

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

Direct Dial: 215.841.6841

June 21, 2016

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

RE: Tanine Bennett v. PECO Energy Company
PUC Docket No.: C-2016-2546542
PUC Docket No.: C-2016-2547137

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *PECO Energy Company's Motion for Judgment on the Pleadings* 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,



Shawane Lee
Counsel for PECO Energy Company

SL/alb
Enclosure

cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TANINE BENNETT

v.

PECO ENERGY COMPANY

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DOCKET NO. C-2016-2546542
DOCKET NO. C-2016-2547137

NOTICE TO PLEAD

To: Tanine Bennett

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 Motion for Judgment on the Pleadings within 20 days from service of this notice, the facts set forth by PECO Energy Company may be deemed to be true, thereby requiring no other proof. All pleadings, such as a Reply to Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Shawane Lee, and where applicable, the Administrative Law Judge presiding over the issue.

Failure to respond to this Motion could result in the dismissal of your case.

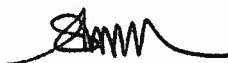
File with:

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

With a copy to:

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

Dated: June 21, 2016



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19101-8699
Tel. (215) 841-6841
Fax. (215) 568-3389
shawane.lee@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TANINE BENNETT

v.

PECO ENERGY COMPANY

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DOCKET NO. C-2016-2546542
DOCKET NO. C-2016-2547137

MOTION FOR JUDGMENT ON THE PLEADINGS

PECO Energy Company ("PECO"), pursuant to 52 Pa. Code §5.102, respectfully requests that your Honorable Commission dismiss the instant complaint inasmuch as Complainant requests a payment arrangement. No factual dispute has been raised in the pleadings with respect to the payment agreement. Pursuant to 66 Pa.C.S. §1405(c), Complainant is ineligible for a Commission-ordered payment agreement, and thus Complainant fails to state a claim upon which relief can be granted. Therefore, PECO is entitled to judgment as a matter of law regarding the prohibited payment agreement.

1. On May 18, 2016, Complainant filed a Formal Complaint against Respondent, PECO, requesting to receive a Commission-ordered payment agreement. A copy of Complainant's Formal Complaint is attached hereto as Exhibit 1.

2. PECO was served with the Formal Complaint on May 20, 2016.

3. In Complainant's Formal Complaint, she selected the boxes designating that the utility has or is threatening to terminate service and she is requesting a payment agreement.

4. The Complainant requests for relief:

I am requesting another hearing for a payment arrangement and verify validity of the charges. PECO inaccurately stated I was on a CAPP (sic) agreement and I was not. During the first hearing I did not obtain counsel and was placed at an unfair advantage.

5. On May 24, 2016, PECO was served with another Formal Complaint at docket number C-2016-2547137, requesting a payment agreement. A copy of Complainant's Second Formal Complaint is attached hereto as Exhibit 2.

6. On June 2, 2016, PECO filed an Answer, New Matter and Notice to Plead to both Formal Complaints. A copy of PECO's Answer and New Matter is attached hereto as Exhibit 3.

7. PECO averred that the Complainant was reinstated to CAP on May 13, 2014 under Tier E1. New Matter ¶ 2

8. PECO averred that Complainant is scheduled to recertify in the program on May 13, 2017. New Matter ¶ 3.

9. PECO averred that the entire balance of \$5,349.99 consists of CAP arrears. New Matter ¶ 4.

10. As the entire balance consists of CAP arrears, PECO averred that no agreement may be issued under 66 Pa.C.S. §1405(c) ¶ 5-7.

11. Under 66 Pa.C.S. §1405(c), the Commission is precluded from establishing a payment agreement for customers participating in CAP. Section 1405(c) states as follows: "Customer assistance program rates shall be timely paid and shall not be the subject of payment agreements negotiated or approved by the commission."

12. To date, 20 days have passed since PECO filed its New Matter.

13. PECO has not been served with a response to its New Matter, and therefore it requests that the facts stated therein be deemed admitted. 52 Pa.Code §5.63(b) (providing that facts in new matter may be deemed admitted if there is no reply).

14. The Commission's regulations at 52 Pa. Code §5.102(a) permits any party to move for summary judgment or judgment on the pleadings after the pleadings are closed, but within such time as to not delay a hearing. Under 52 Pa. Code §5.102(d)(1), the presiding officer will grant the motion if the pleadings, depositions, answers to interrogatories, admissions and affidavits show that there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law.

15. The moving party bears the burden of showing that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. The Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. *First Mortgage Co. of Pennsylvania v. McCall*, 459 A.2d 406 (Pa. Super. 1983).

16. The provision at 52 Pa. Code §5.102(c) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of the case exists, a hearing is unnecessary. *Lehigh Valley Power Committee v. Pennsylvania Public Utility Commission*, 563 A.2d. 557 (Pa. Cmwlth. 1989).

17. The pleadings in this case reveal the following:

- a. There is no factual dispute that (a) Complainant is enrolled in CAP, (b) the entire past due balance is CAP arrears.
- b. Under 66 Pa.C.S. §1405(c), the Commission is prohibited from ordering a payment agreement for an account holder whose past due balance consists of CAP arrears. Therefore, the Commission cannot grant the relief Complainant seeks regarding the payment agreement.

18. Because no factual dispute exists regarding the prohibited payment agreement and the Complaint fails to state a claim for which relief can be granted, PECO is entitled to judgment as a matter of law with respect to the requested payment agreement.

WHEREFORE, PECO Energy Company respectfully requests that your Honorable Commission dismiss the instant complaint with prejudice, as it relates to a request for a payment agreement on CAP arrears, and the Complaint therefore fails to state a claim upon which relief can be granted.

Respectfully submitted,



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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TANINE BENNETT

v.

PECO ENERGY COMPANY

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DOCKET NO. C-2016-2546542
DOCKET NO. C-2016-2547137

VERIFICATION

I, Shawane L. Lee, hereby declare that I am counsel for PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. § 4904 pertaining to false statements to authorities.



Date: June 21, 2016

Shawane L. Lee

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TANINE BENNETT

v.

