

DAVID HATCHIGIAN
2414 Township Line Road
Havertown, PA 19083-5236
david3091@outlook.com

February 10, 2016

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

RECEIVED

FEB 10 2016

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RE: C-2015-2477321, 7512 BRENTWOOD ROAD PHILA PA. 19151
ELECTRIC
C-2015-2477331 104 WOODED LANE VILLANOVA PA. 19085
ELECTRIC
C-2015-2487879 104 WOODED LANE VILLANOVA PA. 19085
GAS

Dear Rosemary Chiavetta

Please find David Hatchigian response to the above three (3)

complaints. Any questions please call or e/m.

Respectfully submitted,


David Hatchigian

Enclosures (3)

Forward U.S.P.S. 3817

CC: Shawane Lee Counsel for PECO
Legal Department
2301 Market Street / S23-1
P. O. Box 8609
Philadelphia Pa. 19101-8699

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

David Hatchigian

v.

PECO Energy Company

**Before
Cynthia Williams Fordham
Administrative Law Judge**

**Complaint #C-2015-2477321
7512 Brentwood Road Phila. Pa. 19151**

IT IS HEREBY ORDERED THAT the order of the Public Service Commission is reversed and the record is remitted to the Commission for the Commission's reconsideration of the issues.

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S OFFICE

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**Before
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**Complaint #C-2015-2477321
7512 Brentwood Road Phila. Pa. 19151**

1. Section 9.2's "Or" Terminology Designating PECO's 3-Part Criteria for Underwriter Certification Creates a Double Meaning That Warrants Consideration of Extrinsic Evidence.

1. The company's policy requires the submission of an underwriter's certificate when there is no electric meter at the property; when the electric service has been off for six months or more; or when there is a hazardous condition (Tr. 27, 28; 32; PECO Exs. 4, 5, 8)

2. As the Commission's Order reflects, the record showed discontinuity for more than six months but there was no evidence presented that Brentwood could not be certified safe without an underwriter.

3. On the contrary, the record indicates safe service was determined without the need for an underwriter's certificate. If the burden of proof has been satisfied then it must be determined whether the Respondent has submitted evidence of "co-equal" value or weight to refute the Complainant's evidence. If this has occurred, the burden of proof has not been satisfied, unless the Complainant presented additional evidence. *Morrissey v. Pa. Dept. of Highways*, 424 Pa. 87,225 A.2d 895 (1967).

4. Whereas tariff provisions that have been approved by the Commission are prima facie reasonable (Lynch v. Pa. Pub. Util. Comm'n, 594 A.2d 816 (Pa.Cmwlth. 1991)) the Commission could not have intended to give PECO unlimited discretion to punish owners and tenants in the manner mandated by looking to the tariff's plain language alone.

5. Notwithstanding the "or" language in the commission-approved Sec. 9.2, utilities do not have unlimited discretion to formulate tariffs just as long as they are driven by public policy.

6. The Commission is the trier of the facts and here it was apparent that the Commission considered all the evidence and made a multitude of findings that warranted going beyond plain language. Hearings were held beginning on July 15, 2015, at which evidence was introduced by the Appellant and PECO as to matters of tariff reasonableness and the award of retroactive damages if the challenged tariff was deemed unreasonable.

7. To sustain Complainant's preponderance burden under 66 Pa.C.S. § 332(a) that PECO violated the Public Utility Code or a regulation or order of the Commission, testimony was furnished tending to show that PECO agreed there was no unsafe or hazardous at the Property. (Tr. 41)

8. Based on the evidence, there was no hazardous condition at the Complainant's property. (Tr. 41)

9. The inspection confirmed there was no realistic likelihood of structural decay or deteriorated wiring so as to risk an unsafe condition developing during that time. (Tr. 41)

10. In this appeal, the Commission can thus refrain from revisiting these undisputed facts or its factual determination with respect to the policy's "hazardous condition" criteria. (See attachments to Complainant Hatchigian's March 27, 2015 inquiry letter to the PUC, numbered 1-

8)(DH TO ALSO INSERT ALL INSPECTOR EX.'S SHOWING THE ELECTRICAL WAS GOOD TO GO @ BRENTWOOD, DETAILING EXACTLY HOW CURRENT SERVICE WAS SAFE)).

