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May 11, 2015

**VIA ELECTRONIC FILING**

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

**RE: Anthony Cortez v. PECO Energy Company  
PUC Docket No. C-2014-2410180**

Dear Secretary Chiavetta:

Enclosed is a copy of PECO Energy's Exceptions to Administrative Law Judge Darlene Davis-Heep's Initial Decision, which was e-filed today.

The Exceptions to ALJ Heep's Initial Decision was due on May 5, 2015. Due to an administrative oversight, PECO Energy is now filing its Exceptions along with this letter.

PECO Energy requests that the Commission accept the Exceptions *nunc pro tunc*. As the Commission's Final Order has not been issued in this case and the Exceptions are being filed only six (6) days after the due date, the Complainant will not be prejudiced by its acceptance. Additionally, the company will hand deliver the Exceptions to the Complainant today to give him an opportunity to file a response, if necessary.

Therefore, please accept PECO Energy's late-filed Exceptions to the ALJ Heep's Initial Decision *nunc pro tunc* as timely filed.

If you have any questions regarding PECO Energy's Exceptions or this request, please contact me at (215) 841-6841.

Respectfully,

A handwritten signature in black ink, appearing to read "Shawane L. Lee".

Shawane L. Lee  
Assistant General Counsel

Encl.

Cc: Anthony Cortez (*via hand delivery*)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ANTHONY CORTEZ

Complainant

v.

PECO ENERGY COMPANY

Respondent

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Docket No. C-2014-2410180

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**EXCEPTIONS OF  
OF PECO ENERGY COMPANY**

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Pursuant to 52 Pa Code § 5.533, PECO Energy Company (“PECO”) hereby files its Exceptions to the Initial Decision of Administrative Law Judge Darlene R. Davis Heep (“ALJ Heep”) issued on February 10, 2015 in the above-referenced matter.

The Complaint in this matter involved a \$270.00 tampering fee assessed to the Complainant, Anthony Cortez’s account and allegations of foreign wiring. The Complainant claimed there was faulty wiring at his apartment complex, which made his bills extremely high and that his landlord had tampered with his meter. On the central issues raised in the Complaint – meter tampering and foreign wiring – ALJ Heep found in favor of the Complainant. Based on improper evidentiary weight of the evidence, ALJ Heep incorrectly recommends that the landlord of the Complainant’s service address is responsible for the Complainant’s charges from April 2013 through July 28, 2014, including a tampering fees assessed to the account. ALJ Heep recommends that PECO provide Complainant with a credit to his account for the charges incurred during this service period. With respect to the finding there was foreign wiring at the premises and the Complainant is not responsible for the tampering fee, ALJ Heep’s key factual conclusions are not supported by substantial evidence; is directly contradicted by PECO’s PUC

approved tariff; and in some cases directly contradicted with the testimony presented at the hearing).

In her Initial Decision, ALJ Heep concludes that:

1. That the claim of Anthony Cortez against PECO Energy Company at Docket No. C-2014-2410180 is granted.
2. That the landlord of the service address is responsible for charges between April of 2013 and July 28, 2014, including any tampering fees, and PECO will credit the Complainant for these charges and any fees for that period.
3. That PECO will provide Complainant with a final bill and the credit in Ordering Paragraph 2 above no later than 30 days after the final order of the Commission.

(Initial Decision, p. 15)

ALJ Heep's basis for the decision is as follows:

PECO charged Complainant a tampering charge pursuant to Tariff Rule 10.4. However, the evidence and testimony support a finding that someone other than the Complainant tampered with the meters or wiring...

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...the evidence supports a finding that the electric meter in Complainant's unit was registering foreign wiring from at least April of 2013, when the pull on the meter and other evidence of foreign load began again to surface, until July 28, 2014, when a collective of investigations by PECO established that there was no longer foreign load.