PECO ENERGY COMPANY

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DOCKET NO. C-2016-2546542
DOCKET NO. C-2016-2547137

CERTIFICATE OF SERVICE

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

Tanine Bennett
407 Sansom Street
Upper Darby, PA 19082

Dated at Philadelphia, Pennsylvania, June 21, 2016



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

EXHIBIT 1

Botak, Amy:(PECO)

From: eServe@pa.gov
Sent: Friday, May 20, 2016 4:40 PM
To: Lee, Shawane L:(PECO)
Cc: Botak, Amy:(PECO)
Subject: [EXTERNAL] PA PUC eServe Notice
Importance: High

Dear Shawane L Lee,

A(n) **Formal Complaint** has been served in this proceeding. This document is docketed as **C-2016-2546542**. You may view this document at **Formal Complaint**

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

Thank You,
Public Utility Commission
Commonwealth of Pennsylvania

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

PECO ENERGY
EXHIBIT 1

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint

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

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

1. Customer (Complainant) Information

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

Name Tanine BENNETT
Street/P.O. Box 407 Sansom St. Apt # _____
City Upper Merion State PA. Zip 19082
County Delaware

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

(215) 219-2627 (home) () (mobile)

E-mail Address (optional): _____

Utility Account Number (from your bill) 5568316053

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

Name _____

Street/P.O. Box _____

City _____ State _____ Zip _____

2. Name of Utility or Company (Respondent)

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

PECO

RECEIVED
MAY 18 AM 4:41
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

3. Type of Utility Service

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

- | | |
|--|---|
| <input checked="" type="checkbox"/> ELECTRIC | <input type="checkbox"/> WASTEWATER/SEWER |
| <input type="checkbox"/> GAS | <input type="checkbox"/> TELEPHONE/TELECOMMUNICATIONS (local, long distance) |
| <input type="checkbox"/> WATER | <input type="checkbox"/> MOTOR CARRIER (e.g. taxi, moving company, limousine) |
| <input type="checkbox"/> STEAM HEAT | |

4. Reason for Complaint

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

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

- I would like a payment agreement.

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

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

- Other (explain).

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

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

5. Requested Relief

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

I am requesting another hearing for a payment arrangement and verify validity of ~~the~~ charges. PECO inaccurately stated I was on a CAPP agreement and I was NOT. During the first hearing I did not obtain counsel and was placed at an unfair advantage.

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

6. Protection From Abuse (PFA)

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

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

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

YES

NO

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

7. Prior Utility Contact

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

YES

NO

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

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

YES

NO

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

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

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

8. Legal Representation

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

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

Lawyer's Name _____

Street/P.O. Box _____

City _____ State _____ Zip _____

Area Code/Phone Number _____

E-mail Address (if known) _____

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

9. Verification and Signature

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

Verification:

I, TANINE BENNETT, 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).

Tanine Bennett
(Signature of Complainant)

5/16/16
(Date)

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

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

10. Two Ways to File Your Formal Complaint

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

Note: If you are appealing your Bureau of Consumer Services (BCS) decision, you must file your formal complaint by mail.

Mail. Mail the completed form with your original signature and any attachments, by certified mail, first class mail, or overnight delivery to this address:

Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, Pennsylvania 17120

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

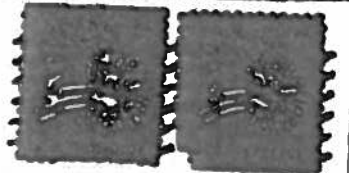
If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

Keep a copy of your Formal Complaint for your records.

TANINE HARRIS
407 SANDWICH ST.
UPPER DORBY, PA. 19082

PHILADELPHIA PA 190

15 MAY 2005 PM 5:1



SECRETARY
PENNSYLVANIA PUBLIC UTILITY COMM.
400 NORTH ST.
HARRISBURG, PA. 17120

17120-007999



EXHIBIT 2

Botak, Amy:(PECO)

From: eServe@pa.gov
Sent: Tuesday, May 24, 2016 12:01 PM
To: Lee, Shawane L:(PECO)
Cc: Botak, Amy:(PECO)
Subject: [EXTERNAL] PA PUC eServe Notice

Importance: High

Dear Shawane L Lee,

A(n) Formal Complaint has been served in this proceeding. This document is docketed as C-2016-2547137.

You may view this document at

Formal Complaint

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

**Thank You,
Public Utility Commission
Commonwealth of Pennsylvania**

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

PECO ENERGY
EXHIBIT **2**

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint

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

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

1. Customer (Complainant) Information

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

Name Tanine Harris
Street/P.O. Box 407 Sanson St. Apt #
City Upper Merion State PA Zip 19082
County Delaware

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

215-219-2627 (home) () (mobile)

E-mail Address (optional):

Utility Account Number (from your bill) 5568316053

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

Name
Street/P.O. Box
City State Zip

2. Name of Utility or Company (Respondent)

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

PECO

RECEIVED

MAY 19 2016

3. Type of Utility Service

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

- | | |
|--|---|
| <input checked="" type="checkbox"/> ELECTRIC | <input type="checkbox"/> WASTEWATER/SEWER |
| <input checked="" type="checkbox"/> GAS | <input type="checkbox"/> TELEPHONE/TELECOMMUNICATIONS (local, long distance) |
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After I pay towards my bill, they continue to send me shut off notices.
- I would like a payment agreement.

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

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

Other (explain).

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

I am requesting assistance with obtaining a payment arrangement.

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

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

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

YES

NO

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

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

YES

NO

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

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

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

Lawyer's Name _____

Street/P.O. Box _____

City _____ State _____ Zip _____

Area Code/Phone Number _____

E-mail Address (if known) _____

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

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Tanine Bennett
(Signature of Complainant)

5/19/16

(Date)

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

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

10. Two Ways to File Your Formal Complaint

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Note: If you are appealing your Bureau of Consumer Services (BCS) decision, you must file your formal complaint by mail.

Mail. Mail the completed form with your original signature and any attachments, by certified mail, first class mail, or overnight delivery to this address:

Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, Pennsylvania 17120

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

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

Keep a copy of your Formal Complaint for your records.



CMPC

PRESS FIRMLY TO SEAL



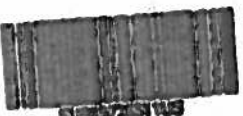
U.S. POSTAGE
PAID PERMIT NO. 100
NEW YORK, NY
\$22.95
POSTAGE GUARANTEED

To: PUC

Agency: PUC

Post Office: EXPRESS

6502018 03:20 AM



Address Copy

Post Office To Address

10106	0 22.95
2. 10. 16	45. 20
3. 12	0 22.95

1	0	0
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3	0	0
4	0	0
5	0	0

WHEN USED INTERNATIONALLY,
A CUSTOMS DECLARATION
LABEL MAY BE REQUIRED.



