

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

NEHEMIAH THOMAS	:	
Complainant	:	
v.	:	DOCKET NO. F-2012-2294555
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

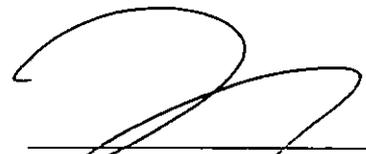
NOTICE TO PLEAD

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, Tishekia Williams, 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:
Tishekia Williams
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103

Dated at Philadelphia, PA, April 11, 2012



Tishekia Williams
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103
(215) 841-6481
Tishekia.williams@exeloncorp.com

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APR 11 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

NEHEMIAH THOMAS :
Complainant :
v. : **DOCKET NO. F-2012-2294555**
: :
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. Complainant's allegations have already been adjudicated and are barred by the doctrine of Res Judicata.

1. On March 14, 2012, PECO Energy was served with a formal complaint filed by Nehemiah Thomas (hereafter "Complainant"). The Complainant claims that PECO Energy attempted to murder him, terrorist are following him, that PECO Energy wrongfully refused to repair his service entrance cable, and that his bill contains incorrect charges.
2. PECO Energy simultaneously filed an Answer and the instant Preliminary Objection.
3. Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil procedure.¹
4. 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

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.

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

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

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

8. 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 if, in its opinion, a hearing is not necessary in the public interest. A hearing is required only when there is a disputed question of fact, and is not required to resolve questions of law.⁶

9. The Commission has only those duties, powers, responsibilities and jurisdiction that were expressly or by necessary implication given to it by the Legislature.⁷

10. The Complainant's claims regarding alleged attempts to murder him and terrorist attacked are not within the Commission's jurisdiction. While PECO Energy denies these allegations, even if they were taken as true, the allegations are clearly criminal in nature. Therefore, must be dismissed for want of subject matter jurisdiction.

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.

⁶ *Dee-Dee Cab, Inc. v. Pa. Pub. Util. Comm'n*, 817 A.2d 593 (Pa. Commw. Ct. 2003), petition for allowance of appeal denied, 836 A.2d 123 (Pa. 2003).

⁷ *Rogoff v. The Buncher Company*, 395 Pa. 477, 151 A.2d 83 (1959).

11. With regards to the Complainant's allegations regarding his billing, LIHEAP payments and service entrance cable, the Complainant has already had a full and fair opportunity to litigate these matters.

12. On July 13, 2010, PECO Energy was served with a formal complaint filed by Nehemiah Thomas at docket number C-2010-2187179. A copy of the complaint is attached as Exhibit 1. In that complaint, Mr. Thomas alleged incorrect charges on his bill, which the charges were placed on his bill in an attempt to kill him, and that PECO Energy failed to replace his service entrance cable.

13. PECO Energy filed an answer to the complaint on August 2, 2010. A copy of the Answer is attached as Exhibit 2.

14. By notice dated July 26, 2010, an initial hearing was scheduled for October 27, 2010. By notice dated March 7, 2011, the hearing was rescheduled for April 4, 2011. The hearing was held as scheduled. By notice dated May 17, 2011, a further hearing was scheduled for July 22, 2011. The hearing was convened as scheduled.

15. On September 14, 2011, an Initial Decision ("ID") was issued dismissing the complaint with prejudice finding that the Complainant failed to meet his burden of proof. The ALJ found that the Complainant had not met his burden under *Waldron* to demonstrate this his bill was incorrect, and that he is responsible for repairing the service entrance cable per PECO Energy's Commission approved tariff. A copy of the ID is attached as Exhibit 3.

16. No exceptions were filed. By Order entered November 15, 2011, the Commission exercised its power to review the matter sua sponte. In its Opinion and Order, the Commission expanded the discussion of the law governing "high bill" complaints but did not

disturb the holding of the ALJ dismissing the complaint. A copy of the Opinion and Order is attached as Exhibit 4.

17. The Complainant is again disputing the same issues. PECO avers that the complaint is barred by the doctrine of res judicata.

18. The doctrine of res judicata requires that the two actions possess the following common elements: (1) identity of the thing sued upon; (2) identity of the cause of action; (3) identity of the parties; and (4) identity of the capacity of the parties.⁸

19. All four elements are met. The identity of the thing sued is the same in both actions. Complainant disputes responsibility for repairing his service entrance cable, claims his bill is incorrect⁹, and that PECO Energy is attempting to murder him. Indeed, the Complainant explicitly states he would like to “appeal” the decision rendered by ALJ Nguyen. The cause of action is also the same. In essence, Complainant alleges that PECO violated Commission regulations by providing inaccurate billing and refusing to repair his service entrance cable. The parties are also the same. Each case involved a suit between Complainant, Nehemiah Thomas and PECO Energy. Finally, the parties are acting in the same capacity in each case. Complainant is a customer and PECO is a public utility.

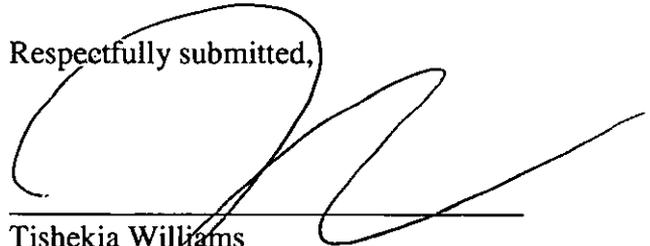
⁸ Stevens Painton Corp. v. First State Ins. Co., 746 A.2d 649 (Pa.Super. 2000). The essential inquiry is whether the ultimate and controlling issues have been decided in a prior proceeding where the parties had an opportunity to appear and assert their rights. *Id.* at 654.

⁹ The Complainant’s service has been off since October 2011.

REQUEST FOR RELIEF

WHEREFORE, for all of the reasons stated herein, PECO respectfully requests that your Honorable Commission dismiss the instant complaint with prejudice.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tishekia Williams', is written over a horizontal line. The signature is stylized and extends to the right of the line.

Tishekia Williams
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
tishekia.williams@exeloncorp.com



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



DATE SERVED: JULY 13, 2010

PECO ENERGY COMPANY
C/O WARD L SMITH
ASSOCIATE GENERAL COUNSEL
PO BOX 8699
PHILADELPHIA PA 19101-8699

C-2010-2187197
TISHEKIA WILLIAMS

JUL 14 2010

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APR 11 2012

Dear Mr. Smith:

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

A complaint has been filed against you before the Pennsylvania Public Utility Commission by Nehemiah Thomas. To defend yourself against the claims stated in the following pages, you must act within twenty (20) days by filing in writing with the Commission, either personally or through your attorney, your defenses or objections to the claims stated against you. Or, you may satisfy the complaint by settling the matter with the Complainant and submitting proof of settlement to the Commission within twenty (20) days.

IF YOU FAIL TO RESPOND WITHIN TWENTY (20) DAYS, THE CASE MAY GO FORWARD IN YOUR ABSENCE AND A JUDGEMENT MAY BE ENTERED AGAINST YOU BY THE COMMISSION WITHOUT FURTHER NOTICE.

