relates to PECO Energy’s responsibility to refund the Complainant’s money arising from the rates he paid as a result of the phase out of the OP rate.

35. Because the sole remaining basis of Complainant’s Complaint is to seek compensation for the costs he incurred for the phase out of the OP meter, his request should be denied pursuant to 52 Pa. Code § 5.101(a)(1) and his complaint dismissed in its entirety.

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,



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**

JOHN BLASKO

Complainant

v.

PECO ENERGY COMPANY

Respondent

:
:
:
:
:

DOCKET NO. C-2014-2426779

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: July 1, 2014



Shawane L. Lee

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JOHN BLASKO

Complainant

v.

PECO ENERGY COMPANY

Respondent

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:
:
:

DOCKET NO. C-2014-2426779

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:

John Blasko
134 Mallaro Drive
North Wales, PA 19454

Dated at Philadelphia, Pennsylvania, July 1, 2014



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
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July 1, 2014

John Blasko
134 Mallaro Drive
North Wales, PA 19454

RE: John Blasko v. PECO Energy Company
PUC Docket No.: C-2014-2426779

Dear Mr. Blasko:

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.

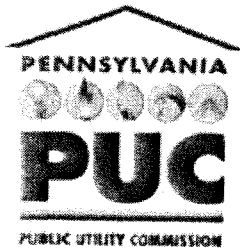
Very truly yours,

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”



PENNSYLVANIA
PUBLIC UTILITY COMMISSION

CONSUMERINFO UTILITY&INDUSTRY FILING&RESOURCES ABOUTPUC CONTACTUS

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Your filing has been electronically received. Upon review of the filing for conformance with the Commission's filing requirements, a notice will be issued acknowledging such compliance and assigning a Docket Number. The matter will receive the attention of the Commission and you will be advised if any further action is required on your part.

Print this page for your records. The date filed on will be the current day if the filing occurs on a business day before or at 4:30 PM Harrisburg, PA time. It will be the next business day if the filing occurs after 4:30 PM Harrisburg, PA time or on weekends or holidays.

*If your filing **exceeds 250 pages**, you are required to submit **one paper copy** of the filing within 3 business days of submitting the electronic filing. This paper copy can be mailed to: Secretary, Pennsylvania Public Utility Commission, Commonwealth Keystone Building, 400 North Street, 2nd Floor, Harrisburg, PA 17120 . Please print a copy of this page and attach it to the paper copy of your filing as the first page.*

eFiling Confirmation	
Docket Number:	C-2014-2426779
Description:	John Blasko - PECO Energy Company Answer to Formal Complaint
Transmission Date:	7/1/2014 11:15:37 AM
Filed On:	7/1/2014 11:15:37 AM
eFiling Confirmation Number:	1553510

Uploaded File List

File Name	Document Class	Document Type
John Blasko - Answer.pdf	Communication	Answer to Formal Complaint



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Shawane Lee
Counsel for PECO Energy Company

Scheduling Recommendation: **Not Call of the Docket**

sl/LO

**BEFORE THE
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JOHN BLASKO	:	
Complainant	:	
v.	:	DOCKET NO. C-2014-2426779
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

ANSWER OF RESPONDENT,
PECO ENERGY COMPANY

On June 16, 2014, PECO Energy Company ("PECO Energy") was served with a formal complaint filed by John Blasko (hereafter "Complainant"). Pursuant to 52 Pa. Code § 5.61, PECO Energy responds to the Complaint and states:

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted in part, denied in part. Unless specifically admitted herein, PECO denies all allegations of fact and conclusions of law in the complaint.

The Complainant currently has an account with PECO Energy for service at 134 Malloro Drive, North Wales, PA 19454. The Complainant was previously billed at the residential heating rate. On August 23, 2011, PECO Energy sent the attached correspondence to the Complainant advising that beginning January 1, 2012, PECO Energy's discounted Off Peak ("OP") rates will be phased out by 2013. See Correspondence, attached hereto as Exhibit "1". See also, Customer Information Management System Screenshot, dated 8/23/2011, attached hereto as Exhibit "2".

PECO Energy denies that the elimination of the subsidized discounted OP rate is improper. The elimination of PECO Energy's OP rate was approved by the Commission as part of PECO's Default Service Program and Rate Mitigation Plan on June 9, 2009, docket number P-2008-2062739. The plan was previously approved by the Commission and is just, reasonable and lawful.

The Complainant does not allege that PECO Energy made any error in billing him or in applying the tariff rate for service. Additionally, the Complainant has not alleged that PECO Energy was unreasonable in its customer service or that the information it disseminated to him concerning the elimination of the OP rate was misleading. Rather, he is objecting to the Commission's decision approving the phase-out of the OP rate. Specifically, in his formal complaint the Complainant states the reason for his complaint by checking the box "***Other***". In addition, he states "As original owners (1988) of the house on 134 Mallard Dr we were told that the all electric house was energy efficient and we would be classified in a special group for pricing with the all electric energy efficient home. ***This reduced rate would continue forever.***" Complainant requests "that the original rates and classifications be restored." To the extent that Complainant disagrees with the Commission's decision rendered in June 2009, the appropriate procedure would be to file a petition for recession or amendment pursuant to Section 703 of the Public Utility Code, 66 Pa.C.S.A. § 703(g).¹

Additionally, in his formal complaint in the section designated for request for relief, the Complainant alleges that PECO Energy should "rebate the payments for the last 2 plus years when the rates changed." In effect, Complainant is requesting that the Commission award him

