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December 18, 2014

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

**RE: Pat's Gourmet Deli, Inc. v. PECO Energy Company**  
**PUC Docket No.: C-2013-2394437**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *PECO Energy Company's Main Brief* 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

cc: Certificate of Service (via Fed Ex)

s/LO

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PAT'S GOURMET DELI, INC.	:	
	:	
Complainant	:	
	:	
v.	:	Docket No. C-2013-2394437
	:	
PECO ENERGY COMPANY	:	
	:	
Respondent	:	

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**PECO ENERGY COMPANY'S  
MAIN BRIEF**

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And Now, pursuant to 52 Pa. Code § 5.501 and the Briefing Order issued in this proceeding, comes PECO Company ("PECO") and files its Main Brief as follows:

**I. INTRODUCTION AND STATEMENT OF THE CASE**

This matter involves a Formal Complaint filed by Pat's Gourmet Deli, Inc. ("Complainant" or "Pat's Gourmet Deli") against PECO. Pat's Gourmet Deli alleges that on October 8, 2013, PECO improperly terminated electric service at its delicatessen located at 2621 Sepviva Street, Philadelphia, PA after PECO requested access to service an electric meter. The Complainant claims they tried to give PECO access; however, PECO did not show up for appointments or would come after business hours. The Complainant requests reimbursement for all of their lost goods and inventory as a result of losing electric service.

PECO terminated electric service at the Complainant's premises after the Complainant failed to give the company access to service the electric meter. PECO had been receiving

sporadic readings on the electric meter and requested access to determine why the company was receiving sporadic readings and to perform maintenance. PECO and its contractor, Grid One, made several telephone calls to the Complainant, scheduled appointments; and dropped 72-hour termination notices in an effort to gain access to the meter. The meter is located in a locked basement. Each time Grid One would visit the premises to access the meter, no one had a key to give access. Accordingly, pursuant to Section 18.3 and 18.4 of PECO's tariff, the company terminated the Complainant's electric service on October 8, 2013. During an investigation of this case, PECO determined that Pat's Gourmet Deli had been tampering with the electric meter in order to steal electric service, thereby causing the sporadic meter readings.

## **II. BACKGROUND AND PROCEDURAL HISTORY**

This matter was initiated by Pat's Gourmet Deli on October 31, 2013, by filing a complaint with the Commission's Small Business Mediation Program. PECO and the Complainant were unable to resolve the dispute and the case was closed by mediator, Cynthia Lehman on November 21, 2013. On November 27, 2013, PECO was served with a Formal Complaint by Robert Holton on behalf of Pat's Gourmet Deli. In the Complainant's Formal Complaint, the Complainant checked the box "The utility is threatening to shut off my service or has already shut off my service". The Complainant stated "they said they don't care make another appointment to change meter I told them what would be lost they gave attitude an (sic) said they do what their (sic) told Goodbye." For relief, the Complaint indicated that "Payment for all lost was 100% PECO's misuse of authority."

PECO filed its Answer and New Matter to the Complaint on December 16, 2013. PECO denied the material allegations of the Complaint, stating that PECO had terminated the

Complainant's service on October 8, 2013, after the company had attempted to gain access to the Complainant's electric meter on several occasions. PECO averred that the company properly terminated the Complainant's service pursuant to Sections 18.3 and 18.4 of the company's tariff.

A hearing was held in this matter on October 28, 2014. At the hearing, the Complainant was represented by attorney Craig A. Sopin, Esquire who presented the testimony of Pat's Gourmet Deli manager, Robert Holton and offered no exhibits into evidence. PECO presented the testimony of four witnesses and admitted twelve exhibits into the record. PECO filed one late-filed revised Exhibit "2", which was entered into the record by Order dated November 13, 2014. The Briefing Order in this matter was also issued on November 13, 2014.