(Initial Decision, p.14)

ALJ Heep incorrectly concluded that the Complainant was not responsible for the tampering charge although the Complainant benefitted from the service related to the tampering and there is a strict liability standard under Section 10.4 of PECO Energy's tariff. Accordingly, even if Complainant did not personally tamper with the equipment, he is liable for the fee because he benefitted from the service that was not paid for due to the tampering. Additionally, ALJ Heep incorrectly concluded there was foreign wiring at the property for the service period

April 2013 through July 28, 2014, although the testimony of PECO's high bill field foreman and PECO's high bill field investigations and report demonstrate the company found no foreign wiring at the premises during this period.

Because ALJ Heep's Initial Decision is not supported by the testimony and documentation in the record, the Initial Decision should not be adopted by the Pennsylvania Public Utility Commission ("Commission"). For the reasons set forth more fully below, the Initial Decision should be rejected and the Commission should dismiss the Complainant's formal complaint in its entirety.

### **BACKGROUND AND PROCEDURAL HISTORY**

On March 6, 2014, Mr. Cortez filed his formal complaint against PECO. The Complaint was an appeal of a Bureau of Consumer Services ("BCS") informal complaint decision that had been filed on October 7, 2013 and decided by the BCS on February 5, 2014. (PECO, Exhibit 13). In the BCS Decision, the BCS determined:

**No foreign wiring discovered by the Company. The Company checked the other 2 apartments but no access to the garage.....The Company may charge a tampering fee when someone other than the Company restores the electric service.**

(PECO, Exhibit 13).

On Mr. Cortez's Formal Complaint form, he checked "I am having a reliability, safety or quality problem with my electric service. (Complainant, Formal Complaint). Mr. Cortez went on to allege that 4921 Longshore Avenue, Apt. A have (sic) faulty wiring and my meter have been tampered with by my landlord Ron Shapiro. I also had an electrical fire. My month (sic) bills are extremely high all year. In his request for relief, Mr. Cortez stated: I, Anthony Cortez,

will like a complete investigation with all the apartments at 4921 Longshore Avenue to resolve my problem. (Complainant, Formal Complaint).

On March 25, 2014, PECO filed its Answer to Complainant's formal complaint. (PECO, Answer). In the company's Answer, it was explained that the Complainant contacted the company in March 2012 to complain of possible foreign wiring. PECO sent a high bill field technician to the premises on March 30, 2012 to investigate and did not find evidence of foreign wiring. (PECO, Answer). PECO's Answer set forth that on August 2, 2012, the company terminated Mr. Cortez's electric service for a past due balance. When the technician terminated the service, he found jumpers on the meter, which is meter tampering. Accordingly, PECO assessed a \$270.00 tampering fee to Mr. Cortez's account. (PECO, Answer).

An in-person evidentiary hearing was held in this matter on May 5, 2014. ALJ Heep presided over the hearing. At the hearing, the Complainant stated that he wanted to subpoena his landlord, Ronald Shapiro, to attend the hearing. Additionally, PECO was to conduct another investigation at the Complainant's service address to include a garage located at the premises. A further hearing was conducted on September 5, 2014. At the hearing, PECO provided the testimony of three witnesses, including the testimony of a Revenue Protection technician, High Bill Field Foreman and Regulatory Assessor. PECO offered fifteen exhibits into evidence. The Complainant offered the testimony of his "fiancée" Ms. Dana Evans, who had a previous account at the service address under which she left a \$4,662.16 unpaid balance. The Complainant also offered five exhibits, three of which included uncorroborated hearsay text messages between the Complainant and, *purportedly*, the property owner, Ronald Shapiro.

The Initial Decision in this matter was issued on February 10, 2015. In her Initial Decision, ALJ Heep concluded that Mr. Cortez was not responsible for the \$270.00 tampering

fee assessed to his account. ALJ Heep also included there was evidence of foreign wiring at the premises; and therefore, Mr. Cortez's balance should be transferred to the property owner.