CUSTOMER OF A UTILITY

A payment schedule may be prescribed or a termination of utility services may be authorized. You may lose money or property or other rights important to you.

COMPANY/UTILITY

An Administrative Law Judge may revoke or suspend any certificate or permit held by you, or impose a fine, or any other appropriate penalty or remedy authorized by the Public Utility Code. You may lose money or property or other rights important to you.

Detailed instructions on how to proceed are contained in the attached pages. You are advised to read them carefully.

July 13, 2010

Unless you are a corporation or other organization, you may proceed without a lawyer. However, if you want a lawyer and do not have one or cannot afford one, the office listed below can tell you where you can get legal help:

Pennsylvania Lawyer Referral Service
Pennsylvania Bar Association
P.O. Box 186
Harrisburg, PA 17108
(800) 692-7375

Very truly yours,

A handwritten signature in cursive script that reads "Rosemary Chiavetta". The signature is fluid and elegant, with a large initial 'R' and a long, sweeping tail on the 'a'.

Rosemary Chiavetta
Secretary

LM

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

DATE SERVED: JULY 13, 2010

NEHEMIAH THOMAS

Complainant

v.

PECO ENERGY COMPANY

Respondent

Complaint Docket

No: C-2010-2187197

FORMAL COMPLAINT NOTICE TO RESPONDENT TO ANSWER OR SATISFY

TO: PECO ENERGY COMPANY

TAKE NOTICE:

That a complaint in the above entitled matter, of which the attached is a true and correct copy, has been presented and filed of record with the Pennsylvania Public Utility Commission. Section 702 of the Public Utility Code, 66 Pa. C.S. Section 702, requires the Commission to serve on each party named in a complaint a copy of the complaint and notice calling upon each party to satisfy the complaint, or to answer the same in writing within a specified time; THEREFORE,

1. You have twenty (20) days from the date on which this complaint is served to either satisfy this complaint or to file with the **Secretary of the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265**, an answer (original and three copies), in writing, under oath, which, as required by Section 5.61 of the Commission's Rules of Practice and Procedure, 52 Pa. Code Section 5.61, either affirms or specifically denies the allegations in this complaint. You must also serve a copy of the answer upon the complainant. The date of service is the mailing date as indicated by the date at the top of this Notice. Section 1.56(a) of the Commission's Rules of Practice and Procedure, 52 Pa. Code Section 1.56(a).

2. If you fail to either satisfy this complaint or to file answer or other responsive pleading within twenty (20) days, you will be deemed to have admitted all the allegations in this complaint in accordance with Section 5.61 of the Commission's Rules of Administrative Practice and Procedure, 52 Pa. Code Section 5.61. In that event, the Commission may, without hearing, enter an order which either revokes or suspends any certificate or permit held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C.S. Section 101, et seq.; and, if

you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. The Commission is not limited to the relief sought by the complainant in paragraph 4 of the attached complaint.

3. If you elect to satisfy this complaint you must file, within twenty (20) days from the date on which this complaint is served, affidavits executed by each complainant that this complaint has been satisfied. Such affidavits must describe the basis on which this complaint was satisfied; any settlement agreement between the parties must be reduced to writing and attached to the affidavit. Such affidavits are to be filed with the Secretary of the Commission at the address set forth in paragraph 1. Upon receipt of affidavits of satisfaction from all complainants, this complaint may be dismissed by the Commission in accordance with Section 703(a) of the Public Utility Code, 66 Pa. C.S. Section 703(a), unless the Commission determines that such dismissal would be contrary to the public interest, in which event the Commission may direct that hearings be held upon the complaint.

4. If you file an answer which admits the allegations in this complaint, or which fails to specifically deny the allegations in this complaint, the Commission may, without hearing, enter an order which either revokes or suspends any certificate held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C. S. Section 101, et seq.; and, if you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. The Commission is not limited to the relief sought by the complainant in paragraph 4 of the attached complaint.

5. If you file a timely answer which specifically denies the allegations in this complaint, or which raises material questions of law or fact, this matter shall be referred to the Office of Administrative Law Judge for hearing and decision. If, after hearing on the issues raised by that answer, you are found to have committed any of the violations alleged in the complaint, the Administrative Law Judge may render a decision which either revokes or suspends any certificate or permit held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C. S. Section 101, et seq.; and, if you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. In the imposition of a penalty after a hearing the Administrative Law Judge is not bound by the relief sought by the complainant in paragraph 4 of the attached complaint.



Rosemary Chiavetta
Secretary

(SEAL)

Certified Mail
Return Receipt Requested

untimely

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint Form

Please print or type.

C-2010-2187197

1. CUSTOMER NAME (COMPLAINANT)

Your name, mailing address, county, telephone number, utility account number and service address:

Name Nehemiah B. Thomas

Street/P.O. Box 1453 So. Colorado St. Apt # _____

City Philadelphia State Pa. Zip 19146

County Philadelphia

Area Code/HOME Phone 215-467-1563

Area Code/WORK Phone 215-467-1563

Utility Account Number 96185-60016
(from your bill)

RECEIVED

JUL - 8 2010

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

Name _____

Street/P.O. Box _____

City _____ State _____ Zip _____

2. UTILITY NAME (RESPONDENT)

Name of utility company your complaint concerns: Peco Energy Company

3. TYPE OF UTILITY (check one)

ELECTRIC

STEAM HEAT

GAS

WASTE WATER

WATER

MOTOR CARRIER

(taxi, moving company, limousine)

TELEPHONE

(local, long distance)

52182

4. COMPLAINT (check one)

A. In general, what is your complaint?

- I want to oppose the company's proposed rate increase.
- There are incorrect charges on my bill.
- There is a reliability, safety or quality problem with my utility service.
- I received a notice that my utility service is being terminated.
- I would like a payment agreement.
- Other.
(explain)

B. State the facts of your complaint.

Include any specific dates, times or places that are important. If the complaint is about a bill, tell us about any charges that you believe are not correct. Use additional paper if you need more space. Provide copies of all relevant documents you believe will support your complaint.

My complaint is about overcharges on my account, that I believe were done intentionally to try and kill myself by leaving me in the cold. My disability forces my body to go to extremely low temperatures, and a terrorist group knows this. See attachments.

5. RELIEF

What do you want the Public Utility Commission to do about your complaint? Use additional paper if you need more space.

My electric bill should be between \$10⁰⁰ and \$15⁰⁰ per month. Please check electric bills from Dec. 2007 to June 2008. At this point Peo electric zeroed out all overcharges while my first complaint was still in effect, which never was resolved. Get me new service entrance wire, check charges day by day for at least a week, subtract overcharges. I heap weatherization can install new service entrance wire, and other utility needs.

PROTECTION FROM ABUSE

Answer the following question if your complaint is against a natural gas distribution company, an electric distribution company or a water company **AND** your complaint is about a billing problem, an application for service problem, a termination of service problem or a request for a payment agreement.

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

YES

NO

PRIOR UTILITY CONTACT

Answer the following question only if you are a residential customer and your complaint is against an electric distribution utility, natural gas distribution utility or a water distribution utility.

Have you spoken to a utility company representative about this complaint?

