

July 17, 2015

Via UPS Next Day

Rosemary Chiavetta, Esquire  
Secretary  
PA Public Utility Commission  
400 North Street, 2d Floor, West  
Harrisburg, PA 17120

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JUL 17 2015

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**Re: Docket No. C-2015-2462644**  
**Beth Trivelpiece v. PECO Energy Company**  
**Memorandum of Law of PECO Energy**

Dear Secretary Chiavetta:

Pursuant to the June 30, 2015 Interim Order of the Honorable Conrad A. Johnson, enclosed for filing is the Memorandum of Law of Respondent, PECO Energy Company, in the above referenced proceeding.

A copy of the enclosed Memorandum of Law has been forwarded to Complainant's counsel in the manner indicated on the attached Certificate of Service.

If there are any questions, please feel free to contact me.

Very truly yours,

Reger Rizzo & Darnall LLP

  
Margaret A. Morris

MAM/jmm  
Enclosure

cc: The Hon. Conrad A. Johnson, PA Public Utility Commission [w/enc.]  
Shawane L. Lee, Esquire, Exelon Business Services [w/enc.]  
Deborah Steeves, Esquire, Legal Aid of Southeastern Pennsylvania [w/enc.]

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Administrative Law Judge Conrad Johnson

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BETH TRIVELPIECE

v.

PECO ENERGY COMPANY

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Docket No. C-2015-2462644

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MEMORANDUM OF LAW OF PECO ENERGY COMPANY

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Counsel for PECO Energy Company

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**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**BETH TRIVELPIECE**

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v.

:

**Docket No. C-2015-2462644**

:

**PECO ENERGY COMPANY**

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**I. INTRODUCTION**

This matter comes before this Honorable Commission as a result of the Formal Complaint filed by Beth Trivelpiece (Complainant) against PECO Energy Company (PECO) in the above-captioned proceeding. PECO respectfully requests that its Motion to Exclude a claim that arose in 2008, but was not raised by the Complainant until 2015, be granted and find that the Complainant is legally responsible for the outstanding account accrued in 2010 and transferred to her active account in 2013.

**II. HISTORY OF PROCEEDINGS**

On January 14, 2015, the Complainant filed a Formal Complaint alleging, *inter alia*, that there were incorrect charges on her bill. (Complaint at ¶4).

On January 23, 2015, PECO filed an Answer denying the material allegations and asserted that the Complainant was responsible for the outstanding account transferred within 4-years of establishing her current service.

The evidentiary hearing was held on June 2, 2015 before the Honorable Conrad Johnson (Judge Johnson). By Interim Order, dated June 30, 2015, Judge Johnson

directed the parties to submit a memorandum of law on or before July 17, 2015, in support of their respective position regarding: 1) the Complainant's ability to bring a claim more than 3 years after the liability arose; and 2) PECO's transfer of the outstanding account which was accrued within four years of the Complainant establishing her current service.

## II. FACTS

The following facts are relevant to the discussion.

### **373 Church**

1. The Complainant established service at 373 Church Street, Phoenixville, under Account No. 35-13-43-1735 on June 20, 2003. TR 67; PECO Exhibit 1-R.
2. Service was taken out of her name, under Account No. 35-13-43-1735, on June 16, 2004. TR 67; PECO Exhibit 1-R.
3. The outstanding account balance for Account No. 35-13-43-1735, was \$1,435.69. TR 67; PECO Exhibit 1-R.

### **229 Church**

4. The Complainant established service at 229 Church Street, 3<sup>rd</sup> Floor, Phoenixville, under Account No. 01520-00205 on June 10, 2006. TR 68; PECO Exhibit 1-R.
5. The outstanding account of \$1,435.69 from 373 Church Street was transferred to the 229 Church account on June 15, 2006. TR 68; PECO Exhibit 1-R.
6. Service was taken out of her name, under Account No. 01520-00205 on August 2, 2007. TR 68; PECO Exhibit 1-R.