¹ "The commission may, at any time, after notice and after opportunity to be heard as provided in this chapter, rescind or amend any order made by it. Any order rescinding or amending a prior order shall, when served upon the person, corporation, or municipal corporation affected, and after notice thereof is given to the other parties to the proceedings, have the same effect as is herein provided for original orders." 66 Pa.C.S.A. § 703(g).

damages for the phase out of the OP rate. Assuming all of the Complainant's allegations are true, the Complainant is not entitled to relief under the law. The Commission lacks jurisdiction to award damages pursuant to 52 Pa. Code § 5.101(a)(1). Other than the Complainant's objection to the phase out of the OP rate, the only remaining purported infractions in the Complaint relates to PECO Energy responsibility to refund the Complainant's money arising from the phase out of the OP rate. Because the sole remaining basis of Complainant's formal complaint is to seek compensation for the alleged damages arising from the phase out of the OP rate, his request should be denied pursuant to 52 Pa. Code § 5.101(a)(1). PECO Energy requests that the complaint be dismissed in its entirety.

5. This paragraph is a request for relief and no answer is required.
6. PECO Energy is without sufficient information to confirm or deny this statement.
7. Admitted.

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,



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19101-8699
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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.



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North Wales, PA 19454

Dated at Philadelphia, Pennsylvania, July 1, 2014



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Counsel for PECO Energy Company
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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”

DATE

CUSTOMER NAME
ADDRESS ONE
ADDRESS TWO
CITY, STATE ZIP

Dear CUSTOMER NAME:

As you are probably aware several changes occurred in January that impacted your electric bill. As one of our residential heating customers, we want to make sure you understand how these changes, and changes in the future, could impact you.

With PECO's residential heating rate, you receive a discount on the additional electricity you use during the winter months. However all utilities will be moving to single prices for the electricity used by customers.

Here's how it will work. Beginning January 1, 2012 the discounted generation prices currently offered will be phased out. Specifically, the discount on the generation price will be reduced by half on January 1, 2012. The discount will then end on December 31, 2012. These changes will affect only the price you pay for the electricity you use. PECO's discount on our charges to deliver electricity to you will remain.

We know this change will impact you, and we are working hard to provide you the tools and programs you need to help offset the impact. We have programs in place right now and will offer additional programs and pricing options in the future.

Sign up for Budget Billing – You can reduce the impact of this change to your monthly bill by enrolling in Budget Billing. Budget Billing makes short-term fluctuations in monthly bills much easier to handle by dividing annual energy costs evenly throughout the year.

Save Energy and Save Money – With PECO Smart Ideas we have useful energy-saving tips, programs and rebates to help save money in every home. To learn more visit www.peco.com/SmartIdeas.

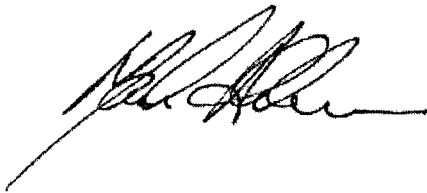
Shopping for Electricity – As our residential heating rates are phased-out, you also may be able to save money by purchasing your electricity from a competitive electric generation supplier. And we expect more suppliers to offer options to our residential heating customers in the future. To find competitive electric generation suppliers or learn more about shopping for electricity visit the Pennsylvania Public Utility Commission's website at www.papowerswitch.com or call 1-800-692-7380.

Whether you are purchasing your electricity from a competitive electric generation supplier or from PECO, PECO will continue to safely deliver electricity, provide billing and customer support, and respond to outages and other emergencies for ALL customers. And, ALL customers also can take advantage of our PECO Smart Ideas suite of programs to save energy and money.

Additional Pricing Options – Specifically PECO Smart Time Pricing, recently approved by the Pennsylvania Public Utility Commission, will provide additional pricing options for customers. Scheduled to be available beginning in late 2012, the program will offer time of use rates that can help you save money by using energy during certain times of the day when prices are generally lower.

We are committed to helping you understand these changes. Look for more information from us throughout the year or visit www.pecoanswers.com for more information. If you have questions, please contact us at 1-800-494-4000.

Sincerely,

A handwritten signature in black ink, appearing to read 'Mark Alden', with a long horizontal stroke extending to the left.

Mark Alden
Vice President
PECO Customer Operations

RH-1 06/11

EXHIBIT “2”

Account Edit Object Actions Help

Customer Name: JOHN S BLASKO

Premise Address: 134 MALLARD DR NORTH WALES PA 19454

Primary Phone: (215) 997-1965 **Extension:** **Unlisted:** No

Alternate Phone: **Extension:** **Unlisted:** No

Select Customer Contact for JOHN S BLASKO

Contact Edit Actions Help

- Bill
- Ac
- Ac
- Pri
- Cut
- Soc
- Pre
- Opt
- Elec
- Trac

Contacted	Type
06/03/13	Maintain Bill Account
05/29/13	Correspondence - Collections
05/23/13	Proactive Customer Call
05/09/13	Correspondence - Collections
05/06/13	Proactive Customer Call
04/24/13	Proactive Customer Call
04/17/13	Supplier Enrollment
10/30/12	Outage Status Request
10/30/12	Outage Status Request
10/30/12	Outage Status Request
10/26/12	Proactive Customer Call
07/18/12	Direct Load Control Program Change
08/23/11	Billing - Rates/Riders
06/30/88	Miscellaneous

Comments:

RH Discount Phase-Out letter mailed. Current generation discount to be reduced by 50% beginning January 1st, 2012. Generation discount eliminated by December 31st, 2012.