YES

(includes appeals of BCS determinations)

NO

If you tried to, but could not speak to a utility company representative about your complaint, please explain why.

VERIFICATION AND SIGNATURE

You must print or type your name below on the line provided for the verification paragraph, and you must sign and date (in ink) this form on the lines provided.

Verification:

1. Nehemiah B. Thomas

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).

Nehemiah B. Thomas
(Signature)

July 7, 2010
(Date)

9. LEGAL REPRESENTATION (IF ANY)

If you are represented by a lawyer in this matter you must provide your lawyer's name, address and telephone number.

Lawyer's Name Miss Williams (Community Legal Service)

Street 1424 Chestnut St.

City Phila. State Pa. Zip 19102

Area Code/Phone Number 215-981-3700

10. FILING

Please return the completed form 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	Secretary Pennsylvania Public Utility Commission 400 North Street Commonwealth Keystone Building, 2 nd Floor Harrisburg, Pennsylvania 17120
---	--

Facsimiles and/or electronic filings of the complaint form will not be accepted.

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

Hi! Attachment Formal complaint. My complaint is about overcharges on my account , that I believe were done intentionally to try and Kill myself by leaving me in the cold. My disability forces my body to go to extremely low temperatures, and a terrorist group knows this. I have sued in, Municiple Court and The Court Of Common Pleas since 2005, October, the DA's office since 2004, and I have been attacked before and after. These terrorist have great connections in high places, I believe, because they can stall and attack during any legal proceeding. They have illegally shut off my water, in May 2004 ,I have not had a bath or shower in my house since May 2004, and about 15 showers at the YMCA in the first couple of years after shutoff, then had to stop attending because of attacks. My gas was illegally shut off in May 2006, I have a gas leak from the stove, weatherization has been stalled until this day. The heater hotline will only install a new heater without checking the old one out, and knowing that the gas was shut off. My roof has been sabotaged and is leaking water and air into three floors of my house destroying ceilings on two floors. All these things have been reported for over four years now and have not been addressed. If it was not for a Peco attendant creating an external neutral wire temporary connection I would have no utilities, which seems to be the goal of the terrorist. I have had to wear a coat the last four winters in my house, use electric blankets, which are now

sabotaged and several hats and hoods to survive. I am a self taught Minister that is taught through the scriptures to fight spiritual wickedness in high places, Ephesians 6th ch., but I never thought things could be this wicked. Well I have told the truth as I am instructed in the word of God, however if you allow this insolence (disrespect) to continue, so be it. P.S. Public record has all my cases on file SS# 192-44-2869. If I am not alive by the time they stall these proceedings out, please let the courts know that these are the reasons why. I also gave facts through the informal hearing and no attempt that I know of was made to reconcile differences. Also I have received Liheap grants for the last three years, \$300.00, \$421.00, \$421.00 with two \$100.00 additions this year and they have been given all facts , through my lawyers , Miss Pileggi, Miss Williams, Community Legal Service and myself.

Request for Formal Complaint Forms
(Notification of Intent to Appeal)

Time

Notice to Customer:

If you sign and return this form, you are telling the Public Utility Commission that you want to appeal this decision. Do not return this form unless you want to appeal this decision.

If you want to appeal, you must return this form within 20 days of 6/4/2010. The Commission will send you formal complaint forms if you return this form.

You must comply with this decision until the Public Utility Commission completes the formal complaint process. You must make all of the required payments or the utility company may shut off your service.

Sincerely,
Pennsylvania Public Utility Commission

Yes, I want to appeal this decision. Please send formal complaint forms to me at the following address:

Customer name and address:
(Please correct any mistakes.)

NEHEMIAH THOMAS
1453 S COLORADO STREET
PHILADELPHIA PA 19146

RECEIVED
2010 JUN 15 AM 9:26
PA.P.U.C.
SECRETARY'S BUREAU

215-467-1563

(Area Code) Telephone Number
BCS: 2509150
Company: PECO ENERGY

Nehemiah B. Thomas

Signature
Date of Mailing: 6/4/2010

Mail this completed form to:

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

P.S. Report is not correct, this does not sound like it has common sense. I said to Peco that the heaters are 1500 watts to turn on then they do not call for more energy. Also I had to extend the complaint because of shut off notices while I awaited the PUC decision. I was on the cap plan since 2004, and I was not in debt to Peco. The matters were about overcharges because of a faulty service entrance wire about which the Home Improvement book says that the server is responsible. My correct bills were paid through Liheap grants. (\$300⁰⁰ 2008) (\$421⁰⁰ 2009) (\$621⁰⁰ 2010)

52V182

termination
- Service Entrance Cable

2000 - bills for non-use



~~Bills~~ ⇒

~~use space headers~~

⇒ why it was credited

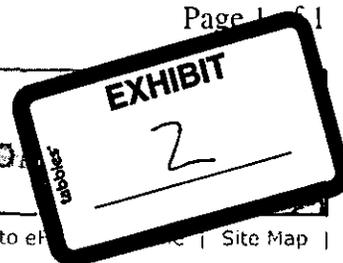
Remember to ability to when taps cut



⇒ if customer want used



Pennsylvania Public Utility Commission



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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.

The PUC is temporarily requiring all eFilers to submit one paper copy of all documents that are filed electronically. This paper copy should be submitted to the Secretary's Bureau within 3 business days of submitting the electronic filing online. 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-2010-2187197
Description:	Answer
Transmission Date:	8/2/2010 10:39:22 AM
Filed On:	8/2/2010 10:39:22 AM
eFiling Confirmation Number:	1449350

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Uploaded File List

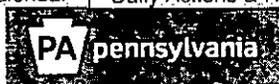
File Name	Document Class	Document Type
Nehemiah B.Thomas Answer.pdf	Communication	Answer to Formal Complaint

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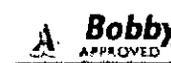
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9618560016

Answer

Legal Department

Exelon Business Services Company
2301 Market Street/523-1
P.O. Box 8699
Philadelphia, PA 19101-8699

Telephone 215.841.4000
Fax 215.568.3389
www.exeloncorp.com

Business Services
Company

Direct Dial: 215.841.6841

August 2, 2010

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

Re: Nehemiah B. Thomas v. PECO Energy Company
PUC Docket No. C-2010-2187197

Dear Ms. Chiavetta:

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

<u> X </u>	Answer (1 original)
<u> </u>	Motion for Continuance (1 original)
<u> </u>	Motion for Judgment on the Pleadings (1 original)
<u> </u>	Preliminary Objection (1 original)
<u> </u>	Exceptions (1 original)
<u> </u>	Reply Exceptions (1 original)
<u> </u>	Brief (1 original)
<u> </u>	Reply Brief (1 original)

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,



Tishkia Williams
Counsel for PECO Energy Company

TW/adz
Enc.