POST July 2013 CR 12.5 x 9.5



PS10001000006

VIS
Of. Dt

TANINE KENNEDY
407 JANZEN ST.
LITTLE ROCK, AR 72205

1. 10106
PAID PERMIT NO. 100
NEW YORK, NY
POSTAGE GUARANTEED

1 2 7 2 0 +

EXHIBIT 3



PENNSYLVANIA PUBLIC UTILITY COMMISSION

CONSUMER INFO UTILITY & INDUSTRY FILING & RESOURCES ABOUT PUC CONTACT US

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eFiling Confirmation	
Docket Number:	C-2016-2546542
Description:	Tanine Bennett - PECO Energy Company Answer to Formal Complaint
Transmission Date:	6/2/2016 2:06:47 PM
Filed On:	6/2/2016 2:06:47 PM
eFiling Confirmation Number:	1636295

Uploaded File List

File Name	Document Class	Document Type
Tanine Bennett - Answer with New Matter.pdf	Communication	Answer to Formal Complaint

PECO ENERGY
EXHIBIT **3**



An Exelon Company

Legal Department
2301 Market Street / S23-1
Philadelphia, PA 19101-8699

Direct Dial: 215-841-6841

June 2, 2016

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

RE: Tanine Bennett v. PECO Energy Company
PUC Docket No.: C-2016-2546542

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *PECO Energy's Answer to the Formal Complaint*.

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".

Shawane Lee
Counsel for PECO Energy Company

SL/ab
Enclosure

cc: *Scheduling Recommendation: Call of the Docket*

PENNSYLVANIA PUBLIC UTILITY COMMISSION

TANINE BENNETT

Complainant

v.

PECO ENERGY COMPANY

Respondent

DOCKET NO. C-2016-2546542

NOTICE TO PLEAD

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

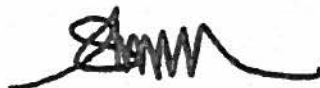
File with:

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

With a copy to:

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

Dated at Philadelphia, PA, June 2, 2016



**Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street S-23
Philadelphia, PA 19101-8699
215-841-6841
Shawane.lee@exeloncorp.com**

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TANINE BENNETT

Complainant

v.

PECO ENERGY COMPANY

Respondent

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DOCKET NO. C-2016-2546542

ANSWER OF RESPONDENT,
PECO ENERGY COMPANY

On May 20, 2016, PECO Energy Company ("PECO Energy") was served with a formal complaint filed by Tanine Bennett (hereafter "Complainant") in the above captioned docket.

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

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

In her Complaint, Complainant alleges that PECO Energy is threatening to terminate her service. The Complainant requests a hearing and challenges whether she is on a Customer Assistance Program (CAP) agreement. The Complainant requests a payment agreement and says that she had an unfair advantage at the previous PUC hearing because she had no attorney. PECO Energy avers that the Complainant is enrolled in the CAP program. Her entire balance is comprised of CAP arrears; therefore, she is not entitled to a PUC payment agreement and her complaint should be dismissed pursuant to 66 Pa.C.S. § 1405(c).

PECO Energy's records indicate that the Complainant has electric service at 407 Sansom Street, Upper Darby, PA 19082 under account number 55683-16053. See Account Activity Statement, attached hereto as Exhibit "1". The Complainant enrolled in PECO's Customer Assistance Program ("CAP") on May 9, 2012 under Tier E1. The Complainant was reinstated to the CAP program on May 13, 2014 under Tier E1. The Complainant is scheduled to recertify in the program on May 13, 2017. The Complainant's entire balance is comprised of CAP arrears.

On April 28, 2016, PECO sent the Complainant a ten-day termination notice for a past due balance of \$5,189.56. The company made a 72 hour notice call on May 5, 2016 and May 11, 2016, advising that the Complainant's service would be terminated. The Complainant's service was not terminated as a result of her filing the present formal complaint.

The Complainant filed a previous formal complaint at docket number C-2015-2488809, stating that PECO did not give her correct information concerning her CAP account and did not correctly calculate her household income. She filed the complaint after PECO sent her a ten day termination notice and 72 hour termination for a past due balance of \$3,439.21. On November 9, 2015, Administrative Law Judge David A. Salapa issued an Initial Decision dismissing the Complainant's complaint. See Tanina Bennett v. PECO, Docket No. C-2015-2488809 (Initial Decision entered November 9, 2015), attached hereto as Exhibit "2". The Commission issued a Final Order adopting ALJ Salapa's Initial Decision on January 28, 2016.

The Complainant's balance is \$5,349.99. See Exhibit "1". The Complainant does not pay her bill on time or in full each month. Further, the Complainant misses monthly payments. The Complainant is actively enrolled in the CAP program. The Complainant is not entitled to a payment agreement on her balance pursuant to 66 Pa.C.S. § 1405(c) as the entire balance is comprised of CAP arrears.

5. Denied.
6. Admitted
7. Admitted.
8. PECO Energy neither admits nor denies the allegations in paragraph 8. PECO is without knowledge or information sufficient to form a belief as to the truth of this averment and, therefore, such allegation is deemed denied.
9. Paragraph 9 is a Verification and Signature to which no response is required.
10. Paragraph 10 contains information regarding Filing, to which no response is required.

NEW MATTER OF RESPONDENT. PECO ENERGY COMPANY

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

1. The Complainant enrolled in PECO's Customer Assistance Program ("CAP") on May 9, 2012 under Tier E1.
2. The Complainant was reinstated to the CAP program on May 13, 2014 under Tier E1.
3. The Complainant is scheduled to recertify in the program on May 13, 2017.
4. The Complainant's balance is \$5,349.99
5. The Complainant's entire balance is comprised of CAP arrears.
6. The Complainant is actively enrolled in the CAP program.
7. 66 Pa.C.S. § 1405(c) provides that, "(c)ustomer assistance program rates shall be timely paid and shall not be the subject of payment agreements negotiated or approved by the commission."

8. Consequently, pursuant to 66 Pa.C.S. § 1405(c), the PUC has no jurisdiction to give the Complainant a payment agreement.

9. PECO Energy avers that the Complainant's complaint should be dismissed pursuant to 66 Pa. C.S. §1405(c).

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

Respectfully Submitted,



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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TANINE BENNETT
Complainant

v.

PECO ENERGY COMPANY
Respondent

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DOCKET NO. C-2016-2546542

VERIFICATION

I, Shawane L. Lee, hereby declare that I am counsel for PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. § 4904 pertaining to false statements to authorities.



Date: June 2, 2016

Shawane L. Lee

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TANINE BENNETT

Complainant

v.