### **EXCEPTION NO. 1**

#### **ALJ Heep's Initial Decision Incorrectly determines Complainant is not responsible for the tampering fee assessed to his account although he benefited from the service.**

In her Initial Decision, ALJ Heep determined in her findings of fact that "Complainant does not have the technical knowledge needed to bypass a circuit." (Finding of Fact #30). ALJ determined that "The Company did not state that Complainant tampered with the service equipment or performed theft of the service. (Finding of Fact #35). ALJ found that "PECO Data Raker records show that Complainant's meter was pulled in April of 2013 and September of 2013 (Finding of Fact #37). Consequently, "a \$270.00 tampering fee was billed to Complainant in August of 2013. (Finding of Fact #34). ALJ Heep went on to opine that PECO's Revenue Protection technician explained what is needed to pen the meter and bypass it. "His testimony leads to the conclusion that it would take someone with electrical knowledge to bypass the meters as was found in this case. ALJ determined that "the testimony of Ms. Evans that she complained to the landlord and PECO that persons were tinkering with the meters at the complex further supports a finding that the Complainant did not tamper with his PECO meter or the wiring." ALJ Heep's rationale for determining that Mr. Cortez is not responsible for the tampering fee is in error.

Section 10.4 of PECO Energy's tariff has a strict liability standard for tampering. The provision does not require proof that the customer himself or herself actually performed the tampering, but rather, imposes a tampering fee if the customer benefits from the tampering. Section 10.4 reads as follows:

**10.4 TAMPERING. In the event of the Company's meters or other property being tampered or interfered with, the customer being supplied through such equipment shall pay the amount which the Company may estimate is due** for service used but not registered on the Company's meter, and for any repairs or replacements required, as well as for costs of inspections, investigations, and protective installations.

In this case, ALJ Heep determined in her Findings of Fact that Mr. Cortez's meter had been bypassed. This was based on the testimony of PECO's Revenue Protection technician, PECO's Data Raker records, which showed the meter had been pulled in April and September 2012, as well as PECO's Revenue Protection records. The fact there was tampering at Mr. Cortez's meter automatically makes him responsible for the \$270.00 tampering fee because he benefitted from the service supplied to him that was not paid for. As the customer being supplied electric service through the meter, Mr. Cortez is responsible for the tampering fee. It is of no import that Mr. Cortez does not have the knowledge to perform the tampering; Mr. Cortez did not personally tamper with the meter; or others may be responsible for the tampering. The fact is that Mr. Cortez benefitted from the free electricity obtained through the tampering. The strict liability standard imposed by the tariff makes him responsible. ALJ Heep's decision in this regard hinges on the fact that Mr. Cortez could not be responsible for the tampering because he does not have the technical knowledge to perform the tampering. This is incorrect and is not required by the tariff. Accordingly, ALJ Heep's determination that Mr. Cortez is not responsible for the tampering fee is in error and should be reversed.

**EXCEPTION NO. 2**

**ALJ Heep's Decision There Was Foreign Wiring at the Premises Between April 2013 and July 28, 2014 Is Not Supported by the Evidence.**

In making the determination there is foreign wiring at the premises ALJ Heep relies heavily on the testimony of Mr. Cortez and his witness, Dana Evans, both of whom have no technical knowledge to determine foreign wiring and presented no proof of foreign wiring other than their testimony. Conversely, PECO offered significant evidence that the company did not find foreign wiring at the premises. Specifically, PECO High Bill Field Foreman, Thomas Lerro, who is an electrician with over 35 years at the company, testified that he went to Mr. Cortez's apartment building on May 15, 2014 and July 28, 2014 to investigate and test for foreign wiring. (Tr. 43, PECO Exhibit 14). He also testified that one of the high bill field technicians he supervises, Roberto Alicea, went to the property on March 30, 2012 and January 31, 2014. (Tr. 43, Tr. 61, PECO Exhibit 11, PECO Exhibit 12). Mr. Lerro testified that on March 30, 2012, Mr. Alicea's records indicate that he was able to *drop all electric load* from the meter and idle Mr. Cortez's meter. (Tr. 44-45). Mr. Lerro testified the fact that Mr. Alicea was able to idle the meter after disconnecting every electric item in Mr. Cortez's apartment demonstrates there was no foreign wiring affecting Mr. Cortez at the time of the March 30, 2012 visit. (Tr. 46). During Mr. Alicea's January 31, 2014, he investigated the Complainant's foreign wiring concerns and the meter and determined there was no foreign wiring found. (Tr. 63, PECO Exhibit 12).