7. The outstanding account balance for Account No. 01520-00205 was \$3,086.38. TR 67; PECO Exhibit 1-R.

**221 High**

8. The Complainant established service at 221 High Street, Apt. 1, Phoenixville, under Account No. 38820-17060 on September 16, 2008. TR 68; PECO Exhibit 1.
9. The outstanding account of \$3,086.38 from 229 Church was transferred to the 221 High account on September 18, 2008. TR 69; PECO Exhibit 1-R.
10. Service was taken out of her name, under Account No. 38820-17060 on December 12, 2008. TR 69; PECO Exhibit 1.
11. The outstanding account balance for service under Account No. 38820-17060 was \$4,563.68. TR 68; PECO Exhibit 1-R.

**367 2<sup>nd</sup> Avenue**

12. The Complainant established service at 367 2<sup>nd</sup> Avenue, 1<sup>st</sup> Floor, Phoenixville, under Account No. 85078-67029 on December 3, 2008. TR 70; PECO Exhibit 1.
13. The outstanding account of \$4,563.68 from 221 High was transferred to the 367 2<sup>nd</sup> Avenue account on January 27, 2009. TR 70; PECO Exhibit 1-R.
14. Service was taken out of her name, under Account No. 85078-67029 on July 30, 2010. TR 70; PECO Exhibit 1-R.
15. The outstanding account balance for service under Account No. 85078-67029, was \$12,952.24. TR 70; PECO Exhibit 1-R.

### **852 Aspen—Current Account**

16. The Complainant established her current service at 852 Aspen Avenue, Spring City, under Account No. 38796-98060, on October 10, 2013. TR 71; PECO Exhibits 1-R and 4.
17. The outstanding account from 367 2<sup>nd</sup> Avenue in the amount of \$12,952.24 was transferred to the current account on November 15, 2013. TR 70; PECO Exhibit 4.

### **III. QUESTIONS PRESENTED**

1. *Is the Complainant barred by Section 3314(a) of the Code from raising a claim in 2015 when liability arose in 2008?*

**SUGGESTED ANSWER: Yes**

2. *Is the Complainant responsible for the outstanding account finalized in 2010 that was transferred to her current account in 2013?*

**SUGGESTED ANSWER: Yes**

### **IV. ANALYSIS**

#### **Three-year statute of limitation -- 66 Pa. C.S. § 3314(a)**

Section 3314 of the Code sets forth the general rule regarding the timeframe that action must be brought before the Commission. Specifically Section 3314(a) requires that any action must be brought within three years from the date the liability arose.

The Complainant alleges she did not reside at 229 Church Street and is not responsible for those outstanding charges. The outstanding account of \$3,086.38 for 229 Church was transferred on September 18, 2008 to the then-active account at 221 High Street. The date the liability arose was September 18, 2008 when the outstanding account was transferred. Therefore, the Complainant had until September 18, 2011 to challenge the transfer of the 229 Church outstanding account of \$3,086.38. The Complainant waived her right to bring such a challenge by not raising the issue until the present Complaint in 2015.

The Code is clear: an action must be brought within 3 years of when the liability arose. The Complainant had until September 18, 2011 to challenge the transfer of the outstanding account for 229 Church and her liability for that transferred outstanding account.

The Complainant, in 2015, is barred by Section 3314(a) of the Code from challenging the transfer of the outstanding account for 229 Church in 2008. PECO respectfully request that the Complainant be barred from untimely raising this issue; she has waived her rights to bring such a challenge.

**Four year period to transfer outstanding account -- 52 Pa. Code § 56.35**

When the Complainant applied for service at the current address on October 10, 2013, she had an outstanding account of \$12,952.24 from the 367 2<sup>nd</sup> Avenue account

that was finalized on July 30, 2010. That outstanding account of \$12,952.24 was transferred to the current account on November 15, 2013.

Commission regulations, at 52 Pa. Code § 56.35, regarding payment of an outstanding account, reads, in part, as follows:

A utility may require, as a condition of the furnishing of residential service to an applicant, the payment of any outstanding residential account with the utility which accrued within the past four years, for which the applicant is legally responsible and for which the applicant was billed properly.