PECO ENERGY COMPANY

Respondent

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DOCKET NO. C-2016-2546542

CERTIFICATE OF SERVICE

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

Tanine Bennett
407 Sansom Street
Upper Darby, PA 19082

Dated at Philadelphia, Pennsylvania, June 2, 2016



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

EXHIBIT "1"

*** Account Information ***

Account Number: 55683-16053
Account Status: Active
Requested By: PAINTER BENNETT
(215)219-2627 Extension:

Mail To:
PAINTER BENNETT
407 SANSON ST
UPPER DAWB
PA 19082

Current Bill: \$160.43
Billed Prior: \$5189.56
Balance Due: \$5349.99
Service Address: 407 SANSON ST
UPPER DAWB PA 19082

*** Current Account Status ***

Credit Amount: \$0.00
Deposit Requested: \$0.00
Deposit On-Hand: \$0.00
Meter Bill Grp: 05
Rate: CAP Option BI Gas Residential Service
CAP Opt BI Electric Residential Service

DATE	CHARGE TYPE	BILLING PERIOD	READ	METER #	CHARGE AMOUNT	CREDIT AMOUNT	TOTAL BILL	BALANCE FORWARD	DUE DATE	KWH
05/30/14	Payment									
06/06/14	BUDGET BILLING	05/06/14 06/05/14			\$209.00	\$202.00	\$1606.46	\$1397.46	06/30	851
** Budget Bill Detail ** Actual Bill Amount: 115.05										
07/08/14	Regular Bill				\$209.00		\$1606.46			
07/08/14	BUDGET BILLING	06/05/14 07/07/14			\$209.00		\$1606.46	\$1506.46	07/30	1240
** Budget Bill Detail ** Actual Bill Amount: 157.55										
07/18/14	Payment									
08/06/14	BUDGET BILLING	07/07/14 08/05/14			\$209.00	\$202.00	\$1822.46	\$1613.46	08/28	1251
** Budget Bill Detail ** Actual Bill Amount: 157.07										
08/06/14	Regular Bill				\$209.00		\$1822.46			
09/05/14	BUDGET BILLING	08/05/14 09/04/14			\$209.00		\$2031.46	\$1822.46	09/29	1159
** Budget Bill Detail ** Actual Bill Amount: 141.86										
09/05/14	Regular Bill				\$209.00		\$2240.46			
10/06/14	BUDGET BILLING	09/04/14 10/05/14			\$209.00	\$160.00	\$2031.46	\$2031.46	10/28	1045
** Budget Bill Detail ** Actual Bill Amount: 128.00										
10/06/14	Regular Bill				\$209.00		\$2289.46			
10/14/14	Payment									
11/04/14	BUDGET BILLING	10/05/14 11/03/14			\$209.00	\$160.00	\$2080.46	\$2080.46	11/26	1016
** Budget Bill Detail ** Actual Bill Amount: 139.47										
11/04/14	Regular Bill				\$209.00		\$2530.93			
12/02/14	Late Payment Charge				\$32.47		\$2530.93			
12/05/14	BUDGET BILLING	11/03/14 12/04/14			\$209.00		\$2321.93	\$2321.93	12/29	1462
** Budget Bill Detail ** Actual Bill Amount: 256.03										
12/05/14	Regular Bill				\$209.00		\$2562.56			
12/11/14	Payment									
01/05/15	Late Payment Charge				\$32.63	\$210.00	\$2562.56			
01/08/15	BUDGET BILLING	12/04/14 01/07/15			\$209.00		\$2562.56	\$2562.56	01/30	2032
** Budget Bill Detail ** Actual Bill Amount: 437.84										
01/08/15	Regular Bill				\$209.00		\$2807.33			
02/04/15	Late Payment Charge				\$35.77		\$2807.33			
02/10/15	BUDGET BILLING	01/07/15 02/09/15			\$209.00		\$2807.33	\$2598.33	03/04	1995
** Budget Bill Detail ** Actual Bill Amount: 408.44										
02/10/15	Regular Bill				\$209.00		\$2807.33			

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PRCO Account Activity Statement

Date: 05/27/16
Page: 3 of 3

DATE	CHARGE TYPE	BILLING PERIOD	READ	METER #	CHARGE AMOUNT	CREDIT AMOUNT	TOTAL BILL	BALANCE FORWARD	DUE DATE	KWH
12/03/15	GAS SERVICE	11/02/15 12/03/15	146	115015713	\$41.49					
12/03/15	ELECTRIC SERVICE	11/02/15 12/03/15	29657	121846349	\$52.84					
01/07/16	REGULAR BILL									
01/07/16	GAS SERVICE	12/03/15 01/07/16	220	115015713	\$63.66		\$4621.57	\$4527.24	12/28	424
01/07/16	ELECTRIC SERVICE	12/03/15 01/07/16	30045	121846349	\$67.03					
02/05/16	REGULAR BILL									
02/05/16	GAS SERVICE	01/07/16 02/05/16	383	115015713	\$125.88		\$4752.26	\$4621.57	01/29	588
02/05/16	ELECTRIC SERVICE	01/07/16 02/05/16	30600	121846349	\$65.70					
03/07/16	REGULAR BILL									
03/07/16	GAS SERVICE	02/05/16 03/07/16	550	115015713	\$130.04		\$4963.84	\$4752.26	02/29	555
03/07/16	ELECTRIC SERVICE	02/05/16 03/07/16	31212	121846349	\$70.15					
03/07/16	Late Payment Charge				\$68.95					
03/25/16	Payment					\$200.00	\$5212.98	\$5012.79	03/29	612
04/05/16	GAS SERVICE	03/07/16 04/05/16	608	115015713	\$54.39					
04/05/16	ELECTRIC SERVICE	03/07/16 04/05/16	31660	121846349	\$53.00					
04/05/16	Late Payment Charge				\$69.19					
04/05/16	REGULAR BILL									
05/03/16	Late Payment Charge									
05/04/16	GAS SERVICE	04/05/16 05/04/16	647	115015713	\$70.81		\$5189.56	\$5082.17	04/27	448
05/04/16	ELECTRIC SERVICE	04/05/16 05/04/16	32072	121846349	\$40.41					
05/04/16	REGULAR BILL				\$49.21		\$5349.99	\$5260.37	05/26	412

EXHIBIT "2"

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Tanine Bennett

v.

PECO Energy Company

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C-2015-2488809

INITIAL DECISION

Before
David A. Salapa
Administrative Law Judge

INTRODUCTION

The customer filed a complaint against her electric utility alleging that the utility failed to provide her with correct information concerning its customer assistance program (CAP) and failed to accurately calculate her household income when determining her CAP benefit and improperly initiated termination proceedings. This decision denies the complaint because the utility provided an adequate explanation of the CAP to the Complainant, correctly calculated the customer's household income when it determined her CAP benefit and properly initiated termination proceedings against the customer when the customer failed to make regular payments on her account.

