



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

August 4, 2014

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

**RE: Stephanie Hallman v. PECO Energy Company
PUC Docket No.: F-2013-2393373**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *PECO Energy Company's Exceptions* 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 stylized flourish at the end.

Shawane Lee
Counsel for PECO Energy Company

s/LO

cc: Stephanie Hallman (via First Class Mail)
Katrina L. Dunderdale, Adm. Law Judge (via First Class Mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

STEPHANIE HALLMAN

Complainant

v.

PECO ENERGY COMPANY

Respondent

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Docket No. F-2013-2393373

**EXCEPTIONS OF
OF PECO ENERGY COMPANY**

Pursuant to 52 Pa Code § 5.533, PECO Energy Company (PECO) hereby files its Exceptions to the Initial Decision of Administrative Law ALJ Katrina L. Dunderdale (ALJ Dunderdale) issued on June 23, 2014 in the above-referenced matter which sustained the Complaint of Stephanie Hallman (Complainant) and recommended that PECO be fined for providing unreasonable service.

Introduction

This matter involves PECO holding the Complainant responsible for the outstanding balance that accrued for the time-period August 29, 2009 to April 16, 2013 (Disputed Period) at 133 Carre Avenue, Essington, Pennsylvania (Service Location) based on its business records establishing the account and the numerous contacts over the life of the account. The Complainant has not provided documentation to substantiate that she resided at another property during the Disputed Period. She did provide to PECO a lease, dated 2006, executed with her parents regarding her residency at the family home, as well as documentation of her residency for calendar year 2013.

ALJ Dunderdale erred in finding the Complainant carried her burden of proof based on her self-serving testimony and late-filed exhibits and ignoring PECO's business records substantiating the Complainant's numerous contacts regarding the account during the Disputed Period and assessing PECO a civil penalty for unreasonable service without any record support.

Record Evidence

The Complainant testified she never resided at the Service Location during the Disputed Period but rather her ex-boyfriend, Mike Treichel, did and he is responsible for the outstanding balance. She asserts the owners of the Service Location are Mr. Treichel's relatives who are lying that she signed a lease or resided at the Service Location. In support of her position, Complainant testified she provided to PECO a copy of a 2006 lease with her parents to reside in the family home¹; utility service for the family home has never been in her name. Tr. 2. The Complainant stated that she had additional support but that "she was hoping [the hearing] was going to be in a courtroom, not on the phone" and she has "every lease for the last seven and a half years, proving where I live [sic] here." (Tr. 80-81).

PECO through its witnesses supported by its business records testified that the Complainant applied for service at the Service Location on August 27, 2009; service was placed in her name on August 29, 2009 after the Complainant paid the required security deposit. (PECO Ex 6, p. 3, Tr. 48-49). PECO's business records also reflect additional contacts with the Complainant. Specifically, the Complainant contacted PECO on June 19, 2010 seeking to place service at her family home in her name. The Complainant

¹ Family home is located at 327 Seneca Street, Essington, Pennsylvania.

specifically stated she did not want to discontinue service at the Service Location but that she was seeking to establish an additional account in her name, at the family home, and that bills for each respective account were to be mailed to the individual service address. (PECO Ex 6, p. 1 and 4). On July 1, 2010, the Complainant called PECO seeking to stop service from being placed in her name, as her father was not moving out of the family home. On that call in 2010, she verified her social security number and corrected her social security number on her present account at the Service Location since two digits were transposed. (PECO Ex 6, p. 4). PECO's business records reflect that the Complainant, on May 4, 2012, provided her financial information which was confirmed during the hearing. (PECO Exhibit 3).

Service in the Complainant's name was discontinued when one of the owners of the Service Location established service in his name. A final bill in the amount of \$1,321.97 for the Complainant's account was issued. (PECO Exhibit 1). The Complainant contacted PECO on May 20, 2013 to dispute the final bill issued for the account. This is the first contact that PECO was made aware that the Complainant was disputing establishing the account or the balance. She has never provided any documentation to PECO to support her claim that she did not reside at the Service Location **during the Disputed Period**; the documentation provided to PECO, other than materials from her parents, do not relate to the Disputed Period but rather reflect her residency for 2013.

Initial Decision

ALJ Dunderdale sustained the Complaint finding: (1) the Complainant met her burden of proof; (2) PECO had not refuted that burden of proof; (3) Complainant's testimony and exhibits should be given greater deference and weight than PECO's testimony and business records. ALJ Dunderdale recommended a \$1,000 fine for providing unreasonable service in connection with the establishing of the account in the Complainant's name and for "filing of negative credit reports with the three credit reporting agencies."

