

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

Direct Dial: 215.841.6841

June 27, 2016

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

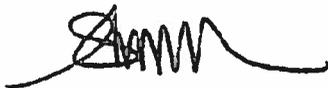
**RE: Lisa Martin v. PECO Energy Company**  
**PUC Docket No.: C-2016-2541801**

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,

A handwritten signature in black ink, appearing to read "Shawane Lee", with a long horizontal flourish extending to the right.

Shawane Lee  
Counsel for PECO Energy Company

SL/alb  
Enclosure

cc: Certificate of Service

PENNSYLVANIA PUBLIC UTILITY COMMISSION

LISA MARTIN

Complainant

v.

PECO ENERGY COMPANY

Respondent

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DOCKET NO. C-2016-2541801

NOTICE TO PLEAD

To: *Lisa Martin*

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.

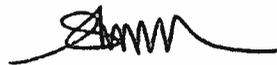
File with:

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 27, 2016



---

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

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**LISA MARTIN**

**Complainant**

**v.**

**PECO ENERGY COMPANY**

**Respondent**

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**DOCKET NO. C-2016-2541801**

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**MOTION FOR JUDGMENT ON THE PLEADINGS**

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

1. On April 26, 2016, PECO was served with a formal complaint filed by Lisa Martin (hereafter “Complainant”). A copy of the Complaint is attached hereto as Exhibit “1”.

2. In her formal complaint, Complainant alleges that PECO transferred a bill the company charged off in 2010 and put it back on her bill in 2013. The Complainant states that PECO is charging her for electric for a residence she did not reside at and she has a \$9,000 bill which is now over \$12,000. The Complainant requests to have the bill removed.

3. On April 29, 2016, PECO filed an Answer, New Matter and Notice to Plead. A copy of PECO’s Answer and New Matter is attached hereto as Exhibit 2.

4. PECO averred in its New Mater that all of the allegations raised in the Complaint were raised by the Complainant in a prior former complaint and were dismissed. New Matter ¶1.

5. PECO averred that the Complainant filed a formal complaint docketed at F-2013-2360697. In that Complaint, the Complainant states that she is not responsible for a \$9,592.07 utility bill. The Complainant states that she disagrees with PECO Energy's account of how these bills accrued. The Complainant additionally alleges that she never had electric service in her name for the Rear of 242 New Galena Road. The Complainant states that she had a separate meter for a separate dwelling. The Complainant alleges that when she called PECO Energy, she was told that the electric bill was from January of 2010 for 242 New Galena Road. The Complainant claims that she lost the home at that property and sent proof to PECO Energy. New Matter ¶2

6. PECO averred that on August 1, 2013, the issues raised in the formal complaint at docket number F-2013-2360697 were heard before Administrative Law Judge Elizabeth H. Barnes. New Matter ¶4.

7. PECO averred that the Complainant was represented by attorney Henry Cooper, Esquire at the telephonic hearing. New Matter ¶5.

8. PECO averred that ALJ Barnes issued an Initial Decision on September 18, 2013, dismissing the Complainant's Complaint. See Lisa Martin v. PECO, F-2013-2360697 (Initial Decision entered September 18, 2013), attached hereto as Exhibit "3". New Matter ¶6

9. PECO averred that in ALJ Barnes' decision, she determined that the Complainant was responsible for the charged off balance from 2010 that Complainant now raises again in her formal complaint. New Matter ¶9. In her Initial Decision, ALJ Colwell stated:

On October 7, 2010, there was a charge off in the amount of \$9,592.07 from the account being finaled in May of 2010. N.T. 25. The entire amount in dispute is Customer Assistance Program (CAP) arrears which are not subject to a Commission-ordered payment agreement. 66 Pa. C.S. § 1405(c). N.T. 29. I find the amount of \$9,592.07 to be appropriate because it includes the \$3,242.37 that was transferred to the

account on November 2008 that came from the rear account that was not paid and because PECO discontinued service shortly after Complainant requested discontinuance in May, 2010. N.T. 30-32. PECO Exhibit 5. It is reasonable that PECO believed Complainant was the responsible account holder for both the front and rear properties given the social security numbers and name of Lisa A. Martin are the same on the accounts for both units as well as for an account held by Complainant from November 3, 3005 through March 2, 2007 at 123 Mary Street, Doylestown, PA. PECO Exhibit 3.