11. It was urged that the decision to enforce the tariff with no exceptions despite the absence of any unsafe condition was reached by overriding the facts and through a mistake of law. (Tr.41)

12. The Complainant testified that his tenant could not move into the apartment on time because the Respondent would not provide electric service before the underwriter's certificate was submitted (Tr. 13).

13. The Complainant testified that his tenant could not move into the apartment on time because the Respondent would not provide electric service before the underwriter's certificate was submitted (Tr. 13).

14. Complainant further testified that the wiring was maintained to be safe for use after longer than a six month discontinuity (Tr. 13) It was argued the lack of exemption or waiver provision in the tariff is unreasonable and the underwriter certification requirement was applied regardless of increased tenant safety.

15. He testified that comparable service to adjoining apartments with the identical wiring was safe after discontinuity (Tr. 13). As disclosed to the Commission by letter dated March 27, 2015, even if the tariff was made known to plaintiff he was at no point noticed that Section 9.2 afforded no possibility of waiver, exemption or adjustment even where the owner demonstrated the absence of any hazardous condition pursuant to the tariff. If Complainant had been permitted to do so at the hearing, it would have been a simple matter to establish with

reasonable certainty the maintenance measures taken to render the service in a safe condition for the preceding 6 month period. (Tr. 13).

16. The testimonial record reflects that Complainant was compelled to postpone his tenant's move-in date, return \$300.00 in rent paid, expend additional funds and time to locate and meet with the underwriter, and pay \$75.00 to have PECO allow the re-energization of his property. (See Ex.'s 4 and 6, attached to March 27, 2015 letter from Complainant Hatchigian to Pennsylvania Public Utility Commission).

17. Based on the record, the contention that the cost to tenants and landlords is excessive and unreasonable should have been sustained.

18. The Order disregards that the owner is required to pay the identical premium for certification even after it is clear there is no unsafe condition at his property.

19. If Appellees are to be believed, even once the more stringent prerequisite of finding "no hazardous condition" has been fulfilled by the owner, he or she must still be subject to the six-month discontinuity criteria. As applied (without the possibility of exemption, waiver or adjustment) the tariff mandates that the property owner to contact a third party electrical inspection agency, pay a separate fee to confirm there is no violation of the electrical code and verify the absence of a hazard for the company's employees. The plain language relied upon by the company also overrides the simple fact that having a test meter in place will indicate full functioning of the wiring and that an inspector's finding of "no hazardous condition" renders the discontinuity parameter entirely redundant.

20. A careful consideration of all the evidence would have included the experiences of the company applying the criteria, prior complaints filed with the Commission as to the policy or the three-part criteria provided therein, what is a reasonable amount to charge where there is a

test meter on site, thereby making a proper allowance for the practical realities faced by owner and tenant.

21. The policy's de-linking of the tariff's three-part criteria via unadorned "or" phrasing is unreasonable on its face and passes the cost of certification on to owners and their tenants where there is clearly no hazard posed, with no exceptions.

22. As such, while it is well established that only when a court determines that a tariff is ambiguous may it then consider extrinsic evidence to determine the tariff's meaning. *Utilities Corp. v. Public Utility Com'n*, 912 A.2d 386 (Pa. Commw. Ct. 2006), even when a contract is facially unambiguous, it may be susceptible to more than one meaning and ambiguous "when understood from the linguistic reference point of the parties." *Sumitomo Machinery Corp. of America v. AlliedSignal, Inc.*, 81 F.3d 328, 332 (3d Cir.1996)(quoting *Mellon Bank, N.A. v. Aetna Business Credit, Inc.*, 619 F.2d 1001, 1011 (3d Cir.1980)).

23. The extrinsic evidence may reveal an ambiguity that was not evident from the face of the contract because it may demonstrate that from the linguistic reference point of the parties, the contract is susceptible of different meanings. See, e.g., *American Cyanamid Co. v. Fermenta Animal Health Co.*, 54 F.3d 177, 181 (3d Cir.1995).

24. As applied here the company's tariff unreasonably excludes the possibility of exemption/waiver even where the property owner can definitively evidence that no present hazard exists. The company did not establish that the request for an underwriter's certificate is either reasonable or based on safety in these changed circumstances.

25. Because the tariff's ordinary meaning is clearly redundant and attempting to apply the plain language of the 3-part criteria for underwriter certification in a factual vacuum yields an

everyday meaning to property owners that is circular, this court need not defer to PECO's interpretation.