### **III. PROPOSED FINDINGS OF FACT**

1. Robert Holton and his wife, Pat, own the property located at 2621 Sepviva Street, Philadelphia, PA. (Tr. 33).
2. The Holtons operated the delicatessen, Pat's Gourmet Deli at 2621 Sepviva Street, Philadelphia, PA from 2007 to 2013. (Tr. 11, Tr. 13).
3. Robert Holton's wife, Pat, is the principal owner and operator of Pat's Gourmet Deli. (Tr. 21).
4. Robert Holton is the General Manager of Pat's Gourmet Deli and oversees the day-to-day operation of the business. (Tr. 11).
5. Pat's Gourmet Deli's hours of operation were from 6:00 a.m. – 6:00 p.m. (Tr. 53-54).
6. Pat's Gourmet Deli had three refrigerated display cases, two regular sized stand-up freezers and a large giant soda machine cabinet. (Tr. 12).

7. PECO supplies electricity to Pat's Gourmet Deli. (Tr. 13.).
8. Pat's Gourmet Deli has an electric meter located in the basement. (Tr. 14).
9. There were no employees of Pat's Gourmet Deli who had a key to the basement because that is where the deli kept their storage. (Tr. 14-15).
10. For the billing period November 16, 2011 through August 20, 2012, Pat's Gourmet Deli received actual bills from meter readings ranging from \$38.79 to \$207.26 per month. For four months during that period, PECO billed Pat's Gourmet Deli \$42.68, \$40.04, \$42.59, and \$38.79 for actual usage on the meter. (PECO Exhibit 1).
11. PECO began obtaining sporadic readings from the AMR electric meter which was not reading on a daily basis. (Tr. 15, Tr. 64, Tr. 67, Tr. 178-179).
12. Meter number 105639260 was tested on February 21, 2011, before it was installed at 2621 Sepviva Street and tested 99.9 percent accurate. (Tr. 176-177).
13. On August 23, 2012, PECO removed meter number 105639260 from the property. (Tr. 66, Tr. 178, Tr. 180).
14. PECO installed meter number 105465625 at 2621 Sepviva Street on August 23, 2012. (Tr. 66).
15. Before meter number 105465625 was installed at the property, it was tested and found to be 99.9 percent accurate. (Tr. 182).
16. Landis and Gyr owns the AMR meter reading system and obtains readings from meters on the AMR network. Landis and Gyr delivers the readings into PECO's Customer Information Management System ("CIMS"). (Tr. 144-145).

17. DataRaker data reports are graphical representations of the meter data received through the AMR network. (Tr. 145).
18. PECO analyst, Daniel Heine, analyzes DataRaker data for the purpose of preventing theft of service and to testify in criminal matters on behalf of PECO. (Tr. 146).
19. Daniel Heine reviewed DataRaker data reports to determine why PECO was not receiving readings from the electric meter at 2621 Sepviva Street. (Tr. 145).
20. The DataRaker data for the electric meter at Pat's Gourmet Deli showed a pattern of tampering. The meter was pulled for most of the month and placed back in for a few days around the billing date to deliver a reading to the company. (Tr. 149, 150).
21. The meter tampering, through pulling the meter, caused PECO not to receive signals from the electric meter. (Tr. 150, 153).
22. PECO sent estimated bills to Pat's Gourmet Deli beginning September 20, 2012. (Tr. 63).
23. PECO contacted Pat's Gourmet Deli and requested access to service the meter. (Tr. 17-18).
24. Grid One is a PECO contractor that performs meter maintenance and terminations. (Tr. 111).
25. On November 21, 2012, Grid One went to the property and the technician was not able to gain access to the meter because the Pat's Gourmet Deli employee did not have a key to the basement. (Tr. 68, PECO Exhibit 2).