10. PECO averred that the Commission reviewed ALJ Barnes' Initial Decision pursuant to 66 Pa.C.S. § 332(h). New Matter ¶10.

11. PECO averred that on December 19, 2013, the Commission adopted ALJ Barnes' Initial Decision by Opinion and Order and dismissed the Complainant's complaint. See Lisa Martin v. PECO, F-2013-2360697 (Opinion and Order entered December 19, 2013), attached hereto as Exhibit "4". New Matter ¶11.

12. Accordingly, PECO averred that all of the allegations in the Complainant's current formal case should be dismissed on the grounds of res judicata. New Matter ¶13-15.

13. To date, 20 days has passed since PECO filed its New Matter.

14. 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).

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

16. 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.

17. 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).

18. 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).

19. The pleadings in this case reveal that the Complainant's case is barred on res judicata grounds.

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

21. Res judicata includes any issue, claim or defense that was raised or could have been raised in the prior proceedings. Glynn v. Glynn, 2001 PA Super 359, ¶ 27, 789 A.2d 242, 250.

22. The doctrine of res judicata, which is also known as claim preclusion, holds that a final judgment on the merits by a court of competent jurisdiction will bar any future action on the same cause of action between the parties and their privies. Hopewell Estates, Inc. v. Kent, 435 Pa. Superior Ct. 471, 476, 646 A.2d 1192 (1994). The doctrine of res judicata applies to cases before the Commission. See, O'Toole v. Bell Telephone Co. of Pennsylvania, Inc., 77 Pa. P.U.C. 98, 104 (1992). The doctrine of res judicata reflects the refusal of the law to tolerate the re-litigation of a matter decided by a court of competent jurisdiction. For the doctrine to prevail four conditions must be met:

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

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

23. In the present case all four elements of res judicata are met.

24. Consistent with the requirement of res judicata, the issue sued upon in the 2013 matter and the 2016 complaint are the same. Complainant's issue is founded on a dispute regarding a \$9,000 balance transferred from a former address in 2010 from 242 New Galena Road and her responsibility for that balance.

25. The cause of action in the most recent Complaint is also the same. In the 2013 matter, Complainant requested that the \$9,000 plus charges accumulated at 242 New Galena Road and transferred to her current account in 2013 be removed. Analogous to the previous complaint, in the most recent complaint, Complainant states that she is not

responsible for the balance because she did not reside at 242 New Galena Road. Indeed, in her Initial Decision, ALJ Barnes made several findings of fact regarding this dispute and determined that Complainant lived at the service address as follows:

- a. Complainant lived at 242 New Galena Road, Chalfont, PA in 2006 in one of two rentals units. Complainant lived in the Front unit, but not the Rear unit.
- b. Complainant claims that the first time she received a bill for service to the rear unit was when she received a denial of new service letter for her current residence on December 31, 2012. She was told that she had an outstanding balance of \$9,000 to pay before service would be connected to her new address.
- c. The total unpaid balance on the Front account was \$9,437.45 which included the balance of \$3,242.37 that was transferred to the account from the Rear account that was not paid in November, 2008, in addition to the new charges that accumulated between November of 2008 and May of 2010 for the Front unit.
- d. Complainant's final bill for service charges regarding account number 778007-49012, and the service property at New Galena Road was mailed on June 9, 2010 to 63 Sellersville Rd., Chalfont, PA and the entire charges consisted of customer assistance program (CAP) arrears.

26. Res judicata also requires the parties to the instant action be the same or stand in privity to the parties of the original action. Hopewell Estates, Inc. v. Kent, 435 Pa. Superior Ct. 471. 476,646 A.2d 1192 (1994). The parties in the most recent action are the same as the 2013 complaint which was already dismissed. This matter is again initiated by Lisa Martin against PECO Energy.