26. Stated differently, there is no complaint in this appeal against the classification set up by the tariff; Appellant's sole grievance was with being deprived of the logical exemption therein implicitly allowed. Whereas the electric service at the property was shut off for at least six months, it was argued notwithstanding the tariff's "or" terminology that the company should not have enforced the discontinuity criteria once the property owner sufficiently established compliance with all essential prerequisites warranting underwriter certification.

27. An injustice arose due to the multiple intertwined criteria for underwriter certification, asserting that the company has exceeded its limited Commission-approved discretion.

28. Giving effect to PECO's six-month discontinuity criteria where the higher bar of "hazardous condition" has been hurdled at the landlord's expense does not increase public safety but it does shift added costs onto tenants, delay tenant move-in dates, and punishes landlords for maintaining safe service consistent with the policy objective of public safety. In deciding out of hand that the tariff is unambiguous, the Commission ignored the double meaning created by the redundancy of the 6 month discontinuity provision of the tariff. Compare, dissent in *State Farm Fire & Cas. Co. v. PECO*, 2012 PA Super 212 (Pa. Super. Ct., 2012) (the majority focuses exclusively on the rule's particular reference to "accidents" and its elastic clause, arguably redundant relative to the other specific exclusions, precluding all liability for "any other cause beyond the Company's control.")

29. A court should construe an ambiguous tariff "against the framer and in favor of the consumer." *Lewistown-Reedsville Water Co. v. Pub. Serv. Comm'n*, 111 Pa.Super. 24, 169 A. 406, 408 (Pa.Super.Ct.1933).

30. "[i]n construing tariffs, courts and agencies must look to the four corners of the tariff and consider the entire instrument as a whole." *Consol. Gas Transmission Corp. v. FERC*, 771 F.2d 1536, 1545 (D.C.Cir.1985). And "[t]he purposes for which a tariff was imposed should be considered ... for 'to decide the question of the scope of [a] tariff without consideration of the factors and purposes underlying the terminology employed would make the process of adjudication little more than an exercise in semantics.' " *Id.* (second alteration in original) (quoting *United States v. W. Pac. R.R.*, 352 U.S. 59, 67, 77 S.Ct. 161, 1 L.Ed.2d 126 (1956)("...like any other instrument, a tariff is to be read in the light of its known purposes and in a manner which avoids unnecessary and gross unfairness."))

31. Here, the commission looked just at the four corners of the tariff to interpret its meaning, however Complainant has offered a reasonable alternative interpretation that would warrant the need to examine extrinsic evidence. See *Mellon Bank, N.A. v. Aetna Business Credit, Inc.*, 619 F.2d 1001, 1011 (C.A.3 (Pa.), 1980) (If a reasonable alternative interpretation is suggested, "external signs and objective indicia" may be considered in determining whether ambiguity exists.)

32. Furthermore, the Commission's decision must be supported by substantial evidence. 2 Pa.C.S. § 704. The term "substantial evidence" has been defined by various Pennsylvania courts as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Substantial evidence is more 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); *Murphy v. Dept. of Public Welfare*, 85 Pa.Cmwlth. 23, 480 A.2d 382 (1984).

33. In sum, it is apparent that the Commission did not assign the testimonial evidence the weight it deserved below, since it appears undisputable that the commission deemed that the nature of the hazard posed could not be determined from the Respondent's exhibits.

34. Moreover, the "or" in section 9.2's plain language is not reasonable as applied, construed in light of the commission's factfinding below that there was virtually no incursion upon public safety posed by reenergizing Appellant's service, or none which could even be identified for purposes of the company's more stringent "hazardous condition" criteria.

35. Based on the foregoing, the order of the Public Service Commission should be reversed and the record remitted with directions to reconsider whether a reasonable exception is implied by the tariff.

Respectfully submitted,

A handwritten signature in cursive script, reading "David Hutchinson". The signature is written in black ink and is positioned below the typed name "David Hutchinson".

February 10, 2016

DAVID HATCHIGIAN
2414 Township Line Road
Havertown, PA 19083-5236
david3091@verizon.net

March 27, 2015

Pennsylvania Public Utility Commission
400 North Street
Harrisburg, Pennsylvania 17120

RE: 7512 Brentwood Road Phila. Pa. 19151 P.E.C.O. Complaint no.

