



An Exelon Company

Legal Department
2301 Market Street / S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699

Direct Dial: 215.841.6841

August 19, 2015

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

**RE: Fred Lavner v. PECO Energy Company
PUC Docket No.: C-2015-2496908**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *Preliminary Objection of Respondent, PECO Energy Company* 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

cc: Certificate of Service

SL/alb
Enclosure

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

FRED LAVNER	:	
Complainant	:	
	:	
v.	:	DOCKET NO. C-2015-2496908
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

NOTICE TO PLEAD

Pursuant to 52 Pa. Code §§ 5.101 and 5.62(c), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Preliminary Objection within 10 days from service of this notice, a ruling may be entered against you. Your response must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Shawane L. Lee, and where applicable, the Administrative Law Judge presiding over the issue.

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

With a copy to:
Shawane L. Lee
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103

Dated at Philadelphia, PA, August 19, 2015



Shawane L. Lee
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103
(215) 841-6481
Shawane.Lee@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

FRED LAVNER	:	
Complainant	:	
	:	
v.	:	DOCKET NO. C-2015-2496908
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

**PRELIMINARY OBJECTION OF RESPONDENT,
PECO ENERGY COMPANY**

Respondent, PECO Energy Company (“PECO Energy”), pursuant to 52 Pa. Code § 5.101(a)(4) respectfully petitions this Honorable Commission to dismiss the instant Complaint as legally insufficient.

1. On August 7, 2015, PECO Energy was served with a formal complaint filed by Fred Lavner (hereafter “Complainant”). A copy of the Complaint is attached hereto as Exhibit “1”.

2. In his formal complaint, the Complainant alleges that for the last two years he has received no monthly bills in the mail. The Complainant claims that PECO requires him to be a “cash in person customer” because of allegedly false information provided by PECO that he put stop payments on two checks. The Complainant is disputing his bill and his “growing balance” and requests billing records from January 2005 through July 2015. The Complainant disputes his monthly \$400-\$500 bill and claims it is double what his nearest neighbors pay with a household larger than his. The Complainant states he had problems with his meter that

was in major disarray and overtaxed his electrical supply system. The Complainant claims that PECO did nothing about it so he had to replace the meter at his own expense.

3. PECO Energy simultaneously filed an Answer and the instant Preliminary Objection.

4. Pursuant to 52 Pa. Code § 5.101, preliminary objections may be filed against a complaint and dismissed for legal insufficiency. 52 Pa. Code § 5.101(a)(4).

5. Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil procedure.¹

6. In deciding preliminary objections, the Public Utility Commission must determine, based on the factual pleadings of the petitioner, if relief or recovery is possible.²

7. A complaint must be able to recover under the law to survive a preliminary objection.³

8. All of the non-moving party's averments must be taken as true for the sake of deciding the preliminary objection.⁴

9. The court does not, however, need to accept, "unwarranted inferences from facts, argumentative allegations, or expressions of opinions."⁵

10. Section 703 of the Public Utility Code, 66 Pa. C.S.A. § 703(b) provides that the Commission may dismiss any complaint without a hearing of, in its opinion, a hearing is not necessary to the public interest.

¹ *Equitable Small Transportation Interveners v. Equitable Gas Co.*, 1994 Pa.PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994)

² 2006 Pa. PUC Lexis 111, *7.

³ *Milliner v. Enck*, 709 A.2d 417, 418 (Pa. Super. Ct. 1998) ("preliminary objection should be sustained only where it appears with certainty that, upon the facts averred, the law will not allow the plaintiff to recover").

⁴ *Id.* at 7-8.

⁵ *Feingold v. McNulty*, 2009 Phila. Ct. Com. Pl LEXIS 167, *3.

11. A hearing is required only when there is a disputed question of fact, and is not required to resolve questions of law. *Dee-Dee Cab, Inc. v. Pa.Pub. Util. Comm'n*, 817 A.2nd 593 (Pa.Commw. Ct. 2003), petition for allowance of appeal denied, 836 A.2d 123 (Pa. 2003).

12. Here, there are no genuine issues of fact and PECO Energy is entitled to judgment as a matter of law with respect to all of the allegations in the Complaint with the exception of three issues raised (complainant's request for a payment agreement; the alleged requirement to pay cash in person, and whether the meter at his property was in disrepair).

13. All of the remaining allegations in the present Complaint were previously raised by the Complainant in a prior former complaint and were dismissed.

14. The Complainant filed formal complaint docketed at C-2013-2357426. See Formal Complaint, C-2013-2357426, attached hereto as Exhibit "2".

15. On April 24, 2013, PECO Energy filed an Answer with New Matter to the Complainant's Complaint. See PECO Energy Answer with New Matter, attached hereto as Exhibit "3".

16. On July 24, 2013, a telephonic hearing was held before Administrative Law Judge Joel H. Cheskis (ALJ Cheskis).

17. On October 2, 2013, ALJ Cheskis, issued an Initial Decision, which granted the Complainant a payment agreement and ordered PECO to provide monthly billing statements to the Complainant. ALJ Cheskis dismissed all other allegations raised in the Complainant's Complaint. See Initial Decision, dated 7/24/13, attached hereto as Exhibit "4".

18. In that Decision, with regard to the Complainant's allegations of not receiving monthly bills and his billing dispute, ALJ Cheskis determined:

In his Complaint, Mr. Lavner averred that he has had difficulty receiving bills from PECO. Mr. Lavner stated that "he can go months without

getting a bill from PECO” and that he would like “assurances from PECO that I will get monthly paper bills in the mail or e-bills.” During the Hearing, Mr. Lavner testified that he has not received any bill since October, 2011, although he has received shut-off notices. Tr. 20-22. Mr. Lavner testified that, when he called PECO, he was told that he was enrolled in paperless billing. Tr. 21. Mr. Lavner added that he never enrolled in paperless billing but he did make one-time payments online through the PECO website. Tr. 21.

In response to Mr. Lavner, PECO witness McCollum testified that Mr. Lavner was enrolled in e-billing from November 28, 2005 to October 28, 2010 and did not receive a paper bill during that time. Tr. 37, 38, 72. Instead, bills were delivered via the Internet. Tr. 27. Ms. McCollum added that PECO does not automatically enroll customers in e-billing. Tr. 37. Ms. McCollum noted that when Mr. Lavner removed himself from e-billing on October 28, 2010, his bills have been sent to the Service Address of 39 Cornell Road in Bala Cynwyd, PA since that time. Tr. 38. Ms. McCollum testified that there are no PECO records from the postal service of returned mail indicating that Mr. Lavner’s bills were not received at the Service Address. Tr. 38-39. PECO also presented Exhibit Number 14 which is the e-billing exhibit and terms and conditions that indicates Mr. Lavner’s e-bills were being sent to his current e-mail address: flavner@comcast.net. Tr. 72; PECO Exh. No. 14. Ms. McCollum noted that she exchanged e-mails with Mr. Lavner at that email address as recently as July 7, 2013. Tr. 73.

Commission regulations require a public utility to render a bill once every billing period to every residential customer in accordance with approved rate schedules. 52 Pa.Code § 56.11(a). A utility may utilize electronic billing in lieu of mailing paper bills under certain requirements. 52 Pa.Code § 56.11(b). Regardless of whether a bill is rendered on paper or electronically, a bill rendered by a public utility for metered residential service must state clearly certain information, including the beginning and end of the billing period and meter reading, whether the bill is estimated, the due date on or before which payment shall be made, among other things. 52 Pa.Code § 56.15.

In this case, Mr. Lavner expressed significant frustration regarding what he believed was his failure to receive monthly bills. *See e.g.*, Tr. 78, 80. Mr. Lavner’s frustration is exacerbated by his concerns that his billing amounts were erroneous, his inability to have a high bill investigation performed at his home, being placed on budget billing, customer service issues and other issues. Mr. Lavner also testified that he received incorrect information from an investigator at the Commission regarding the disputed bills. Tr. 79. Despite these frustrations, however, Mr. Lavner has failed to carry his burden to demonstrate that PECO violated the Public Utility Code, any Commission Order or regulation or any Commission-approved Company tariff with regard to his billing.

From October, 2010, when Mr. Lavner opted out of e-billing and was being sent paper bills, PECO's records indicate that he made approximately twenty (20) payments on his account. PECO Exh. No. 1. Some of these payments were quite substantial, although at no point was Mr. Lavner's account balance reduced to zero. Id. Mr. Lavner's balance began to escalate significantly in the winter of 2012 after which his account was placed on budget billing. Id. PECO Exhibit Number 1 demonstrates that Mr. Lavner made one significant payment in the summer of 2012 which significantly reduced his outstanding balance, but that Mr. Lavner made only two payments toward his arrearage between July, 2012 and July, 2013 during which time his balance reached \$4,543.76. Id. This pattern, which Mr. Lavner did not contest, does not support a finding that Mr. Lavner did not receive utility bills, as he alleged.

Furthermore, by law, a public utility is entitled to receive payment for the service it provides. Scaccia v. West Penn Power Co., 55 Pa. PUC 637 (1982); *see also*, Kea v. Peoples Natural Gas Co., 60 Pa. PUC 215 (1985); Mill v. Pa. Pub. Util. Comm'n, 447 A.2d 1100 (Pa. Cmwlth.1982). Mr. Lavner recognized during the Hearing his responsibility to pay for the utility service he uses. Tr. 79. As a result, Mr. Lavner was responsible to ensure that he was paying for his utility service even if he was not receiving monthly bills, knowing that he was receiving utility service. This could have entailed contacting PECO to find his account balance or making estimated payments in an attempt to ensure that his account balance was not significantly high. Instead, Mr. Lavner only made two payments from July, 2012 to July, 2013 despite knowing that he was continuing to use utility service. During that time, his balance increased from \$224.73 to \$4,543.76. *See*, PECO Exh. No. 1.

Nonetheless, Mr. Lavner has now made it sufficiently clear that he no longer wants e-billing but would like to receive his monthly bills in paper format. PECO will therefore be directed as part of this Decision to ensure that Mr. Lavner is no longer billed electronically but is only sent paper bills. This portion of Mr. Lavner's Complaint will be sustained.

As a result, this portion of Mr. Lavner's Complaint will be sustained in part and denied in part. Mr. Lavner has not demonstrated that PECO violated the Public Utility Code, any Commission Order or regulation or any Commission-approved Company tariff with regard to billing him for utility service. Mr. Lavner has made it clear, however, that he desires monthly paper bills and PECO will be directed to bill him in that format.

See Exhibit "4".

19. ALJ Cheskis also addressed and dismissed the Complainant's high bill allegations as follows:

During the Hearing, Mr. Lavner testified that his electric bills have been high over the last year-and-a-half “in light of the fact that there are only two seniors living in the house. We are not in the home about two weeks out of the month, and HVAC is turned off when we’re away. So my complaint has been high bill.” Tr. 16.

In response to his high bill complaint, PECO presented the testimony of Dana McCollum, a regulatory assessor at PECO, and Thomas Lerro, a senior field foreman supervisor for PECO’s high bill investigation group. Ms. McCollum sponsored multiple exhibits, most notably the Account Activity Statement for Mr. Lavner’s account which details Mr. Lavner’s payment history and utility usage from September, 2010 to July, 2013. Tr. 27-28; PECO Exh. No. 1. Similarly, Mr. Lerro sponsored two exhibits that comprise the reports pertaining to the completed field investigation form for the Service Address conducted by PECO on July 16, 2013. Tr. 52-62; PECO Exh. Nos. 7 and 8. Both Ms. McCollum and Mr. Lerro testified in support of PECO’s position that Mr. Lavner’s bills are correct as rendered.

The burden of proof for “high bill” complaints has been established in Waldron, supra, and its progeny. See, Nicolas Montagna d/b/a Montagna Homes v. National Fuel Gas Distribution Corp., Docket Number C-2011-2243674, Opinion and Order (entered April 12, 2012). In Waldron, the Commission stated that, while the accuracy of the meter is an important factor in resolving billing disputes, it is not the sole criterion. The Commission will also consider the following factors: the billing history of the complainant; any change in the number of occupants residing at the household; the potential for energy utilization; and any other relevant facts or circumstances that are brought to light during the complaint proceeding. Waldron at 100; see also, Nehemiah B. Thomas v. PECO, Docket No. C-2010-2187197, Order (entered November 15, 2011) (“the Waldron Rule allows a complainant to establish a *prima facie* case in a “high bill” complaint by showing that the disputed bill is abnormally high when compared to prior usage patterns and his or her pattern of usage has not changed or by providing other relevant evidence showing that the disputed bill is unreasonably high”).

PECO witness Lerro testified that the results of the high bill investigation conducted on July 16, 2013 revealed that Mr. Lavner’s meter tested within the guidelines established by PECO and the Commission. Tr. 57-58; PECO Exh. No. 8. The field investigation also revealed that the Service Address has a potential for average summer usage of 4,050 kwh based on the appliances found at the Service Address. Tr. 54-55; PECO Exh. No. 7.

When looking at Mr. Lavner’s electric usage for each month year over year for the last two years data is provided, only four out of the twelve

months available for both 2011-12 and 2012-13 show an increase in usage (February, June, July and October). For one of those months – July, 2011 compared to July, 2012 – the kwh increase was minimal (3 kwh increase). For two of those four months the most recent usage data was less than the same data for the same month two years prior – June, 2013 compared to June, 2011 and October, 2012 compared to October, 2010. As a result, Mr. Lavner’s usage history does not support a finding that his utility bill increased unreasonably or that he was being billed erroneously. When looking at the usage history year to year, there is not a clear pattern of high bills that would support a conclusion of erroneous billing under Waldron. While some variation in electric usage year after year is reasonable, Mr. Lavner’s usage history reveals consistent or even reduced usage more than it reveals unreasonably high usage.

Furthermore, Mr. Lavner has not presented any evidence that would support a finding of a high bill, including a change in the number of occupants residing at the household, the potential for energy utilization or any other relevant facts or circumstances that support a finding that his bills are too high. This is consistent with PECO’s evidence that Mr. Lavner’s meter was operating within PECO and Commission guidelines and that Mr. Lavner’s bills were correct as rendered. Tr. 57-62; PECO Exh. Nos. 7 and 8. Mr. Lavner testified that he and his wife are not in the home two weeks each month and the heating and cooling is turned off when they are away. Tr. 16. This explains why the monthly kwh is significantly lower than the 4,050 kwh potential identified in the high bill investigation but does not, however, demonstrate that PECO’s bills were erroneous.

Finally, during the Hearing, Mr. Lavner cross-examined Mr. Lerro regarding Mr. Lerro’s testimony wherein he incorrectly compared Mr. Lavner’s monthly usage. Tr. 63. Although Mr. Lavner correctly noted that Mr. Lerro incorrectly compared June, 2013 usage to July, 2012 usage, instead of June, 2012 usage, the correct comparison also does not support a finding of incorrect billing because, although the June, 2013 usage, as noted above, is higher than the June, 2012 usage, it is less than the June, 2011 usage. Therefore, even the correct comparison of June usage data does not support a finding that Mr. Lavner’s bills were high. Additionally, this usage data is significantly outweighed by the usage data comparisons for all 34 months of usage data available in PECO Exhibit Number 1 that, when viewed overall, do not evidence high or incorrect billing. To the extent that some month’s usage was higher than the same month’s usage in the prior year, there is not a sufficient pattern to support a conclusion that Mr. Lavner was being over billed by PECO. Mr. Lavner has failed to satisfy his burden under Waldron.

As such, Mr. Lavner’s argument that his utility bills were incorrect will be rejected.

20. The Pennsylvania Public Utility Commission reviewed ALJ Cheskis' Initial Decision pursuant to 66 Pa. C.S. § 332(h).

21. On December 24, 2013, the Commission issued an Opinion and Order, reversing the payment agreement issued by ALJ Cheskis pursuant to 66 Pa. C.S. §1405(d). The Commission adopted the remainder of ALJ Cheskis' Initial Decision. See Exhibit "5".

22. Consistent with ALJ Cheskis' Decision, the Commission dismissed the Complainant's high bill and billing allegations against PECO Energy. See Exhibit "5".

23. The doctrine of res judicata operates to prevent re-litigation of claims already litigated on the merits. As stated by the Commission in Frank Tomazin v. Pennsylvania-American Water Company, 1997 Pa. PUC Lexis 52 (1997), "the policies underlying the doctrine of res judicata are minimizing judicial energy devoted to individual cases, establishing certainty and respect for court judgments, and protecting the party relying on the prior adjudication from vexatious litigation."