Scheduling recommendation: CALL OF THE DOCKET: NON-CALL OF THE DOCKET: X

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Legal Department

Exelon Business Services Company
2301 Market Street/523-1
P.O. Box 8699
Philadelphia, PA 19101-8699

Telephone 215.841.1000
Fax 215.568.3389
www.exeloncorp.com

Business Services
Company

Direct Dial: 215 841-6841

August 2, 2010

Nehemiah B. Thomas
1453 S. Colorado Street
Philadelphia, PA 19146

Re: Nehemiah B. Thomas v. PECO Energy Company
PUC Docket No. C-2010-2187197

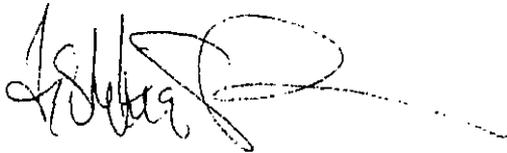
Dear Mr. Thomas:

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. If there is a "Notice to Plead" attached to this Answer, you should review the Notice to Plead for information on how to respond to a New Matter, Motion or Preliminary Objection that may have been included with the Answer. Please note that if you do not respond to a New Matter, Motion, or Preliminary Objection an unfavorable decision may be rendered against you.

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.

If you have any questions or concerns at any time, please do not hesitate to contact me at the above listed number.

Very truly yours,



Tishekia Williams
Counsel for PECO Energy Company
TW/adz
Enc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

NEHEMIAH B. THOMAS :
 :
v. : **DOCKET NO. C-2010-2187197**
 :
PECO ENERGY COMPANY :

ANSWER OF RESPONDENT, PECO ENERGY COMPANY

PECO Energy Company ("PECO Energy"), pursuant to 52 Pa. Code § 5.61, responds to the Complaint and states:

1. Admitted.
2. Admitted.
3. Admitted.
4. Denied. PECO denies that there are incorrect charges on Complainant's account.

Additionally, PECO denies all allegations of wrongdoing or misconduct. Complainant currently has an excess credit in the amount of \$153.21 on this account. A copy of Complainant's account activity statement is attached as Exhibit 1.

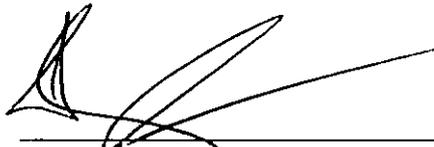
Upon information and belief, Complainant believes that his electric service bill is too high. PECO denies the bills are improper. On March 23, 2009, Complainant called to dispute his bill. A high bill investigation was initiated. A high bill field appointment was scheduled for April 9, 2009. On April 7, 2009, Complainant cancelled the investigation stating that he wanted the same field person who visited his home in December 2007 to perform the investigation. Complainant was informed that the requested field technician does not work for the Company's high bill department and could not perform the investigation. PECO is willing to conduct a high bill field investigation using a technician with the appropriate skills and training for the task.

On March 25, 2009. Complainant filed an informal report with the Bureau of Consumer Services at case number 2509150. On June 4, 2010, the BCS rendered a decision. The BCS determine that Complainant's bills are correct as rendered. Given Complainant's use of four (4) spaced heaters, his winter usage can be justified. A copy of the decision is attached as Exhibit 2.

5. PECO Energy is without sufficient information to confirm or deny this statement.
6. Admitted.
7. Admitted.

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

Respectfully Submitted,



Tishkia Williams
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
tishkia.williams@exeloncorp.com

*PECO account
1*

*** Account Information ***

Account Number: 96185-60016
Account Status: Active
Requested By: NEHEMIAH B THOMAS
(215)467-1563 Extension:
Mail To: NEHEMIAH B THOMAS
1453 S COLORADO ST
PHILADELPHIA PA 19146

*** Current Account Status ***

Current Bill: \$0.00
Billed Prior: \$0.00
Balance Due: \$0.00
Service Address: 1453 S COLORADO ST
PHILADELPHIA PA 19146
Credit Amount: \$153.21
Deposit Requested: \$0.00
Deposit On-Hand: \$0.00
Meter Bill Grp: 10
Rate: CAP Opt D Electric Residential Service

DATE	CHARGE TYPE	BILLING PERIOD	READ	METER #	CHARGE AMOUNT	CREDIT AMOUNT	NOGAP TOTAL BILL	BALANCE FORWARD	DUE DATE	KWH	CCF	KW
08/13/08	ELECTRIC SERVICE	07/14/08 08/12/08	26614	038440374	\$11.79							
08/13/08	Regular Bill							\$-97.06	09/04	106		
09/12/08	ELECTRIC SERVICE	08/12/08 09/11/08	26711	038440374	\$11.20			\$-85.86	10/06	97		
09/12/08	Regular Bill											
10/13/08	ELECTRIC SERVICE	09/11/08 10/12/08	26815	038440374	\$11.66			\$-74.20	11/04	104		
10/13/08	Regular Bill											
11/11/08	ELECTRIC SERVICE	10/12/08 11/10/08	26959	038440374	\$14.19			\$-60.01	12/03	144		
11/11/08	Regular Bill											
12/12/08	ELECTRIC SERVICE	11/10/08 12/11/08	27562	038440374	\$50.20			\$-9.81	01/05	603		
12/12/08	Regular Bill											
12/15/09	ELECTRIC SERVICE	12/11/08 01/14/09	29029	038440374	\$163.18							
12/15/09	Regular Bill						\$153.37		02/06	1467		
12/22/09	LIHEAP Payment					\$441.00						
01/16/09	ELECTRIC SERVICE	01/14/09 02/15/09	30777	038440374	\$191.63							
01/16/09	Regular Bill							\$-96.00	03/10	1748		
03/17/09	ELECTRIC SERVICE	02/15/09 03/16/09	32153	038440374	\$142.52							
03/17/09	Regular Bill						\$46.52		04/08	1376		
04/15/09	ELECTRIC SERVICE	03/16/09 04/14/09	33092	038440374	\$84.84							
04/15/09	Regular Bill						\$131.36	\$46.52	05/07	939		
05/14/09	ELECTRIC SERVICE	04/14/09 05/13/09	33501	038440374	\$31.28							
05/14/09	Regular Bill						\$162.64	\$131.36	06/05	409		
06/15/09	ELECTRIC SERVICE	05/13/09 06/14/09	33578	038440374	\$10.07							
06/15/09	Regular Bill						\$172.71	\$162.64	07/07	77		
07/15/09	ELECTRIC SERVICE	06/14/09 07/14/09	33655	038440374	\$10.20							
07/15/09	Regular Bill						\$182.91	\$172.71	08/06	77		
08/13/09	ELECTRIC SERVICE	07/14/09 08/12/09	33739	038440374	\$10.64							
08/13/09	Regular Bill						\$193.55	\$182.91	09/04	84		
09/14/09	ELECTRIC SERVICE	08/12/09 09/13/09	33855	038440374	\$12.70							
09/14/09	Regular Bill						\$206.25	\$193.55	10/06	116		
10/13/09	ELECTRIC SERVICE	09/13/09 10/12/09	33970	038440374	\$12.64							
10/13/09	Regular Bill						\$218.89	\$206.25	11/04	115		
11/11/09	ELECTRIC SERVICE	10/12/09 11/10/09	34117	038440374	\$14.68							
11/11/09	Regular Bill						\$233.57	\$218.89	12/03	147		
12/14/09	ELECTRIC SERVICE	11/10/09 12/13/09	34441	038440374	\$25.98							
12/14/09	Regular Bill						\$259.55	\$233.57	01/05	324		
12/15/10	ELECTRIC SERVICE	12/13/09 01/14/10	34984	038440374	\$39.98							
12/15/10	Regular Bill						\$299.53	\$259.55	02/09	543		
12/04/10	LIHEAP Payment					\$421.00						
12/15/10	ELECTRIC SERVICE	01/14/10 02/14/10	35657	038440374	\$51.43							
12/15/10	Regular Bill							\$-70.04	03/09	673		
13/15/10	LIHEAP Payment					\$100.00						
13/16/10	ELECTRIC SERVICE	02/14/10 03/15/10	36159	038440374	\$38.28							
13/16/10	Regular Bill							\$-131.76	04/07	502		
14/14/10	ELECTRIC SERVICE	03/15/10 04/13/10	36437	038440374	\$23.57							
14/14/10	Regular Bill							\$-108.19	05/06	278		
14/15/10	LIHEAP Payment					\$100.00						
15/13/10	ELECTRIC SERVICE	04/13/10 05/12/10	36619	038440374	\$17.26							
15/13/10	Regular Bill							\$-190.93	06/04	182		
16/14/10	ELECTRIC SERVICE	05/12/10 06/13/10	36831	038440374	\$19.22							
16/14/10	Regular Bill							\$-171.71	07/06	212		
17/14/10	ELECTRIC SERVICE	06/13/10 07/13/10	37032	038440374	\$18.50							
17/14/10	Regular Bill							\$-153.21	08/05	201		