26. On November 24, 2012, Grid One attempted to contact Pat's Gourmet Deli by telephone to schedule an appointment to gain access to the meter; however, there was no response. (Tr. 69, PECO Exhibit 2).
27. Grid One began contacting Pat's Gourmet Deli again in April 2013 by telephone and through sending a no access letter. (Tr. 70, PECO Exhibit 2).
28. On June 11, 2013, Grid One visited the property on a cold call to gain access to the meter; however, they were told there was no key to the basement. (Tr. 70-71, Tr. 122, PECO Exhibit 2).
29. Grid One continued to try contacting Pat's Gourmet Deli in June 2013 by making two telephone calls and sending a letter requesting access. (Tr. 72-73, PECO Exhibit 2).
30. On July 1, 2013, PECO dropped a ten-day termination notice at the property due to no access to the meter. (Tr. 73, PECO Exhibit 2).
31. The company left a 72-hour notice on July 11, 2013, due to no access to the meter. (Tr. 73, PECO Exhibit 2).
32. On July 13, 2013, a technician went to the premises but was unable to gain access to the meter because the worker at the property did not have access to the basement. A 72-hour termination notice was dropped at that time. (Tr. 74, PECO Exhibit 2).
33. An appointment was scheduled with Pat's Gourmet Deli to give access to the meter on July 22, 2013. (Tr. 75, Tr. 124, PECO Exhibit 2). When the technician arrived; however, the technician was told there was no key available for the basement. (Tr. 75).

34. Grid One made another appointment with Pat's Gourmet Deli to give access to the meter on September 10, 2013, with a 30 minute call ahead. (Tr. 125, PECO Exhibit 2). When the technician called 30 minutes ahead to phone number (215) 533-5865, there was no response. (Tr. 76, Tr. 125, PECO Exhibit 2).
35. In September 2013, PECO and/or Grid One attempted to contact Pat's Gourmet Deli by telephone on three occasions and by letter with no response. (Tr. 77, PECO Exhibit 2).
36. On October 3, 2013, Grid One made its last attempt to investigate the meter by visiting the property but was not able to gain access to the meter. Grid One dropped a 72-hour termination notice at that time. (Tr. 78, Tr. 126, PECO Exhibit 2).
37. On October 8, 2013, Grid One technician, Herman Wright, terminated Pat's Gourmet Deli's electric service at the taps. (Tr. 79, Tr. 127, Tr. 157, PECO Exhibit 2).
38. On October 11, 2013, Robert Holton filed an informal complaint with the Bureau of Consumer Services at case number 003159648. In his informal complaint, Mr. Holton said that he had set up several appointments to have the meter changed and waited for someone to come. (Tr. 19 – 22).
39. Mr. Holton said that a PECO technician came to the property after store hours at 7:00 PM. (Tr. 22-23) (PECO Exhibit 3).
40. PECO produced a Hyperion Report, which Grid One receives daily, showing the technician, and date and time the technician visited the property. (Tr. 118-119) (PECO Exhibit 7).

41. Grid One's technicians work from 7:00 a.m. to 3:30 p.m. Monday through Friday and 7:00 a.m. to 3:30 p.m. on Saturday. (Tr. 129).
42. Grid One has technicians who work during the evening but for appointments only. (Tr. 129).
43. The Hyperion Report reflects that Grid One made a total of six field visits to 2621 Sepviva Street. (Tr. 121) (PECO Exhibit 7). Five visits were to gain access to the electric meter and one visit was to terminate service. (Tr. 121-128) (PECO Exhibit 7).
44. The Hyperion Report does not have a record of a 7:00 p.m. visit to 2621 Sepviva Street. (Tr. 130) (PECO Exhibit 7).
45. The Hyperion Report does not have a record of scheduled appointments Grid One did not keep. (PECO Exhibit 7).