27. As required by the fourth tenant of the doctrine of res judicata, the quality and capacity of the parties involved is the same as it was in 2013.

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

29. Here, the issues presented have all been litigated previously. Therefore, PECO Energy is entitled to judgment as a matter of law with respect to all of the allegations in the Complaint.

30. All of the allegations raised in the Complaint were previously raised by the Complainant in a former complaint and were dismissed.

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

32. Because the present Complaint asserts the same factual and legal basis for relief as the dismissed 2014 Complaint, the Complainant is estopped from attempting to re-assert her claims here.

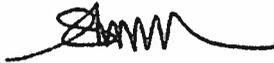
33. The doctrine of res judicata is meant to protect against just the type of re-litigation that the Complainant is attempting with her present formal Complaint. It is pointless and a waste of the Commission's time and resources to permit the new Complaint to go forward with respect to any issues already raised in the earlier Complaint.

34. For the reasons set forth above, all of the Complainant's claims should be dismissed on the grounds of res judicata.

**REQUEST FOR RELIEF**

WHEREFORE, for the reasons set forth above, PECO Energy Company respectfully requests that your Honorable Commission summarily dismiss the Complainant's Complaint, and all issues which were raised in the 2014 Complaint at docket number F-2014-2413585.

Respectfully submitted,



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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](mailto:Shawane.Lee@exeloncorp.com)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**LISA MARTIN**

**Complainant**

v.

**PECO ENERGY COMPANY**

**Respondent**

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**DOCKET NO. C-2016-2541801**

**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 27, 2016

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Shawane L. Lee

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>LISA MARTIN</b>	:	
<b>Complainant</b>	:	
	:	
<b>v.</b>	:	<b>DOCKET NO. C-2016-2541801</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

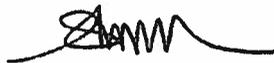
**CERTIFICATE OF SERVICE**

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:

Lisa Martin  
63 Sellersville Road  
Chalfont, PA 18914

Administrative Law Judge Mark A. Hoyer  
Pennsylvania Public Utility Commission  
Office of Administrative Law Judge  
301 5<sup>th</sup> Avenue  
Piatt Place, Suite 220  
Pittsburgh, PA 15222

Dated at Philadelphia, Pennsylvania, June 27, 2016.



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

# **EXHIBIT “1”**

**Botak, Amy:(PECO)**

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**From:** eServe@pa.gov  
**Sent:** Tuesday, April 26, 2016 11:21 AM  
**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-2016-2541901**.

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.*

AND 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 LISA A. MARTIN

Street/P.O. Box 63 Sellersville Road Apt #

City CHALFONT State PA Zip 18914

County Bucks

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

(215) 262-3148 (home) ( ) (mobile)

E-mail Address (optional): LMINTERIORS@AOL.COM

Utility Account Number (from your bill) 70532-07030

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 PECO

Street/P.O. Box P.O. Box 37632

City Philadelphia State PA Zip 0629

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 Energy Company

RECEIVED

APR 25 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):

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

4. Reason for Complaint

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

The utility is threatening to shut off my service or has already shut off my service.  
TRANSFERRED A BILL They had charged off in 2010  
Then put back on my bill 2013 - accruing interest

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. Charging me for Electric @ a residence I did not reside in having the bill over \$9,000.00 now over \$12,000.00 after they charged it off

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 would like to have this large amount removed. I have paid my current electric bill on time every month for 3 years. I am not responsible for a bill from January 2010 since I did not reside at that address. Will provide witness to that fact.

**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 Lisa A. Martin, 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).

Lisa A. Martin  
(Signature of Complainant)

4/23/16  
(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.

