

Direct Dial: 215.841.6841

February 5, 2015

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

RE: George L. Gadsden v. PECO Energy Company
PUC Docket No.: C-2013-2381130

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *PECO Energy Company's Reply 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,



Shawane Lee
Counsel for PECO Energy Company

cc: Certificate of Service

sl/LO

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GEORGE L. GADSDEN
Complainant

v.

PECO ENERGY COMPANY
Respondent

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:
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DOCKET NO. C-2013-2381130

REPLY EXCEPTIONS OF PECO ENERGY COMPANY

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Counsel for PECO Energy Company

DATE: February 5, 2015

REPLY EXCEPTIONS

PECO Energy Company (“PECO”) hereby replies to the Exceptions filed by George Gadsden (“Complainant”) in the above-referenced matter on January 22, 2015. On August 27, 2013, Complainant filed a formal complaint against PECO. In his formal complaint, Complainant alleged that his electric and gas bill from September 1, 2013 to November 1, 2013 was incorrect and that he did not want to pay for the bill. The Complainant also requested a payment agreement for his balance. Respondent, PECO filed an Answer on September 5, 2013, stating that Complainant’s high bill concerns had been investigated and that he had been correctly billed. PECO also averred that Complainant had an active payment agreement issued by the Bureau of Consumer Services (“BCS”).

An in-person hearing was held before Administrative Law Judge Angela T. Jones (“ALJ Jones”) on December 23, 2013 and July 30, 2014. ALJ Jones issued an Initial Decision on December 11, 2014, wherein she dismissed Complainant’s formal complaint, stating that he had not met his burden of proof with regard to his high bill complaint and that absent a change of income he was not entitled to a second Commission-issued payment agreement.

The Commission should sustain the Initial Decision of ALJ Jones. Complainant does not allege ALJ Jones made an error of law or abused her discretion in any manner. Instead, Complainant excepts to the decision issued by ALJ Jones because he simply disagrees with her decision. Specifically in his exceptions, Complainant states “I do not agree with the Initial Decision” and states the following:

Exception (1): I showed to the hearings on multiples (sic) dates (four hearings) and not permitted to testify completely or at all also, not able to ask questions of PECO. The Complainant alleges he was “denied his due process right to testify at the hearing”.

The hearing transcript reflects there is no truth to the Complainant's assertion that he had no opportunity to testify or to cross-examine PECO's witnesses. Preliminary, there were two hearings – not four. At the first hearing held on December 23, 2014, the Complainant provided extensive direct testimony in pages 5 -31 of the transcript. Tr. 5 – 31. During his testimony, Complainant testified regarding the number of people residing at his home, the appliances in the property in use, and the work and living habits of the occupants. Tr. 6-11. The Complainant testified about his specific high bill dispute with PECO and the conversations he had with PECO employees. Tr. 12 -24. The Complainant testified that he thought there was a foreign load at his property but PECO proved there was not a foreign load and he has no proof there is one. Tr. 12-13. He testified that he had no proof that the pizza shop below him was tapping into his gas service; therefore, he had to rely on PECO's evidence. Tr. 38. The Complainant also testified that PECO had tested both his electric and gas meters and they both tested "within the established parameters." Tr. 24-27. At the conclusion of the Complainant's testimony, ALJ Jones asked him if his testimony was finished and Complainant agreed that he was finished and had no additional witnesses to present. Tr. 41.

PECO then presented the testimony of the company's first witness, Regulatory Assessor, Michael Begley, who testified regarding the Complainant's account status, balance, budget billing, high bill investigation, and payment agreements. Tr. 44-51. Thereafter, the Complainant cross-examined Mr. Begley regarding whether PECO has any mechanisms in place to alert a customer if there are high bills at a property prior to the customer renting a property. In his cross-examination, Complainant suggested that PECO should have a mechanism in place to police the energy efficiency of a particular rental unit and the appliances to alert prospective or current tenants. Tr. 51-56.