HISTORY OF THE PROCEEDING

On June 17, 2015, Tanine Bennett (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (Respondent). The complaint alleges that the Respondent provided contradictory information to the Complainant concerning whether she was enrolled in the Respondent's CAP. In addition the

complaint asserts that the Respondent did not correctly calculate her household income when determining her CAP benefit. Finally, the complaint contends that the Respondent is sending termination notices to the Complainant even though she is making monthly payments on her account. The complaint requests that the Commission recalculate the Complainant's household income and direct the Respondent to stop sending termination notices to the Complainant.

The Respondent filed an answer with new matter on July 10, 2015. The answer admits that the Respondent provides service to the Complainant at the address shown on the complaint. The answer asserts that the Complainant is enrolled in the Respondent's CAP.

The answer also admits that it has sent a notice of pending termination to the Complainant due to the Complainant's failure to pay her monthly bills in full. According to the answer, the Respondent has not terminated the Complainant's service.

The new matter alleges that the Complainant was enrolled in the Respondent's CAP on May 9, 2012 and re-enrolled in the CAP on May 13, 2014. The matter asserts that the Complainant's account balance of \$3,802.51 is composed entirely of CAP arrears. The answer with new matter requests that the Commission dismiss the complaint.

By hearing notice dated August 4, 2015, the Commission scheduled a telephonic hearing for this matter on October 8, 2015 at 10:00 a.m. and assigned the case to me. I issued a probearing order dated August 10, 2015, addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

I conducted a telephonic hearing on October 8, 2015. The Complainant appeared ~~pro se~~ and presented testimony. Shawane L. Lee, Esquire represented the Respondent, which presented one witness who sponsored eight exhibits that I admitted into the record. The initial hearing resulted in a transcript of 56 pages. The record closed on November 4, 2015, the date the transcript was filed with the Secretary's Bureau. For the reasons set forth below, I will deny the complaint.

FINDINGS OF FACT

1. The Complainant in this case is Tanine Bennett. N.T. 6.
2. The Respondent in this case is PECO Energy Company. N.T. 8.
3. The Complainant resides at 407 Sansom Street, Upper Darby, Delaware County. N.T. 7, 28.
4. The Complainant has resided at 407 Sansom Street since 2011. N.T. 7-8.
5. The Complainant resides at 407 Sansom Street with her husband and two children, ages 18 and 16. N.T. 7.
6. When the Complainant first enrolled in the Respondent's CAP, she earned \$15.34 per hour. N.T. 10.
7. When the Complainant first enrolled in the Respondent's CAP, she received child support for her older child in the amount of \$500.00 per month. N.T. 10.
8. The Complainant is not currently employed. N.T. 13.
9. The Complainant has applied for disability benefits but her application has not yet been processed. N.T. 13.
10. The Complainant's husband is currently employed, earning \$10.00 per hour and working 57 hours per week. N.T. 13.
11. The Respondent has sent the Complainant termination notices. N.T. 17.

12. The Complainant was enrolled in the Respondent's CAP on May 9, 2012. N.T. 29, PECO Ex. 2.
13. Subsequently, the Complainant was removed from the CAP on April 18, 2014 for failure to recertify her household income. N.T. 30.
14. The Complainant was re-enrolled in the CAP on May 13, 2014, after the Complainant recertified her income. N.T. 30.
15. The Complainant was enrolled at CAP rate E-1. N.T. 30.
16. At the time she was re-enrolled in the CAP, the Complainant's household income was \$1,545.00 per month, with the Complainant receiving \$1,044.00 per month in unemployment compensation benefits and \$500.00 per month in child support. N.T. 30-31, PECO Ex. 5.
17. The Complainant was re-enrolled as a CAP level E-1 customer. N.T. 30-31, PECO Ex. 5.
18. As a CAP level E-1 customer, the Complainant received a 24% discount on her rates. N.T. 32.
19. When the Complainant was first enrolled in the CAP, she had an outstanding balance of \$4,415.98. N.T. 34.
20. The Respondent set aside the balance of \$4,415.98 for forgiveness. N.T. 34-35.
21. Under the Respondent's CAP, if the customer makes monthly payments in full and on time, the Respondent forgives one twelfth of the set aside balance for each payment. N.T. 34-35.

22. The Respondent forgave \$3,312.00 of the Complainant's \$4,415.98 set aside balance. N.T. 34-35.
23. There is a remaining amount of \$827.98 set aside that is eligible for forgiveness. N.T. 35.
24. On January 5, 2015, the Complainant contacted the Respondent concerning the CAP. N.T. 38, PECO Ex. 3.
25. The Respondent sent a CAP application to the Complainant and advised the Complainant to send her pay stubs, child support stoppage letter and a no employment letter for her husband. N.T. 39, PECO Ex. 3.
26. On February 3, 2015, the Respondent received a CAP application from the Complainant with pay stubs for the Complainant, a no income letter for her husband and a printout of child support payments.
27. The child support payment printout was inconsistent with the court order directing the child support payments. N.T. 39, PECO Ex. 3.
28. On February 3, 2015, the Respondent lacked the necessary information to process the Complainant's CAP income level change. N.T. 39, PECO Ex. 3.
29. On February 17, 2015, the Complainant contacted the Respondent to complain that the child support payments were being used to calculate her CAP benefits even though she no longer received child support payments. N.T. 39-40, PECO Ex. 3.
30. The Respondent advised the Complainant to provide it with proof of income and the court's child support order. N.T. 39-40, PECO Ex. 3.

31. The Complainant remained on the CAP. N.T. 41.
32. On October 5, 2015, the Complainant provided the Respondent with proof of income and the court's child support order. N.T. 45-46.
33. The Respondent recalculated the Complainant's household income and enrolled the Complainant as a Tier E CAP customer. N.T. 45-46.
34. As a Tier E CAP customer, the Complainant receives a 42% discount on her rates. N.T. 32.
35. The Complainant made three payments on her account in 2015. N.T. 33.
36. The Complainant made payments of \$100.00 on March 13, 2015, \$200.00 on May 11, 2015 and \$1,267.50 on June 22, 2015. N.T. 33, PECO Ex. 1.
37. On June 26, 2015, the check for \$1,267.50 was returned for insufficient funds. N.T. 33, PECO Ex. 1.
38. The Complainant made seven payments on her account in 2014. N.T. 33-34.
39. The Complainant made payments of \$92.00 on January 6, 2014, \$100.00 on March 10, 2014, \$112.00 on April 1, 2014, \$202.00 on May 30, 2014, \$202.00 on July 18, 2014, \$160.00 on October 14, 2014 and \$210.00 on December 11, 2014. N.T. 34, PECO Ex. 1.
40. The Complainant made three payments on her account in 2013. N.T. 34.
41. The Complainant made payments of \$100.00 on July 26, 2013, \$91.00 on October 10, 2013 and \$92.00 on October 31, 2013. PECO Ex. 1.

