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March 16, 2016

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

**RE: Deree J. Norman v. PECO Energy Company**  
**PUC Docket No.: C-2015-2472605**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *PECO Energy Company's Main Brief* 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 long horizontal flourish extending to the right.

Shawane Lee  
Counsel for PECO Energy Company

cc: Certificate of Service

SL/alb  
Enclosure

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DEREE J. NORMAN	:	
	:	
Complainant	:	
	:	
v.	:	Docket No. C-2015-2472605
	:	
PECO ENERGY COMPANY	:	
	:	
Respondent	:	

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**PECO ENERGY COMPANY'S  
MAIN BRIEF**

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And Now, pursuant to 52 Pa. Code § 5.501 and the Briefing Order issued in this proceeding, comes PECO Company ("PECO") and files its Main Brief as follows:

**I. INTRODUCTION AND STATEMENT OF THE CASE**

This matter involves a Formal Complaint filed by Deree Norman ("Complainant" or "Mr. Norman") against PECO. Complainant alleges that PECO uses a complex algorithm to create fictitious usage charges and that he has a smart meter that is not registering properly. Complainant claims that his bills increased dramatically during the fall/winter months of September 11, 2010 through March 14, 2011 and September 10, 2012 through March 13, 2013. Complainant requests that his bills be adjusted to reflect "normal" usage and that PECO be investigated and held accountable for its billing practices.

To address Complainant's billing concerns PECO conducted two high bill field investigations at the Complainant's property in 2011 and 2015 and an instrument meter test.

Additionally, the company contacted Complainant several times from 2011 through the date of the PUC hearing in 2015 to address Complainant's billing concerns. The objective evidence in this case demonstrates there are no billing discrepancies, meter issues or algorithms affecting the Complainant's billing.

## **II. BACKGROUND AND PROCEDURAL HISTORY**

This matter was initiated by Complainant on March 16, 2015, by filing a formal complaint. On March 19, 2015, PECO was served with the formal complaint. In Complainant's formal complaint, Complainant checked the box "The utility is threatening to shut off my service or has already shut off my service" and "Incorrect charges are on my bill". The Complainant attached a typewritten statement in which he alleged that PECO was using fictitious billing algorithms to increase his bill during the winter months. For relief, the Complaint indicated that he wanted compensation for his "inconvenience and anguish"; his billing corrected and PECO investigated.

PECO filed its Answer to the Complaint on April 8, 2015. PECO denied the material allegations of the Complaint, and stated the company had performed a high bill field investigation. PECO additionally averred that Complainant was enrolled in PECO's Customer Assistance Program (CAP) under Tier B in 2007 until he was removed in 2013 for failing to recertify.<sup>1</sup> PECO averred that the company had addressed the Complainant's billing concerns during an August 24, 2011, field visit, which confirmed the billing is accurate.

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<sup>1</sup> Customers enrolled in CAP Tier B receive the highest discount for electric usage at 90 percent. From October – June, they are only required to pay a flat rate of \$30.00 if their usage does not exceed 650 kilowatt hours. Being removed from CAP and this Tier would dramatically affect the Complainant's bills.

A hearing was held in this matter on September 3, 2015, October 29, 2015 and January 21, 2016. At the hearing, the Complainant represented himself and offered several exhibits into evidence. PECO presented the testimony of four witnesses and admitted ten exhibits into the record. The Briefing Order in this matter was issued on February 23, 2016.

### **III. PROPOSED FINDINGS OF FACT**

1. Mr. Norman established electric service at 5367 Thomas Avenue, Philadelphia, PA on March 29, 2002. (Tr. 193-194).
2. Mr. Norman's service address has AMR meter number 107316622, which was installed and tested on February 14, 2002. (Tr.184; Tr. 233).
3. On February 14, 2002, the AMR meter number 107316622 tested 100.10 percent on full load and 100.08 percent on light load within PECO and PUC guidelines. (PECO 9; Tr. 185).
4. Mr. Norman does not have an AMI – Smart Meter installed at his service address. (Tr. 233; Tr. 236).
5. On August 24, 2011, PECO performed a high bill field investigation at Mr. Norman's residence. (PECO 10).
6. During the August 24, 2011 field visit, PECO's field technician found that Mr. Norman had no gas heat at the time of the visit. (PECO 10).
7. On September 24, 2015, PECO conducted a field visit at Mr. Norman's residence and performed an instrument meter test on meter number 107316622 in the presence of his personal electrician. (PECO 13; Tr. 187).