Expires

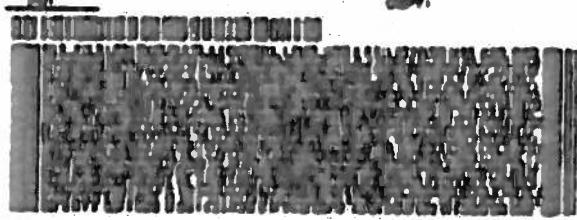
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ORIGIN 19:3000 (210) 906-0101  
LINA BENTON  
C/O BENTON BUSINESS SERVICES  
4570 COUNTY LINE RD.  
CHAMBERS PA 15014  
UNITED STATES US

SHIP DATE: 25APR16  
ACTWT: 0.10 LB  
CND: 105431504/MSX13000  
DTM: 0000 IN  
BILL SENDER

TO SECRETARY  
PENNSYLVANIA PUBLIC UTILITY C  
400 NORTH ST

HARRISBURG PA 17120  
(717) 111-1111



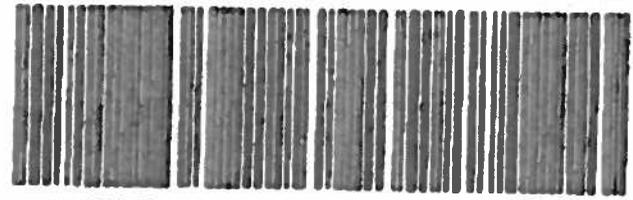
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7829 0310 1723

MON - 25 APR 10:30A  
PRIORITY OVERNIGHT

XH MDTA

17120  
PA-US  
MDT

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20  
JT



FID 261206 23APR16 576 630C1/1042/4010

**EXHIBIT "2"**



# PENNSYLVANIA PUBLIC UTILITY COMMISSION

CONSUMERINFO UTILITY&INDUSTRY FILING&RESOURCES ABOUTPUC CONTACTUS

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## eFiling Successfully Transmitted



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

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

*If your filing exceeds 200 pages, you are required to submit one paper copy of the filing within 3 business days of submitting the electronic filing. This paper copy can be mailed to: Secretary, Pennsylvania Public Utility Commission, Commonwealth Keystone Building, 400 North Street, 2nd Floor, Harrisburg, PA 17120. Please print a copy of this page and attach it to the paper copy of your filing as the first page.*

eFiling Confirmation	
Docket Number:	C-2016-2541801
Description:	Lisa Martin - PECO Energy Company Answer with New Matter
Transmission Date:	4/29/2016 2:23:26 PM
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### Uploaded File List

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

PECO ENERGY  
EXHIBIT 2



An Exelon Company

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

Direct Dial: 215-841-6841

April 29, 2016

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

**RE: Lisa Martin v. PECO Energy Company**  
**PUC Docket No.: C-2016-2541801**

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



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**LISA MARTIN**

**Complainant**

**v.**

**PECO ENERGY COMPANY**

**Respondent**

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**DOCKET NO. C-2016-2541801**

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**ANSWER OF RESPONDENT**  
**PECO ENERGY COMPANY**

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On April 26, 2016, PECO Energy Company ("PECO Energy") was served with a formal complaint filed by Lisa Martin, 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 formal complaint, Complainant states that PECO Energy is threatening to terminate or has already terminated her service. The Complainant alleges that PECO has transferred a bill the company charged off in 2010 and put it back on her bill. She states that she is not responsible for a bill from January 2010 since she did not reside at that address. The Complainant states that PECO is charging her a \$9,000 bill for a residence she did not reside at. The Complainant alleges her bill is now over \$12,000. The Complainant is requesting that PECO remove the large balance. PECO avers that the company and Complainant have already

litigated these issues in the matter Lisa A. Martin v. PECO, Docket Number F-2013-2360697 (Opinion and Order entered Dec. 19, 2013). The Commission held the Complainant responsible for the transferred balance. The current complaint should be dismissed because it is *res judicata*.

The Complainant established an account with PECO Energy for electric service at 242 New Galena Road, Rear, Chalfont, PA on June 12, 2006 under account number 64344-00109. A final bill was issued on the account on October 25, 2006 in the amount of \$286.87. The Complainant established another account at 242 New Galena Road, Rear, Chalfont, PA on February 2, 2007 under account number 64344-04052. A final bill was issued on September 29, 2008. While she had this account, the Complainant enrolled in PECO Energy's Customer Assistance Program ("CAP") under Tier E on August 8, 2007. PECO Energy forgave \$4,002.38 in pre-program arrears on June 19, 2008.