Ex. 1. 42. The Complainant's current account balance is \$4648.48. N.T. 43, PECO

43. The Complainant's entire arrearage consists of CAP arrears. N.T. 43.

44. On April 24, 2015, the Respondent sent a disconnect notice to the Complainant. N.T. 44, PECO Ex. 8.

45. On April 27, 2015, the Respondent sent a 72 hour shut off notice to the Complainant. N.T. 44, PECO Ex. 8.

46. When the Complainant filed an informal complaint with the Commission's Bureau of Consumer Services (BCS) on May 14, 2015, the Respondent removed the Complainant's account from collections on May 14, 2015. N.T. 42-44, PECO Exs. 6, 8.

47. BCS issued a decision on May 19, 2015. N.T. 43, PECO Ex. 7.

48. The BCS decision dismissed the Complainant's complaint. N.T. 43, PECO Ex. 7.

49. On June 1, 2015, the Respondent sent a termination notice to the Complainant. N.T. 45, PECO Ex. 8.

50. On June 4, the Respondent sent a 72 hour shut off notice to the Complainant. N.T. 45, PECO Ex. 8.

51. When the Complainant filed a formal complaint with the Commission on June 22, 2015, the Respondent removed the Complainant's account from collections on June 22, 2015. N.T. 45, PECO Ex. 8.

52. The Complainant's account is currently not in collection because of the pending formal complaint. N.T. 45-46.

DISCUSSION

The Complainant in this proceeding has the burden of proof to show that the Respondent is responsible or accountable for the problem described in the complaint. Patterson v. Bell Telephone Co. of Pa., 72 Pa. PUC 196 (1990), Feinstein v. Philadelphia Suburban Water Co., 50 Pa. PUC 300 (1976). The Complainant must establish her case by a preponderance of the evidence. Samuel L. Lashberry, Inc. v. Pa. Pub. Util. Comm'n., 578 A.2d 600 (Pa. Cmwh. 1990), alloc. den., 602 A.2d 863 (Pa. 1992). To meet her burden of proof, the Complainant must present evidence more convincing, by even the smallest amount, than that presented by the Respondent. Sa-Ling Hosiery v. Mercantiles, 70 A.2d 854 (Pa. 1950).

Here the Complainant alleges that the Respondent provided inaccurate information to her concerning whether she was enrolled in the Respondent's CAP, that the Respondent did not correctly calculate her household income when determining her CAP benefit and that the Respondent is sending termination notices to the Complainant even though she is making monthly payments on her account. I will address each of these allegations in order after providing some background information taken from the evidence presented by the Complainant and Respondent.

The Complainant resides at 407 Sansom Street, Upper Darby, Delaware County. N.T. 7, 28. The Complainant testified that she has resided at 407 Sansom Street since 2011. N.T. 7-8. The Complainant currently resides at 407 Sansom Street with her husband and two children, ages 18 and 16. N.T. 7.

The Complainant stated that when she first enrolled in the Respondent's CAP, she earned \$15.34 per hour. N.T. 10. In addition, she received child support payments for her older child in the amount of \$500.00 per month. N.T. 10.

The Complainant testified that when she enrolled in the CAP, the Respondent provided contradictory information to the Complainant concerning whether she was enrolled in the Respondent's CAP. N.T. 10-11. In addition, the Complainant indicated that the Respondent informed her that even though she was enrolled in the CAP she did not receive a discount on her electric rates. N.T. 11-12.

The Complainant is not currently employed. N.T. 13. She has applied for disability benefits but her application has not yet been processed. N.T. 13. The Complainant's husband is currently employed, earning \$10.00 per hour and working 57 hours per week. N.T. 13.

The Complainant also testified that the Respondent has sent her termination notices. N.T. 17. According to the Complainant, she has been making monthly payments and should not be receiving termination notices. N.T. 17.

In response, the Respondent provided the testimony of Anna Mae Migliaccio, a regulatory inspector. N.T. 27. Ms. Migliaccio stated that, according to the Respondent's records, the Complainant was enrolled in the Respondent's CAP on May 9, 2012. N.T. 29, PECO Ex. 2. Subsequently, the Complainant was removed from the CAP on April 18, 2014 for failure to recertify her household income. N.T. 30.

The Complainant was re-enrolled in the CAP on May 13, 2014, after the Complainant recertified her income. N.T. 30. The Complainant was enrolled at CAP rate E-1. N.T. 30. At the time she was re-enrolled in the CAP, the Complainant's household income was \$1,545.00, with the Complainant receiving \$1,044.00 per month in unemployment compensation benefits and \$500.00 per month in child support. N.T. 30-31, PECO Ex. 5. The Complainant was enrolled as a CAP level E-1 customer. N.T. 30-31, PECO Ex. 5. As a CAP level E-1 customer, the Complainant received a 24% discount on her rates. N.T. 32.

When the Complainant was enrolled in the CAP, she had an outstanding balance of \$4,415.98. N.T. 34. The Respondent set this amount aside for forgiveness. N.T. 34-35.

Under the Respondent's CAP, if the customer makes monthly payments in full and on time, the Respondent forgives one twelfth of the set aside balance for each payment. N.T. 34-35.

Pursuant to this forgiveness program, the Respondent forgave \$3,312.00 of the Complainant's \$4,415.98 set aside balance. N.T. 34-35. There is a remaining amount of \$827.98 set aside that is eligible for forgiveness. N.T. 35.

According to the Respondent's records, on January 5, 2015, the Complainant contacted the Respondent concerning the CAP. N.T. 38, PECO Ex. 3. The Respondent sent a CAP application and advised the Complainant to send her pay stubs, child support stoppage letter and a no employment letter for her husband. N.T. 39, PECO Ex. 3.

According to the Respondent's records, on February 3, 2015, the Respondent received a CAP application from the Complainant with pay stubs for the Complainant, a no income letter for her husband and a printout of child support payments. However, the child support payment printout was inconsistent with the court order directing the child support payments. N.T. 39, PECO Ex. 3. The Respondent lacked the necessary information to process the Complainant's CAP income level change. N.T. 39, PECO Ex. 3.