24. The doctrine of res judicata, which is also known as claim preclusion, holds that a final judgment on the merits by a court of competent jurisdiction will bar any future action on the same cause of action between the parties and their privies. Hopewell Estates, Inc. v. Kent, 435 Pa. Superior Ct. 471, 476, 646 A.2d 1192 (1994).

25. The doctrine of res judicata applies to cases before the Commission. See, O'Toole v. Bell Telephone Co. of Pennsylvania, Inc., 77 Pa. P.U.C. 98, 104 (1992). The doctrine of res judicata reflects the refusal of the law to tolerate the re-litigation of a matter decided by a court of competent jurisdiction. For the doctrine to prevail four conditions must be met:

- (1) Identity of issues;
- (2) Identity of causes of action;

- (3) Identity of persons and parties to the action; and
- (4) Identity of the quality and capacity of the parties suing or sued.

Day v. Volkswagenwerk Aktiengesellschaft, 318 Pa. Superior Ct. 255, 474 A.2d 1313, 1316, 1317 (1983).

26. In the present case all four elements of res judicata are met. Clearly, the parties are identical in both Complaints. The thing sued upon is identical in both Complaints. Both the current Complaint and the 2013 Complaint relate to high bills, a dispute about receiving bills and billing issues for utility service at 39 Cornell Road, Bala Cynwyd, PA. The cause of action is identical. Finally, the quality and capacity of the parties is identical in both Complaints. The Complainant is the electric customer in both Complaints, and PECO is the public utility providing service to the Complainant.

27. The Commission entered an Order dismissing the Complainant's previous Complaint as a matter of law, with prejudice, and such dismissal prevents the re-filing of the Complaint raising the same high bill allegations, billing issues and dispute about receiving a monthly billing statement. With his new Complaint, the Complainant has ignored the Commission's clear dismissal Order and has attempted to re-file his Complaint.

28. For purposes of determining whether res judicata applies, the essential inquiry is whether the ultimate and controlling issues have been decided in a prior proceeding where the parties had an opportunity to appear and to be heard. Stevens Painton Corp. v. First State Ins. Co., 746 A.2d 649, 654 (Pa. Super. 2000) (emphasis added). The Complainant was provided with a hearing before ALJ Cheskis who heard the merits of his Complaint.

29. Because the present Complaint asserts the some of the same factual and legal basis for relief as the dismissed 2013 Complaint, the Complainant is estopped from attempting to re-assert his claims here.

30. The doctrine of res judicata is meant to protect against just the type of re-litigation that the Complainant is attempting with his present formal Complaint. It is pointless and a waste of the Commission's time and resources to permit the high bill allegations, billing dispute and whether the Complainant is receiving monthly billing statements in the new Complaint to go forward.

31. For the reasons set forth above, the Complainant's claims raising the issues already litigated in the 2013 complaint should be dismissed on the grounds of res judicata.

REQUEST FOR RELIEF

WHEREFORE, for the reasons set forth above, PECO Energy Company respectfully requests that your Honorable Commission summarily dismiss the Complainant's Complaint as it relates to the issues raised in the 2013 Complaint.

Respectfully submitted,



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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

FRED LAVNER

Complainant

v.

PECO ENERGY COMPANY

Respondent

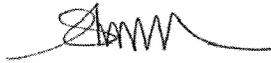
:
:
:
:
:
:
:

DOCKET NO. C-2015-2496908

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: August 19, 2015



Shawane L. Lee

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

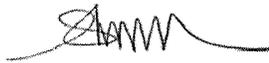
FRED LAVNER	:	
Complainant	:	
	:	
v.	:	DOCKET NO. C-2015-2496908
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

CERTIFICATE OF SERVICE

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

Fred Lavner
39 Cornell Road
Bala Cynwyd, PA 19004

Dated at Philadelphia, Pennsylvania, August 19, 2015



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

EXHIBIT 1

Botak, Amy:(PECO)

From: eServe@pa.gov
Sent: Friday, August 07, 2015 4:00 PM
To: Lee, Shawane L.:(PECO)
Cc: Botak, Amy:(PECO)
Subject: [EXTERNAL] PA PUC eServe Notice
Importance: High

Dear Shawane L Lee,

A(n) **Formal Complaint** has been served in this proceeding. This document is docketed as **C-2015-2496908**.
You may view this document at

Formal Complaint

You are receiving this email because you are a(n) **Respondent** for this case and have agreed to be served electronically. By selecting electronic service (eService), you have agreed that this notification constitutes valid service. Electronic service of any and all documents will be in place of paper service.

Thank You,
Public Utility Commission
Commonwealth of Pennsylvania

** Please do not respond to this automatically generated email.*

PECO ENERGY
EXHIBIT 1

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint

*Filing this form begins a legal proceeding and you will be a party to the case.
If you do not wish to be a party to the case, consider filing an informal complaint.*

To complete this form, please type or print legibly in ink.

1. **Customer (Complainant) Information**

Provide your name, mailing address, county, telephone number(s), e-mail address and utility account number. It is your responsibility to update the Commission with any changes to your address and to where you want documents mailed to you.

Fred Lavner
39 Cornell Road
Bala Cynwyd, PA 19004
Montgomery
610.667.0265 (home) 610.308.9189 (mobile)
flavner@verison.net

Utility Account Number (from your bill) 55498-00806

2. **Name of Utility or Company (Respondent)**

Provide the full name of the utility or company about which you are complaining. The name of your utility or company is on your bill.

PECO

3. Type of Utility Service

Check the box listing the type of utility service that is the subject of your complaint (check only one):

- ELECTRIC WASTEWATER/SEWER
 GAS TELEPHONE/TELECOMMUNICATIONS (local, long distance)
 WATER MOTOR CARRIER (e.g. taxi, moving company, limousine)
 STEAM HEAT

4. Reason for Complaint

What kind of problem are you having with the utility or company? Check all boxes below that apply and state the reason for your complaint. Explain specifically what you believe the utility or company has done wrong. Provide relevant details including dates, times and places and any other information that may be important. If the complaint is about billing, tell us the amount you believe is not correct. Use additional paper if you need more space. Your complaint may be dismissed without a hearing if you do not provide specific information.

- The utility is threatening to shut off my service or has already shut off my service.
- I would like a payment agreement.
- Incorrect charges are on my bill. Provide dates that are important and an explanation about any amounts or charges that you believe are not correct. Attach a copy of the bill(s) in question if you have it/them.
- I am having a reliability, safety or quality problem with my utility service. Explain the problem, including dates, times or places and any other relevant details that may be important.
- Other (explain).

5. Requested Relief

How do you want your complaint to be resolved? Explain what you want the PUC to order the utility or company to do. Use additional paper if you need more space.

Our contentious relationship with PECO has been going on for the last two years over the course of a 24 year provision of services to our registered address. Despite repeated phone calls, letters, emails, visits to PECO customer service, plus the filing of both informal and formal complaints with PUC, our problems continue to fester.

- a) For the last two years we have received NO monthly bills in the mail. According to PECO we are ineligible for paperless billing. We are demanding access to paperless billing so that we can be assured of getting a monthly bill. Despite PECO's repeated assurances that a monthly bill is being mailed to our home address, that is NOT the case. The only thing we get in the mail from PECO is 10 day shut off notices. That is the ONLY way we know what our monthly bill is (it's ALWAYS past due) and we have to hurry down to the PECO office to pay by cash.
- b) After 24 years as a customer it's reprehensible that we are a CASH IN PERSON customer. Not only is it inconvenient, but it is also illegal. According to patently false information that was provided to PUC by PECO representatives, they've alleged that in the past two years we made two consecutive payments by check and put stop payments on them. Not true beyond the surface. THOSE TWO STOP PAYMENTS WERE ACCORDING TO THE DIRECTIVE OF JUDE SCARPELLO, PECO'S MANAGER OF COLLECTIONS WHO TOLD ME BY PHONE TO CANCEL OUT THE CHECKS AND PAY BY CERTIFIED FUNDS IN ORDER TO CLEAR UP OUR OUTSTANDING BALANCE IN 2014. SCARPELLO NEVER MADE NOTATIONS ON OUR ACCOUNT THAT THE STOP PAYMENTS WERE PLACED AT HIS INSISTENCE. We have evidence of phone contact with Mr. Scarpello on June 17, 2014, June 26, 2014, July 2, 2014, July 3, 2014, July 17, 2014 and July 31, 2014.
- Concurrent to this filing of a formal complaint with the PUC, we are filing civil action for remedy against PECO in Montgomery County Court of the Commonwealth of PA, and Mr. Scarpello is being subpoenaed by our counsel in preparation for that action.
- c) On July 31, 2014 Mr. Scarpello told us that our payments made between June and July 2014 gave us a zero balance with PECO. It is still our intention that the amount we paid was grossly incorrect, but we paid it out of frustration with the lack of remediation from both PECO and PUC. One month after that final conversation with Mr. Scarpello, we received a letter saying that we owed PECO \$1100. To this day nobody at PECO has been able to explain why and the amount has now ballooned to \$3143. That amount is in addition to our so-called regular monthly bill of \$400-\$500, which is double of what our nearest neighbors pay, with households that are much larger than ours.
- d) Despite repeated complaints to PECO about problems with the meter, they have done nothing about it, so last month I had it replaced at my expense. The meter was in a state of major disrepair, with wires that were exposed, frayed and oxidized, resulting in a fire hazard and overtaxed electrical supply system. I have the meter and box that was replaced and plan on submitting it to the ALJ as an exhibit for the formal hearing, in addition to the civil proceedings.

The relief we are seeking from the PUC in this formal proceeding is as follows:

- a) Assurance from PECO that we can subscribe to paperless billing so that we will receive a monthly bill for service in a timely fashion and be able to pay the monthly charges in full either by credit card, debit card or electronic check.
- b) We want an acknowledgment for the record that the two stop payments on our account were at the direction of the PECO credit manager and not a deceptive act by us to avoid service suspension.
- c) We want a written explanation of what this growing balance is on our account, and why it is not reflected in the monthly bill. If we're being billed \$500 in a month for usage, what is this \$349 add-on for something called budget billing, which we never asked for.
- d) We want a complete billing record for monthly services at 39 Cornell Road dating back to 2005, and forward to current service. We DO NOT want a cryptic billing statement provided on a single sheet of paper. We want to see gas and electric usage and fees per month, every month, and the amount(s) paid from January 2005 thru July 2015. And we want these documents provided as exhibits at least 60 days prior to a formal hearing and/or civil trial, whichever comes first.
- e) We will ask for financial relief for the replacement of the corrosive and corrupted electric meter and external wiring to the d-mark.
- f) As our first formal hearing was adjudicated with egregious procedural misconduct by both the AJL judge and the defendant counsel, we are requesting that all exhibit documents and witness names and contact info be shared with us at least 30 days prior to a scheduled hearing.
- g) We'd like to receive a transcript of our formal hearing against PECO started in August 2014, in the event that we need to refer to past evidence or witness testimony.

6. **Protection From Abuse (PFA)**

Has a court granted a "Protection From Abuse" order that is currently in effect for your personal safety or welfare? The PUC needs this information to properly process your complaint so that your identity is not made public.

Note: You must answer this question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility AND your complaint is about a problem involving billing, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection From Abuse" order for your personal safety or welfare?

YES

NO

If your answer to the above question is "yes," attach a copy of the current Protection From Abuse order to this Formal Complaint form.

7. **Prior Utility Contact**

a. **Is this an appeal from a decision of the PUC's Bureau of Consumer Services (BCS)?**

YES

NO

Note: If you answered yes, move to Section 8. No further contact with the utility or company is required. If you answered no, answer the question in Section 7 b. and answer the question in Section 7 c. if relevant.

b. **If this is not an appeal from a BCS decision, have you spoken to a utility or company representative about this complaint?**

YES

NO

Note: You must contact the utility first if (1) you are a residential customer, (2) your complaint is against a natural gas distribution utility, an electric distribution utility or a water utility AND (3) your complaint is about a billing problem, a service problem, a termination of service problem, or a request for a payment agreement.

c. **If you tried to speak to a utility company representative about your complaint but were not able to do so, please explain why.**

Note: Even if you are not required to contact the utility or company, you should always try to speak to a utility or company representative about your problem before you file a Formal Complaint with the PUC.

8. **Legal Representation**

If you are filing a Formal Complaint as an individual on your own behalf, you are not required to have a lawyer. You may represent yourself at the hearing.

If you are already represented by a lawyer in this matter, provide your lawyer's name, address, telephone number, and e-mail address, if known. Please make sure your lawyer is aware of your complaint. If represented by a lawyer, both you and your lawyer must be present at your hearing.

Lawyer's Name: Obermayer Rebmann Maxwell & Hippel

The contact information for our counsel from this firm is still being determined to make sure that there is no conflict of interest. We will update our filing as soon as that information becomes available.

Note: Corporations, associations, partnerships, limited liability companies and political subdivisions are required to have a lawyer represent them at a hearing and to file any motions, answers, briefs or other legal pleadings.

9. **Verification and Signature**

You must sign your complaint. Individuals filing a Formal Complaint **must** print or type their name on the line provided in the verification paragraph below and **must** sign and date this form in **ink**. If you do not sign the Formal Complaint, the PUC **will not accept it**.

Verification:

I _____, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

(Signature of Complainant)

8-5-15
(Date)

Title of authorized employee or officer (only applicable to corporations, associations, partnerships, limited liability companies or political subdivisions)

Note: If the Complainant is a corporation, association, partnership, limited liability company or political subdivision, the verification **must** be signed by an authorized officer or authorized employee. If the Formal Complaint is **not signed** by one of these individuals, the PUC **will not accept it**.

10. **Two Ways to File Your Formal Complaint**

Electronically. You must create an account on the PUC's eFiling system, which may be accessed at <http://www.puc.pa.gov/efiling/default.aspx>.

EXHIBIT 2

O'Neill, Leslie:(BSC)

From: eServe@pa.gov
Sent: Friday, April 12, 2013 10:02 AM
To: Lee, Shawane L. (BSC)
Cc: O'Neill, Leslie (BSC)
Subject: PA PUC eServe Notice

Importance: High

Dear Shawane L Lee,

A(n) **Formal Complaint** has been served in this proceeding. This document is docketed as **C-2013-2357426**. You may view this document at

Formal Complaint

You are receiving this email because you are a(n) **Respondent** for this case and have agreed to be served electronically. By selecting electronic service (eService), you have agreed that this notification constitutes valid service. Electronic service of any and all documents will be in place of paper service.

Thank You,
Public Utility Commission
Commonwealth of Pennsylvania

** Please do not respond to this automatically generated email.*

PECO ENERGY
EXHIBIT 2

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint

*Filing this form begins a legal proceeding and you will be a party to the case.
If you do not wish to be a party to the case, consider filing an informal complaint.*

To complete this form, please type or print legibly in ink.

1. Customer (Complainant) Information

Provide your name, mailing address, county, telephone number(s), e-mail address and utility account number.

Name Fred Lavner _____

Street/P.O. Box 39 Cornell Road _____ Apt # _____

City Bala Cynwyd _____ State PA _____ Zip 19004 _____

County _____ Montgomery _____

Telephone Number(s) Where We Can Contact You During the Day:

(610) 308-9189 _____ (home) (610 667-0265)
_____ (mobile)

E-mail Address (optional):

flavner@comcast.net _____

Utility Account Number (from your bill) 5549800806 _____

RECEIVED

APR 03 2013

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

If your complaint involves utility service provided to a different address or in a different name than your mailing address, please list this information below.

Name _____

Street/P.O. Box _____

City _____ State _____ Zip _____

2. Name of Utility or Company (Respondent)

Provide the full name of the utility or company about which you are complaining. The name of your utility or company is on your bill.

PECO

3. Type of Utility Service

Check the box listing the type of utility service that is the subject of your complaint (check only one):

- ELECTRIC WASTEWATER/SEWER
 GAS TELEPHONE/TELECOMMUNICATIONS (local, long distance)
 WATER MOTOR CARRIER (e.g. taxi, moving company, limousine)
 STEAM HEAT

4. Reason for Complaint

What kind of problem are you having with the utility or company? Check all boxes below that apply and state the reason for your complaint. Explain specifically what you believe the utility or company has done wrong. Provide relevant details including dates, times and places and any other information that may be important. If the complaint is about billing, tell us the amount you believe is not correct. Use additional paper if you need more space. Your complaint may be dismissed without a hearing if you do not provide specific information.