8. The meter test performed on September 24, 2015, showed the meter was accurate; tested within 100.025 on full load and light load and was found to be working within PECO and PUC guidelines. (PECO 13).
9. At the September 24, 2015, field visit, Mr. Norman agreed there were no issues with the meter. (Tr. 189).
10. Mr. Norman and his electrician Mike Janiewski signed a checklist that PECO had verified the meter, verified the accuracy of the last billed meter reading, analyzed the potential for billed use; performed a passing load test to check meter accuracy, performed an instrument test and verified there is no foreign wiring. (PECO 14).
11. Based on the electrical appliances in the home, Mr. Norman had the potential to use the electricity at the premises for which he was billed, and his meter readings were consistent with billed usage. (PECO 10; PECO 12).
12. Richard King is PECO's Billing Operations Manager and he has been employed with the company for 44 years after starting with the company as a meter reader. (Tr. 203).
13. Mr. King testified that PECO's billing system collects actual data in the form of daily meter readings that are entered into PECO's billing system. The rate is calculated and a bill is generated. (Tr. 203, Tr. 213).
14. The L + G (Landis & Gyr) billing system pulls actual meter readings every night at 12:00 a.m. and transmits them into PECO's Customer Information Management System (CIMS). (Tr. 211; Tr. 229).
15. PECO has twenty-one (21) different billing cycles that generate bills from 26 – 35 day billing periods.

16. PECO does not use complex mathematical algorithms, statistical data or empirical data in the billing system. (Tr. 214; Tr. 229).
17. Mr. King testified that changes in heating such as disconnecting a heating source and changing to electric heat can increase winter usage. (Tr. 216).
18. PECO's high bill analyst John Vizza investigated Mr. Norman's high bill concerns and determined that Mr. Norman's electric use from November 2013 to March 2014 reflected the use of electric heating. The usage was over 1200 kilowatt hours through the winter season but then dropped dramatically as the warmer weather came in. (PECO 4; Tr. 198-199).

### **III. PROPOSED CONCLUSIONS OF LAW**

1. As the party seeking the intervention from this Commission, Complainant bears the burden of proving that Respondent violated provisions of the Public Utility Code or the Public Utility Commission's regulations in some fashion.<sup>2</sup>
2. To establish a sufficient case and satisfy the burden of proof, Complainant must show that PECO is responsible or accountable for the problem described in the Complaint.<sup>3</sup> Such a showing must be by a preponderance of the evidence<sup>4</sup>. Complainant can meet that burden if it presents evidence more convincing, by even the smallest amount, than that evidence presented by Respondent.<sup>5</sup>

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<sup>2</sup> Section 332(a) of the Public Utility Code, 66 Pa. C.S. §332(a).

<sup>3</sup> Patterson v. Bell Telephone Company of Pennsylvania, 72 PA PUC 196 (1990), Feinstein v. Philadelphia Suburban Water Company, 50 PA PUC 300 (1976).

<sup>4</sup> Samuel J. Lansberry, Inc. v. Pa. Public Utility Comm'n, 134 Pa. Commw. 218; 221-222, 578 A.2d 600; 602 (1990), *alloc. den.* in 602 A.2d 863 (1992).

<sup>5</sup> Se-Ling Hosiery v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950).

3. Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence.<sup>6</sup> More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.<sup>7</sup>
4. Since the Complainant's complaint alleges over billing, the Complainant's burden of proof is governed by Waldron v. Philadelphia Electric Co., 54 PUC 98 (1980) (Waldron). In Waldron, the Commission concluded that a complainant may establish a prima facie over billing case by showing that: (1) the number of occupants of the household has not changed; (2) the potentials for energy utilization is low; and (3) the prior billing history shows no previous abnormalities. If the Complainant has submitted such evidence, the burden of going forward with evidence shifts to the Respondent. If the Respondent fails to rebut the Complainant's evidence, then the Complainant would prevail. If the Respondent places into the record evidence to rebut the Complainant's prima facie case, the burden of going forward with the evidence shifts back to the Complainant. In order to satisfy the burden of proof, the Complainant must rebut the Respondent's evidence by a preponderance of the evidence. Although the burden of going forward with the evidence may shift from one party to another during a proceeding, the "burden of proof" never shifts. It always remains on the Complainant, Replogle v. Pennsylvania Electric Co., 54 Pa. PUC 528 (1980).
5. Complainant has failed to carry his burden of providing sufficient evidence to support a finding that PECO violated the Public Utility Code or the Commission's regulations.

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<sup>6</sup> Mill v. Comm'w., PA Public Utility Comm'n, 447 A.2d 1100 (Pa. Cmwlth.1982); Edan Transportation Corp. v. PA Public Utility Comm'n, 623 A.2d 6 (Pa. Cmwlth.1993), 2 Pa.C.S. §704

<sup>7</sup> Norfolk and Western Ry. v. PA Public Utility Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Compensation Bd. of Review, 166 A.2d 96 (Pa. Super.1960); Murphy v. Commonwealth, Dep't. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa. Cmwlth.1984).

6. Complainant failed to sustain his burden of establishing that PECO provided inadequate, unreasonable or unsafe service; therefore, the Complaint must be dismissed.