At the second further hearing that took place on July 30, 2014, PECO presented the testimony of high bill field foreman, Thomas Lerro, to testify to the high bill field investigations and meter tests that took place at the Complainant's residence. Tr. 73-121. At the conclusion of Mr. Lerro's testimony, the Complainant conducted an extensive cross-examination of Mr. Lerro. Tr. 122-146. The Complainant questioned Mr. Lerro regarding the location of the meters at the premises and the testing performed on the meters. Tr. 127-128. The Complainant challenged the veracity of the field technician's report and pointed out the fact the report stated there is one person living in the premises when there are actually four people living there using the service. Tr. 125. The Complainant questioned why the field technician did not test his appliances. Tr. 124. The Complainant elicited the fact that Mr. Lerro was not the technician who had physically visited the property. Tr. 123, Tr. 134. The Complainant questioned whether it was important for the field technician, Lori Messere, who actually performed the field visit to be present to testify. Tr. 134. Mr. Lerro testified that Ms. Messere was unlikely to remember specific details from a high bill investigation performed over two years ago and that Ms. Messere's recollection would be from the reports, which is the same recollection he could provide. Tr. 134.

The transcript clearly shows there were two hearings where the Complainant provided abundant direct testimony and elicited testimony on cross-examination from PECO's witnesses. At both hearings, the Complainant was afforded his "due process right" to present his case through testimony and cross-examination. Accordingly, the Complainant's Exception stating that he had no opportunity to testify or question PECO's witnesses is unfounded.

Exception (2): PECO never showed with the proper witnesses who had direct knowledge of the case as a result, the judge was furious at times with PECO and stop the hearings abruptly each time.

The initial hearing convened on December 23, 2013 - two days before Christmas. As the Complainant alleged high bills, a high bill field witness was required to testify to the two high investigations conducted at the Complainant's residence and the instrument meter tests performed on the Complainant's meters on December 11, 2013. There were three hearings scheduled – not four as the Complainant alleges in his Exceptions. At the time of the first hearing, Lori Messere, the high bill field technician who performed the field visits was out of the office on short-term disability. Additionally, the field technician's supervisor, Thomas Lerro, was not available as he had taken Christmas vacation. Accordingly, to prevent delaying the hearing, PECO presented the witness of the acting field supervisor, Mary McQuilkin to testify to the field reports. However, ALJ Jones advised that since Ms. McQuilkin was not the field technician who had performed the field visit and she was not Lori Messere's immediate supervisor, Ms. McQuilkin could not testify to the field reports. Consequently, the hearing was continued so that the supervisor, Thomas Lerro, could testify after the Christmas holidays.

The matter was scheduled for a further hearing on March 28, 2014. PECO planned to present the testimony of Mr. Lerro on that day. However, the morning of the hearing, Mr. Lerro's wife was admitted to the hospital with a life-threatening heart condition. Accordingly, Mr. Lerro was not available to testify. Additionally, the field technician, Lori Messere, who had conducted the actual field visit at the Complainant's residence, was still out on short-term disability. Because PECO had no witness to testify to the high bill field reports and meter tests, the company requested an emergency continuance.

On July 30, 2014, the further hearing convened as scheduled and Mr. Lerro testified to the high bill field reports and instrument meter tests conducted at the property. At the time of his testimony, high bill field technician, Lori Messere was still on short term disability. Mr. Lerro testified that on June 6, 2012, a high bill field investigation was conducted at the Complainant's residence. The technician performed a passing load test on both the gas and electric meters and found the meters to be registering properly. The technician found no foreign piping or foreign wiring. Tr. 113-20. The technician conducted an appliance analysis and determined that the Complainant had the potential to use the service billed. Tr. 116-20. A second field visit was conducted at the Complainant's residence on March 15, 2013. Tr. 75-76; PECO Exhibit 4. The technician verified there was no foreign piping from the neighboring pizzeria as the Complainant alleged. The technician also performed another passing load test on the gas meter and it was found to be registering properly. Tr. 83-94; PECO Exhibit 4. Mr. Lerro testified that both the electric meter was instrument tested and the meter tested within PUC and PECO guidelines. Tr. 109-10. The gas meter had also been removed and tested in PECO's Berywn meter shop. However, Mr. Lerro did not know how to read the testing data for that meter. Tr. 134-35. PECO offered to present a meter engineer to testify to the gas meter data at a further hearing; however, the Complainant declined because he did not want another hearing.