Dear Sir/Madam

On February 20, 2015 David Hatchigian entered into an agreement with Suenee Walker to rent second floor apartment at the above address. After Ms Walker attempted to request electric to the above address, it was brought to her attention that the landlord was required to obtain an electrical underwriter inspection of the electrical service for the sole benefit of the P.E.C.O. request. I called and questioned the purpose for this request and was told anytime the service has been turned off for more than six (6) months the P.E.C.O. requires this for there safety. I have no problem with the P.E.C.O. request accept for the landlord to be required to incur this expense for the sole purpose of guarantee the P.E.C.O. there is no problem when there is no reason to deny service. I am not in the electric utility business. There is a **NO** law, rule or statue that allows the P.E.C.O. to deny electric service to a residential customer with out just cause. I was told that they (P.E.C.O.) did not know and to contact the P.U.C. which I did and then received a phone call and letter confirming that there is **NO** law, rule or statue requiring the P.E.C.O. to deny electric service to my tenant. I have been forced to comply with the P.E.C.O. request with out a justifiable reason and forced to return ten days of rent three hundred (\$300) dollars and incur seventy five (\$75) dollar expense for the P.E.C.O. benefit for refusal to energize the electric. And my time to meet with the underwriter.

I am requesting five hundred (\$500) dollar out of pocket compensation. See attach exhibits.

Respectfully submitted,



**PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMPLAINT NO.**

**DAVID HATCHIGIAN VS P.E.C.O.
7512 BRENTWOOD ROAD PHILADELPHIA PA. 19151**

March 27, 2015

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Complaint against P.E.C.O. 7512 BRENTWOOD ROAD PHILA PA.
19151 NO.

INDEX

FEBRUARY 20, 2015 LEASE FROM D.H. TO SUENEE WALKER
STARTING FEBRUARY 21, 2015 EXH.1-2

MARCH 1, 2015 PAID RECEIPT FROM MUNICIPAL INSPECTION
AGENCY EXH 3

FEBRUARY 27, 2015 MONEY ORDER FOR SEVENTY FIVE (\$75)
DOLLARS EXH. 4

MARCH 1, 2015 MESSAGE FROM MUNICIPAL INSPECTION
AGENCY REQUESTING INSPECTION ON MARCH 1, 2015 EXH. 5

MUNICIPAL INSPECTION BUSINESS CARD (BOB PALKO) EXH. 6

MARCH 6, 2015 L.O.I. FROM DEBORAH SHINN P.E.C.O.
REPRESENTATIVE CONFIRMING NO LAW, RULE, STATUE EXIST
EXH 7-8

APARTMENT KEY NO. 55
 P.R. O.R. 46

RESIDENTIAL LEASE
 COPYRIGHT PENNSYLVANIA ASSOCIATION OF REALTORS® 1995

1-800-452-4525

This form recommended for but not restricted to use by members of the Pennsylvania Association of REALTORS®

1. DATE of Lease FEBRUARY 20, 2015

2. TENANT: (list all Tenants)
 Name SUENEE WALKER
 Mailing Address 2127 NORTH WANAMAKER STREET PHILA PA. 19131
 Phone Number(s) 215-837-8408
 Name _____
 Mailing Address _____
 Phone Number(s) _____

3. LANDLORD: (list all Landlords)
 Name DAVID HATCHIGIAN
 Mailing Address 2414 TOWNSHIP LINE ROAD HAVERTOWN PA. 19083
 Phone Number(s) 610-448-7267 610-627-7518 FAX DAVID8091@VERIZON.NET
 Name _____
 Mailing Address _____
 Phone Number(s) _____

4. AGENT FOR THE LANDLORD is _____

5. PROPERTY
 Landlord agrees to rent to Tenant the following Property: 7612 BRENTWOOD ROAD 2nd FLOOR PHILADELPHIA PA. 19151

6. STARTING AND ENDING DATES OF LEASE (also called "Term")
 A. Starting Date: This Lease starts on FEBRUARY 21, 2015 at 12 Noon.
 B. Ending Date: This Lease ends on FEBRUARY 28 2016 at 12 Noon.