The utility is threatening to shut off my service or has already shut off my service.

RECEIVED

I would like a payment agreement.

APR 03 2013

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Incorrect charges are on my bill. Provide dates that are important and an explanation about any amounts or charges that you believe are not correct. Attach a copy of the bill(s) in question if you have it/them.

I am having a reliability, safety or quality problem with my utility service. Explain the problem, including dates, times or places and any other relevant details that may be important.

Other (explain).

I have a file of informal complaints against PECO with the PUC. PECO has not been truthful in responding to my claims and problems on the account. I have notified them by phone, mail

and in person and they have responded to PUC by stating "I have never contacted them." That is a lie. I have tried on multiple occasions over the last two years to establish:

- a) the billing/usage amount is erroneous based on occupants, lifestyle and past history
- b) we can go months without getting a bill from PECO.
- c) I requested in person an on-site audit, was promised that it would be scheduled... it never happened and it doesn't appear anywhere in my file
- d) All I want is a short term/accelerated payment plan so we can get everything right and give me the opportunity to live a normal life as a PECO customer. PECO claims that I have defaulted on a payment plan in the past. HOW CAN I DEFAULT WHEN I DON'T RECEIVE BILLS. Who wouldn't want to pay \$200 per month rather than \$1300?????

Note: If your complaint is only about removing or modifying a municipal lien filed by the City of Philadelphia, the Public Utility Commission (PUC) cannot address it. Only local courts in Philadelphia County can address this type of complaint. The PUC can address a complaint about service or incorrect billing even if that amount is subject to a lien.

In addition, the PUC generally does not handle complaints about cell phone or Internet service, but may be able to resolve a dispute regarding voice communications over the Internet (including the inability to make voice 911/E911 emergency calls) or concerns about high-speed access to Internet service.

5. Requested Relief

How do you want your complaint to be resolved? Explain what you want the PUC to order the utility or company to do. Use additional paper if you need more space.

I want an audit performed at the property to validate monthly PECO usage and charges.
I then want a reasonable short-term accelerated payment plan to get to a zero balance.
I want assurances from PECO that I will get monthly paper bills in the mail or e-bills

RECEIVED

APR 08 2013

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU



Note: The PUC can decide that a customer was not billed correctly and can order billing refunds. The PUC can also fine a utility or company for not following rules and can order a utility or company to correct a problem with your service. Under state law, the PUC cannot decide whether a utility or company should pay customers for loss or damages. Damage claims may be sought in an appropriate civil court.

RECEIVED

APR 08 2013

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

6. **Protection from Abuse**

Has a court granted a "Protection from Abuse" order that is currently in effect for your personal safety or welfare? The PUC needs this information to properly process your complaint so that your identity is not made public.

Note: You must answer this question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility AND your complaint is about a problem involving billing, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection from Abuse" order for your personal safety or welfare?

YES

NO

If your answer to the above question is "yes," attach a copy of the current Protection for Abuse order to this Formal Complaint form.

7. **Prior Utility Contact**

a. Is this an appeal from a decision of the PUC's Bureau of Consumer Services (BCS)?

YES

NO

Note: If you answered yes, move to Section 8. No further contact with the utility or company is required. If you answered no, answer the question in Section 7 b. and answer the question in Section 7 c. if relevant.

b. If this is not an appeal from a BCS decision, have you spoken to a utility or company representative about this complaint?

YES

NO

Note: You must contact the utility first if (1) you are a residential customer, (2) your complaint is against a natural gas distribution utility, an electric distribution utility or a water utility AND (3) your complaint is about a billing problem, a service problem, a termination of service problem, or a request for a payment agreement.

RECEIVED

APR 03 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

- c. If you tried to speak to a utility company representative about your complaint but were not able to do so, please explain why.

Note: Even if you are not required to contact the utility or company, you should always try to speak to a utility or company representative about your problem before you file a Formal Complaint with the PUC.

8. Legal Representation

If you are filing a Formal Complaint as an individual on your own behalf, you are not required to have a lawyer. You may represent yourself at the hearing.

If you are represented by a lawyer in this matter, provide your lawyer's name, address, telephone number, and e-mail address, if known. Please make sure your lawyer is aware of your complaint. If represented by a lawyer, both you and your lawyer must be present at your hearing.

Lawyer's Name STEPHEN B. LAUER
Street/P.O. Box 135 S. 19TH STREET
City PHILADELPHIA State PA Zip 19103
Area Code/Phone Number 215-561-7681
E-mail Address (if known) _____

Note: Corporations, associations, partnerships, limited liability companies and political subdivisions are required to have a lawyer represent them at a hearing and to file any motions, answers, briefs or other legal pleadings.

9. Verification and Signature

You must sign your complaint. Individuals filing a Formal Complaint must print or type their name on the line provided in the verification paragraph below and must sign and date this form in ink. If you do not sign the Formal Complaint, the PUC will not accept it.

RECEIVED

APR 03 2013

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Verification:

I, FRED VANUSA, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Fred Vanusa
(Signature of Complainant)

3-12-13
(Date)

Title of authorized employee or officer (only applicable to corporations, associations, partnerships, limited liability companies or political subdivisions)

Note: If the Complainant is a corporation, association, partnership, limited liability company or political subdivision, the verification must be signed by an authorized officer or authorized employee. If the Formal Complaint is not signed by one of these individuals, the PUC will not accept it.

10. Filing

You may electronically file your Formal Complaint with the PUC. To do so, you need to establish an account on the PUC's eFiling system, which may be accessed at <http://www.puc.pa.gov/efiling/default.aspx>.

If you do not electronically file your Formal Complaint, mail the completed form (along with any attachments) to one of the addresses listed below:

If using U.S. Postal Service:

If using overnight delivery service:

Secretary Pennsylvania Public Utility Commission P.O. Box 3265 Harrisburg, PA 17105-3265	Secretary Pennsylvania Public Utility Commission 400 North Street Commonwealth Keystone Building, 2 nd Floor Harrisburg, Pennsylvania 17120
---	--

Note: Formal Complaints sent by fax or e-mail will not be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

RECEIVED

Keep a copy of your Formal Complaint for your records.

APR 03 2013

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

PRIORITY MAIL

PRIME MAIL SERVICE

RECEIVED

Flat Rate

APR 08 2013

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

COM

INSTRUCTIONS APPLY:

Additional postage is required. Consult the Flat Rate Mail (FRM) at ps.usps.com for details.

APR 04 2013

TRACKING NUMBER



3 5124 58



PRIORITY MAIL

UNITED STATES POSTAL SERVICE

For Domestic and International Use



From

LAUNER

39 CORDELL ROAD
BALA CYNWYD, PA 19004

TO

SECRETARY
ATTN: JODI TAYLOR
COMMONWEALTH KEYSONE RUB
2ND FLOOR
400 NORTH STREET
HARRISBURG, PA 17120

Label 988, January 2008



1006

17120

TRY FLAT RATE PRIORITY MAIL PRE-PAY

- Built-in Tracking
 - Postage rate locked forever
 - No shipping label required
 - Free Package Pickup
- usps.stamps.com/prepaid



Please Recycle

This packaging is the property of the United States Postal Service and is provided for your use only. Misuse may be a violation of Postal Service regulations. June 2012

EP145-A-PP June 2012

EXHIBIT 3



PENNSYLVANIA
PUBLIC UTILITY COMMISSION

CONSUMERINFO UTILITY&INDUSTRY FILING&RESOURCES ABOUTPUC CONTACTUS

[Login to eFiling](#) | [Contact Us](#) | [Search](#)

- [My Filings](#)
- [New Filings](#)
- [Modify Account](#)
- [POR Search](#)
- [eService Directory](#)
- [Subscriptions](#)
- [Technical Assistance](#)
- [eFiling FAQs](#)
- [Log Off](#)

eFiling Successfully Transmitted



Your filing has been electronically received. Upon review of the filing for conformance with the Commission's filing requirements, a notice will be issued acknowledging such compliance and assigning a Docket Number. The matter will receive the attention of the Commission and you will be advised if any further action is required on your part.

Print this page for your records. The date filed on will be the current day if the filing occurs on a business day before or at 4:30 PM Harrisburg, PA time. It will be the next business day if the filing occurs after 4:30 PM Harrisburg, PA time or on weekends or holidays.

If your filing exceeds 250 pages, you are required to submit one paper copy of the filing within 3 business days of submitting the electronic filing. This paper copy can be mailed to: Secretary, Pennsylvania Public Utility Commission, Commonwealth Keystone Building, 400 North Street, 2nd Floor, Harrisburg, PA 17120 . Please print a copy of this page and attach it to the paper copy of your filing as the first page.

eFiling Confirmation	
Docket Number:	C-2013-2357426
Description:	Fred Lavner - Answer and New Matter
Transmission Date:	4/24/2013 9:17:19 AM
Filed On:	4/24/2013 9:17:19 AM
eFiling Confirmation Number:	1513145

Uploaded File List

File Name	Document Class	Document Type
Fred Lavner - Answer and New Matter.pdf	Communication	Answer to Formal Complaint

PECO ENERGY
EXHIBIT **3**



Exelon Business Services Company
Legal Department

2301 Market Street/S231
Philadelphia, PA 19103

215 568 3389 Fax
www.exelencorp.com

Direct Dial: 215.841.6841

April 24, 2013

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

RE: Fred Lavner v. PECO Energy Company
PUC Docket No.: C-2013-2357426

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are the following documents in the matter referenced above.

- Answer
- Answer & New Matter
- Motion
- Motion for Judgment on the Pleadings
- Motion for Continuance
- Preliminary Objection
- Exceptions
- Reply Exceptions
- Main Brief
- Reply Petition

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
SL/lo

Scheduling Recommendation: Call of the Docket Non Call of the Docket

PENNSYLVANIA PUBLIC UTILITY COMMISSION

FRED LAVNER

Complainant

v.

PECO ENERGY COMPANY

Respondent

:
:
:
:
:
:
:
:

DOCKET NO. C-2013-2357426

NOTICE TO PLEAD

Pursuant to 52 Pa. Code §§ 5.101 and 5.62(c), you are hereby notified that, if you do not file a written response denying or correcting the enclosed NEW MATTER of PECO Energy Company within 20 days from service of this notice, a decision may be rendered against you. All pleadings, such as a Reply to NEW MATTER, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Shawane L. Lee, and where applicable, the Administrative Law Judge presiding over the issue.

File with:

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

With a copy to:

Shawane L. Lee, Esq.
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103

Dated at Philadelphia, PA, April 24, 2013



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street S-23
Philadelphia, PA 19101-8699
215-841-6863
Shawane.lee@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

FRED LAVNER	:	
Complainant	:	
	:	
v.	:	DOCKET NO. C-2013-2357426
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

ANSWER OF RESPONDENT,
PECO ENERGY COMPANY

On April 12, 2013, PECO Energy Company ("PECO Energy") was served with a formal complaint filed by Fred Lavner (hereafter "Complainant") in the above captioned docket.

Pursuant to 52 Pa. Code § 5.61, PECO responds to the Complaint and states:

1. Admitted.
2. Admitted.
3. Admitted.
4. Unless specifically admitted herein, PECO Energy denies all material allegations of fact and conclusions of law in the instant complaint.

In his Formal Complaint, the Complainant alleges that PECO Energy has erroneously billed his residence based on the usage amount, number of occupants, lifestyle and past history. The Complainant additionally alleges that he goes for months without receiving a utility bill from PECO Energy. The Complainant states that he requested a field investigation be performed by the company and to date nothing has been scheduled. The Complainant requests a payment agreement on his balance. PECO Energy specifically denies that the Complaint is being

overcharged and denies there are any billing errors on the Complainant's utility bills. Specifically, PECO Energy's records reveal the following:

The Complainant has an account for gas and electric service at 39 Cornell Road, Bala Cynwyd, PA 19004 under account number 55498-00806. See Account Activity Statement, attached hereto as Exhibit "1". Since the Complainant has had his account, he has received four (4) payment agreements, including two agreements issued by the Bureau of Consumer Services ("BCS") in resolution of informal complaints. See Payment Agreement History, attached hereto as Exhibit "2". Specifically, the Complainant had a Level 4 payment agreement issued on May 8, 2009 on his balance of \$643.64. Under the agreement, the Complainant was to pay a monthly installment of \$164.66 per month plus the current bill. The agreement defaulted. The company processed another payment agreement for the Complainant on December 16, 2009. Under that agreement, the Complainant was to pay \$288.77 per month on his \$2,910.25 balance. The agreement defaulted.

In addition to the company-issued payment agreements, the Complainant received two BCS issued payment agreements. Specifically, on April 6, 2010, the Complainant filed an informal complaint, requesting a payment agreement and complaining that he had not received any utility bills from PECO Energy. See Case Details Report #002662157, attached hereto as Exhibit "3". On April 9, 2010, the BCS issued a Decision Report, granting a Level 4 payment agreement. Under the agreement the Complainant was to pay a monthly arrears payment of \$859.00 per month plus a \$440.00 budget bill on his \$5,149.37 balance. See BCS Decision Report #002662157, attached hereto as Exhibit "4". The BCS Decision also addressed the issue of the Complainant not receiving utility bills as follows:

Dispute invalid. Customer enrolled in Ebilling since 11/28/05 and therefore has not received paper bills. The PUC notes enrollment in Ebilling is an optional billing payment mechanism chosen by the customer; If you wish to be removed from Ebilling you must contact the company.

See BCS Decision Report #002662157, attached hereto as Exhibit "4".

On May 8, 2012, the Complainant filed an informal complaint with the BCS at case number 002965916, requesting a payment agreement. The BCS issued a payment agreement on the Complainant's balance of \$3,069.60. Under the terms of the agreement, the Complainant was to pay a monthly arrears payment of \$512.00 per month plus a budget bill payment of \$444.00. See BCS Decision Report #002965916, attached hereto as Exhibit "5". The agreement defaulted.

On September 11, 2012, the Complainant filed an informal complaint, alleging, amongst other things, high bills at his residence. The Complainant claimed that his house had been vacant for most of the summer but the bill was still high. The Complainant claimed that he had requested a meter check several times but had received no response from the company. See BCS Case Details Report #003018793, attached hereto as Exhibit "6".

On March 9, 2013, the BCS issued a Decision Report, addressing the high bill allegation as follows:

The company has stated the customer has not contacted them to dispute the high bills prior to filing the Complaint with the PUC.....Company records note the bills have been based on actual meter readings. PUC unable to issue decision on billing accuracy.Customer should contact company to schedule a field visit.

See BCS Decision Report #003018793, attached hereto as Exhibit "7".

The Complainant's current balance is \$2,168.76. See Account Activity Statement, attached hereto as Exhibit "1". The account activity statement demonstrates that the Complainant does not pay the entire amount billed, frequently misses payments, and does not make the payments by the due date. See Exhibit "1".

PECO Energy avers that the Complainant is not receiving paper bills because he is enrolled in E-billing. Since he initially raised this issue in his informal complaint at case number 002662157, he has not contacted the company to stop E-billing. Additionally, the Complainant has not contacted the company to complain of high bills or to request a high bill investigation. Since the inception of this formal complaint, the company has reached out to Complainant to schedule a high bill field investigation; however, he has not responded. The company cannot conduct an investigation without the Complainant's cooperation.

5. Denied.
6. Admitted.
7. Denied.
8. Denied. PECO is without knowledge or information sufficient to form a belief as to the truth of this averment and, therefore, such allegation is deemed denied.
9. Paragraph 9 is a Verification and Signature to which no response is required.
10. Paragraph 10 contains information regarding Filing, to which no response is required.

NEW MATTER OF RESPONDENT. PECO ENERGY COMPANY

PECO Energy Company ("PECO Energy"), pursuant to 52 Pa. Code § 5.62(b), further responds:

1. To the extent that the Complaint is requesting a payment agreement, PECO Energy avers that the Complainant is not entitled to any additional payment agreements because he has defaulted on a prior Commission issued payment agreement.

2. Specifically, On May 8, 2012, the Complainant filed BCS Complaint #002965916, requesting a payment agreement.

3. The BCS issued a payment agreement on his balance, requiring a monthly payment of \$512.00 towards the arrears and a \$444.00 budget billing payment. See BCS Decision Report #002965916, attached hereto as Exhibit "5".