On November 5, 2008, the Complainant established an account for service at 242 New Galena Road, Front, Chalfont, PA under account number 77007-49012. See Account Activity Statement, attached hereto as Exhibit "1". When she established this account, an unpaid balance of \$3,242.37 from the 232 New Galena Road, Rear, account number 64344-04052 transferred into the account on November 5, 2008. On or about June 9, 2010, the Complainant requested discontinuance of service at 242 New Galena Road, Front. A final bill was issued in the amount of \$9,427.45. See Exhibit "1". On October 7, 2010, \$9,592.07 was charged off to a collection agency. See Exhibit "1".

On December 31, 2012, the Complainant requested electric service at 63 Sellersville Road, Chalfont, PA. PECO Energy advised her that she had a \$9,592.07 unpaid balance from account number 77007-49012 for service at 242 New Galena Road, Front, Chalfont, PA. The

company sent a denial letter, dated December 31, 2012. See Denial Letter, dated 12/31/12, attached hereto as Exhibit "2".

On January 10, 2013, the Complainant filed an informal complaint with the Bureau of Consumer Services ("BCS") at case number 003056300. In her informal complaint, the Complainant stated that she applied for service at 63 Sellersville Road after her roommate moved. PECO Energy denied her service in her own name because she owes a balance from 242 New Galena Road, Chalfont, PA. The Complainant stated that she moved from this property in 2010 due to a foreclosure on the home. The Complainant stated that she contacted the company to request service be taken out of her name at that address. The Complainant also stated that she never resided at Galena Road in 2006 and she does not understand how she let a bill accrue to over \$9,000. The Complainant claims that she sent PECO Energy paperwork to confirm where she lived in 2006; the foreclosure date on the home, and proof of when she moved into her present address in 2010. See Case Details Report #003056300, attached hereto as Exhibit "3".

On March 26, 2013, the BCS issued a Decision Report, dismissing the case as follows:

Based upon the available information, Lisa A Martin is responsible for an outstanding balance totaling \$9,592.07. The balance includes CAP arrears. 1405(c) does not allow the PUC to issue a PAR on CAP rates. Lisa A Martin did not provide the Public Utility Commission with the information she claimed she would provide by 3/18/2013. As of 3/22/2013 the PUC has not heard back from her. Company requires Lisa A Martin to pay the prior balance of 49,592.07 in full in order to establish service at 63 Sellersville Road in Chalfont, PA as is allowed under 56.35(A).

See BCS Decision Report #003056300, attached hereto as Exhibit "4".

PECO Energy avers that the Complainant is responsible for the balance transferred from her previous service address – 242 New Galena Road, Front, Chalfont, PA. Pursuant to 52 Pa. Code § 56.35– Payment of Outstanding Balance.

(a) A public utility may require, as a condition of the furnishing of residential service to an applicant, the payment of any outstanding residential account with the public utility which accrued within the past 4 years for which the applicant is legally responsible and for which the applicant was billed properly.

Public records associate the Complainant with the property from 2005 to August 2010. Additionally, PECO Energy's records do not reflect any communication from the Complainant at any time requesting discontinuance of service at 242 New Galena Road prior to June 2010.

Pursuant to 56 Pa. Code. § 56.16. Transfer of accounts.

(a) A customer who is about to vacate premises supplied with public utility service or who wishes to have service discontinued shall give at least 7 days notice to the public utility and a noncustomer occupant, specifying the date on which it is desired that service be discontinued. In the absence of a notice, the customer shall be responsible for services rendered.

(b) In the event of discontinuance or termination of service at a residence or dwelling in accordance with this chapter, a public utility may transfer an unpaid balance to a new residential service account of the same customer.

In this case, the Complainant did not contact PECO Energy to terminate service at 242 New Galena Road. Pursuant to 56 Pa. Code. § 56.16(a), the Complainant had an obligation to contact the company to discontinue service; and therefore, she is responsible for the charges incurred until the service was discontinued through service termination. By way of further response, the Complainant has never submitted any documentation to PECO Energy, justifying that she never resided at the premises during the time period at issue and failed to provide this documentation to the BCS.