July 31, 2010

BCS Decision Report

BCS Case #: 002509150 Open Date: 2009-03-25
Customer Name: NEHEMIAH THOMAS
Service Address: 1453 S COLORADO STREET

PHILADELPHIA, PA 19146
BCS Bill Account #: 96185060016 Previous Case #: 2186919
Violation Type: NO Chapter Type:
Decision Type: W Section / Rule:
Investigator Name: TRENT PEECHATKA

Decision Issued Date: 2010-06-04
Case Closed Date: 2010-06-02

Letter Description:
EGW PAR W/COMPLEX DISPUTE/NO PAYMENT AGREEMENT/LEVEL 1

Total Balance:	\$0.00	Balance Date:	2009-04-23
Amount to Restore Service:	\$0.00	Amount to Continue Service:	\$0.00
Date Payment Due:		Regular Budget Amount:	\$53.00
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:
CASE CLOSED WITH A DECISIONCUSTOMER HAS AN EXCESS CREDIT IN THE AMOUNT OF \$208.19CUSTOMER`S BILLING DISPUTE WAS EXPLAINED BY COMPANY THAT HE HAD THE POTENTIAL FOR USAGE WITH THE USE OF 4 SPACE HEATERSCUSTOMER IS RECEIVING THE BENEFITS OF CAP RATE AND WILL BE ENCOURAGED TO REMAIN ACTIVEBILLING IS CONSIDER4ED CORRECT AS RENDERED

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

NEHEMIAH B. THOMAS

:
:
:
:
:

v.

DOCKET NO. C-2010-2187197

PECO ENERGY COMPANY

VERIFICATION

I, Tishekia Williams, 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 2, 2010

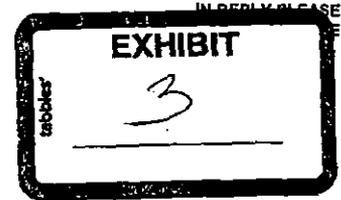


Tishekia Williams



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

September 14, 2011



TO ALL PARTIES:

due: 10.4

TISHEKIA WILLIAMS

SEP. 19 2011

NEHEMIAH B. THOMAS
V.
PECO ENERGY COMPANY

TO WHOM IT MAY CONCERN:

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. An original and nine (9) copies of your signed Exceptions to the decision, if any, **MUST BE FILED WITHIN TWENTY (20) DAYS OF THE ISSUANCE DATE OF THIS LETTER**, WITH THE SECRETARY OF THE COMMISSION, 2ND FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA; OR, MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265; OR DOCUMENTS MAY BE E-FILED ACCORDING TO THE E- FILING PROCEDURES.

IN ADDITION, **BY THE SAME DATE AND TIME INDICATED ABOVE**, A COPY OF EXCEPTIONS MUST BE IN THE HANDS OF THE OFFICE OF SPECIAL ASSISTANTS, 3RD FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA; AND, A COPY IN THE HANDS OF EACH PARTY OF RECORD. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of Exceptions or Replies to Exceptions.

Parties are also requested to provide the Commission's Office of Special Assistants with a copy of the Exceptions or Replies to Exceptions on CD-ROM or DVD, in Microsoft Word 2007 format. If Word 2007 is not available, any Microsoft Office compatible format is acceptable including PDF.

Replies to Exceptions, if any, must be served on the Secretary of the Commission, Office of Special Assistants, and each party of record, in the manner described above, **WITHIN TEN (10) DAYS OF THE DATE THAT THE 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 shall be attached to the filed Exceptions or Replies to Exceptions.

Exceptions and Replies to Exceptions shall obey 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.

Encls.
Certified Mail
Receipt Requested

Very truly yours,

Rosemary Chiavetta
Secretary

RECEIVED
APR 11 2012
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

9619560016

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nehemiah B. Thomas

v.

PECO Energy Company

:
:
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:
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:

C-2010-2187197

INITIAL DECISION

Before
Ky Van Nguyen
Administrative Law Judge

HISTORY OF THE PROCEEDINGS

On July 8, 2010, Nehemiah B. Thomas (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (Respondent). Essentially, the Complainant alleged that the Respondent had overbilled him from December 2007 to June 2008 and that his electric bills should be between \$10 and \$15 a month. He asked that the Commission investigate the Respondent's practice.

The Commission received the Respondent's answer dated August 2, 2010 to the complaint. The Respondent stated that the Complainant's bills were accurate, that the Complainant had a credit of \$153.21 on his account, and that a high bill investigation was scheduled for April 9, 2009, but on April 7, 2009, the Complainant cancelled this appointment, stating that he only wanted the field person who visited his home in December 2007 to conduct the high bill investigation.

A hearing was scheduled for October 27, 2010. On October 20, 2010, the Complainant asked for a continuance of the October 27, 2010 hearing until March 2011 in order

for him to prepare his case because the Community Legal Services, previously agreed to represent him, had withdrawn its representation. I granted the request.

On April 4, 2011, a hearing on the complaint was held. The Complainant did not appear at the hearing and requested that he attend the hearing by telephone. He was afraid that someone might attack him. He proceeded unrepresented. He testified on his own behalf and introduced a package of documents which, for the reason below, was not admitted into the record. The Respondent was represented by Tishekia Williams, Esquire, who presented the testimony of three witnesses and introduced three exhibits which were admitted into the record.

Before presenting the testimony of her witnesses, Ms. Williams requested that an additional hearing be scheduled for the Respondent to rebut the Complainant's allegations of his high bill complaint. The Complainant did not object to the request and I granted it.