The regulation is clear. The Complainant is responsible for the outstanding account balance for 367 2<sup>nd</sup> Avenue that was accrued within 4 years of her establishing her current service with PECO. The account was finalized on July 30, 2010. The Complainant NEVER challenged any charges associated with the 2<sup>nd</sup> Avenue account. The Complainant's current account was established on October 10, 2013; the outstanding account from 2<sup>nd</sup> Avenue was lawfully transferred on November 15, 2013—within the 4 year time period authorized in Section 56.34.

The Complainant argues that “any charges” accrued outside the 4 years of the newly established service in 2013 are not her responsibility. She has provided no support for her position. A utility is authorized to transfer any outstanding account lawfully billed with the 4-year period. The specific charges for services rendered to 229 Church were properly and lawfully billed during the period June 2006 through August 2007. That outstanding account was lawfully transferred in September 2008 as specifically



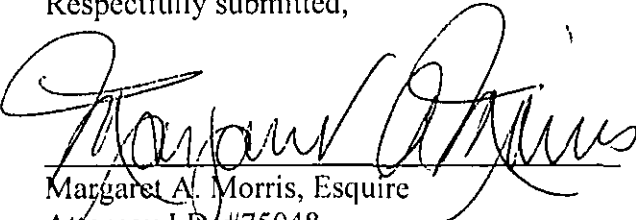
authorized by Commission regulation. PECO respectfully request that Commission find that the Complainant is legally responsible for the 2010 outstanding account transferred in 2013.

## V. CONCLUSION

The Complainant waived her right to challenge the transfer in 2008 of the outstanding account from 229 Church Street by not raising that claim until 2015. PECO lawfully transferred the outstanding account that existed on July 30, 2010 to the current account on November 15, 2013 as authorized under Section 56.35.

**WHEREFORE**, PECO Energy Company respectfully requests that its Motion to Exclude testimony that raises a claim more than 3-years after the liability arose be granted and that the Complainant's objection to the transfer of the outstanding balance from the last service location, 367 2<sup>nd</sup> Avenue be denied since the outstanding account accrued in 2010 was lawfully transferred in 2013, within the 4-year timeframe.

Respectfully submitted,



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Dated: July 17, 2015

*Counsel for PECO Energy Company*

**Re: Docket No. C-2015-2462644  
Beth Trivelpiece v. PECO Energy Company  
Memorandum of Law of PECO Energy**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served upon the following person, in the manner indicated, in accordance with the requirements of §1.54 (relating to service by a participant).

**Via Electronic Mail**

Deborah Steeves, Esq.  
Legal Aid of Southeastern PA  
222 N. Walnut Street, 2d Floor  
West Chester, PA 19380  
[dsteeves@lasp.org](mailto:dsteeves@lasp.org)

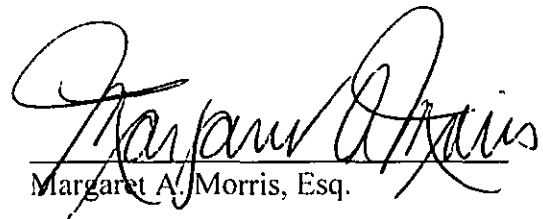
*Counsel for Complainant*

Dated: July 17, 2015

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Margaret A. Morris, Esq.

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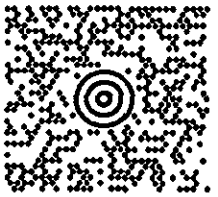
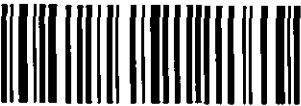
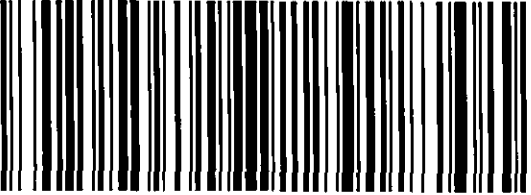
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