ALJ Dunderdale's basis for her decision is as follows:

The formal complaint clearly shows Complainant contested PECO's insistence it had evidence showing she lived at the service address. Consequently, PECO was on notice evidence would be needed to contradict Complainant's allegations. None of the evidence provided by PECO showed Complainant's signature or anything, which would tie Complainant to the service address. No evidence PECO provided at the hearing showed Complainant benefitted personally from the provision of electric and natural gas service by PECO as either the ratepayer of record or as an adult occupant. **The extent of PECO's contradictory evidence is mere hearsay, consisting primarily of statements made to PECO's call center or to BCS from the landlords and statements made by a female individual calling into PECO's call center, alleging the caller was Complainant.**

The evidence proves PECO was in error to hold Complainant responsible for PECO services provided at the service address. In addition, PECO was in error to file negative reports with the credit reporting agencies, averring Complainant owes over \$1800 in unpaid and uncollected debt. Complainant met her burden of proof in this proceeding pursuant to 66 Pa.C.S.A. § 332(a). (Emphasis Added).

(Initial Decision, p.7)

Exceptions

Exception #1: PECO was never served with the Complainant's late-filed exhibits or ALJ Dunderdale's Second Post-Hearing Order which admitted Complainant's Exhibits 1, 2, 4 and 7.

PECO has been denied due process to challenge the Complainant's late-filed exhibits or to request a further hearing in this matter. PECO was never served with the Complainant's late-filed exhibits or ALJ Dunderdale's Second Prehearing Order admitting Complainant's late-filed Exhibits 1, 2, 4 and 7. The first time PECO was notified of the existence of the Complainant's late-filed Exhibits and the Second Post-Hearing Order was in the Initial Decision. The Second Prehearing Order does not even appear electronically on the PUC's docket to view or download. To this day, PECO has never seen this document.

PECO did not receive any proposed late-filed exhibits from the Complainant or ALJ Dunderdale's ruling of those exhibits. PECO received the First post-Hearing Order and the Interim Order Closing the Hearing Record²; there is no mention of any filing by the Complainant or any disposition. As such, PECO had no reason to inquire further; it is not uncommon for a complainant to not submit late-filed exhibits. In fact, the Commission's practice is that the presiding judge typically contacts the utility to confirm that the utility has in fact received the material from a complainant so that due process is afforded. This was not the case in the present proceeding. To date, PECO has never received the Complainant's exhibits; an Order from ALJ Dunderdale advising the

² The Commission's website does not reflect any order issued by ALJ Dunderdale.

Complainant submitting exhibits; or an Order ruling on the admission of the Complainant's exhibits.

Since the Initial Decision does not summarize or reflect the contents of the late-filed exhibits, PECO still is unaware as to the contents and relevancy of those documents and can only surmise their contents and relevancy from the limited Findings of Facts (FOF) stated in the Initial Decision as follows:

- Complainant Exhibit 1: the Complainant resided at her parents' house since June 21, 2006 (FOF #1).
- Complainant Exhibit 2: the copy of the police report along with a copy of her three credit reports, a lease showing she lived at her parents' house from 2006 a letter from her landlord/father where she resided; copy of her driver's license (date unknown); the education program for a minor child; and her insurance card (type and date unknown) (FOF # 8).
- Complainant Exhibit 7: the police report filed in 2013 (FOF # 7).
- Complainant Exhibit #4: PECO has no knowledge regarding this exhibit and the Initial Decision does not discuss the document.

The matter should be remanded so that PECO can be provided due process to object to the Complainant's late-filed exhibits and to respond to allegations that it provided unreasonable service warranting a fine.

Exception #2: ALJ Dunderdale erred in finding that the Complainant carried her burden of proof to sustain the Complaint and did not give proper weight to PECO's business records or the BCS Decision considering them "mere hearsay."

The ALJ Dunderdale erred in finding that the Complainant met her burden of proof that she was charged inappropriately and unreasonably for the electric PECO service which PECO did not provide to her or for her benefit. ID at 11. ALJ Dunderdale stated during the hearing that if the Complainant's testimony outweighs anything that PECO has provided, the Complainant carries her burden. Tr 38.

The Complainant's testimony does not outweigh the testimony of PECO's witnesses and its business records. The Complainant has never produced any evidence, (other than a lease from her parents) that she did not reside at the Service Location during the Disputed Period. ALJ Dunderdale gave little or no weight to PECO Exhibit 6 which reflects the contacts in 2009 and 2010 made by the Complainant for the Service Location as well as her attempts to establish service at her parents' home in 2010.