On July 22, 2011, an additional hearing was scheduled to receive the Respondent's testimony on the Complainant's allegations of his high bill complaint. At this hearing, Ms. Williams presented the testimony of two witnesses and introduced one exhibit into the record.

On August 10, 2011, I asked the Respondent to submit the Complainant's Account Activity Statement from December to June 2004, 2005 and 2006. On August 18, 2011, Ms. Williams submitted to me this information, which was marked as PECO Exhibit 5 and was admitted into the record. She also sent a copy to Mr. Thomas for his possible objection. To date, I have not received any objection from Mr. Thomas.

The record was closed on August 18, 2011.

FINDINGS OF FACT

1. The Complainant is a residential customer of the Respondent and takes service at 1451 South Colorado Street, Philadelphia, PA (April 4, 2011 N.T. 4; Formal Complaint Form).

2. The Complainant's residence at this address is a two-story house with a basement. His sister passed away in March 2007 and his mother in September 2009. He now lives there alone (April 4, 2011 N.T. 22-24).

3. The Complainant's house is not insulated. When it rains, the water leaks through the roof, all the way to downstairs. A wall in a middle room was torn down (April 4, 2011 N.T. 30-32).

4. The Complainant's electrical appliances consist of lighting, three computers, five TVs, three radios, two TiVos (computers recording TV), four portable heaters, a slow cooker, an electric frying pan, a portable refrigerator, a big refrigerator, two toasters, and two printers (April 4, 2011 N.T. 24-30).

5. In December 2006, the service at the Complainant's residence was terminated because of a hazardous condition (April 4, 2011 N.T. 39, 40, 47).

6. In July 2007, the service to the Complainant's residence was reconnected without the Respondent's authorization. The service was terminated again in the same month (April 4, 2011 N.T. 39-41).

7. On December 18, 2007, the service to the Complainant's residence was restored in the Complainant's name. There was no billing between July 2007 and December 2007. The Respondent issued the first bill of \$200.88 to the Complainant on January 16, 2008 (April 4, 2011 N.T. 43, 47-50; July 22, 2011 N.T. 10).

8. The Complainant has owed the Respondent \$656.22 since the service was established in his name on December 18, 2007 (April 4, 2011 N.T. 49, 50; PECO Exhibit 1).

9. According to the Respondent's Tariff, all equipment beyond the point of delivery, except the meter, are within a customer's responsibility to repair (April 4, 2011 N.T. 63, 64; PECO Exhibit 3).

10. On December 13, 2007, the Respondent's field technician (Michael Brignola) visited the Complainant's residence. He found that the service was off and that the Complainant's service entrance wire was damaged. He believed that the Respondent should replace the wire (July 22, 2011 N.T. 8; PECO Exhibit 4).

11. On December 17, 2007, Mr. Brignola still found that the Complainant's service entrance wire was damaged. He added an external neutral wire to the Complainant's service entrance wire, which was a temporary fix. He also affixed to the top of the Respondent's loop and the Complainant's entrance service wire a hazardous condition tag. The tag was designed to give the Respondent's employees and its contractors a warning that a hazardous condition existed which may harm them and that they should not remake a tap to the neutral wire. On December 18, 2007, the Complainant's service was actually restored (July 22, 2011 N.T. 9, 10, 15-18, 31-36, 40, 41).

12. In January 2008, the Complainant received his first LIHEAP (Low Income Home Energy Assistance Program) grant (July 22, 2011 N.T. 16, 18).

13. On October 20, 2010, the Respondent's employees (James Roscovich and Tom Leary) visited the Complainant's residence. They found a hazardous condition tag affixed to the top of the Respondent's loop and the Complainant's entrance service wire. They then left a 30-day notice with the Complainant, requiring him to replace the service entrance wire (April 4, 2011 N.T. 43, 44; July 22, 2011 N.T. 26-29; PECO Exhibit 2).

14. A service entrance wire would not cause a customer's electric bills to go up (July 22, 2011 N.T. 29).

DISCUSSION

The Complainant's package of documents

At the beginning of the April 4, 2011 hearing, the Complainant reminded me of a package of documents which supported the Complainant's position that a utility is responsible for the repair and installation of a service entrance wire and which he expected to be admitted into the record as evidence.

Before April 4, 2011, Mr. Thomas electronically sent me a package of 27-numbered pages. The package consists of a cover letter sent to me on April 3, 2011, a Hearing Cancellation/Reschedule Notice dated March 27, 2011, a printed sheet entitled "Hunter Media Console Electric Fireplace w/Remote," a letter from PECO to Mr. Thomas dated August 2, 2010, the Respondent's answer to the Complainant's complaint, a PECO Account Activity Status, a Corrected Hearing Notice dated July 26, 2010, a Hearing Notice dated July 19, 2010, a Fax Cover Sheet dated October 20, 2010, a PECO Notice – Repairs dated October 20, 2010, a printed sheet entitled "How the electrical system works," a sheet dated April 5, 2009 on which the Complainant stated that his "bill for the past 5 months could not be more than 10% of the bill charged," page 1 and page 2 of PECO Bills with the due dates of February 8, 2011 and March 9, 2011, and with service between December 12, 2010 to December 31, 2010, and between January 13, 2011 and February 14, 2011, a Hearing Cancellation/Reschedule Notice dated March 7, 2011, page 1 of a PECO bill with the due date of April 7, 2011, and page 2 of a PECO bill with service between February 14, 2011 and March 15, 2011.

On these documents, the Complainant jotted down, wherever he found a space, comments or statements, such as his fears for his own life and the U.S. national security, his preference for a certain field technician, his intention to sue PECO for attempted murder, his belief that his bills were high, and his requests for a telephonic hearing. In specific, the

Complainant directed my attention to the article entitled "How the electrical system works." According to this article, under the heading "Know your limits," for any outdoor repairs and installations, a local utility is responsible for these services (N.T. 9-13).

A review of these documents indicates that they are irrelevant, confusing, cumulative, prejudicial, or hearsay. Therefore, I will not admit them into the record.

Burden of proof

Section 332(a) of the Public Utility Code, 66 Pa. C.S. §332(a),¹ provides that the party seeking relief from the Commission has the "burden of proof." "Burden of proof" is a duty to establish a fact by a "preponderance of the evidence." The term "preponderance of the evidence" means that one party has presented evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950). In other words, "preponderance" is not dependent on the number of witnesses testifying on either side but rather on the credibility of the testimony in the light of all the evidence in a case. Burch v. Reading Co., 240 F.2d 574 (3d Cir. 1957) cert. denied, 353 U.S. 965 (1957). The Pennsylvania Supreme Court has characterized a preponderance of the evidence as tantamount to a "more likely than not" inquiry. Commonwealth v. \$6,425 Seized From Esquilin, 583 Pa. 544, 555, 580 A.2d 523, 529 (2005).

Under these principles the Complainant, as the party seeking relief, has the burden of proof. In this billing dispute, the Complainant has the burden of proving by a preponderance of the evidence (1) that the number of occupants in the household has not changed, (2) that the potential for energy use was low (no change in the nature of electrical use or no addition of new appliances), and (3) that the Complainant's billing history showed no previous abnormalities. Waldron v. Philadelphia Electric Company, 54 Pa. PUC 98 (1980), Branham v. Philadelphia Electric Co., 54 Pa. PUC 120 (1980), and Replogle v. Pennsylvania Electric Company, 54 Pa.