4. The Complainant defaulted on the BCS agreement.

5. Additionally, the Complainant cannot demonstrate a decrease in income. 66 Pa.

C.S. §1405(d) states:

(d) NUMBER OF PAYMENT AGREEMENTS.— Absent a change in income, the commission shall not establish or order a public utility to establish a second or subsequent payment agreement if a customer has defaulted on a previous payment agreement. A public utility may, at its discretion, enter into a second or subsequent payment agreement with a customer.

Change of income is defined at 66 Pa. C.S. §1403 which states:

"Change in income." A decrease in household income of 20% or more if the customer's household income level exceeds 200% of the Federal poverty level or a decrease in household income of 10% or more if the customer's household income level is 200% or less of the Federal poverty level.

6. The Complainant reported the following monthly income to PECO Energy:

Date	Income Reported (monthly)	Household Size	FPL %
03/7/13	\$4,701.00	3 Adults	288% (Level 3)
06/14/10	\$5,801.00	3 Adults	380% (Level 4)
12/09/09	\$4,939.00	4 Adults	268% (Level 3)
10/03/09	\$6,149.00	3 Adults	402% (Level 4)

7. To the extent the Complainant is now requesting a new payment agreement from the Commission, a new payment agreement is not appropriate. Complainant violated the terms of the last PUC agreement issued under BCS Decision Report #002965916. See Exhibit "1".

8. Additionally, he has not alleged a decrease in income to qualify him as having a "change of income".

9. The Complainant is not entitled to Commission ordered payment terms according to 66 Pa. C.S. §1405(d).

WHEREFORE, PECO Energy Company respectfully requests that your Honorable Commission dismiss the instant Complaint.

Respectfully Submitted,



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
(215) 841-6841
Fax: 215.568.3389

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

FRED LAVNER

Complainant

v.

PECO ENERGY COMPANY

Respondent

:
:
:
:
:
:
:

DOCKET NO. C-2013-2357426

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: April 24, 2013

Shawane L. Lee

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

FRED LAVNER	:	
Complainant	:	
	:	
v.	:	DOCKET NO. C-2013-2357426
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

CERTIFICATE OF SERVICE

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

Fred Lavner
39 Cornell Road
Bala Cynwyd, PA 19004

Dated at Philadelphia, Pennsylvania, April 24, 2013



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



Exelon Business Services Company
Legal Department
200 Liberty Bell Boulevard, 11th Floor
Philadelphia, PA 19106
Tel: 215-261-1000
www.exelon.com

Direct Dial: 215 841-6841

April 24, 2013

Fred Lavner
39 Cornell Road
Bala Cynwyd, PA 19004

**RE: Fred Lavner v. PECO Energy Company
PUC Docket No.: C-2013-2357426**

Dear Mr. Lavner:

Enclosed is a copy of PECO Energy Company's response to the formal complaint filed in the above-referenced docket. The law requires PECO Energy to file an answer to your Public Utility Commission complaint. Keep these papers for your records. This is not a decision on your complaint. PECO's response may include a New Matter, Motion or Preliminary Objection. Please note that if you do not respond to a New Matter, Motion, or Preliminary Objection an unfavorable decision may be rendered against you. Responses to New Matters and Motions must be filed within 20 days. Responses to Preliminary Objections must be filed within 10 days. If there is no New Matter, Motion or Preliminary Objection included, no response is required.

Soon, the Public Utility Commission will schedule either a settlement conference or a hearing on your complaint. The Commission will let you know by mail whether there will be a conference or a hearing and will include instructions on what to do next. If the matter is set for hearing, the notice will provide you with information about the date, time and place of the hearing. If we are unable to resolve your complaint and have to proceed with a hearing, a judge will be at the hearing and will decide your complaint. You must call the Public Utility Commission if you have any questions about the hearing or if you cannot attend the hearing.

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
Enc.
SL/lo

EXHIBIT "1"

PECO Account Activity Statement

Date: 04/18/13
Page: 1 of 3

*** Account Information ***

Account Number: 55498-00806
Account Status: Active
Requested By: FRED A LAVNER
(610)667-0265 Extension:

Mail To:
FRED A LAVNER
39 CORNELL RD
BALA CYNWYD PA 19004

*** Current Account Status ***

Current Bill: \$403.89
Billed Prior: \$1764.87
Balance Due: \$2168.76
Service Address:
39 CORNELL RD
BALA CYNWYD PA 19004
Credit Amount: \$0.00
Deposit Requested: \$945.00
Deposit On-Hand: \$0.00
Meter Bill Grp: 01
Rate: Gas Residential Heating Service
Electric Residential Service

DATE	CHARGE TYPE	BILLING PERIOD	READ	METER #	CHARGE AMOUNT	CREDIT AMOUNT	TOTAL BILL	BALANCE FORWARD	DUE DATE	KWH	CCF
09/28/10	Late Payment Charge				\$9.67						
09/29/10	GAS SERVICE	08/29/10 09/28/10	566	018675462	\$33.35						
09/29/10	ELECTRIC SERVICE	08/29/10 09/28/10	44637	053004573	\$507.90						
09/29/10	DEPOSIT				\$11.25						
09/29/10	Regular Bill						\$1206.50	\$654.00	10/21	3296	22
10/26/10	Late Payment Charge				\$17.79						
10/28/10	GAS SERVICE	09/28/10 10/27/10	606	018675462	\$51.81						
10/28/10	ELECTRIC SERVICE	09/28/10 10/27/10	46269	053004573	\$254.26						
10/28/10	DEPOSIT				\$11.25						
10/28/10	Regular Bill						\$1541.61	\$1224.29	11/19	1632	40
11/01/10	Payment										
11/17/10	Payment					\$644.33					
11/24/10	Late Payment Charge					\$562.17					
11/30/10	GAS SERVICE	10/27/10 11/29/10	727	018675462	\$4.59						
11/30/10	ELECTRIC SERVICE	10/27/10 11/29/10	47646	053004573	\$134.93						
11/30/10	Regular Bill				\$215.35						
12/06/10	Payment						\$689.98	\$339.70	12/22	1377	121
12/28/10	Late Payment Charge				\$5.25						
01/04/11	GAS SERVICE	11/29/10 01/03/11	1016	018675462	\$300.37						
01/04/11	ELECTRIC SERVICE	11/29/10 01/03/11	49221	053004573	\$241.81						
01/04/11	Regular Bill						\$902.30	\$360.12	01/26	1575	289
01/24/11	Payment										
02/01/11	Late Payment Charge				\$8.14						
02/03/11	GAS SERVICE	01/03/11 02/02/11	1297	018675462	\$302.12						
02/03/11	ELECTRIC SERVICE	01/03/11 02/01/11	50677	053004573	\$238.41						
02/03/11	Regular Bill										
02/24/11	Payment						\$542.18	\$1090.85	02/25	1456	281
03/02/11	Late Payment Charge				\$8.11						
03/03/11	GAS SERVICE	02/02/11 03/02/11	1496	018675462	\$218.16						
03/03/11	ELECTRIC SERVICE	02/01/11 03/02/11	52033	053004573	\$222.54						
03/03/11	Regular Bill										
03/30/11	Late Payment Charge				\$14.72						
04/01/11	Payment						\$997.48	\$556.78	03/25	1356	199
04/01/11	GAS SERVICE	03/02/11 03/31/11	1636	018675462	\$164.04						
04/01/11	ELECTRIC SERVICE	03/02/11 03/31/11	53244	053004573	\$200.31						
04/01/11	Regular Bill										
05/02/11	GAS SERVICE	03/31/11 05/01/11	1705	018675462	\$86.80						
05/02/11	ELECTRIC SERVICE	03/31/11 05/01/11	54850	053004573	\$263.30						
05/02/11	Late Payment Charge				\$5.46						
05/02/11	Regular Bill										
05/23/11	Transfer						\$734.73	\$-75.00	05/24	1606	69
05/23/11	RECONNECT FEE - CUT-OUT NON-PAY					\$75.00					
05/24/11	Payment										
06/01/11	GAS SERVICE	05/01/11 05/31/11	1733	018675462	\$42.19						
06/01/11	ELECTRIC SERVICE	05/01/11 05/31/11	56943	053004573	\$360.65						
06/01/11	Late Payment Charge				\$5.25						
06/01/11	Regular Bill										
06/07/11	Payment						\$763.65	\$360.81	06/23	2093	28
06/28/11	Late Payment Charge				\$6.04						
06/30/11	GAS SERVICE	05/31/11 06/29/11	1754	018675462	\$31.93						
06/30/11	ELECTRIC SERVICE	05/31/11 06/29/11	59880	053004573	\$519.12						
06/30/11	Regular Bill						\$965.18	\$414.13	07/22	2937	21

PECO ENERGY
EXHIBIT

PECO Account Activity Statement

DATE	CHARGE TYPE	BILLING PERIOD	READ	METER #	CHARGE AMOUNT	CREDIT AMOUNT	TOTAL BILL	BALANCE FORWARD	DUE DATE	KWH	CCF
07/07/11	Payment										
07/25/11	Payment					\$408.09					
07/27/11	Late Payment Charge					\$415.20					
08/01/11	GAS SERVICE	06/29/11 07/31/11	1776	018675462	\$2.13						
08/01/11	ELECTRIC SERVICE	06/29/11 07/31/11	63892	053004573	\$32.88						
08/01/11	Regular Bill				\$708.83		\$885.73	\$144.02	08/23	4012	22
08/09/11	Payment					\$144.02					
08/30/11	GAS SERVICE	07/31/11 08/29/11	1796	018675462	\$30.95						
08/30/11	ELECTRIC SERVICE	07/31/11 08/27/11	67064	053004573	\$560.59						
08/30/11	Late Payment Charge				\$11.12						
08/30/11	Regular Bill						\$1344.37	\$752.83	09/21	3172	20
09/27/11	Payment					\$730.00					
09/27/11	Late Payment Charge				\$9.05						
09/29/11	GAS SERVICE	08/29/11 09/28/11	1819	018675462	\$32.26						
09/29/11	ELECTRIC SERVICE	08/27/11 09/28/11	69657	053004573	\$450.50						
09/29/11	Regular Bill						\$1106.18	\$623.42	10/21	2593	23
10/12/11	Payment					\$425.00					
10/13/11	Payment					\$350.00					
10/13/11	Transfer					\$75.00					
10/13/11	RECONNECT FEE - CUT-OUT NON-PAY					\$75.00					
10/24/11	Returned Electronic Check				\$75.00						
10/24/11	RETURNED CHECK NSF CHARGE				\$350.00						
10/26/11	Late Payment Charge				\$20.00						
10/28/11	GAS SERVICE				\$9.91						
10/28/11	ELECTRIC SERVICE	09/28/11 10/27/11	1847	018675462	\$36.58						
10/28/11	Regular Bill	09/28/11 10/27/11	70942	053004573	\$226.89						
11/16/11	Payment					\$681.18	\$1049.56	\$691.09	11/21	1285	28
11/21/11	Returned Check				\$681.18						
11/21/11	RETURNED CHECK NSF CHARGE				\$20.00						
11/30/11	GAS SERVICE				\$109.35						
11/30/11	ELECTRIC SERVICE	10/27/11 11/29/11	1957	018675462	\$109.35						
11/30/11	Regular Bill	10/27/11 11/29/11	72415	053004573	\$259.02						
12/01/11	Deposit Interest					\$110.38	\$1437.93	\$1049.56	12/22	1473	110
12/28/11	Late Payment Charge				\$3.72						
01/03/12	GAS SERVICE				\$177.81						
01/03/12	ELECTRIC SERVICE	11/29/11 01/02/12	2123	018675462	\$250.41						
01/03/12	Regular Bill	11/29/11 01/02/12	73943	053004573							
01/09/12	Payment					\$277.99	\$1759.49	\$1331.27	01/25	1528	166
01/31/12	Late Payment Charge				\$6.28						
02/02/12	GAS SERVICE				\$209.55						
02/02/12	ELECTRIC SERVICE	01/02/12 02/01/12	2320	018675462	\$229.72						
02/02/12	Regular Bill	01/02/12 02/01/12	75341	053004573							
02/29/12	Late Payment Charge				\$12.86		\$1927.05	\$1487.78	02/24	1398	197
03/02/12	GAS SERVICE				\$184.26						
03/02/12	ELECTRIC SERVICE	02/01/12 03/01/12	2492	018675462	\$224.94						
03/02/12	Regular Bill	02/01/12 03/01/12	76709	053004573							
04/02/12	GAS SERVICE				\$121.35		\$2349.11	\$1939.91	03/26	1368	172
04/02/12	ELECTRIC SERVICE	03/01/12 04/01/12	2605	018675462	\$211.57						
04/02/12	Late Payment Charge				\$34.75						
04/02/12	Regular Bill						\$2716.78	\$2383.86	04/24	1273	113
05/01/12	GAS SERVICE				\$105.84						
05/01/12	ELECTRIC SERVICE	04/01/12 04/30/12	2702	018675462	\$207.24						
05/01/12	Late Payment Charge	04/01/12 04/30/12	79228	053004573	\$39.74						
05/01/12	Regular Bill						\$3069.60	\$2756.52	05/23	1246	97
05/09/12	Deposit					\$923.61					
05/09/12	Transfer					\$2145.99					
05/10/12	Payment Agreement										
05/31/12	BUDGET BILLING	04/30/12 05/30/12			\$444.00						
** Budget Bill Detail **					Actual Bill Amount: 356.83	BB Deferred Amount: -87.17					
05/31/12	PUC AGREEMENT				\$429.20						
05/31/12	Regular Bill						\$873.20		06/22	1887	31

PECO Account Activity Statement

DATE	CHARGE TYPE	BILLING PERIOD	READ	METER #	CHARGE AMOUNT	CREDIT AMOUNT	TOTAL BILL	BALANCE FORWARD	DUE DATE	KWH	CCF
06/27/12	Bill Out DPA due to Default				\$1716.79						
06/27/12	Late Payment Charge				\$11.79						
06/29/12	BUDGET BILLING	05/30/12 06/28/12			\$444.00						
	** Budget Bill Detail **	Actual Bill Amount: 363.07				BB Deferred Amount: -168.10					
06/29/12	Regular Bill						\$3045.78	\$2601.78	07/23	2159	25
07/12/12	RECONNECT FEE - CUT-OUT NON-PAY				\$75.00						
07/13/12	Payment					\$2896.89					
07/30/12	Late Payment Charge				\$0.84						
07/31/12	BUDGET BILLING	06/28/12 07/30/12			\$444.00						
	** Budget Bill Detail **	Actual Bill Amount: 647.63				BB Deferred Amount: 35.53					
07/31/12	Regular Bill						\$668.73	\$224.73	08/22	4015	29
08/28/12	Late Payment Charge				\$10.02						
08/29/12	BUDGET BILLING	07/30/12 08/28/12			\$444.00						
	** Budget Bill Detail **	Actual Bill Amount: 519.03				BB Deferred Amount: 110.56					
08/29/12	Regular Bill						\$1122.75	\$678.75	09/20	3157	31
09/28/12	BUDGET BILLING	08/28/12 09/27/12			\$444.00						
	** Budget Bill Detail **	Actual Bill Amount: 412.71				BB Deferred Amount: 79.27					
09/28/12	Regular Bill						\$1566.75	\$1122.75	10/22	2226	35
10/29/12	BUDGET BILLING	09/27/12 10/28/12			\$444.00						
	** Budget Bill Detail **	Actual Bill Amount: 277.91				BB Deferred Amount: -86.82					
10/29/12	Late Payment Charge				\$6.50						
10/29/12	Regular Bill						\$2017.25	\$1573.25	11/20	1326	53
11/27/12	Late Payment Charge				\$11.86						
11/29/12	BUDGET BILLING	10/28/12 11/28/12			\$444.00						
	** Budget Bill Detail **	Actual Bill Amount: 356.37				BB Deferred Amount: -174.45					
11/29/12	Regular Bill						\$2473.11	\$2029.11	12/21	1249	173
12/27/12	Late Payment Charge				\$17.20						
01/02/13	Payment					\$720.05					
01/02/13	BUDGET BILLING	11/28/12 01/01/13			\$444.00						
	** Budget Bill Detail **	Actual Bill Amount: 440.38				BB Deferred Amount: -178.07					
01/02/13	Regular Bill						\$2214.26	\$1770.26	01/24	1507	245
01/29/13	Late Payment Charge				\$13.17						
02/01/13	BUDGET BILLING	01/01/13 01/31/13			\$444.00						
	** Budget Bill Detail **	Actual Bill Amount: 379.81				BB Deferred Amount: -242.26					
02/01/13	Regular Bill						\$2671.43	\$2227.43	02/25	1301	211
03/04/13	BUDGET BILLING	01/31/13 03/03/13			\$381.00						
	** Budget Bill Detail **	Actual Bill Amount: 436.52				BB Deferred Amount: -186.74					
03/04/13	Late Payment Charge				\$18.86						
03/04/13	Regular Bill						\$3071.29	\$2690.29	03/26	1402	262
03/08/13	Deposit					\$48.42					
03/29/13	Payment					\$1258.00					
04/02/13	BUDGET BILLING	03/03/13 04/01/13			\$381.00						
	** Budget Bill Detail **	Actual Bill Amount: 329.11				BB Deferred Amount: -238.63					
04/02/13	Late Payment Charge				\$22.89						
04/02/13	Regular Bill						\$2168.76	\$1787.76	04/24	1128	159