The Complainant filed a formal complaint regarding this dispute at docket number F-2013-2360697. The matter proceeded to a hearing before Administrative Law Judge Elizabeth H. Barnes on August 1, 2013. ALJ Barnes made 13 Findings of Fact regarding the

Complainant's \$9,000 transferred balance from 242 New Galena Road, which addressed her responsibility for the balance. ALJ Barnes issued an Initial Decision dismissing the complaint on September 18, 2013, stating:

The Complainant has failed to show she did not reside at 242 New Galena Road, or that there was an unauthorized use of her name and social security number to establish electric service accounts in her name for the Rear unit. Her admission that she held a mortgage for the property until it was foreclosed in January, 2010 is further evidence that the Company accurately billed the Complainant.

See Lisa Martin v. PECO, Docket Number F-2013-2360697 (Initial Decision entered Sep. 18, 2013), attached hereto as Exhibit "5".

The Complainant filed exceptions to ALJ Barnes' Initial Decision. The Commission reviewed ALJ Barnes' Initial Decision and determined that the Complainant is responsible for the \$9,000 balance transferred to her account. See Lisa Martin v. PECO, Docket Number F-2013-2360697 (Opinion and Order entered Dec. 19, 2013), attached hereto as Exhibit "6".

On June 25, 2015, the Complainant filed another informal complaint disputing the balance transferred from 242 New Galena Road. In her informal complaint, the Complainant stated that she was given an \$11,000 electric bill from PECO in 2013 from an old address at 242 New Galena Road, Chalfont, PA. The Complainant stated that she moved from that address on January 11, 2010. The Complainant stated that PECO is threatening to terminate her service because they are now holding her responsible for the bill. The Complainant disputes owing the bill as she claims she did not live there when the balance accrued. See Case Details Report #003359572, attached hereto as Exhibit "7".

On August 27, 2015, the BCS issued a Decision Report, dismissing the case as follows:

A DECISION FOR A PRIOR PUC INFORMAL COMPLAINT AT BCS # 3056300 AND FORMAL COMPLAINT F-2013-2360697 UPHELD THE COMPANIES' POSITION THAT YOU WERE RESPONSIBLE FOR THE FORMER ADDRESS BALANCE OF \$9,592.07 THAT WAS TRANSFERRED INTO YOUR CURRENT ACCOUNT. THE CAP PRE-PROGRAM ARREARS OF \$4,002.38 WERE FORGIVEN ON 6/19/08 AND NO ADDITIONAL FORGIVENESS IS WARRANTED. CLOSING CASE, CAP ENROLLED, DISPUTE, DECISION RENDERED, 1405 (C) REGULATIONS.

See BCS Decision Report #003359572, attached hereto as Exhibit "8".

The Complainant's balance is \$12,814.39. See Account Activity Statement, attached hereto as Exhibit "9". The Commission has already determined that the Complainant is responsible for the former address balance. The Complainant's case should be dismissed as *res judicata* as set forth in the accompanying Preliminary Objection.

5. Denied.

6. Admitted.

7. Denied.

8. Denied. PECO is without knowledge or information sufficient to form a belief as to the truth of this averment and, therefore, such allegation is deemed denied.