Mr. Lerro testified that he personally went out to the property in May 2014 and after an extensive analysis determined there was no foreign wiring found affecting Mr. Cortez. (Tr. 66). Additionally, Mr. Lerro took Complainant's witness, Ms. Dana Evans, down to the meters at the

premises; *idled the meter disc* in front of her and showed her the brand new meter boards installed. At that visit, Ms. Evans agreed there was no foreign wiring. (Tr. 73). Mr. Lerro returned to the property on July 28, 2014, to investigate and *once again completely idled the meter* by completely shutting everything down. (Tr. 76). Mr. Lerro determined there was no foreign wiring at the property. (Tr. 77). Indeed, Mr. Lerro testified that based on his review of the records; Mr. Alicea's two field visits to the premises; and two separate visits where he was able to idle Mr. Cortez's meter, there was no evidence of foreign wiring. (Tr. 78).

Despite this testimony, ALJ Heep determines that there is foreign wiring at the premises and orders PECO to transfer the balance to the property owner. To support her decision, ALJ Heep states:

Credible testimony by Complainant and his witness, Ms. Evans, as well as PECO records established that there is a history of foreign load at the residential complex. It was further established that PECO was notified of the suspicion of foreign load on several occasions. Testimony regarding the garage electric service shutting off at the time Complainant's service was shut off also supports a prima facie case on behalf of Complainant.

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Overall, the evidence and information presented by PECO and the Complainant support a finding that there was foreign wiring at the property for, at a minimum, the period from April of 2013 until July 28, 2014. There is the garage service shut-off incident, more than suggestive of foreign wiring and the telling of which was entirely credible.

In determining there was foreign wiring at the premises, ALJ Heep discounted the testimony of a High Bill Field Foreman who is an electrician employed 35 years with PECO in favor of the Complainant's testimony that a garage service shut off when their service was shut off. ALJ Heep discounted the testing the High Bill Foreman conducted at the premises on two separate occasions and the fact that he dropped the load at the Complainant's residence and the meter idled on both occasions. ALJ Heep discounted the high bill field investigation reports of

technician Roberto Alicea who was at the property *twice* and found no foreign wiring. Mr. Alicea performed testing and idled the meter during both his visits and found no foreign wiring. All of this evidence presented by PECO was simply ignored by ALJ Heep in favor of the “credible” testimony of the Complainant his witness Ms. Dana Evans, neither of whom is qualified to determine, test, or find foreign wiring. Indeed, Ms. Evans even admitted to the High Bill Field Foreman that she agreed no foreign wiring was found at the time of his July 28, 2014 visit. (Tr. 73). Clearly, ALJ Heep’s Initial Decision determining there is foreign wiring and the balance should be transferred to the property owners is clear error and should be reversed.

Based on the clear evidence in the record, PECO respectfully submits that the Commission should reverse ALJ Heep’s conclusion that Complainant is not responsible for the \$270.00 tampering fee and that PECO should credit the Complainant’s account for charges from the period April 2013 through July 28, 2014 and transfer them to the property owner due to alleged foreign wiring.

## **CONCLUSION**

When properly viewed, the evidence in this case cannot support a finding that the Complainant met his burden of proof. PECO investigated the Complainant’s high bill and faulty wiring concerns on numerous separate occasions. Additionally, the company correctly found tampering at the Complainant’s meter and assessed a tampering fee to his account because he benefitted from the service. PECO presented its findings, testimony, testing information and the results of its high bill investigations yet, inexplicably, the ALJ ruled in favor of the Complainant with no evidence except the Complainant and his fiancée’s testimony. PECO respectfully submits that the Commission should dismiss the Complaint in its entirety because it is not supported by the evidence.

Respectfully submitted,



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Dated: May 11, 2015

**BEFORE THE  
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ANTHONY CORTEZ

Complainant

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Docket No. C-2014-2410180

**CERTIFICATE OF SERVICE**

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

Anthony Cortez  
2020 West Venango Street  
Philadelphia, PA 19140

Anthony Cortez  
4921 Longshore Avenue, Apt. A  
Philadelphia, PA 19135

Dated at Philadelphia, Pennsylvania, May 11, 2015.



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