¹ Section 332(a) of the Public Utility Code provides:

"(a) Burden of Proof. – Except as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof.

PUC 528 (1980). If the utility fails to rebut this evidence, the Complainant's prima facie case, the Complainant would prevail.

Also, in Replogle, supra, the Commission has further stated that although the results of the meter test are important, standing alone, they may be insufficient rebuttal testimony. However, if in addition to the meter test results, the utility places into the record testimony to rebut the Complainant's prima facie case, such as an inventory or analysis of the appliances in the home, or an attempt by the Respondent to ascertain the cause of the high bill, such as the presence of a foreign load or a wire condition or both, the burden of going forward shifts to the Complainant to prove that the meter in question is defective. If the Complainant is unable to marshal direct proof that his meter has malfunctioned, he can prove his case by circumstantial evidence that the metered use has exceeded the actual use. Milkie v. Pa. PUC, 768 A.2d 1217 (Pa. Cmwlth. Ct. 2001).

It is noted that under the Waldron rule, the accuracy of the meter is important, but it is not the sole factor in resolving a billing dispute. In doing so, the Commission will consider the billing history, any change in the number of occupants in the household, the potential for energy use, and any other facts or circumstances that are brought to light during the proceeding. See Waldron, above, at 100.

The Complainant complained about the high bills issued by the Respondent to him from December 2007 through June 2008. He also testified that his sister passed away in March 2007 and his mother in September 2009. Therefore, the number of occupants in the household was three before March 2007, and two between December 2007 and June 2008.

The Respondent testified that the service was restored to the Complainant's name on December 18, 2007 and that the first bill issued to him was on January 16, 2008 in the amount of \$200.88.

From the testimony above, the evidence indicates the number of the occupants in the household has changed, and that there was no previous pattern of usage to compare, because

the service was first established in the Complainant's name on December 18, 2007. Since this date, he has started a new pattern of usage. He, as a new account owner, has a different taste and preference from the previous account owner who resided at the service address. The old pattern of usage, which ranges from \$5.16 (September 2004) to \$25.94 (January 2006) (PECO Exhibit 5), was quite different from the new, which ranges from \$200.88 (January 16, 2008) to \$332.08 (June 12, 2008) (PECO Exhibit 1).

It is not to mention that the Complainant's residence is a two-story house, which is not insulated, that when it rains, the water leaks through the roof, and all the way to downstairs, and that the Complainant has a lot of appliances that use electricity.

Further, there is no direct proof that the Complainant's meter has malfunctioned or that his metered use has exceeded his actual use.

Therefore, I conclude that the Complainant has not carried his burden of proof.

The service entrance wiring

According to the Commission's precedent, a utility tariff (list of rates and rules for services) that has been approved by the Commission has the force of law and is binding on both the utility and the utility's customers. Pennsylvania Electric Co. v. Pennsylvania Public Utility Commission, 63 Pa. Cmwlth. Ct. 238, 437 A.2d 1067 (1981).

Rules 3.4 and 3.5 of the Respondent's tariff provide:

3.4 SERVICE ENTRANCE EQUIPMENT. All equipment beyond the point of delivery, except the meter, shall be installed by the customer. Installation shall be in conformity with the National Electrical Code and the Company's published "Electric Service Requirements," and shall include, where necessary, an approved sealable device for mounting a meter. The meter will be supplied, owned and sealed by the Company or another AMSP.

3.5 SECONDARY SERVICE CONNECTION. (a) Wiring of any premises for connection to overhead lines must be brought outside of the building wall to a location designated or approved by the Company, at which point the house wiring must extend at least 3 feet for attachment to the Company's service-supply lines. (b) Service connection to the Company's underground facilities shall terminate on the customer's premises in an approved connection box from which customer's wiring shall extend to the other service entrance equipment.

These provisions provide that all entrance wiring beyond the point of delivery must be installed by a customer in conformity with the National Electrical Code and the Company's published Electric Service Requirements and that the wiring must be approved by the Company.

The Complainant testified that the Respondent is responsible for installing and maintaining a service entrance wiring (April 4, 2011 N.T. 9-13) and that its failure to maintain this wiring has caused his electric bills to increase (April 4, 2011 N.T. 14-18; July 22, 2010 N.T. 19-21). He relied on an article, which is entitled "How the electrical system works," to advance this proposition. The Complainant also testified his bills were normally about \$20 or \$30 a month, but when he plugged in his electric heaters, because of the faulty service entrance wire, the meter went wacky (April 4, 2011 N.T. 16, 18; July 22, 2011 N.T. 19-21).

The Respondent testified that on December 17, 2007, Respondent's field technician made a temporary fix to the Complainant's damaged service entrance wire by adding to it an external neutral wire for the Complainant's service to be restored the next day, December 18, 2007. He also affixed to the top of the Respondent's loop and the Complainant's service entrance wire a hazardous condition tag to warn the Respondent's employees and its contractors that a hazardous condition existed and that no taps should be made to the wire.

On October 20, 2010, two of Respondent's employees visited the Complainant's residence and found the hazardous condition tag at the top of the Respondent's loop and the Complainant's service entrance wire. They left the Complainant with a 30-day notice requiring him to replace the damaged service entrance wire. The Respondent also testified the

Complainant's heaters had caused his bills to increase, not his service entrance wires. Apparently, the Respondent invoked the authority of the Tariff rules above.

The Complainant's reliance on the article, which states essentially that a utility is responsible for outdoor repairs and installations of the service head and wires, was misplaced because the article is an incompetent hearsay evidence.

Further, the Commission has ruled that a customer's neutral wire is separate from a utility neutral aerial wire and that a utility is not obligated to inspect the customer's neutral wire. Chris and Anne Schlear v. PECO Energy Company, Docket No. c-20043139 (Pa. PUC April 21, 2006). By way of analogy, I conclude that the Respondent is not responsible for the repair of the Complainant's service entrance wire and if the Complainant's wire is not safe, it is the Respondent's duty to require the wire to be repaired or to shut off the service. Stephany v. Equitable gas Co., 347 Pa. 110, 31 A.2d 523 (1943).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this complaint.
2. The Complainant has not carried his burden of proof.

ORDER

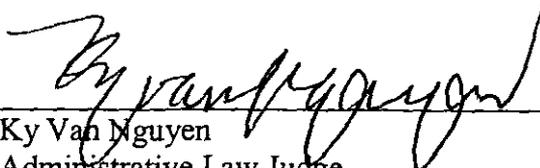
THEREFORE,

IT IS ORDERED:

1. That the complaint of Nehemiah B. Thomas against PECO Energy Company at Docket No. C-2010-2187197 is denied for his failure to carry his burden of proof.