7. RENEWAL TERM
 This Lease will automatically renew for a term of MONTH TO MONTH at the Ending Date unless:
 A. Tenant gives Landlord 30 days' written notice before Ending Date or before the end of any Renewal Term, OR
 B. Landlord gives Tenant 30 days' written notice before Ending Date or before the end of any Renewal Term.
 C. For Month to Month Leases Only: Either Landlord or Tenant may end a month to month Lease by giving 30 days' written notice on or before the day the next rent is due.

8. RENT
 A. The total amount of rent due over the term of this Lease is \$ 11,025
 B. The total rent due each month is \$ 800
 C. Rent is due on or before the FIRST day of the month.
 D. Tenant pays a late charge of \$ 54 if rent is more than THREE days late.
 E. Tenant makes payments to: address 2414 TOWNSHIP LINE ROAD, HAVERTOWN PA. 19083

9. BEFORE MOVING IN, TENANT PAYS

A. Part of a month's rent if Tenant takes possession before first regular due date	\$ _____	\$ <u>225</u>
B. First month's rent	\$ _____	\$ _____
C. <u>ONE MONTH FOR UTILITIES WATER AND GAS</u>	\$ _____	\$ <u>800</u>
D. Security Deposit, on deposit at _____ (name of bank)	\$ _____	\$ <u>800</u>
Total rent and security deposit received to date	\$ _____	\$ _____
Total amount due before Tenant moves in	\$ _____	\$ <u>2225</u>

10. USE OF PROPERTY
 A. Tenant will use property as a residence or ONLY
 B. Not more than ONE people will live on property.

11. UTILITIES AND SERVICES
 A. Landlord will pay for
 cold water hot water

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PA PUBLIC UTILITY COMMISSION
 STATE OF PENNSYLVANIA

1/11/15

AMERICAN WASTE TREATMENT CORPORATION
Industrial and Commercial Services
240 Dejeu Road - Suite 100
Pittsburgh, PA 15212
(412) 870-4494

73"

NAME					DATE	
					3-1-15	
ADDRESS						
1512 Brentwood						
Pittsburgh PA						
PHONE						
SOLD BY		CASH	C.O.D.	CHARGE	ON ACCT.	MOSE RET'D
QTY.	DESCRIPTION					AMOUNT
	Restoration					
	of Sewer					
	and 1/2					
	only					
RECEIVED BY						TAX
TOTAL						75.00

4-4000

6

2

count mai

7400

14266

Thank You

All items and returned goods MUST be accompanied by this bill.

NEGOTIABLE

OVER US \$ 75.00

5.00%

VALID 27, 2015

DATE: 4881-808800

AL #: 6800501831

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PA PUBLIC UTILITY

73"

account nr

3994-4000

306

2282

102

52

2-9400
05R

S.

4 M-

15

0088005 11-24
Office AU # 1210(8)

PERSONAL MONEY ORDER

SERIAL #: 6800501831
ACCOUNT#: 4881-608800

Remitter: DAVID HATCHIGIAN
Purchaser: DAVID HATCHIGIAN
Purchaser Account: 1010829138339
Operator I.D.: u344244
Funding Source: Paper Items(s)

February 27, 2015

PAY TO THE ORDER OF *****MUNICIPAL INSPTION*****

*****Seventy-five dollars and no cents*****

****\$75.00****

Payee Address:
Memo:

WELLS FARGO BANK, N.A.
3 E LANCASTER AVE
17 DAVIDS, PA 19027
INQUIRIES CALL (480) 394-3122

NOTICE TO PURCHASER—IF STOP PAYMENT IS PLACED ON THIS INSTRUMENT, WELLS FARGO BANK MAY IMPOSE A WAITING PERIOD BEFORE ISSUING A REPLACEMENT OR REFUND.

VOID IF OVER US \$ 75.00

NON-NEGOTIABLE

Purchaser Copy

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FEB 10 2016

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

PLANTIFF EXH. 4

Subject: New message from "PENNSYLVANIA from 215-435-4473"
From: "Verizon FiOS Notifications" <noreply@verizon.net>
Date: 3/1/2015 5:03 PM
To: david3091@verizon.net

A new message has arrived in your 610-527-7513 mailbox.

Sender: "PENNSYLVANIA from 215-435-4473"
Recipient: 610-527-7513
Type: Voicemail
Subject: 16 sec voice message

You may access your Verizon FiOS® Digital Voice online account manager by visiting www.verizon.com/fiosvoice.