ALJ Dunderdale accepted Complainant's self-serving testimony as credible and rejected or gave no weight to PECO's business records and the BCS Decision ruling that PECO's exhibits were "mere hearsay, consisting primarily of statements made to PECO's call center or to BCS from the landlords". ALJ Dunderdale did not give proper weight to PECO's business records ruling that PECO Exhibit 6 "speaks for itself, because it is hearsay" and PECO witness Tarpley did not "help create any portion of it, other than to prepare it for litigation." Tr. 52. ALJ Dunderdale improperly prohibited PECO's witness from providing testimony to put the entries on the account into context stating, "the business record exception allows a document to come in, but I don't want to hear Ms. Tarpley's interpretation of it. The document speaks for itself." Tr. 53.

PECO Exhibit 6 refutes the testimony of the Complainant that she never resided at the Service Location or in any way had any contact with PECO regarding that account or her attempts to establish an account at her parents' home. The business records reflect that the Complainant properly completed the application process in 2009 and service was established in her name. The same business records reflect that the Complainant subsequently contacted PECO to discuss the account. She contacted PECO to establish

service in her name at her parents' house and specifically stated she did not want to discontinue service at the Service Location. PECO's business records refute the self-serving rental lease that she provided that she has resided at her parents' home since 2006.

PECO Exhibit 6 clearly refutes the allegation that the Complainant never had any contact with PECO while service was in her name. The Complainant has not offered any documentation for the Disputed Period that she did not reside at the Service Location. The documents provided to PECO reflect the Complainant's residency *after* service was discontinued at the Service Location, i.e., 2013.

It is well-established law that the utility's business records and the BCS Decision are an exception to otherwise inadmissible hearsay. Uniform Business Records as Evidence Act, 42 Pa.C.S. § 6108. ALJ Dunderdale's finding that both PECO's business records and the BCS Decision were "mere hearsay" is erroneous. Where it can be shown that the entries were made with sufficient contemporaneousness to assure accuracy and that they were made pursuant to the business practices and not influenced by the litigation in which they are being introduced, a sufficient indicia of reliability is provided to overcome their hearsay nature. *Robert Gasparro v PECO Energy Company*, Docket No. C-00015482, (Opinion and Order entered April 22, 2002)³.

The Exception of PECO should be granted; PECO's business records and the BCS Decision do not constitute "mere hearsay" and ALJ Dunderdale erred in giving little or no weight to those admitted exhibits.

³ Order affirmed on appeal, 814 A.2d 1282 (Pa. Commw. 2003).

Exception #3: PECO provided unreasonable service and should be fined \$1,000.

ALJ Dunderdale erred in recommending a civil penalty in the amount of \$1,000 for violation of the Public Utility Code. ID at 12. ALJ Dunderdale's basis for her recommended fine is as follows:

- Complainant spent considerable time and trouble obtaining a long list of documents requested by PECO which would show where Complainant lived at all relevant times. Having collected and then faxed these documents to PECO, PECO denied having received the documents and caused negative credit reports to be filed against Complainant's credit rating. Having learned Complainant contests the unpaid balance on the grounds she never resided at the service address, Respondent should have produced or attempted to produce the purported lease which the landlords (out of court declarants) alleged Complainant signed. ID at 8-9
- Complainant has sustained negative reports against her with the credit reporting agencies, and she had to make copies and fax various documents. ID at 9.
- PECO's conduct here was negligent although there did appear to be a flippant disregard for obtaining accurate information and obtaining documentation to justify placing the account in Complainant's name. ID at 9.
- There is no evidence PECO recognizes its failure to provide adequate customer service here. It has made no apparent effort to modify its internal practices in order to avoid inflicting a similar problem for other ratepayers and Commonwealth citizens in the future. ID at 9.
- No party has cited to any prior Commission decisions involving unreasonable customer service in how a utility verifies adult occupants at a service address or when a utility may report information to credit reporting agencies. ID at 10.
- In light of PECO's size and the damage it inflicted on Complainant and her credit rating, the penalty should be \$1,000.00. This amount is neither excessive nor arbitrary, given the wealth of contrary documentation made available from Complainant, coupled with the basic seriousness of the consequences from Respondent's insistence to rely on unreliable, unsubstantiated hearsay evidence from the landlords. Three facts in particular weighed heavy in the calculation of this criterion: (1)

Respondent's failure to obtain or attempt to obtain the testimony of the landlords; (2) Respondent's failure to request or obtain a copy of the lease which Complainant allegedly signed for the service address; and (3) Respondent's filing of negative credit reports with the three credit reporting agencies. ID at 10-11.