*** ALL READINGS ACTUAL UNLESS OTHERWISE INDICATED ***

EXHIBIT “2”

PAYMENT AGREEMENT HISTORY

NAME: Fred Lavner

ACCOUNT: 55498-00806

**ADDRESS: 39 Cornell Rd
Bala Cynwyd PA 19004**

CASE: Docket# C-2013-2357426

DATE OPND	TYPE	AMOUNT	INSTALLMENT	STATUS
05/11/12	PUC #2965916(Level 4)	\$3069.60	\$512.00	Not Kept
04/09/10	PUC #2662157(Level 3)	\$5149.37	\$859.00	Not Kept
12/16/09	PAR (Level 3)	\$2910.25	\$288.77	Not Kept
05/08/09	PAR (Level 4)	\$634.64	\$164.66	Not Kept

EXHIBIT “3”



April 24, 2013

Case Details Report

BCS Case #: 002662157
Customer Name: FRED LAVNER
Service Address: 39 CORNELL RD

BCS Bill Account #: 5549800806

Mailing Address: BALA CYNWYD, PA 19004 2104

Home Phone: (610) 667-0265
Business Phone: 0 -
Business name:
Alternate contact:

Date Case Opened: 2010-04-06
PAR Case: Y
Investigator Name: TIMOTHY PLATT
Investigator Phone: (717) 783-6960
Service class: R
Previous case #: 2636759

Date Cut Out: 9999-12-31
Universal Service: Y
Contact Type: TELEPHONE
Amount in Arrears: \$4671.91

Adults: 4
Children: 0
Children Ages:
Gross Income: \$6000.00
Miscellaneous Info:

Complaint Reason:
ON - PAR WITH DISPUTE (#63)

Customer Problem Description:

PAR WITH DISPUTE - 10 DAY TERM NOTICE CU SAYS HE WAS PUT ON A PAYMENT PLAN A FEW MONTHS AGO. CU PAID THE FIRST MONTH OF THE NEW PLAN AND DIDNT RECEIVE A BILL FROM PECO IN THE LAST 2-3 MONTHS. EXCEPT FOR TODAY. TODAY CU RECEIVED A 10-DAY SHUT OFF NOTICE AND CO WANTS A \$4671.97 PAYMENT . CU MOTHER LIVES WITH HIM AND HAS A MED COND . CU WANTS TO KNOW WHY HE DIDNT RECEIVE ANY BILLS AND WHY THE CO PAR WAS VOIDED. CU WANTS THE ARRANGEMENT TO BE RESTORED, ALSO WANTS TO FIND OUT WHY HE WAS NOT GETTING BILLS .RECEIVED NO BILLS SINCE THE FIRST PAR PAYMENT

Exelon.

April 24, 2013

Company Position:

**04/05/2010 CO SAYS THE AMOUNT ON THE BILL IS WHAT CU OWES . CO SAYS
THEY DONT SEE ANY ACTIVE PAYMENT ARRANGEMENT AND THEY DONT KNOW
WHY CU IS NOT GETTING THE BILLS IN THE MAIL.**

EXHIBIT "4"



April 24, 2013

BCS Decision Report

BCS Case #: 002662157 Open Date: 2010-04-06
Customer Name: FRED LAVNER
Service Address: 39 CORNELL RD
BALA CYNWYD, PA 19004 2104
BCS Bill Account #: 5549800806 Previous Case #: 2636759
Violation Type: NO Chapter Type:
Decision Type: W Section / Rule:
Investigator Name: TIMOTHY PLATT
Decision Issued Date: 2010-04-09
Case Closed Date: 2010-04-09

Letter Description:
EGW STRAIGHT PAR/BUDGET + FOR LEVEL 2-4 HOUSEHOLDS

Total Balance:	\$5149.37	Balance Date:	2010-04-08
Amount to Restore Service:	\$0.00	Amount to Continue Service:	\$0.00
Date Payment Due:		Regular Budget Amount:	\$440.00
Special Budget Payment:	\$1299.00	Final Bill Monthly Payment:	\$0.00
Plus Arrears Payment:	\$859.00	End of Month Payment:	\$0.00
Current Monthly Payment:	\$0.00		
Payment Terms:	W/ NEXT DD 4.26 EXTENDED TO 5.01.10		

PAR Description:

Resolution Description:
CLOSED WITH DECISION.... DECISION LETTER SENT 1405 TERMS ISSUED PER PUC PROCEDURES AS NO PUC PRIORS FOUND OR NOTED 1. DISPUTE INVALID CU ENROLLED IN EBILLING SINCE 11/28/05 AND THEREFORE HAS NOT RECIEVED PAPER BILLS. THE PUC NOTES ENROLLMENT IN EBILLING IS AN OPTIONAL BILLING PAYMENT MECHANISM CHOSEN BY THE CUSTOMER; IF YOU WISH TO BE REMOVED FROM EBILLING YOU MUST CONTACT THE COMPANY. 2. THE PUC HAS NO JURISDICTION OVER THE TERMS AND CONDITIONS OF COMPANY PAYMENTS. THEY REPORT, AND YOUR INFORMATION PROVIDED APPEARS TO CONFIRM, THAT YOU DEFAULTED ON THE COMPANY PAYMENT. 3. PUC ELIGIBLE.L4 CU TO BEGIN WITH THE NEXT DD/ APRIL 26TH / EXTENDED FOR THE APRIL DD ONLY TO EXTENDED TO MAY 1ST PAYING BB 440 + BALANCE OVER 6 MONTHS 859= 1299 MONTHLY

EXHIBIT "5"



April 24, 2013

BCS Decision Report

BCS Case #: 002965916 Open Date: 2012-05-08
Customer Name: FRED LAVNER
Service Address: 39 CORNELL RD
BALA CYNWYD, PA 19004
BCS Bill Account #: 5549800806 Previous Case #: 2947597
Violation Type: NO Chapter Type:
Decision Type: W Section / Rule:
Investigator Name: BUREAU OF
CONSUMER SERVICE
Decision Issued Date: 2012-05-11
Case Closed Date: 2012-05-09

Letter Description:
EGW STRAIGHT PAR/BUDGET + FOR LEVEL 2-4 HOUSEHOLDS

Total Balance:	\$3069.60	Balance Date:	2012-05-08
Amount to Restore Service:	\$0.00	Amount to Continue Service:	\$0.00
Date Payment Due:		Regular Budget Amount:	\$444.00
Special Budget Payment:	\$956.00	Final Bill Monthly Payment:	\$0.00
Plus Arrears Payment:	\$512.00	End of Month Payment:	\$0.00
Current Monthly Payment:	\$0.00		
Payment Terms:	JUNE 2012 DUE DATE		

PAR Description:

Resolution Description:
LEVEL 4, BB 444.00 + 512.00 = 956.00 BEGINNING JUNE 2012.

EXHIBIT "6"



April 24, 2013

Case Details Report

BCS Case #: 003018793
Customer Name: FRED LAVNER
Service Address: 39 CORNELL RD

BCS Bill Account #: 5549800806

Mailing Address: BALA CYNWYD, PA 19004

Home Phone: (610) 667-0265
Business Phone: () -
Business name:
Alternate contact:

Date Case Opened: 2012-09-11
PAR Case: N
Investigator Name: TERRY SEAVER
Investigator Phone: (717) 705-0622
Service class: R
Previous case #: 2965916

Date Cut Out: 9999-12-31

Universal Service: N
Contact Type: E-MAIL
Amount in Arrears: \$0.00

Adults: 0
Children: 0
Children Ages:
Gross Income: \$0.00
Miscellaneous Info:

Complaint Reason:
BILLING DISPUTES (# 18)

Customer Problem Description:
BILLING AND SD DISPUTE.....CUST WROTE:AFTER PAYING A SIGNIFICANT FEE FOR RESTORATION OF SERVICES IN JUNE--RESULTING FROM A COMPLAINT THAT PECO FAILED TO ADDRESS OVER INCORRECT BILLING FROM AUGUST-SEPTEMBER 2011--THEY ARE NOW REQUIRING AN ADDITIONAL EXCESSIVE DEPOSIT FEE. THEY SAID WE ONLY PAID \$45 BUT WE PAID OVER \$400 AND HAVE THE RECEIPT TO VERIFY. ADDITIONALLY, WHATEVER HAPPENED TO OTHER DEPOSITS WE HAVE MADE OVER THE LAST 22 YEARS AND WHAT IS THE INTEREST STATUS? THEY REFUSE TO COMMENT. THE HOUSAE HAS BEEN VACANT FOR MOST OF THE SUMMER WITH THE THERMOSTAT LEFT ON 72 BUT

Exelon.

April 24, 2013

YET PECO BILLS US LIKE 15 PEOPLE LIVE IN THE HOUSE WITH THE THERMOSTAT ON 60 AND WASHER/DRYERS OPERATING 24/7. WE HAVE REQUESTED A METER CHECK SEVERAL TIMES AND HAVE RECEIVED NOTHING. WE DON'T WANT TO GET HIT WITH A HUGE BILL AND ADDITIONAL FEES AGAIN. WE WANT TO PAY WHAT WE RIGHTFULLY OWE OVER A SHORT PERIOD OF TIME BUT GET OUR METER REPLACED, CLARIFICATION OF WHAT IS RIGHTFULLY OWED. BRIEF PAYMENT PLAN IF THIS DOESN'T WORK OUT WE WILL HAVE AN ATTORNEY FILE A FORMAL COMPLAINT

Company Position:

09/05/2012 LCC JUST PAY THE BILL.

EXHIBIT "7"



April 24, 2013

BCS Decision Report

BCS Case #: 003018793 Open Date: 2012-09-11
Customer Name: FRED LAVNER
Service Address: 39 CORNELL RD

BALA CYNWYD, PA 19004
BCS Bill Account #: 5549800806 Previous Case #: 2965916
Violation Type: NO Chapter Type:
Decision Type: W Section / Rule:
Investigator Name: TERRY SEAVER

Decision Issued Date: 2013-03-09
Case Closed Date: 2013-03-07

Letter Description:

EGW PAR W/COMPLEX DISPUTE/NO PAYMENT AGREEMENT/LEVEL 2-4

Total Balance:	\$1233.31	Balance Date:	2012-09-21
Amount to Restore Service:	\$0.00	Amount to Continue Service:	\$0.00
Date Payment Due:		Regular Budget Amount:	\$410.00
Special Budget Payment:	\$0.00	Final Bill Monthly Payment:	\$0.00
Plus Arrears Payment:	\$0.00	End of Month Payment:	\$0.00
Current Monthly Payment:	\$0.00		
Payment Terms:			

PAR Description:

Resolution Description:

DECISION. INVESTIGATION BY THE PUC FOUND: THE CO HAS STATE THE CUST HAS NOT CONTACTED THEM TO DISPUTE THE HIGH BILLS PRIOR TO FILING THE COMPLAINT WITH THE PUC. CUST HAD PRIOR BCS # 2965916 CLOSED 5/9/2012 WITH A LVL 4 PAR BEG 6/22/2012 DD. CUST DEFUALTED ON PAR AND ON 6/27/2012 10 DAY NOTICE ISSUED FOR \$2502.82 EFFECTIVE 7/11/2012. ON 7/11/2012 SERVICE WAS TERMINATED FOR THE PAST DUE AMOUNT OF \$2421.89 AFTER PROPER NOTIFICATION WAS PROVIDED. ON 7/12/2012 CUST PAID \$2896.89, CASH ONLY ACCOUNT, (\$2421.89, PAST DUE + \$75.00, RCF + \$400.00, DEPOSIT) AND SERVICE WAS RESTORED. CUST ADVISED CURRENT CHARGES OF \$455.79 DUE BY 7/23/2012. PER CO RECORD ON 7/18/2012 THE DEPOSIT REQUEST WAS WAIVED. THE DEPOSIT OF \$900.00 PAID ON 12/16/2009. ON 5/9/2012 THE DEPOSIT PLUS INTEREST WERE APPLIED TOWARD THE ACCOUNT BALANCE. \$45.00 STILL IN ESCROW ON THE ACCOUNT. CO RECORDS NOTE THE BILLS HAVE BEEN BASED ON ACTUAL



April 24, 2013

METER READINGS. PUC UNABLE TO ISSUE DECISION ON BILLING ACCURACY. CUST IS NOT ELIGIBLE FOR PUC PAR. CUST SHOULD CONTACT CO TO SCHEDULE A FIELD VISIT. CUSTOMER SHOULD CONTACT CO TO DISCUSS PAYMENT TERMS. CLOSE.

EXHIBIT 4

O'Neill, Leslie:(BSC)

From: eServe@pa.gov
Sent: Thursday, October 17, 2013 2:00 PM
To: Lee, Shawane L.:(BSC)
Cc: O'Neill, Leslie:(BSC)
Subject: PA PUC eServe Notice

Importance: High

Dear Shawane L Lee,

A(n) **Initial Decision** has been served in this proceeding. This document is docketed as **C-2013-2357426**. You may view this document at **C-2013-2357426 Fred Lavner v PECO Energy Co ID**

You are receiving this email because you are a(n) **Respondent** for this case and have agreed to be served electronically. By selecting electronic service (eService), you have agreed that this notification constitutes valid service. Electronic service of any and all documents will be in place of paper service.

Thank You,
Public Utility Commission
Commonwealth of Pennsylvania

** Please do not respond to this automatically generated email.*



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

October 17, 2013

C-2013-2357426

FRED LAVNER
V.
PECO ENERGY COMPANY

TO ALL PARTIES:

Enclosed is a copy of the Initial Decision of the Office of Administrative Law Judge.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Your signed Exceptions to the decision, if any, must be: 1) filed with the Secretary of the Commission, and 2) mailed or hand-delivered to each party of record, within twenty (20) days of the date of this letter.

To file Exceptions with the Secretary of the Commission, you must mail or hand-deliver them as follows:

If using U.S. Postal Service:

Secretary
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

If using Overnight or Hand Delivery Service:

Secretary
Pa. Public Utility Commission
400 North Street
Commonwealth Keystone Building, 2nd Floor
Harrisburg, PA 17120

Or, instead of mailing or hand-delivering your Exceptions, you may electronically file them with the Secretary of the Commission. To do so, you need to establish an account on the Commission's eFiling system, which may be accessed at <http://www.puc.state.pa.us/efiling/default.aspx>. Please note that Exceptions sent to the Commission by fax or e-mail will not be accepted for filing.

In addition to filing your Exceptions with the Secretary of the Commission, a courtesy copy of your Exceptions should be e-mailed to the Commission's Office of Special Assistants (OSA) at ra-OSA@pa.gov. If the document is too large to e-mail, please mail or hand-deliver a copy on CD-ROM or DVD (or other data storage media), in Microsoft Word 2010 format or other compatible format to either address noted above.

Replies to Exceptions, if any, must be filed with the Secretary of the Commission and served on each party of record and the Commission's OSA, in the manner described above. They are due within ten (10) days of the date when Exceptions are due.

It is your responsibility to serve all the parties with your Exceptions and Replies to Exceptions. Failure to do so may render your filing unacceptable. A certificate of service (see format in 52 Pa. Code §1.58) shall be attached to the filed Exceptions or Replies to Exceptions.