Although Mr. Lerro did not testify to the results of the gas meter data, the evidence presented demonstrated there were two passing load field tests performed on the gas meter and it tested properly. Further, the evidence showed the Complainant had the potential to use the service billed. In his Exceptions, the Complainant argues that PECO's witness, Tom Lerro, had no "direct knowledge of the case". To the contrary, Mr. Lerro testified that he is a senior field foreman who audits the high field paperwork and directly supervises the technicians who

conduct the investigations. Mr. Lerro testified that he has worked for PECO for 34 years and had been a high bill foreman for the past 16 years. Tr. 73-74. Mr. Lerro was the appropriate witness to testify regarding the Complainant's high bill concerns.

Complainant failed to meet his burden of proof regarding his high bill concerns. First, Complainant presented no evidence there were problems with his billing or that PECO incorrectly billed him. Indeed, the Complainant conceded that he had to rely on PECO's investigation of the alleged foreign load at his residence because he had no evidence or independent testing to prove otherwise. Tr. 12-13; Tr. 38. Conversely, PECO presented Mr. Lerro who testified that both meters at the Complainant's residence had been tested (passing load test, instrument meter test) and the meters were operating within Company and Commission guidelines. Further, there had been two high bill field investigations performed at the Complainant's residence on June 6, 2012 and March 15, 2013, where an appliance analysis and passing load tests were performed to determine the potential to use the amount billed and to check the accuracy of the meters. The field investigations demonstrated that Complainant has the potential to use the gas and electric for which he was billed and there is nothing that caused his \$6,072.82 balance other than non-payment.

The evidence demonstrates that the Complainant's high bill and meter concerns were properly investigated and addressed over several field visits and separate meter tests, including an instrument test of the meter, and there is nothing to indicate that he was billed incorrectly. Accordingly, ALJ Jones' decision, dismissing the Complainant's formal complaint should be upheld.

Exception (3): I am planning to file for CAP.

The Complainant had a Level 1 payment agreement issued by the Bureau of Consumer Services at case number 003100030 on July 18, 2013. PECO Exhibit 11. The agreement defaulted on September 16, 2013. Tr. 49. PECO Exhibit 1. PECO's witness testified that the company sent the Complainant a Customer Assistance Program ("CAP") application on May 31, 2013. However, as of the date of the hearing, the company had not received a completed CAP application from the Complainant and the Complainant was not enrolled in CAP at the service address. Tr. 50. To date, the Complainant has not enrolled in the CAP program. Nevertheless, the Complainant's plan to enroll in the CAP program is not a basis to overturn ALJ Jones' Initial Decision. ALJ Jones correctly decided that the Complainant "did not assert that he had a change in income and failed to provide any evidence of a change in income." Accordingly, the Complainant is not eligible for a payment agreement on his \$6,072.82 balance. Tr. 49.

For the reasons set forth above, PECO respectfully requests that the Commission deny the Exceptions and issue an Order upholding the Initial Decision in its entirety.

Respectfully submitted,



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GEORGE L. GADSDEN	:	
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	:	
v.	:	DOCKET NO. C-2013-2381130
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

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: February 5, 2015



Shawane L. Lee

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Complainant	:	
	:	
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CERTIFICATE OF SERVICE

I, Shawane L. Lee, hereby certify that I have this day served a true copy of the foregoing Reply Exceptions upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**George L. Gadsden
95 Nutt Road, Apt. 2
Phoenixville, PA 19460**

Dated at Philadelphia, Pennsylvania, February 5, 2015.



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