- In this proceeding, PECO's actions – to open an account in Complainant's name without verification, to refuse to remove her name from the account after presented with contrary evidence (i.e., leases), and to file negative credit reports against her name with the credit reporting agencies – were serious and warrant a higher penalty. PECO caused incorrect, adverse information to be placed on Complainant's credit rating report with the credit reporting agencies. ID at 11.

Initial Decision at 8-11.

ALJ Dunderdale's key factual conclusions utilized to support her recommended fine are not supported by the record evidence and should be rejected. PECO respectfully requests that this matter be remanded so PECO is provided due process to respond to the issues raised, *sua sponte*, by ALJ Dunderdale regarding the establishment of service and PECO's collection actions regarding the account. ALJ Dunderdale incorrectly inferred/assumed facts not testified to at the hearing. For instance, ALJ Dunderdale assumed that PECO reports to the credit agencies, when in fact, PECO does not report to credit agencies. ALJ Dunderdale has, after the record closed, treated the Complainant's argument to PECO's request to admit its exhibits as "testimony" without providing PECO the opportunity to cross-examine the Complainant. Due process mandates that the matter be remanded for further hearing on the issue of unreasonable service and the recommended fine.

PECO witness Tarpley testified that the account in the Complainant's name was established after completing the application process. ALJ Dunderdale found PECO's actions to be a flippant disregard for obtaining accurate information and obtaining documentation to justify placing the account in Complainant's name.

Commission precedent does not support the holding of ALJ Dunderdale. In *Barbara Jackson v PECO Energy Company*,⁴ the Commission reversed a prior decision of ALJ Dunderdale which found PECO provided unreasonable service regarding its practice of establishing service in a customer's name noting that PECO was also the victim of fraud. In the present proceeding, PECO followed sound business practice to establish the account in the Complainant's name. Furthermore, PECO stresses that during the entire Disputed Period, PECO sent monthly bills which were never disputed and its business records reflects subsequent contacts from the Complainant so the inference that PECO should have known that service was improperly established in the Complainant's name is without merit.

Conclusion

PECO has been prejudiced by not receiving the late-filed exhibits of the Complainant or the Second Post-Hearing Order admitting those exhibits. Due process mandates that the matter be remanded for further hearing.

ALJ Dunderdale erred by relying on the Complainant's own self-serving testimony and exhibits and rejecting PECO's business records as "mere hearsay" to find that the Complainant has carried her burden of proof. The Complainant has not produced any documentation to prove her residency during the Disputed Period.

⁴ Docket No. C-2010-2195248, Opinion and Order entered August 31, 2012.

ALJ Dunderdale erred by recommending a fine for unreasonable service by pursuing this outstanding balance and not permitting the company to place its business records in context on the record. When properly viewed, the evidence in this case cannot support a finding that the Complainant met her burden that PECO provided unreasonable service to her. PECO respectfully submits that the Commission should dismiss the Complaint in its entirety with no finding of a violation against PECO.

WHEREFORE, PECO Energy Company requests that its Exceptions be granted in their entirety, the Initial Decision reversed and the matter remanded for further hearing.

Respectfully submitted,



Shawane L. Lee
PECO Energy Company
2301 Market Street, S23-1
PO Box 8699
Philadelphia, PA 19101-8699
(215) 841-6841
Fax: 215.568.3389
Shawane.lee@exeloncorp.com

Counsel for PECO Energy Company

Dated: August 4, 2014

**BEFORE THE
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STEPHANIE HALLMAN

Complainant

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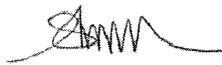
Docket No. F-2013-2393373

CERTIFICATE OF SERVICE

I, Shawane L. Lee, hereby certify that I have this day served a copy of PECO Energy Company's Exceptions in the above matter upon all interested parties by mailing a copy, properly addressed and postage prepaid to:

Stephanie Hallman
327 Seneca Street
Essington, PA 19029

Dated at Philadelphia, Pennsylvania, August4, 2014.



Shawane L. Lee
PECO Energy Company
2301 Market Street, S23-1
PO Box 8699
Philadelphia, PA 19101-8699
(215) 841-6841
Fax: 215.568.3389
Shawane.lee@exeloncorp.com

Counsel for PECO Energy Company