Exceptions and Replies to Exceptions shall follow 52 Pa. Code §§5.533 and 5.535 particularly the 40-page limit for Exceptions and the 25-page limit for Replies to Exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)". Any reference to specific sections of the Administrative Law Judge's Initial Decision shall include the page number(s) of the cited section of the decision.

If no Exceptions are received, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

Very truly yours,

Rosemary Chiavetta
Secretary

Enclosures
Certified Mail
Receipt Requested

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Fred Lavner

v.

PECO Energy Company

:
:
:
:
:

C-2013-2357426

INITIAL DECISION

Before
Joel H. Cheskis
Administrative Law Judge

INTRODUCTION

In this case, the Complainant alleged that he was being over billed by his electric company, has not received monthly bills and received poor customer service. Among other things, the Complainant would like a payment agreement to resolve his outstanding balance and to receive monthly bills in paper form, not electronically. This Initial Decision grants the Complainant's request for a payment agreement and directs the utility to provide monthly bills in paper form, but denies all other allegations in the Complaint, including the averment that he is being over billed.

HISTORY OF THE PROCEEDING

On March 12, 2013, Fred Lavner filed with the Pennsylvania Public Utility Commission (Commission) a formal Complaint against PECO Energy Company (PECO or "the Company"), Docket Number C-2013-2357426. In his Complaint, Mr. Lavner indicated that there are incorrect charges on his bill and that he would like a payment agreement. Mr. Lavner added that he has filed many informal complaints against PECO at the Commission and believes

that the Company is not being truthful in responding to his claims and problems on the account. Mr. Lavner averred that the billing and usage amounts on his bill are erroneous, he has gone months without getting a bill, he requested an on-site audit that was never scheduled and he wants a short term payment plan so that he "can get everything right and give me the opportunity to live a normal life as a PECO customer." Mr. Lavner seeks an audit, a payment agreement and assurances from PECO that he will get monthly paper bills in the mail or electronically.

On April 24, 2013, PECO filed an Answer with New Matter in response to Mr. Lavner's Complaint. The New Matter was accompanied by a Notice to Plead. In its Answer, PECO denied that Mr. Lavner was being overcharged or that there were errors on his utility bills. PECO further noted that Mr. Lavner has received two payment agreements issued by the Company and two payment agreements issued by the Commission's Bureau of Consumer Services (BCS). PECO further provided that Mr. Lavner's current bill is \$2,168.76 and that he is not receiving paper bills because he is enrolled in electronic billing (e-billing). PECO also averred that it has reached out to Mr. Lavner to schedule a high bill field investigation but that Mr. Lavner has not responded. In its New Matter, PECO averred that Mr. Lavner is not entitled to a payment agreement because he has defaulted on a prior Commission issued payment agreement. PECO added that Mr. Lavner has not demonstrated that he has had a decrease in income that warrants a subsequent Commission-ordered payment agreement. PECO concluded that the Commission should dismiss Mr. Lavner's Complaint and attached multiple documents in support of its position.

Mr. Lavner's Answer to PECO's New Matter was due no later than May 17, 2013. 52 Pa.Code §§ 5.63(a), 1.12(a), 1.56(a)(1) and (b). Mr. Lavner did not file an Answer to PECO's New Matter.

On May 2, 2013, the Commission served a Telephone Hearing Notice establishing an Initial Telephonic Hearing for this matter for Wednesday, June 26, 2013 at 10:00 a.m. and assigning me as the Presiding Officer. On May 6, 2013, a Prehearing Order was served establishing the procedural rules that would govern the Hearing.

The Hearing was held on June 26, 2013 as scheduled. Mr. Lavner appeared *pro se*. Shawane Lee, Esquire appeared on behalf of PECO. Prior to going on the record, the parties were given an opportunity to have settlement discussions. In lieu of settlement discussions, however, PECO requested that the Hearing be continued so that the Company could conduct a high bill investigation at the Service Address that would aid settlement discussions. Mr. Lavner did not oppose the request. As a result, because PECO's request was reasonable and unopposed, it was granted and formalized by Order dated July 1, 2013. A Hearing Cancellation/Reschedule Notice was issued on July 1, 2013 rescheduling the Hearing for Wednesday, July 24, 2013.

The second Hearing was held on July 24, 2013 as scheduled. Mr. Lavner again appeared *pro se* and presented oral testimony. Ms. Lee again appeared on behalf of PECO and presented two witnesses who sponsored a total of 13 exhibits, 12 of which were admitted into the record during the Hearing. A transcript of 82 pages was created. On August 2, 2013, PECO served a late-filed Exhibit Number 14 that was formally admitted into the record by Order dated September 18, 2013. The record closed in this proceeding on August 5, 2013 when the transcript was submitted to the Commission.

This matter is now ready for disposition. For the reasons discussed further below, Mr. Lavner's Complaint will be sustained in part and denied in part.

FINDINGS OF FACT

1. The Complainant in this case is Fred Lavner.
2. The Respondent in this case is PECO Energy Company.
3. The Service Address is 39 Cornell Road, Bala Cynwyd, PA.
4. Mr. Lavner's home has four bedrooms and is 2,200 square feet. Tr. 17-18.
5. Only Mr. Lavner and his wife live in the home. Tr. 18.

6. The total monthly gross income for Mr. Lavner's home is approximately \$5,400-\$6,000. Tr. 19-20.

7. Mr. Lavner had a previous business where his average gross income was \$25,000 per month. Tr. 20.

8. In October, 2012, Mr. Lavner was told by a PECO customer service representative that he is enrolled in paperless billing even though he never made that request. Tr. 21.

9. Mr. Lavner has paid past PECO bills through one-time online payments. Tr. 21.

10. Mr. Lavner contacted PECO several times to request a paper bill. Tr. 22.

11. Mr. Lavner was unaware that he defaulted on any payment agreement. Tr. 22-23.

12. Dana McCollum is a regulatory assessor at PECO and reviews informal and formal complaints filed against the Company at the Commission. Tr. 26.

13. PECO Exhibit Number 1 is the account activity statement for Mr. Lavner's account regarding his utility service. Tr. 27-28; PECO Exh. No. 1.

14. PECO Exhibit Number 1 demonstrates that Mr. Lavner's payment history is sporadic and that he is enrolled in budget billing at \$368 per month. Tr. 28-29; PECO Exh. No. 1.

15. The current balance on Mr. Lavner's bill is \$4,543.76. Tr. 29, 44; PECO Exh. No. 1.
16. PECO Exhibit Number 2 is the collection history on Mr. Lavner's account. Tr. 30; PECO Exhibit No. 2.
17. Mr. Lavner was issued 10-day termination notices on October 24, 2011, December 27, 2011, October 23, 2012, December 18, 2012, February 25, 2013 and March 28, 2013. Tr. 30-31; PECO Exh. No. 2.
18. Each of Mr. Lavner's terminations were halted or delayed when either he filed an informal complaint at BCS, a utility report was filed by PECO or he filed his formal Complaint. Tr. 30-31; PECO Exh. No. 2.
19. PECO Exhibit Number 3 is the payment agreement history for Mr. Lavner's account showing two Company-issued payment agreements and two Commission-issued payment agreements, none of which were kept. Tr. 32-34; PECO Exh. No. 3.
20. PECO Exhibit Number 4 is a financial history exhibit for Mr. Lavner providing Mr. Lavner's total monthly income given when he calls PECO. Tr. 34; PECO Exh. No. 4.
21. On March 7, 2013, Mr. Lavner reported a monthly income of \$4,701. Tr. 34; PECO Exh. No. 4.
22. PECO Exhibit Number 5 is a letter from Ms. McCollum to Mr. Lavner dated June 18, 2013 acknowledging his Complaint and the Hearing. Tr. 35; PECO Exh. No. 5.

23. PECO Exhibit Number 9 is a Case Details Report of an informal complaint Mr. Lavner filed at the BCS on October 4, 2010 regarding a payment agreement and a 10-day termination notice. Tr. 36; PECO Exh. No. 9.
24. PECO does not automatically enroll customers in e-billing. Tr. 37.
25. Mr. Lavner removed himself from e-billing as of October 28, 2010 and his bills are now sent to the Service Address. Tr. 38.
26. There are no PECO records from the postal service indicating that mail sent to the Service Address was not delivered. Tr. 38-39.
27. PECO Exhibit Number 10 is a Case Details Report of an informal complaint Mr. Lavner filed at BCS on April 9, 2010 where BCS granted Mr. Lavner a payment agreement. Tr. 39; PECO Exh. No. 10.
28. PECO Exhibit Number 11 is the BCS Decision Report dated May 8, 2012 granting Mr. Lavner a second payment agreement. Tr. 40; PECO Exh. No. 11.
29. PECO Exhibit Number 12 is a Case Details Report regarding an informal complaint filed by Mr. Lavner on September 11, 2012 regarding a billing and security deposit dispute. Tr. 41; PECO Exh. No. 12.
30. PECO Exhibit Number 13 is the BCS Decision Report for the informal complaint filed March 9, 2013 regarding Mr. Lavner's contention that PECO has not contacted him regarding the high bill dispute. Tr. 43; PECO Exh. No. 13.
31. PECO does not continue to bill the customer for usage when there is a service outage. Tr. 44.

32. Mr. Lavner's electric service was out from August 28, 2011 to August 31, 2011. Tr. 44.
33. Thomas Lerro is the senior field foreman supervisor for PECO's high bill field investigation group and has worked for PECO for 33 years. Tr. 51-52.
34. Mr. Lerro supervises eight field technicians who visit individual properties and conduct high bill investigations. Tr. 52.
35. PECO Exhibit Number 7 is the completed field investigation form for the Service Address conducted by PECO on July 16, 2013. Tr. 52-53; PECO Exh. No. 7.
36. The field investigation provides an estimate of utility usage based on appliances found at the Service Address and based on a national average of appliance usage. Tr. 53-54.
37. The Service Address had a potential for an average summer usage of 4,050 kilowatt hours (kwh). Tr. 54-55; PECO Exh. No. 7.
38. The results of the test of Mr. Lavner's meter revealed that the meter was operating within guidelines established by PECO and the Commission. Tr. 57-58; PECO Exh. No. 7.
39. PECO Exhibit Number 8 is the reverse side of the field investigation form where it is noted that Mr. Lavner's bills were correct as rendered. Tr. 60-62; PECO Exh. No. 8.
40. An email address is required in order for PECO to provide e-billing for a customer. Tr. 72.
41. Mr. Lavner was receiving e-bills at flavner@comcast.net from November 28, 2005 to October 28, 2010. Tr. 72-73.

42. PECO Exhibit Number 14 is an E-billing Exhibit and E-billing Terms and Conditions. PECO Exh. No. 14.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950). In this proceeding, Mr. Lavner seeks a determination that his utility bills are incorrect and would like to be placed on a payment agreement to allow him to pay down his outstanding balance over time. Mr. Lavner also seeks to ensure that he receives paper billing every month. Mr. Lavner, therefore, has the burden of proof in this proceeding.

If a complainant establishes a prima facie case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Replogle v. Pennsylvania Electric Company, 54 Pa. PUC 528 (1980), and Waldron v. Philadelphia Electric Company, 54 Pa. PUC 98 (1980) (Waldron).

The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and

Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa. Cmwlth Ct. 23, 480 A.2d 382 (1984).

In this case, Mr. Lavner has raised a number of issues. Each of these issues will be addressed in turn below.

Mr. Lavner Has Not Demonstrated That PECO Has Erroneously Billed Him

During the Hearing, Mr. Lavner testified that his electric bills have been high over the last year-and-a-half “in light of the fact that there are only two seniors living in the house. We are not in the home about two weeks out of the month, and HVAC is turned off when we’re away. So my complaint has been high bill.” Tr. 16.

In response to his high bill complaint, PECO presented the testimony of Dana McCollum, a regulatory assessor at PECO, and Thomas Lerro, a senior field foreman supervisor for PECO’s high bill investigation group. Ms. McCollum sponsored multiple exhibits, most notably the Account Activity Statement for Mr. Lavner’s account which details Mr. Lavner’s payment history and utility usage from September, 2010 to July, 2013. Tr. 27-28; PECO Exh. No. 1. Similarly, Mr. Lerro sponsored two exhibits that comprise the reports pertaining to the completed field investigation form for the Service Address conducted by PECO on July 16, 2013. Tr. 52-62; PECO Exh. Nos. 7 and 8. Both Ms. McCollum and Mr. Lerro testified in support of PECO’s position that Mr. Lavner’s bills are correct as rendered.

The burden of proof for “high bill” complaints has been established in Waldron, supra, and its progeny. See, Nicolas Montagna d/b/a Montagna Homes v. National Fuel Gas Distribution Corp., Docket Number C-2011-2243674, Opinion and Order (entered April 12, 2012). In Waldron, the Commission stated that, while the accuracy of the meter is an important factor in resolving billing disputes, it is not the sole criterion. The Commission will also consider the following factors: the billing history of the complainant; any change in the number of occupants residing at the household; the potential for energy utilization; and any other relevant facts or circumstances that are brought to light during the complaint proceeding.

Waldron at 100; *see also*, Nehemiah B. Thomas v. PECO, Docket No. C-2010-2187197, Order (entered November 15, 2011) (“the Waldron Rule allows a complainant to establish a *prima facie* case in a “high bill” complaint by showing that the disputed bill is abnormally high when compared to prior usage patterns and his or her pattern of usage has not changed or by providing other relevant evidence showing that the disputed bill is unreasonably high”).

PECO witness Lerro testified that the results of the high bill investigation conducted on July 16, 2013 revealed that Mr. Lavner’s meter tested within the guidelines established by PECO and the Commission. Tr. 57-58; PECO Exh. No. 8. The field investigation also revealed that the Service Address has a potential for average summer usage of 4,050 kwh based on the appliances found at the Service Address. Tr. 54-55; PECO Exh. No. 7.

Additionally, record evidence in this case demonstrates that Mr. Lavner’s kwh usage during the past three years was as follows:

	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>
January		1456	1398	1301
February		1356	1368	1402
March		1211	1273	1128
April		1606	1246	1064
May		2093	1887	1620
June		2937	2159	2747
July		4012	4015	
August		3172	3157	
September	3296	2593	2226	
October	1632	1285	1326	
November	1377	1473	1249	
December	1575	1528	1507	

PECO Exh. No. 1.

When looking at Mr. Lavner's electric usage for each month year over year for the last two years data is provided, only four out of the twelve months available for both 2011-12 and 2012-13 show an increase in usage (February, June, July and October). For one of those months – July, 2011 compared to July, 2012 – the kwh increase was minimal (3 kwh increase). For two of those four months the most recent usage data was less than the same data for the same month two years prior – June, 2013 compared to June, 2011 and October, 2012 compared to October, 2010. As a result, Mr. Lavner's usage history does not support a finding that his utility bill increased unreasonably or that he was being billed erroneously. When looking at the usage history year to year, there is not a clear pattern of high bills that would support a conclusion of erroneous billing under Waldron. While some variation in electric usage year after year is reasonable, Mr. Lavner's usage history reveals consistent or even reduced usage more than it reveals unreasonably high usage.

Furthermore, Mr. Lavner has not presented any evidence that would support a finding of a high bill, including a change in the number of occupants residing at the household, the potential for energy utilization or any other relevant facts or circumstances that support a finding that his bills are too high. This is consistent with PECO's evidence that Mr. Lavner's meter was operating within PECO and Commission guidelines and that Mr. Lavner's bills were correct as rendered. Tr. 57-62; PECO Exh. Nos. 7 and 8. Mr. Lavner testified that he and his wife are not in the home two weeks each month and the heating and cooling is turned off when they are away. Tr. 16. This explains why the monthly kwh is significantly lower than the 4,050 kwh potential identified in the high bill investigation but does not, however, demonstrate that PECO's bills were erroneous.

Finally, during the Hearing, Mr. Lavner cross-examined Mr. Lerro regarding Mr. Lerro's testimony wherein he incorrectly compared Mr. Lavner's monthly usage. Tr. 63. Although Mr. Lavner correctly noted that Mr. Lerro incorrectly compared June, 2013 usage to July, 2012 usage, instead of June, 2012 usage, the correct comparison also does not support a finding of incorrect billing because, although the June, 2013 usage, as noted above, is higher than the June, 2012 usage, it is less than the June, 2011 usage. Therefore, even the correct comparison of June usage data does not support a finding that Mr. Lavner's bills were high.