### **III. PROPOSED CONCLUSIONS OF LAW**

1. As the party seeking the intervention from this Commission, Complainant bears the burden of proving that Respondent violated provisions of the Public Utility Code or the Public Utility Commission's regulations in some fashion.<sup>1</sup>
2. To establish a sufficient case and satisfy the burden of proof, Complainant must show that PECO is responsible or accountable for the problem described in the Complaint.<sup>2</sup> Such a showing must be by a preponderance of the evidence<sup>3</sup>. Complainant can meet that burden if

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<sup>1</sup> Section 332(a) of the Public Utility Code, 66 Pa. C.S. §332(a).

<sup>2</sup> Patterson v. Bell Telephone Company of Pennsylvania, 72 PA PUC 196 (1990), Feinstein v. Philadelphia Suburban Water Company, 50 PA PUC 300 (1976).

<sup>3</sup> Samuel J. Lansberry, Inc. v. Pa. Public Utility Comm'n, 134 Pa. Commw. 218; 221-222, 578 A.2d 600; 602 (1990), *alloc. den.* in 602 A.2d 863 (1992).

it presents evidence more convincing, by even the smallest amount, than that evidence presented by Respondent.<sup>4</sup>

3. Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence.<sup>5</sup> More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.<sup>6</sup>
4. A public utility's Commission-approved tariff has the force of law and is binding on the utility and its customers.<sup>7</sup>
5. Tariff provisions approved by the Commission are prima facie reasonable.<sup>8</sup>
6. Pursuant to Rule 10.5 of PECO's Commission-approved tariff (Tariff Electric Pa.PUC No. 4), Right of Access, PECO "shall have access to the premises of a customer at all reasonable times for the purpose of ....installing, testing, inspecting, repairing, removing or changing any or all equipment belonging to the Company."<sup>9</sup>

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<sup>4</sup> Se-Ling Hosiery v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950).

<sup>5</sup> Mill v. Comm'w., PA Public Utility Comm'n, 447 A.2d 1100 (Pa. Cmwlth.1982); Edan Transportation Corp. v. PA Public Utility Comm'n, 623 A.2d 6 (Pa. Cmwlth.1993), 2 Pa.C.S. §704

<sup>6</sup> Norfolk and Western Ry. v. PA Public Utility Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Compensation Bd. of Review, 166 A.2d 96 (Pa. Super.1960); Murphy v. Commonwealth, Dep't. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa. Cmwlth.1984).

<sup>7</sup> Stiteler v. Bell Telephone Co. of Pennsylvania, 32 Pa. Commw. 319, 379 A.2d 339 (1977); Brockway Glass Co. v. Pa. Pub. Util. Comm'n, 63 Pa. Commw. 238, 437 A.2d 1067 (1981); Pennsylvania Electric Co. v. Pa. Pub. Util. Comm'n, 663 A.2d 281 (Pa. Commw. 1995).

<sup>8</sup> Lynch v. Pa. Pub. Util. Comm'n, 140 Pa. Commw. 599, 594 A.2d 816 (1991); alloc. Den., 529 Pa. 670, 605 A.2d 335 (1992), 66 Pa.C.S.A. § 316.

<sup>9</sup> See Section 10.5 of PECO's Tariff.

7. Pursuant to Rule 18.3 of PECO's Commission-approved tariff (Tariff Electric Pa.PUC No. 4), Termination for Cause, PECO "may terminate on reasonable notice if entry to meter or meters is refused or if access thereto is obstructed."<sup>10</sup>
8. Pursuant to Rule 18.4 of PECO's Commission-approved tariff (Tariff Electric Pa.PUC No. 4), Safety Termination, PECO "may terminate without notice if the customer's installation has become hazardous or defective."<sup>11</sup>
9. Complainant presented no evidence that Rule 10.5, Rule 18.3 or Rule 18.4 of PECO's Tariff Electric Pa. PUC No. 14 is unreasonable.
10. Complainant has failed to carry its burden of providing sufficient evidence to support a finding that PECO violated the Public Utility Code or the Commission's regulations by terminating electric service to Pat's Gourmet Deli at 2621 Sepviva Street.
11. Complainant failed to sustain its burden of establishing that PECO provided inadequate, unreasonable or unsafe service; therefore, the Complaint must be dismissed.