— Attachments: —

msg_Mar01_2015_2203GMT.wav

26.3 KB

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PA PUBLIC
2/10/16

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FEB 10 2016

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU



**MUNICIPAL INSPECTION
CORPORATION**

Bob Patko
Electrical Inspector-UCC Cert.
Residential and Commercial

248 Geiger Rd Ste. 103
Philadelphia, PA 19115
215.673.4434 Off
215.435.4473 Cell
215.677.9360 Fax

PECO
Customer Relations
2301 Market Street, N3-1
P.O. Box 8699
Philadelphia, PA 19101-8699

www.peco.com



An Exelon Company

March 6, 2014

David Hatchigian
7512 Brentwood Rd
Philadelphia, PA 19151

Account Number: 84200-73247

Dear Mr. Hatchigian:

In response to the Informal Complaint (BCS #03323044) that was filed with the Bureau of Consumer Services on 3/4/15.

I attempted to contact you at 810-448-7257 but there was no answer. I left a message requesting a call back.

The request for an Underwriters Certificate of Inspection for the above property was made based on a Company policy, not a law, statute or section of our tariff. The Company requires an Underwriter Certificate of Inspection to protect the safety of our customer's and their property before service is energized under the following conditions:

- Hazardous Condition
- Unsafe Condition
- Meter Removed
- Service is off 6 months or longer
- Judgment of the Company

Service for the above address was energized and a new service account was initiated for the tenant upon receipt of the Underwriters Certificate of Inspection.

If you have any additional questions or concerns, I can be reached at 215-841-4382.

This information will be provided to the Public Utility Commission. The Public Utility Commission will notify you of their decision.

Cordially,

Deborah Shinn
Business Analyst

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FEB 10 2016

PA PUBLIC UTILITY COMMISSION
SECRETARY'S OFFICE

PLANTIFF EXH. 7

Subject: New message from "COPA KEYSTONE from 717-772-7777"
From: "Verizon FiOS Notifications" <noreply@verizon.net>
Date: 6/15/2015 9:55 AM
To: david3091@verizon.net

A new message has arrived in your 610-527-7513 mailbox.

Sender: "COPA KEYSTONE from 717-772-7777"
Recipient: 610-527-7513
Type: Voicemail
Subject: 68 sec voice message

717-787-8009

You may access your Verizon FiOS® Digital Voice online account manager by visiting www.verizon.com/fiosvoice.

ROSEMARY CHINUSTA NO.

—Attachments:

msg_Jun15_2015_1355GMT.wav

109 KB



MUNICIPAL INSPECTION CORPORATION



248 Geiger Rd Suite 103 Philadelphia, PA 19115 Office # 215.673.4434 Fax # 215.677.9360
[Mic-Sharon@hotmail.com](mailto:mic-sharon@hotmail.com)

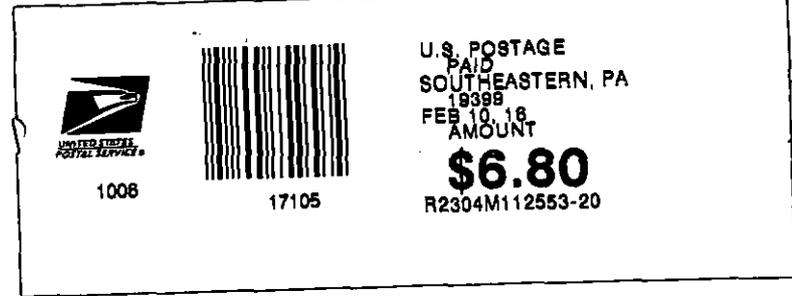
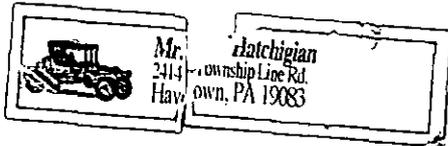
February 10, 2016

RE: 7512 Brentwood Road

On November 19, 2015 an electrical inspection was done by our company.
The inspection passed and paid \$75.00

Sincerely

Municipal Inspection Corp.
Inspector Robert Palko



P. A. Public Utility Commission

P.O. Box 3265

Hanbury, Pa. 17105-3265

Att: Rosemary Charvetto