The Respondent's records indicate that on February 17, 2015, the Complainant contacted the Respondent to complain that the child support payments were being used to calculate her CAP benefits even though she no longer received child support payments. N.T. 39-40, PECO Ex. 3. The Respondent advised the Complainant to provide it with proof of income and the court's child support order. N.T. 39-40, PECO Ex. 3. The Complainant remained on the CAP. N.T. 41.

On October 5, 2015, the Complainant provided the Respondent with proof of income and the court's child support order. N.T. 45-46. The Respondent recalculated the Complainant's household income and enrolled the Complainant as a Tier E CAP customer. N.T. 45-46. As a Tier E CAP customer, the Complainant receives a 42% discount on her rates. N.T. 32.

Ms. Migliaccio reviewed the Complainant's payment history as shown in her account activity statement. N.T. 32, PECO Ex. 1. According to the account activity statement, the Complainant made three payments on her account in 2015. N.T. 33. The Complainant made payments of \$100.00 on March 13, 2015, \$200.00 on May 11, 2015 and \$1,267.50 on June 22, 2015. N.T. 33, PECO Ex. 1. However, on June 26, 2015, the check for \$1,267.50 was returned for insufficient funds. N.T. 33, PECO Ex. 1.

According to the account activity statement, the Complainant made seven payments on her account in 2014. N.T. 33-34. The Complainant made payments of \$92.00 on January 6, 2014, \$100.00 on March 10, 2014, \$112.00 on April 1, 2014, \$202.00 on May 30, 2014, \$202.00 on July 18, 2014, \$160.00 on October 14, 2014 and \$210.00 on December 11, 2014. N.T. 34, PECO Ex. 1.

According to the account activity statement, the Complainant made three payments on her account in 2013. N.T. 34. The Complainant made payments of \$100.00 on July 26, 2013, \$91.00 on October 10, 2013 and \$92.00 on October 31, 2013. PECO Ex. 1.

The Complainant's current account balance is \$4648.48. N.T. 43, PECO Ex. 1. The entire arrearage consists of CAP arrears. N.T. 43.

Ms. Migliaccio reviewed the collection history of the Complainant's account. N.T. 43, PECO Ex. 8. The Respondent's records state that on April 24, 2015, the Respondent sent a disconnect notice to the Complainant. N.T. 44, PECO Ex. 8. The Respondent's records indicate that on April 27, 2015, the Respondent sent a 72 hour shut off notice to the Complainant. N.T. 44, PECO Ex. 8. When the Complainant filed an informal complaint with the BCS on May 14, 2015, the Respondent removed the Complainant's account from collections on May 14, 2015. N.T. 42-44, PECO Exs. 6, 8.

BCS issued a decision on May 19, 2015. N.T. 43, PECO Ex. 7. The decision dismissed the Complainant's complaint. N.T. 43, PECO Ex. 7.

The Respondent's records indicate that on June 1, 2015, the Respondent sent a termination notice to the Complainant. N.T. 45, PECO Ex. 8. The Complainant's records state that on June 4, the Respondent sent a 72 hour shut off notice to the Complainant. N.T. 45, PECO Ex. 8. When the Complainant filed a formal complaint with the Commission on June 22, 2015, the Respondent removed the Complainant's account from collections on June 22, 2015. N.T. 45, PECO Ex. 8. The Complainant's account is currently not in collection because of the pending formal complaint. N.T. 43-46.

Having provided some background information, I will now address the Complainant's allegations that the Respondent provided inaccurate information to her regarding its CAP. Before addressing the Complainant's contentions, I will first provide a brief explanation of CAP programs.

The Commission developed a policy statement regarding CAP programs that is codified at 52 Pa.Code §§ 69.261-69-267. The policy statement at 52 Pa.Code § 69.263(a) mandates that a utility should develop its CAP consistent with the guidelines set forth in the policy statement. The policy statement at 52 Pa.Code § 69.263(c) states that before implementing, revising or expanding a CAP, a utility should submit its CAP proposal to BCS for review and Commission approval of design elements.

The scope of a CAP is not unlimited. The policy statement at 52 Pa.Code § 69.264 states that the participation limit for a CAP should reflect a needs assessment, consideration of the number of low-income households in the utility's service territory, the number of participants currently enrolled, participation rates for assistance programs and resources available.

Eligibility criteria for a CAP is controlled by the policy statement at 52 Pa.Code § 69.263(4). In particular, a CAP applicant must have household income at or below 150% of the Federal poverty guidelines. The CAP applicant must also be a low-income, payment troubled customer. The policy statement at 52 Pa.Code § 69.262 defines a low-income, payment troubled customer as a low-income customer who has failed to maintain one or more payment

arrangements. Utilities must prioritize enrollment of eligible, payment troubled customers using one of the four options set forth at 52 Pa.Code §§ 69.265(4)(iii)(A)-(D).

A participant in CAP may be removed for failure to comply with any of the provisions set forth in 52 Pa.Code § 69.265(7). Relevant to this case, a participant may be removed for failure to annually verify eligibility, pursuant to 52 Pa.Code § 69.265(7)(vi).

Having provided a brief explanation of CAP programs, I will now address the Complainant's contention that the Respondent provided contradictory information to the Complainant concerning whether she was enrolled in the Respondent's CAP. The Complainant insists that she was informed by the Respondent that she did not receive a rate discount from the CAP. However, the Complainant did not provide any dates when the Respondent provided the allegedly inaccurate information.

The provision at 52 Pa.Code § 69.265(6)(iv) requires that a complete and thorough explanation of a CAP's components should be explained to participants. Here it appears that the Complainant may have received contradictory information concerning her benefits, depending on when she contacted the Respondent because she was enrolled, then removed then re-enrolled in the Respondent's CAP.

The Respondent's witness stated the Complainant was enrolled in the Respondent's CAP on May 9, 2012. The Complainant was removed from the CAP on April 18, 2014 for failure to recertify her household income and verify her eligibility for the CAP, pursuant to 52 Pa.Code § 69.265(7)(vi). Since the Complainant failed to verify her eligibility, pursuant to 52 Pa.Code § 69.265(7)(vi), the Respondent did not violate any Commission regulation or order by removing the Complainant from the CAP. Once the Complainant was removed from the CAP, she was no longer eligible to receive a rate discount. If the Complainant contacted the Respondent concerning the CAP after she was removed from CAP, the Respondent would have correctly informed her that she was no longer eligible to receive a rate discount.