#### **IV. ARGUMENT**

In this case, Pat's Gourmet Deli claims that PECO improperly terminated service at 2621 Sepviva Street and that several appointments were set up to give access to the meter; however the technician failed to show up for the appointments or came after business hours. This claim by the Complainant lacks all credibility, and must fail based on the Hyperion Report produced by PECO at Exhibit 7. The Hyperion Report clearly shows the number of field visits Grid One

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<sup>10</sup>See Section 18.3 of PECO's Tariff.

<sup>11</sup>See Section 18.4 of PECO's Tariff.

made to the property, including the date and time, as well as the absence of any visit during the evening as alleged by Pat's Gourmet Deli.

This case begins with the Complainant tampering with the electric meter, which caused PECO to receive sporadic meter readings. (Tr. 150-153). (PECO Exhibits 11 and 12). As a result, PECO changed the Complainant's meter on August 23, 2012. (Tr. 66). The newly installed meter had been tested prior to installation and tested 99.9 percent accurate. (Tr. 182). Yet, the company continued to receive sporadic meter readings and beginning September 20, 2012, PECO had to send estimated bills to the Complainant. (Tr. 63). The evidence shows that the sporadic meter readings were caused by the Complainant pulling the meter for most of the month to prevent paying for service; and therefore, no signals were being sent through Landis and Gyr. (Tr. 150). This drove PECO to issue a meter investigation to change or provide maintenance to the meter. (Tr. 150).

PECO began the meter investigation process by calling and sending letters to the Complainant to access the meter. (Tr. 69) (PECO Exhibit 2). PECO's CIMS contacts demonstrate that prior to the 72 hour termination notice being dropped at the premises on July 11, 2013, the company attempted to call or sent letters to the Complainant ten times. (Tr. 74) (PECO Exhibit 2). The Hyperion Report shows that PECO's contractor, Grid One, went to the Complainant's premises on five separate occasions to access the meter; however, the meter was located in a locked basement and there was no one present at the store with a key to open the basement. (PECO Exhibit 7). After five field attempts, multiple telephone calls and letters sent, PECO terminated service at the premises on October 8, 2013. (PECO Exhibit 2 and 7).

Mr. Holton provided solely his self-serving testimony to support his allegation that PECO failed to show up for appointments or came after hours. Mr. Holton's testimony supports the fact

there were several appointments made to gain access to the meter; however, the Hyperion Report produced by PECO clearly shows that it was Mr. Holton who failed to show up for the appointments to open the basement door with the key that he would not permit employees to have. (PECO Exhibit 7). The Hyperion Report and CIMS contacts shows that during each of the five field visits to gain access to the meter, there was no key to the basement or the worker at the premises did not have access to the basement. (PECO Exhibit 2 and 7). By failing to provide the basement key during these five visits, Pat's Gourmet Deli, in effect, obstructed access to the meter.

Pat's Gourmet Deli's claim is also undermined by the evidence that it did not provide. Despite Robert Holton testifying that he had documented the dates PECO visited the property and the dates the company did not show up for scheduled appointments, Mr. Holton failed to provide any such documentation. Mr. Holton indicated at the hearing that he wrote down the date and time he called PECO and each time he was at the property and waited around for the company to arrive. (Tr. 42-43). But, he did not provide any documentation to support his statements at the hearing or with late-filed Exhibits. Mr. Holton also testified that Grid One showed up after hours and he has camera footage and surveillance of the Grid One truck. (Tr. 42-43). However, he did not produce this surveillance footage at the hearing or later in a late filed exhibit. This failure to provide any evidence to support his claim allows for a negative inference that Grid One did not fail to show up for scheduled appointments or come to the premises after hours.<sup>12</sup>

Further, Pat's Gourmet Deli caused the course of events by tampering with the electric meter. The DataRaker data reports and the account activity statement clearly demonstrate a