Additionally, this usage data is significantly outweighed by the usage data comparisons for all 34 months of usage data available in PECO Exhibit Number 1 that, when viewed overall, do not evidence high or incorrect billing. To the extent that some month's usage was higher than the same month's usage in the prior year, there is not a sufficient pattern to support a conclusion that Mr. Lavner was being over billed by PECO. Mr. Lavner has failed to satisfy his burden under Waldron.

As such, Mr. Lavner's argument that his utility bills were incorrect will be rejected.

Mr. Lavner Is Entitled To A Payment Agreement For His Outstanding Amount Owed

In his Complaint, Mr. Lavner indicated that he would like a payment agreement and noted he would like "a reasonable short-term accelerated payment plan to get a zero balance." Mr. Lavner added during the Hearing that he would like to "start paying against the balance" he has accrued.

In response, PECO witness McCollum testified regarding Mr. Lavner's account activity statement, payment history, current balance, collection history and payment agreement history, among other things. Tr. 27-34. Ms. McCollum also presented multiple PECO Exhibits in support of the Company's position that Mr. Lavner is not entitled to any further payment agreement.

Through Chapter 14 of the Public Utility Code, the Commission has the authority to establish a payment agreement for customers with outstanding bills pursuant to certain guidelines related to total household income and household size. 66 Pa.C.S. § 1405(b). More specifically, Chapter 14 limits the length of time the Commission can order a Company to allow a customer to resolve an unpaid balance on an account that is subject to a payment agreement based on the gross monthly household income in relation to the federal poverty level. For example, the Commission may order a Company to allow a customer whose gross monthly

household income does not exceed 150% of the federal poverty level a payment agreement over a period of up to five (5) years. 66 Pa.C.S. § 1405(b)(1).

Record evidence demonstrates, however, that the Commission's BCS has previously ordered two payment agreements for Mr. Lavner. PECO Exh. No. 3. Section 1405(d), however, prohibits the Commission from establishing or ordering a utility to establish a second or subsequent payment agreement if a customer has defaulted on a previous payment agreement, absent a change in income. 66 Pa.C.S. § 1405(d). A change of income is defined as a decrease in household income of 20% or more if the customer's household income level exceeds 200% of the federal poverty level or a decrease in household income of 10% or more if the customer's household income level is 200% or less of the federal poverty level. 66 Pa.C.S. § 1403.

In this case, Mr. Lavner testified that the total gross monthly income for his household is approximately \$5,400-\$6,000 and that there are only two people living in his home. Tr. 18-20. The 2013 United States Department of Health poverty income guidelines provide that 100% of the federal poverty level for a household with two residents is \$1,292.50 per month. 78 Fed. Reg. 5182-5183. Using Mr. Lavner's total gross monthly household income of \$5,400, the lower end of his estimate, Mr. Lavner is at 417% of the federal poverty level ($\$5,400 / \$1,292 = 4.17$). As a result, in order to demonstrate a change in income to warrant an additional payment agreement, Mr. Lavner must have experienced a decrease in income of 20% or more.

During the Hearing, Mr. Lavner testified that he had a previous business where his average gross income was \$25,000 per month. Tr. 20. The Company did not dispute this testimony. As a result, Mr. Lavner experienced a decrease in household income of more than 20% because his income decreased from \$25,000 per month to approximately \$5,400 per month ($(\$25,000 - \$5,400) / \$25,000 = 78.4\%$). Mr. Lavner has experienced a change in income sufficient to warrant an additional payment agreement pursuant to Chapter 14. At 417% of the federal poverty level, Chapter 14 limits the ability of the Commission to order a payment agreement to no longer than six (6) months to pay his outstanding balance with PECO. 66 Pa.C.S. § 1405(b)(4). Although the Commission has indicated that Chapter 14 does not require

the Commission to issue a second payment agreement when the change in income provides the same repayment period as the original payment agreement, *see, Caroline Maitland v. UGI Penn Natural Gas Inc.*, Docket Number C-20078353, Opinion and Order (entered Aug. 20, 2008), in this case, a second payment agreement is reasonable where there are exacerbating circumstances such as a delayed high bill investigation and concerns regarding billing method.

As such, Mr. Lavner's request for a payment agreement will be sustained and PECO will be directed to bill Mr. Lavner for his current usage plus 1/6th of the outstanding balance until the arrearage is satisfied.

Mr. Lavner Has Not Demonstrated That He Was Improperly Billed

In his Complaint, Mr. Lavner averred that he has had difficulty receiving bills from PECO. Mr. Lavner stated that "he can go months without getting a bill from PECO" and that he would like "assurances from PECO that I will get monthly paper bills in the mail or e-bills." During the Hearing, Mr. Lavner testified that he has not received any bill since October, 2011, although he has received shut-off notices. Tr. 20-22. Mr. Lavner testified that, when he called PECO, he was told that he was enrolled in paperless billing. Tr. 21. Mr. Lavner added that he never enrolled in paperless billing but he did make one-time payments online through the PECO website. Tr. 21.

In response to Mr. Lavner, PECO witness McCollum testified that Mr. Lavner was enrolled in e-billing from November 28, 2005 to October 28, 2010 and did not receive a paper bill during that time. Tr. 37, 38, 72. Instead, bills were delivered via the Internet. Tr. 27. Ms. McCollum added that PECO does not automatically enroll customers in e-billing. Tr. 37. Ms. McCollum noted that when Mr. Lavner removed himself from e-billing on October 28, 2010, his bills have been sent to the Service Address of 39 Cornell Road in Bala Cynwyd, PA since that time. Tr. 38. Ms. McCollum testified that there are no PECO records from the postal service of returned mail indicating that Mr. Lavner's bills were not received at the Service Address. Tr. 38-39. PECO also presented Exhibit Number 14 which is the e-billing exhibit and terms and conditions that indicates Mr. Lavner's e-bills were being sent to his current

e-mail address: flavner@comcast.net. Tr. 72; PECO Exh. No. 14. Ms. McCollum noted that she exchanged e-mails with Mr. Lavner at that email address as recently as July 7, 2013. Tr. 73.

Commission regulations require a public utility to render a bill once every billing period to every residential customer in accordance with approved rate schedules. 52 Pa.Code § 56.11(a). A utility may utilize electronic billing in lieu of mailing paper bills under certain requirements. 52 Pa.Code § 56.11(b). Regardless of whether a bill is rendered on paper or electronically, a bill rendered by a public utility for metered residential service must state clearly certain information, including the beginning and end of the billing period and meter reading, whether the bill is estimated, the due date on or before which payment shall be made, among other things. 52 Pa.Code § 56.15.

In this case, Mr. Lavner expressed significant frustration regarding what he believed was his failure to receive monthly bills. *See e.g.*, Tr. 78, 80. Mr. Lavner's frustration is exacerbated by his concerns that his billing amounts were erroneous, his inability to have a high bill investigation performed at his home, being placed on budget billing, customer service issues and other issues. Mr. Lavner also testified that he received incorrect information from an investigator at the Commission regarding the disputed bills. Tr. 79. Despite these frustrations, however, Mr. Lavner has failed to carry his burden to demonstrate that PECO violated the Public Utility Code, any Commission Order or regulation or any Commission-approved Company tariff with regard to his billing.

From October, 2010, when Mr. Lavner opted out of e-billing and was being sent paper bills, PECO's records indicate that he made approximately twenty (20) payments on his account. PECO Exh. No. 1. Some of these payments were quite substantial, although at no point was Mr. Lavner's account balance reduced to zero. *Id.* Mr. Lavner's balance began to escalate significantly in the winter of 2012 after which his account was placed on budget billing. *Id.* PECO Exhibit Number 1 demonstrates that Mr. Lavner made one significant payment in the summer of 2012 which significantly reduced his outstanding balance, but that Mr. Lavner made only two payments toward his arrearage between July, 2012 and July, 2013 during which time

his balance reached \$4,543.76. Id. This pattern, which Mr. Lavner did not contest, does not support a finding that Mr. Lavner did not receive utility bills, as he alleged.

Furthermore, by law, a public utility is entitled to receive payment for the service it provides. Scaccia v. West Penn Power Co., 55 Pa. PUC 637 (1982); *see also*, Kea v. Peoples Natural Gas Co., 60 Pa. PUC 215 (1985); Mill v. Pa. Pub. Util. Comm'n, 447 A.2d 1100 (Pa. Cmwlth.1982). Mr. Lavner recognized during the Hearing his responsibility to pay for the utility service he uses. Tr. 79. As a result, Mr. Lavner was responsible to ensure that he was paying for his utility service even if he was not receiving monthly bills, knowing that he was receiving utility service. This could have entailed contacting PECO to find his account balance or making estimated payments in an attempt to ensure that his account balance was not significantly high. Instead, Mr. Lavner only made two payments from July, 2012 to July, 2013 despite knowing that he was continuing to use utility service. During that time, his balance increased from \$224.73 to \$4,543.76. *See*, PECO Exh. No. 1.

Nonetheless, Mr. Lavner has now made it sufficiently clear that he no longer wants e-billing but would like to receive his monthly bills in paper format. PECO will therefore be directed as part of this Decision to ensure that Mr. Lavner is no longer billed electronically but is only sent paper bills. This portion of Mr. Lavner's Complaint will be sustained.

As a result, this portion of Mr. Lavner's Complaint will be sustained in part and denied in part. Mr. Lavner has not demonstrated that PECO violated the Public Utility Code, any Commission Order or regulation or any Commission-approved Company tariff with regard to billing him for utility service. Mr. Lavner has made it clear, however, that he desires monthly paper bills and PECO will be directed to bill him in that format.

Mr. Lavner Has Not Demonstrated That PECO Provided Him Poor Customer Service

During the Hearing, Mr. Lavner testified that he has "reached out to PECO numerous times, as I've said in my complaint, as far as getting the issue resolved. The lack of customer service is beyond belief, as far as getting this resolved." Tr. 17. Mr. Lavner also

testified that he received incorrect information from a PECO representative regarding prior payment agreements or budget billing and was told varying information about his account from various PECO representatives. Tr. 22-23.

There are no Commission regulations establishing a standard of conduct for public utility customer service representatives. In the absence of specific regulations, Section 1501 of the Public Utility Code governs a public utility's obligation to provide reasonable service to its customers. 66 Pa.C.S. § 1501. Section 1501 provides, in pertinent part, that "every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities." 66 Pa.C.S. § 1501. In Gallagher v. Bell Telephone Co. of Pa., Docket No. F-8958314, Opinion and Order (entered September 23, 1992)(Gallagher), the Commission held that a public utility had violated Section 1501 by allowing its customer service representatives to refuse to identify themselves to a complainant, by calling the complainant a rude name and by hanging up on the complainant. Id.; *see also*, Joel and Jill Haines v. PPL Electric Utilities Corporation, Docket No. F-002201447, Order (entered April 3, 2008).

Interactions between a customer and a utility's customer service representative can be tense at times. Certainly, Mr. Lavner is frustrated about his perceived lack of billing from PECO, and other related issues. The customer deserves the right to be treated with courtesy and respect. Yet, Mr. Lavner has not provided substantial evidence to demonstrate that any treatment he received from a PECO Customer Service Representative, or any PECO employee, was unreasonable or violated the Public Utility Code, the Company's Commission-approved tariff or a Commission Order or regulation. Mr. Lavner has not shown that the level of treatment he received from PECO was comparable to that of the service provided in Gallagher.

As such, Mr. Lavner has not met his burden of proof to demonstrate that PECO has acted unreasonably or contrary to Commission Order or regulation in its customer service.

Mr. Lavner's Request For An "Audit" Is Moot

In his Complaint, Mr. Lavner requested that an audit be performed at his property to validate the monthly PECO usage and charges. What Mr. Lavner has referred to as an audit is, in fact, a high bill investigation. Since the filing of the Complaint, PECO conducted a high bill investigation at the Service Address on July 16, 2013. See, PECO Exh. Nos. 7 and 8. Mr. Lavner recognized during the Hearing that the audit was performed on that date, although Mr. Lavner indicated he does not agree with the results of the investigation. Tr. 16. Nonetheless, the issue is now moot because PECO has performed the requested investigation and ordering PECO to perform a high bill investigation at the Service Address will no longer be considered as part of this Decision.

Conclusion

In conclusion, substantial record evidence demonstrates that Mr. Lavner is entitled to a payment agreement of no longer than six months to allow him to resolve his outstanding balance with PECO because he has experienced a change in income. Mr. Lavner has also clearly indicated on the record that he would like to receive monthly bills in paper format and not through e-billing. Mr. Lavner, however, has failed to satisfy his burden that PECO has over billed him or otherwise violated the Public Utility Code, any Commission Order or regulation or any Commission-approved Company tariff with regard to its provision of utility service at the Service Address. A payment agreement will be ordered as part of this decision and PECO will be directed to provide Mr. Lavner his monthly bill in paper form.

Mr. Lavner's issues have been addressed through this proceeding. He has had a high bill investigation performed in his home. Even though he may not agree with the results of the investigation, the investigation confirms that Mr. Lavner's bills are correct as rendered. Mr. Lavner has expressed the need for time to pay off his balance to PECO and is being given six months to do that. Finally, Mr. Lavner desires to receive his monthly bill in paper form and PECO is being directed to do that. Mr. Lavner's Complaint will, therefore, be sustained in part and denied in part.

CONCLUSIONS OF LAW

1. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).
2. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950).
3. If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Replogle v. Pennsylvania Electric Company, 54 Pa. PUC 528 (1980), and Waldron v. Philadelphia Electric Company, 54 Pa. PUC 98 (1980).
4. The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.
5. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Superior Ct. 278, 166 A.2d 96 (1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 85 Pa. Cmwlth Ct. 23, 480 A.2d 382 (1984).

6. In establishing whether a “high bill” has been demonstrated, while the accuracy of the meter is an important factor in resolving billing disputes, the Commission will also consider the billing history of the complainant; any change in the number of occupants residing at the household; the potential for energy utilization; and any other relevant facts or circumstances that are brought to light during the complaint proceeding. Waldron v. Philadelphia Electric Co., 54 Pa. PUC 98, 100 (1980).

7. The Commission has the authority to establish a payment agreement for customers with outstanding bills pursuant to certain guidelines related to total household income and household size. 66 Pa.C.S. § 1405(b).

8. The Commission is prohibited from establishing or ordering a utility to establish a second or subsequent payment agreement if a customer has defaulted on a previous payment agreement, absent a change in income. 66 Pa.C.S. § 1405(d).

9. A change of income is defined as a decrease in household income of 20% or more if the customer’s household income level exceeds 200% of the federal poverty level or a decrease in household income of 10% or more if the customer’s household income level is 200% or less of the federal poverty level. 66 Pa.C.S. § 1403.

10. The 2013 United States Department of Health poverty income guidelines provide that 100% of the federal poverty level for a household with two residents is \$1,292.50 per month. 78 Fed. Reg. 5182-5183.

11. At 417% of the federal poverty level, Chapter 14 limits the ability of the Commission to order a payment agreement to no longer than six (6) months to pay his outstanding balance with PECO. 66 Pa.C.S. § 1405(b)(4).

12. Commission regulations require a public utility to render a bill once every billing period to every residential customer in accordance with approved rate schedules. 52 Pa.Code § 56.11(a).

13. A utility may utilize electronic billing in lieu of mailing paper bills under certain requirements. 52 Pa.Code § 56.11(b).

14. Regardless of whether a bill is rendered on paper or electronically, a bill rendered by a public utility for metered residential service must state clearly certain information including the beginning and end of the billing period and meter reading, whether the bill is estimated, the due date on or before which payment shall be made, among other things. 52 Pa.Code § 56.15.

15. A public utility is entitled to receive payment for the service it provides. Scaccia v. West Penn Power Co., 55 Pa. PUC 637 (1982); *see also*, Kea v. Peoples Natural Gas Co., 60 Pa. PUC 215 (1985); Mill v. Pa. Pub. Util. Comm'n, 447 A.2d 1100 (Pa. Cmwlth. 1982).

16. In the absence of specific regulations, Section 1501 of the Public Utility Code governs a public utility's obligation to provide reasonable service to its customers. 66 Pa.C.S. § 1501.