The Respondent's witness testified that the Complainant was re-enrolled in the CAP on May 13, 2014, after the Complainant recertified her income and verified her eligibility for the CAP. Once the Complainant verified her eligibility for the CAP, she was re-enrolled into the CAP, pursuant to 52 Pa.Code § 69.265(8), which allows utility to reinstate a customer into the CAP at its discretion. She then became eligible to begin receiving the rate discount again. The Respondent's witness testified that once she was re-enrolled in the CAP, the Complainant received a rate discount in accord with the provisions of the Respondent's tariff. If the Complainant contacted the Respondent concerning the CAP after she was re-enrolled in the CAP, the Respondent would have correctly informed her that she was again eligible to receive a rate discount.

Depending on when the Complainant contacted the Respondent she may have been told correctly that she either was receiving or not receiving a rate discount. Since the Complainant failed to indicate on what date or dates she contacted the Respondent, she failed to demonstrate that the information provided to her was inaccurate. I conclude that the Complainant has failed to prove by a preponderance of the evidence that the Respondent violated any Commission order or regulations by failing to provide a complete and thorough explanation of the CAP to the Complainant, by removing the Complainant from the CAP or by failing to provide the Complainant with a discounted rate while she was enrolled in the CAP.

I will now address the Complainant's contention that the Respondent did not correctly calculate her household income when determining her CAP benefit. According to the Complainant, the Respondent should have calculated her household income subtracting her child support payment amounts that the Complainant no longer received for child support. The Respondent did not recalculate the Complainant's household income subtracting the child support amounts until shortly before the hearing.

The provision at 52 Pa.Code § 69.265(4)(ii) requires that an applicant for a CAP program must verify his or her household income. When the Complainant was re-enrolled in the CAP, her household income was \$1,545.00, with the Complainant receiving \$1,044.00 per

month in unemployment compensation benefits and \$500.00 per month in child support. The Complainant does not dispute this calculation.

The Complainant contends that when her child support ended, the Respondent should have recalculated her household income. However, before the Respondent could recalculate the Complainant's household income, she had to verify that income with the Respondent.

Here it appears that the Complainant simply did not provide adequate verification that the child support payments had actually ended. The Respondent required that the Complainant provide a copy of the court's child support order. The Complainant did not provide that document until shortly before the hearing on October 5, 2015. In the absence of adequate information to verify income, the Respondent had no obligation to recalculate the Complainant's household income. I conclude that the Complainant has failed to prove by a preponderance of the evidence that the Respondent violated any Commission order or regulations by failing to recalculate the Complainant's household income until it received the proper documents to verify income.

I will now address the Complainant's allegations that the Respondent is sending termination notices to the Complainant even though she is making monthly payments on her account. The Complainant contends that she has been making monthly payments on her account and therefore the Respondent should not be sending termination notices to her.

Before it could terminate service to the Complainant for non-payment, the Respondent had to provide notice to the customer of record. The Responsible Utility Customer Protection Act, 66 Pa. C.S. §§ 1401-1418 at 66 Pa. C.S. §1406(a)(1) provides that a public utility may terminate service for non-payment of an account after providing notice to the customer as set forth in 66 Pa. C.S. §1406(b). The provision at 66 Pa. C.S. §1406(b)(1)(i) directs that a public utility shall provide a written termination notice to the customer at least ten days prior to the date of the proposed termination. The termination notice remains effective for sixty days. The provision at 66 Pa. C.S. §1406(b)(1)(ii) directs that a public utility shall attempt to contact

the customer in person or by phone, email or text message at least three days prior to the scheduled termination.

The Complainant's records indicate that so far in 2015, the Complainant has made three payments. The Complainant made a payment of \$100.00 on March 12, 2015, a payment of \$200.00 on May 7, 2015 and a payment of \$1,267.50 on June 22, 2015. The June 22, 2015 payment of \$1,267.50 was returned for insufficient funds. Contrary to her assertions, the Complainant has not been making regular monthly payments.

After receiving only one payment in the first four months of 2015, the Respondent sent a termination notice to the Complainant on April 24, 2015, followed by a 72 hour termination notice sent on April 29, 2015. When the Complainant filed an informal complaint with BCS on May 14, 2015, the Respondent removed the Complainant's account from collections on May 24, 2015.

After BCS dismissed the Complainant's complaint, the Respondent sent a termination notice to the Complainant on June 1, 2015, followed by a 72 hour termination notice sent on June 4, 2015. When the Complainant filed a formal complaint with the Commission, the Respondent removed the Complainant's account from collections on June 22, 2015.

The Complainant was not making regular payments on her account. The Respondent was therefore permitted to initiate termination proceedings against the Complainant. I conclude that the Complainant has failed to prove by a preponderance of the evidence that the Respondent violated any Commission order or regulations by initiating termination proceedings against the Complainant and sending termination notices to the Complainant.

In summary, I conclude that the Complainant has failed to establish by a preponderance of the evidence that the Respondent failed to provide a complete and thorough explanation of the CAP to the Complainant, improperly removed the Complainant from the CAP or failed to provide the Complainant with a discounted rate while she was enrolled in the CAP. I also conclude that the Complainant has failed to establish by a preponderance of the evidence

that the Respondent failed to properly recalculate the Complainant's household income. Finally, I conclude that the Complainant has failed to prove by a preponderance of the evidence that the Respondent improperly initiated termination proceedings against the Complainant or improperly sent termination notices to the Complainant. For the foregoing reasons, I will deny the complaint and enter the following order.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. § 701.
2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).
3. The Complainant failed to establish by a preponderance of the evidence that the Respondent provided her with an incomplete explanation of its CAP because she was enrolled, removed, then re-enrolled in the CAP. 52 Pa.Code § 69.265(6)(iv).
4. The Complainant failed to prove by a preponderance of the evidence that the Respondent failed to recalculate her income when it received documents to verify income because she failed to provide an actual copy of the court order terminating the child support payments until October 5, 2015. 52 Pa.Code § 69.265(4)(ii).
5. The Responsible Utility Customer Protection Act applies to this proceeding. 66 Pa.C.S. § 1401-1418.
6. The Complainant has failed to prove by a preponderance of the evidence that the Respondent improperly initiated termination proceedings against her because she was not making regular payments on her account. 66 Pa. C.S. §1406.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint of Tanine Bennett against PECO Energy Company at Docket No. C-2015-2488809 is denied.
2. That the docket at Docket No. C-2015-2488809 is marked closed.

Date: November 9, 2015

ds

David A. Salapa
Administrative Law Judge