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<sup>12</sup> A negative inference may be drawn when a party fails to produce evidence within its peculiar control and possession. See Tremaine v. H.K. Mulford Co., 317 Pa. 97; Wilson v. Pennsylvania Railroad Company, 421 Pa. 419, 210 A.2d 666 (1966); and Glover v. Com., Norristown State Hospital, 90 Pa. Commw. 58, 494 A.2d 39 (1985).

pattern of stealing electric service by pulling the meter in and out of the socket. (Tr. 150). This triggered Landis and Gyr and PECO to begin the meter maintenance process and the quest to gain access to the meter. (Tr. 150). The account activity statement shows that Pat's Gourmet Deli paid as little as \$38.79 per month for electric service in a delicatessen that had three refrigerated display cases, two regular sized stand-up freezers and a large giant soda machine cabinet. (PECO Exhibit 1). The actual readings PECO did receive and the bills issued to Pat's Gourmet Deli were less than an average residential apartment use, which is simply not possible with the amount of equipment operating at the deli. (Tr. 161). The sporadic meter readings, DataRaker data, the testimony of PECO analyst, Daniel Heine and the positive meter test results on both meters supports the fact there was tampering at the premises. Pat's Gourmet Deli has provided no credible evidence that would allow for any other conclusion.

In conclusion, Pat's Gourmet Deli has failed to meet its burden of proving that PECO improperly terminated service at 2621 Sepviva Street. The evidence in this case, the CIMS contacts and the Hyperion Report, overwhelmingly confirms that PECO and Grid One did in fact attempt to gain access to the Complainant's meter on multiple occasions by calling, sending letters and making five field visits to the premises. After the company could not gain access, PECO properly terminated service pursuant to Sections 18.3 and 18.4 of PECO's tariff as access to the electric meter was obstructed and the meter possibly required maintenance. Pat's Gourmet Deli obstructed access to the electric meter because the meter was located in a locked basement with only one individual who had access to the key. The Hyperion Report and CIMS records demonstrate that each time Grid One attempted to gain access to the meter the company was obstructed because no one had a key available to open the basement. For these reasons,

Pat's Gourmet Deli's electric service was properly terminated in compliance with PECO's Tariff, and the Complaint should be dismissed, with prejudice.

## **VI. PROPOSED ORDERING PARAGRAPHS**

Wherefore, it is hereby ORDERED, that:

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa. C.S. §701

2. Pursuant to 66 Pa. C.S. §§332(a), the burden of proof in this proceeding is on the Complainant.

3. The Complainant has not met its burden of proving that it is entitled to relief. 66 Pa. C.S. §§332(a)

4. That the complaint of Pat's Gourmet Deli against PECO Energy Company at Docket No. C-2013-2394437 is denied, with prejudice.

5. That the record at Docket No. C-2013-2394437 is marked closed.

WHEREFORE, for all of the reasons stated above, PECO Energy Company respectfully requests that this Complaint be dismissed with prejudice.

Respectfully submitted,



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Shawane L. Lee

Dated: December 18, 2014

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PAT'S GOURMET DELI, INC.	:	
	:	
Complainant	:	
	:	
v.	:	Docket No. C-2013-2394437
	:	
PECO ENERGY COMPANY	:	
	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that on this 18<sup>th</sup> day of December, 2014, a copy of the foregoing Brief has been served upon the persons listed below via First Class Mail in accordance with the requirements of 52 Pa. Code Sections 1.54 and 1.55.

Craig A. Sopin, Esquire  
601 Walnut Street  
The Curtis Center, Suite 160-W  
Philadelphia, PA 19106

Administrative Law Judge Angela T. Jones  
Commonwealth of Pennsylvania  
Pennsylvania Public Utility Commission  
801 Market Street, Suite 4063  
Philadelphia, PA 19107



DATE: December 18, 2014

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Shawane L. Lee