9. Paragraph 9 is a Verification and Signature to which no response is required.

10. Paragraph 10 contains information regarding Filing, to which no response is required.

**NEW MATTER OF RESPONDENT, PECO ENERGY COMPANY**

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

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

2. **The Complainant filed formal complaint docketed at F-2013-2360697 wherein she disputed a \$9000 balance transfer from 242 New Galena Road and stated she was not responsible for the balance.**
3. **On May 13, 2013, PECO Energy filed an Answer to the Complainant's Complaint.**
4. **On August 1, 2013, a telephonic hearing was held before Administrative Law Judge Elizabeth H. Barnes ("ALJ Barnes").**
5. **The Complainant was represented by attorney Henry Cooper, Esquire at the telephonic hearing.**
6. **On September 18, 2013, ALJ Barnes issued an Initial Decision, dismissing the Complainant's Complaint.**
7. **In that Decision, ALJ Barnes made thirteen (13) Findings of Fact.**
8. **The Findings of Fact included:**
  - a. **Complainant lived at 242 New Galena Road, Chalfont, PA in 2006 in one of two rentals units. Complainant lived in the Front unit, but not the Rear unit.**
  - b. **Complainant claims that the first time she received a bill for service to the rear unit was when she received a denial of new service letter for her current residence on December 31, 2012. She was told that she had an outstanding balance of \$9,000 to pay before service would be connected to her new address.**
  - c. **The total unpaid balance on the Front account was \$9,437.45 which included the balance of \$3,242.37 that was transferred to the account from the Rear account that was not paid in November, 2008, in addition to the new charges that accumulated between November of 2008 and May of 2010 for the Front unit.**
  - d. **Complainant's final bill for service charges regarding account number 778007-49012, and the service property at New Galena Road was mailed on June 9, 2010 to 63 Sellersville Rd., Chalfont, PA and the entire charges consisted of customer assistance program (CAP) arrears.**

9. ALJ Barnes addressed the charged off balance from 2010 that Complainant now raises again in her formal complaint. ALJ Barnes determined the Complainant's responsibility for the balance as follows:

On October 7, 2010, there was a charge off in the amount of \$9,592.07 from the account being finalized in May of 2010. N.T. 25. The entire amount in dispute is Customer Assistance Program (CAP) arrears which are not subject to a Commission-ordered payment agreement. 66 Pa. C.S. § 1405(c). N.T. 29. I find the amount of \$9,592.07 to be appropriate because it includes the \$3,242.37 that was transferred to the account on November 2008 that came from the rear account that was not paid and because PECO discontinued service shortly after Complainant requested discontinuance in May, 2010. N.T. 30-32. PECO Exhibit 5. It is reasonable that PECO believed Complainant was the responsible account holder for both the front and rear properties given the social security numbers and name of Lisa A. Martin are the same on the accounts for both units as well as for an account held by Complainant from November 3, 2005 through March 2, 2007 at 123 Mary Street, Doylestown, PA. PECO Exhibit 3.

See Lisa Martin v. PECO, Docket Number F-2013-2360697 (Initial Decision entered Sep. 18, 2013).

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

11. On December 19, 2013, the Commission issued an Opinion and Order, adopting ALJ Barnes' Initial Decision.

12. Consistent with ALJ Barnes' Decision, the Commission dismissed the Complainant's Complaint against PECO Energy.

13. The doctrine of res judicata operates to prevent re-litigation of claims already litigated on the merits. As stated by the Commission in Frank Tomazin v. Pennsylvania-American Water Company, 1997 Pa. PUC Lexis 52 (1997), "the policies underlying the doctrine of res judicata are minimizing judicial energy devoted to individual cases, establishing

certainty and respect for court judgments, and protecting the party relying on the prior adjudication from vexatious litigation.”

14. The doctrine of res judicata, which is also known as claim preclusion, holds that a final judgment on the merits by a court of competent jurisdiction will bar any future action on the same cause of action between the parties and their privies. Hopewell Estates, Inc. v. Kent, 435 Pa. Superior Ct. 471, 476, 646 A.2d 1192 (1994). The doctrine of res judicata applies to cases before the Commission. See, O'Toole v. Bell Telephone Co. of Pennsylvania, Inc., 77 Pa. P.U.C. 98, 104 (1992). The doctrine of res judicata reflects the refusal of the law to tolerate the re-litigation of a matter decided by a court of competent jurisdiction. For the doctrine to prevail four conditions must be met:

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

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

15. In the present case all four elements of res judicata are met. Clearly, the parties are identical in both Complaints. The thing sued upon is identical in both Complaints. Both the current formal complaint and the formal complaint filed in 2013 at docket number F-2013-2360697 relate to the Complainant's dispute about a \$9,000 balance transfer from a former address in 2010 from 242 New Galena Road and her responsibility for that balance. The previous complaint concerns whether the Complainant is responsible for that balance. The cause of action is identical. Finally, the quality and capacity of the parties is identical in both

Complaints. The Complainant is the electric customer in both Complaints, and PECO is the public utility providing service to the Complainant.