17. A public utility violates Section 1501 by allowing its customer service representatives to refuse to identify themselves to a complainant, by calling the complainant a rude name and by hanging up on the complainant. Gallagher v. Bell Telephone Co. of Pa., Docket No. F-8958314, Opinion and Order (entered September 23, 1992); *see also*, Joel and Jill Haines v. PPL Electric Utilities Corporation, Docket No. F-002201447, Order (entered April 3, 2008).

18. Mr. Lavner's formal Complaint against PECO Energy Company should be sustained in part and denied in part.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by Fred Lavner against PECO Energy Company at Docket Number C-2013-2357426 is hereby sustained in part and denied in part.
2. That the portion of Fred Lavner's Complaint alleging that his bills for utility service from PECO Energy Company are too high or otherwise incorrect is denied.
3. That the portion of Fred Lavner's Complaint requesting a payment agreement for his arrearage for utility usage from PECO Energy Company is sustained.
4. That the portion of Fred Lavner's Complaint requesting he receive his monthly bills in paper form is sustained and PECO Energy is directed to provide Mr. Lavner with his monthly bill in paper form going forward.
5. That the portion of Fred Lavner's Complaint alleging unreasonable customer service is denied.
6. That within 30 days of the date the Commission enters its Order in this case, PECO Energy Company shall tender a bill to Fred Lavner for the unpaid balance of his utility bill.
7. That Fred Lavner shall pay PECO Energy Company the regular amount of his bills as they come due, plus 1/6th of the arrearage owed on his account identified in ordering paragraph number 6, commencing with the first monthly bill received after entry of the

EXHIBIT 5

O'Neill, Leslie:(BSC)

From: eServe@pa.gov
Sent: Tuesday, December 24, 2013 10:00 AM
To: Lee, Shawane L.:(BSC)
Cc: O'Neill, Leslie:(BSC)
Subject: PA PUC eServe Notice

Importance: High

Dear Shawane L Lee,

A(n) **Order** has been served in this proceeding. This document is docketed as **C-2013-2357426**. You may view this document at

Rewrite Opinion and Order - 2357426-ALJ- 12-5-13 PM- Fred Lavner v PECO Energy Company

You are receiving this email because you are a(n) **Respondent** for this case and have agreed to be served electronically. By selecting electronic service (eService), you have agreed that this notification constitutes valid service. Electronic service of any and all documents will be in place of paper service.

Thank You,
Public Utility Commission
Commonwealth of Pennsylvania

** Please do not respond to this automatically generated email.*

PECO ENERGY
EXHIBIT **5**

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held December 5, 2013

Commissioners Present:

Robert F. Powelson, Chairman
John F. Coleman, Jr., Vice Chairman
James H. Cawley
Pamela A. Witmer
Gladys M. Brown

Fred Lavner

C-2013-2357426

v.

PECO Energy Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Joel H. Cheskis, issued on October 17, 2013, in the above-captioned proceeding. Exceptions have not been filed. However, we exercised our right to review the Initial Decision pursuant to Section 332(h) of the Public Utility Code (Code), 66 Pa. C.S. § 332(h). For the reasons stated below, we shall modify the ALJ's Initial Decision by denying the Complainant's request for a payment agreement, consistent with this Opinion and Order.

History of the Proceeding

On March 12, 2013, Fred Lavner (Complainant) filed a Formal Complaint (Complaint) against PECO Energy Company (PECO), alleging that he had incorrect charges on his electric bill and that PECO provided him with poor customer service. The Complainant asserted that despite having filed numerous informal complaints with the Commission against PECO, PECO had not been truthful in responding to his claims and problems. The Complainant also argued that he did not consistently receive bills from PECO for service rendered but that PECO, nevertheless, issued him notices of default for failure to pay. As relief, the Complainant requested a Payment Agreement. Complaint at ¶ 4.

On April 24, 2013, PECO filed an Answer and New Matter in response to the Complaint. In its Answer, PECO denied all material allegations contained in the Complaint. Specifically, PECO denied that the Complainant was overcharged for his service or that his bills contained errors. PECO noted that the Complainant had previously received four payment agreements, including two agreements issued by the Commission's Bureau of Consumer Services (BCS), but failed to keep any of the agreements. Answer at 2-4. PECO further asserted that the Complainant was not receiving paper bills because he was enrolled in PECO's optional electronic billing (e-billing). *Id.* at 5. In its New Matter, PECO alleged that the Complainant was not entitled to receive any additional payment agreements because he had defaulted on two prior Commission-issued payment agreements and had not subsequently experienced a change in income. *Id.* at 6-7. PECO requested that the Complaint be dismissed. *Id.* at 7.

On June 26, 2013, a hearing was held in this matter. However, prior to the delivery of testimony, PECO requested that the hearing be continued so that it could conduct a high bill investigation at the Complainant's Service Address to aid in possible settlement discussions. The Complainant did not oppose this request.

On July 24, 2013, a second hearing was held. The Complainant appeared *pro se* and testified on his own behalf. PECO was represented by counsel, presented the testimony of two witness, and submitted thirteen exhibits, twelve of which were admitted into the record. The hearing resulted in a transcript of eighty-two pages.

On August 2, 2013, PECO served a late-filed exhibit that was formally admitted into the record by Order dated September 18, 2013.

In the Initial Decision, issued on October 17, 2013, ALJ Cheskis sustained the Complaint, in part, and denied it, in part, finding that the Complainant did not demonstrate that PECO billed him incorrectly or provided him with poor service. However, the ALJ granted the Complainant's request for a payment agreement. I.D. at 22.

Discussion

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Code. 66 Pa. C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that PECO is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by PECO. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a

suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the Complainant shifts to PECO. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied the burden of proof. The Complainant now has to provide some additional evidence to rebut the evidence of PECO. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983). While the burden of going forward with the evidence may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

The burden of proof for “high bill” complaints has been explained in *Waldron v. Philadelphia Electric Company*, 54 Pa. P.U.C. 98 (1980), and its progeny. In *Waldron*, the Commission adopted the Michigan Public Service Commission’s (PSC’s) policy announced in *Hallifax v. O & A Electric Co-Op*, Case No. U-5825, May 1979, which stated that, while the accuracy of the meter is an important factor in resolving billing disputes, it is not the sole criterion. The Commission stated that it will also consider the following factors: the billing history of the complainant; any change in the number of occupants residing at the household; the potential for energy utilization; and any other relevant facts or circumstances that are brought to light during the complaint proceeding. *Waldron* at 100.

The Commission recently explained the burden of proof set forth in *Waldron* as follows:

[T]he *Waldron* Rule allows a complainant to establish a *prima facie* case in a “high bill” complaint by showing that the disputed bill is abnormally high when compared to prior usage patterns and his or her pattern of usage has not changed *or by providing other relevant evidence showing that the disputed bill is unreasonably high.* In evaluating a “high bill” complaint, the Commission may consider such evidence as “the billing history of the account, any change in usage patterns (such as a change in the number of occupants residing in the household or potential energy utilization), *and any other relevant facts or circumstances that come to light during the proceeding.*”

Nehemiah B. Thomas v. PECO Energy Company, Docket No. C-2010-2187197, at 5 (Order entered November 15, 2011).

The ALJ made forty-two Findings of Fact and reached eighteen Conclusions of Law. I.D. at 3-8, 19-21. We shall adopt and incorporate herein by reference the ALJ’s Findings of Fact and Conclusions of Law, unless they are reversed or modified by this Opinion and Order, either expressly or by necessary implication.

ALJ’s Initial Decision

1. Allegations of Erroneous Billing

The ALJ noted that the Complainant testified that his electric bills were high in the past eighteen months despite the fact that there were only two occupants at his Service Address and that his Service Address was uninhabited two weeks out of the month, during which time HVAC is turned off. In response, the witness for PECO testified that the Complainant’s bills were correct as rendered and that the Complainant’s usage was within the potential for usage that PECO determined upon conducting a high bill investigation at the Service Address. I.D. at 9-10. In addressing the Complainant’s high bill allegation, the ALJ found that the Complainant’s usage history does not support

a finding that his utility bill increased unreasonably or that he was billed incorrectly. The ALJ determined that a comparison of the Complainant's monthly usage data reveals consistent usage, or even reduced usage, more than it reveals unreasonably high usage. *Id.* at 11.

The ALJ also found that the Complainant failed to provide any evidence that would support a finding that his bills were unreasonably high. In contrast, the ALJ found that PECO provided evidence to show that the Complainant's meter was operating within PECO and Commission guidelines and that the Complainant was correctly billed. The ALJ added that just because the Service Address was uninhabited two weeks out of each month with heating and cooling turned off does not demonstrate that PECO incorrectly billed the Complainant. *Id.*

2. Allegations of Improper Billing and Poor Service

The ALJ also addressed the Complainant's averments that PECO improperly billed him and provided him with poor customer service.

The Complainant asserted that he often went several months without receiving a bill from PECO and had not received any bill since October 2011. The witness for PECO responded that the Complainant was enrolled in e-billing from November 28, 2005 to October 28, 2010, during which time his bills were delivered via e-mail. The witness added that the Complainant removed himself from e-billing on October 28, 2010, after which time bills were sent to his Service Address. *Id.* at 15. The ALJ found that the Complainant did not meet his burden of proving that PECO violated the Code, any Commission Order or Regulation, or any Commission-approved PECO tariff with regard to his billing. Citing record evidence, the ALJ noted that the Complainant made approximately twenty payments on his account after opting out of e-billing in October 2010, but only made two payments toward his arrearages between July

2012 and July 2013. The ALJ concluded that this pattern, uncontested by the Complainant at the hearing, does not support a finding that the Complainant did not receive his monthly electric bills. The ALJ reasoned that, because the Complainant recognized during the hearing his responsibility to pay for the utility service he uses, the Complainant was responsible to ensure that he was paying for his utility service even if he was not receiving monthly bills. *Id.* at 15-16.

The ALJ opined that, if the Complainant was not receiving his bills, the Complainant could have either made estimated payments to ensure that his account balance was not excessively high, or that he could have contacted PECO to obtain his account balance. Instead, the ALJ noted that the Complainant only remitted two payments from July 2012 to July 2013 despite continuing to use PECO's service. However, the ALJ also noted that the Complainant made very clear his desire to receive his monthly bills in paper format. Therefore, the ALJ directed PECO to ensure that the Complainant no longer be billed electronically but only be sent paper bills. *Id.* at 16.

Regarding the Complainant's allegations of poor customer service, the ALJ found that the Complainant did not meet his burden of proving that PECO acted unreasonably or contrary to any Commission Order or Regulation in its provision of customer service. The ALJ applied Section 1501 of the Code 66 Pa. C.S. § 1501, which charges utilities with providing adequate, efficient, safe, and reasonable service, in light of the fact that the Commission has no regulations that establish a standard of conduct for public utility customer service representatives. The ALJ found that, while a utility customer deserves to be treated with courtesy and respect, the Complainant failed to provide substantial evidence that PECO acted otherwise. *Id.* at 17.

3. Request for a Payment Agreement

Finally, the ALJ addressed the Complainant's request for a reasonable payment agreement against PECO's assertions that the Complainant is not entitled to any further payment agreement. The ALJ noted that the Complainant had been granted payment agreements by BCS two times in the past, and that the record evidence indicated that the Complainant defaulted on each of those two payment agreements. The ALJ stated that, in order to be eligible for a new payment agreement from the Commission under Section 1405(d) of the Code, 66 Pa. C.S. § 1405(d), the Complainant was required to demonstrate a change in income. The ALJ explained that a "change in income" is defined in Section 1403 of the Code, 66 Pa. C.S. § 1403, as a decrease in household income of 20% or more for a customer with household income above 200% of the federal poverty level, or a decrease in household income of 10% or more if a customer's household income is 200% or less of the federal poverty level. *Id.* at 12-13.

The ALJ found that the Complainant experienced a decrease in income of greater than 20% and, therefore, met his burden of proving that he should be issued a new payment agreement. Specifically, the Complainant testified that his income decreased from \$25,000 per month to approximately \$5,400 per month. Citing Section 1405(b)(4) of the Code, 66 Pa C.S. § 1405(b)(4), the ALJ pointed out that the Complainant's income level was 417% of the federal poverty level, which limited the ability of the Commission to order a payment agreement of not more than six months for the Complainant to pay his outstanding balance owed to PECO. For the above reasons, the ALJ granted the Complainant's request for a payment agreement and directed PECO to bill the Complainant for his current usage plus one-sixth of his outstanding balance until the arrearage is satisfied. The ALJ added that, although the Commission is not required to issue a second payment agreement when the Complainant's change in income provides the same repayment period as the original payment agreement, he was granting a new

payment agreement in this case due, *inter alia*, to the Complainant's concerns regarding PECO's billing method. *Id.* at 13-14.

Disposition

On consideration of the positions of the Parties and the record evidence, we shall modify the Initial Decision of ALJ Cheskis. We agree with the ALJ's determination that the record does not support a finding that the Complainant's bills were unreasonably high. A review of the record indicates that the Complainant's kWh usage during the past three years reveals a pattern of consistent or reduced usage, and usage that is within the potential for usage at the Complainant's Service Address. Likewise, we concur with the ALJ that the record does not support the Complainant's allegations that PECO billed the Complainant improperly or that it provided him with poor service. As the ALJ points out, the Complainant has not demonstrated that PECO violated any provisions of the Code or its Commission-approved tariff in billing the Complainant. We further concur with the ALJ that PECO be directed to discontinue billing the Complainant electronically and to ensure that the Complainant will only be sent paper bills. However, we are of the Opinion that the ALJ has erred in his finding that the Complainant is entitled to a Commission-issued payment agreement.

The record in this case indicates that the Complainant defaulted on prior Commission-issued payment agreements in April 2010 and May 2012, as well as two Company-issued payment agreements. However, during the hearing, the Complainant testified that he had a business where his average gross income had been \$25,000 per month. The Complainant also testified that his current income is between \$5,400 and \$6,000 per month. Although the ALJ granted the Complainant a new Commission-ordered payment agreement based on this change in income, a closer examination of the record in this proceeding indicates that the Complainant's change in income in 2010 predates the issuance of the most recent Commission-ordered payment agreement.

According to the Complainant’s testimony at the evidentiary hearing held on July 24, 2013, his previous business, which produced \$25,000 in income per month, “ended three years ago” in 2010. Tr. at 20. The most recent Commission-ordered payment agreement was granted on May 8, 2012. Our review of the record reveals that the Complainant failed to provide evidence to demonstrate that a change in income occurred after the Commission’s issuance of this payment agreement.

We note that Sections 1403 and 1405(d) of the Code, 66 Pa. C.S. §§ 1403 and 1405(d), read, in pertinent part, as follows:

§ Section 1403. Definitions

* * *

“Change in income.” A decrease in household income of 20% or more if the customer’s household income level exceeds 200% of the Federal poverty level or a decrease in household income of 10% or more if the customer’s household income level is 200% or less of the Federal poverty level.

* * *

§ 1405. Payment agreements

* * *

(d) **Number of Payment agreements.**— Absent a change in income, the commission shall not establish or order a public utility to establish a second or subsequent payment agreement if a customer has defaulted on a previous payment agreement. A public utility may, at its discretion, enter into a second or subsequent agreement with a customer.

Hence, the Code prohibits us from establishing a second payment agreement if a customer has defaulted on a previous payment agreement, absent a change in income; however, the change in income must occur after the most-recent Commission-ordered payment agreement has been issued. Because there has been no change in income since the Complainant's May 8, 2012 Commission-issued payment agreement, we cannot issue one in this case. Accordingly, we shall deny the Complainant's request for a payment agreement.

Conclusion

Based on our review of the record, the ALJ's Initial Decision, and the applicable law, we shall modify the ALJ's Initial Decision, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Initial Decision of Administrative Law Judge Joel H. Cheskis, issued October 17, 2013, is adopted, as modified by this Opinion and Order.
2. That the portion of the Formal Complaint filed by Fred Lavner against PECO Energy Company at Docket No. C-2013-2357426 requesting that he receive his monthly bills in paper form is sustained and PECO Energy Company is directed to provide Mr. Lavner with his monthly bill in paper form going forward.
3. That the Formal Complaint filed by Fred Lavner against PECO Energy Company at Docket No. C-2013-2357426 is dismissed in all other respects, consistent with this Opinion and Order.

4. That this docket be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive style with a large initial "R".

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: December 5, 2013

ORDER ENTERED: December 24, 2013