#### **IV. ARGUMENT**

Mr. Norman has had the same AMR meter installed at his house since February 14, 2002. (PECO 9). Before the meter was installed, it tested 100.10 percent on full load and 100.08 percent on light load within PECO and PUC guidelines. (PECO 9). During Mr. Norman's case, he spent a considerable amount of time discussing the Smart Meter – an AMI meter - and provided exhibits and written information regarding AMI meters. He also spent quite a bit of time cross-examining PECO's witnesses about the AMI meter. However, Mr. Norman does not have an AMI meter. (Tr. 233). Mr. Norman has the same AMR meter number 107316622, which has been present at his address since he established service at the premises. Therefore, a large portion of Mr. Norman's testimony and exhibits are irrelevant to the case he presented.

In 2011, Mr. Norman began contacting PECO to dispute his winter bills. Per PECO's company process, PECO sent high bill field investigator Mary McQuilkin to Mr. Norman's service address on August 24, 2011 to investigate his concerns. (PECO 10; PECO 11). At that time, Mr. Norman was convinced that PECO was increasing the usage during the winter from a computer back at the company. (PECO 10). Mr. Norman he neglected to consider the fact that his use of an electric heat source caused his bills to be high. (PECO 11). Ms. McQuilkin noted that Mr. Norman had no gas heat in his home and claimed to have kerosene heaters but they were not present during the visit. (PECO 10). So, how was Mr. Norman heating his home if there were no kerosene heaters present and no gas heat? It is not surprising that Mr. Norman's winter bills in 2011 increased. In his brief, Mr. Norman admitted that gas was not used to heat the

home in 2010 and 2011. See Deree Norman's Brief. It is reasonable to believe that Mr. Norman's higher winter bills were not from a billing algorithm, but rather, use of electric heating.

Mr. Norman continued to complain of high bills and filed this formal complaint alleging that PECO is using an algorithm that generates fictitious bills during the winter. PECO, once again, tested Mr. Norman's AMR meter by performing an instrument meter test on September 24, 2015. (PECO 13). Mr. Norman's personal electrician was present and confirmed the meter test was conducted accurately. (Tr. 187-188). The meter tested 100.025 percent accurate on full load and light load. (PECO 12). PECO looked for foreign wiring to determine if that could be the cause of Mr. Norman's increased winter usage and found no issues. (Tr. 188). PECO's technician walked through Mr. Norman's property and noted all of the electrical appliances present and noted that Mr. Norman had the potential to use the service for which he was billed. (PECO 10; Tr. 187). Mr. Norman and his electrician signed off on a checklist that confirmed PECO had performed all of the testing and analysis requested by Mr. Norman and there were no issues found with the meter or Mr. Norman's service. (PECO 188). Based on the August 24, 2011 and September 24, 2015 field visits and meter tests, there is no objective evidence that the meter is not registering properly; Mr. Norman has received incorrect bills or was not properly billed on the meter readings.

Mr. Norman has a theory that PECO is using a fictitious algorithm in the company's billing system during the winter to generate higher bills for its customers. Mr. Norman presented no evidence to support his theory and the testimony of PECO's billing manager, Richard King proves this is simply not true. Mr. King has been employed with PECO for 44 years and started with the company as a meter reader. (Tr. 203). Mr. King testified that PECO collects actual

daily meter readings from Mr. Norman's meter (Tr. 204; Tr. 205). These meter readings are transmitted through the L & G (Landis & Gyr) system to PECO's Customer Information Management billing system every night at 12:00 a.m. (Tr. 203; Tr. 230). The actual meter readings are then calculated with the rate PECO has in place and a bill is generated. (Tr. 204; Tr. 213). Mr. King testified that he has worked with the IT programmers of PECO's billing system and any project that relates to billing and meters and he is responsible for signing off and approving the requirements for bills that go out to customers every month. (Tr. 231). In that capacity, Mr. King testified there are no billing algorithms that go into PECO's system. (Tr. 214; Tr. 229; Tr. 230).

Mr. Norman's exhibits regarding Smart Meters, his charts and testimony did not meet the burden of proof required to demonstrate that PECO improperly billed him. Mr. Norman presented no evidence to establish that PECO violated a regulation or the Public Utility Code. His evidence regarding overbilling consisted mostly of unsupported assertions and irrelevant documentation related to a meter type he does not have installed at his premises. Assertions, personal opinions, or perceptions do not constitute factual evidence. Pennsylvania Bureau of Corrections v. City of Pittsburgh, 532 A.2d 12 (Pa. 1987). As Mr. Norman did not meet his burden of proof, this complaint should be dismissed with prejudice.

## **VI. PROPOSED ORDERING PARAGRAPHS**

Wherefore, it is hereby ORDERED, that:

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa. C.S. §701

2. Pursuant to 66 Pa. C.S. §§332(a), the burden of proof in this proceeding is on the Complainant.

3. The Complainant has not met its burden of proving that it is entitled to relief. 66 Pa. C.S. §§332(a)

4. That the complaint of Deree Norman against PECO Energy Company at Docket No. C-2015-2472605 is denied, with prejudice.

5. That the record at Docket No. C-2015-2472605 is marked closed.

WHEREFORE, for all of the reasons stated above, PECO Energy Company respectfully requests that this Complaint be dismissed with prejudice.

Respectfully submitted,



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Shawane L. Lee

Dated: March 16, 2016