2. That the record at Docket No. C-2010-2187197 be marked closed.

Date: August 31, 2011



Ky Van Nguyen
Administrative Law Judge

Zaketa, Anita D:(BSC)



From: eServe@pa.gov
Sent: Tuesday, November 15, 2011 11:22 AM
To: Williams, Tishekia:(BSC)
Cc: Zaketa, Anita D:(BSC)
Subject: PA PUC eServe Notice

Importance: High

Dear Tishekia Williams,

A(n) **Order** has been served in this proceeding. This document is docketed as **C-2010-2187197**.

You may view this document at

Rewrite Opinion and Order - 2187197-OSA - 10-28-11 PM - Nehemiah Thomas v PECO

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

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SECRETARY'S BUREAU

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

Public Meeting held October 28, 2011

Commissioners Present:

Robert F. Powelson, Chairman
John F. Coleman, Jr., Vice Chairman
Wayne E. Gardner
James H. Cawley
Pamela A. Witmer

Nehemiah B. Thomas

C-2010-2187197

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) Ky Van Nguyen, issued on September 14, 2011, 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, consistent with this Opinion and Order.

History of the Proceeding

On July 8, 2010, Nehemiah B. Thomas (Complainant) filed a Complaint against PECO Energy Company (Respondent), alleging that the Respondent overbilled him from December 2007 to June 2008 and that his electric bills should be between \$10 and \$15 a month. On August 2, 2010, the Respondent filed an Answer denying the material allegations in the Complaint. The Respondent averred that the Complainant's bills were accurate and that the Complainant had a credit of \$153.21 on his account. The Respondent also stated that a high bill investigation was scheduled for April 9, 2009, but the Complainant cancelled the appointment because he only wanted the field person who visited his home in December 2007 to conduct the high bill investigation.

A telephonic hearing was held on April 4, 2011. The Complainant appeared *pro se* and testified on his own behalf. The Respondent was represented by counsel, who presented the testimony of three witnesses and introduced three exhibits which were admitted into the record. Before presenting testimony, counsel for the Respondent requested that an additional hearing be scheduled for the Respondent to rebut the Complainant's allegations regarding high bills. The Complainant did not object to the request, and the ALJ granted the request. An additional hearing was held on July 22, 2011, during which counsel for the Respondent presented the testimony of two witnesses and introduced one exhibit into the record.

On August 10, 2011, the ALJ asked the Respondent to submit the Complainant's Account Activity Statement from December to June for the years 2004, 2005, and 2006. On August 18, 2011, counsel for the Respondent submitted this information to the ALJ, which was marked as PECO Exhibit 5 and admitted into the record. The record was closed on August 18, 2011.

The ALJ's Initial Decision was issued on September 14, 2011. The ALJ denied the Complaint due to the Complainant's failure to carry his burden of proof. I.D. at 8, 10.

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 the Company 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 the Company. *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, sometimes called the burden of persuasion, to rebut the evidence of the Complainant shifts to the Respondent. 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 the Respondent. *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 persuasion 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 ALJ made fourteen Findings of Fact and reached two Conclusions of Law. I.D. at 3-5, 10. 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.

In the Initial Decision, the ALJ found that the evidence indicated that the number of occupants in the household had changed and that there was no previous pattern of usage to compare because the service was first established in the Complainant’s name on December 18, 2007. I.D. at 7-8. The ALJ concluded that the evidence demonstrated that the Complainant had started a new pattern of usage as the new account owner, that the Complainant’s two-story residence was not insulated, and that the Complainant had many appliances which used electricity. The ALJ also concluded that there was no direct proof that the Complainant’s meter had malfunctioned or that his metered usage exceeded his actual usage. Based on the evidence, the ALJ determined that the Complainant did not carry his burden of proof under *Waldron, supra*, and its progeny. I.D. at 8.

Although we agree with the ultimate outcome in this case, we do not agree with the Initial Decision's statement of the *Waldron* Rule. According to the Initial Decision, a complainant establishes a *prima facie* case under *Waldron* by presenting the following testimony: (1) that the number of occupants in a household has not changed; (2) that the potential for energy utilization was low; and, (3) that the complainant's prior billing history showed no previous abnormalities. Upon review, we do not agree that *Waldron* limits the establishment of a *prima facie* case to these three factors.

Rather, consistent with our holding in *Charisse Bennett v. Peoples Natural Gas Co.*, Docket No. C-2009-2122979 (Order entered October 13, 2010), 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*. 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.*" *Id.* at 6 (emphasis added).

As stated in *Bennett*, limiting the *Waldron* Rule to the above three factors creates a situation in which a new customer is asked to produce evidence regarding prior usage that he or she does not possess. *See Bennett* at 6. This interpretation of *Waldron* is too narrow and would prevent a new customer from challenging a high bill. Nevertheless, for the reasons stated in the Initial Decision, we agree that the Complainant has not met his burden of proof that he was over billed, and, accordingly, we will not disturb the holding of the ALJ dismissing the Complaint.

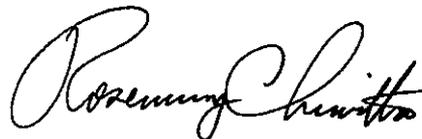
Conclusion

Based on our review of the record, the ALJ's Initial Decision, and the applicable law, we shall dismiss the Complaint of Mr. Thomas and adopt the ALJ's Initial Decision, as modified by this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Initial Decision of Administrative Law Judge Ky Van Nguyen, issued September 14, 2011, is adopted, as modified by this Opinion and Order.
2. That the Complaint of Nehemiah B. Thomas against PECO Energy Company, at Docket No. C-2010-2187197, is dismissed.
3. That the record at this docket be marked closed.

BY THE COMMISSION,



Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: October 28, 2011

ORDER ENTERED: November 15, 2011

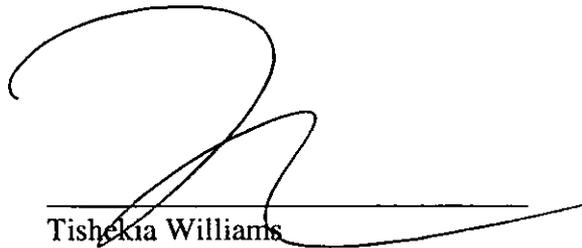
**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JEFFREY RANTZ	:	
Complainant	:	
v.	:	DOCKET NO. C-2012-2293057
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

VERIFICATION

I, Tishekia Williams, 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 3, 2012



Tishekia Williams

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JEFFREY RANTZ	:	
Complainant	:	
v.	:	DOCKET NO. C-2012-2293057
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

CERTIFICATE OF SERVICE

I, Tishekia Williams, 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:

Jeffrey Rantz
109 Robert Joseph Road
Pottstown, PA 19465

Dated at Philadelphia, Pennsylvania, April 3, 2012

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Tishekia Williams
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
tishekia.williams@exeloncorp.com

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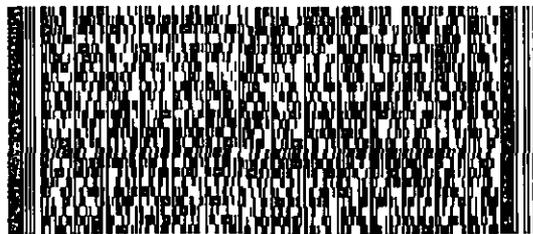
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