16. The Commission entered an Order dismissing the Complainant's previous Complaint as a matter of law, with prejudice, and such dismissal prevents the re-filing of the Complaint. With her new Complaint, the Complainant has ignored the Commission's clear dismissal Order and has attempted to re-file her Complaint.

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

18. Because the present Complaint asserts the same factual and legal basis for relief as the dismissed 2012 Complaint, the Complainant is estopped from attempting to re-assert her claims here.

19. The doctrine of res judicata is meant to protect against just the type of re-litigation that the Complainant is attempting with her present formal Complaint. It is pointless and a waste of the Commission's time and resources to permit the new Complaint to go forward with respect to any issues raised in the Complaint.

20. For the reasons set forth above, all of the Complainant's claims should be dismissed on the grounds of res judicata.

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

**Respectfully Submitted,**



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**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**

**LISA MARTIN**

**Complainant**

**v.**

**PECO ENERGY COMPANY**

**Respondent**

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**DOCKET NO. C-2016-2541801**

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**VERIFICATION**

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



**Date: April 29, 2016**

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**Shawane L. Lee**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**LISA MARTIN**

**Complainant**

**v.**

**PECO ENERGY COMPANY**

**Respondent**

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**DOCKET NO. C-2016-2541801**

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**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:

Lisa Martin  
63 Sellersville Road  
Chalfont, PA 18914

Dated at Philadelphia, Pennsylvania, April 29, 2016



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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: 77007-49012  
 Account Status: Final  
 Requested By: LISA A MARTIN  
 (215) 262-3140 Extension:  
 Mail To: LISA A MARTIN  
 242 NEW GALENA RD  
 FRFT  
 HUNT VALLEY MD 21031

\*\*\* Current Account Status \*\*\*

Current Bill: \$0.00  
 Billed Prior: \$0.00  
 Balance Due: \$0.00  
 Service Address: 242 NEW GALENA RD  
 FRFT  
 CHALFOUNT PA 18914  
 Credit Amount: \$0.00  
 Deposit Requested: \$0.00  
 Deposit On-Hand: \$0.00  
 Meter Bill Grp: 16  
 Rate: CAP Tier E Electric Residential Service

DATE	CHARGE TYPE	BILLING PERIOD	READ	METER #	CHARGE AMOUNT	CREDIT AMOUNT	TOTAL BILL	BALANCE FORWARD	DUE DATE	MIN	OCF	TR
03/24/10	ELECTRIC SERVICE	02/22/10 03/23/10	6907	004513602	\$445.64							
03/24/10	BUDGET BILLING	02/22/10 03/23/10			\$464.00							
	** Budget Bill Detail **				Actual Bill Amount: 445.64							
	** Budget Bill Detail **					EB Deferred Amount: 1374.91						
03/24/10	Regular Bill						\$7554.02	\$7090.02	04/15			3160
04/15/10	LINEAP Payment					\$100.00						
04/20/10	Late Payment Charge				\$31.12							
04/20/10	Late Payment Charge				\$36.16							
04/22/10	ELECTRIC SERVICE	03/23/10 04/21/10	6953	004513602	\$240.40							
04/22/10	BUDGET BILLING	03/23/10 04/21/10			\$633.00							
	** Budget Bill Detail **				Actual Bill Amount: 240.40							
	** Budget Bill Detail **					EB Deferred Amount: 990.39						
04/22/10	Regular Bill						\$8154.30	\$7702.50	05/14			1840
05/19/10	Late Payment Charge				\$31.12							
05/19/10	Late Payment Charge				\$36.16							
05/21/10	ELECTRIC SERVICE	04/21/10 05/20/10	6908	004513602	\$182.77							
05/21/10	BUDGET BILLING	04/21/10 05/20/10			\$633.00							
	** Budget Bill Detail **				Actual Bill Amount: 182.77							
	** Budget Bill Detail **					EB Deferred Amount: 540.16						
05/21/10	Regular Bill						\$8854.58	\$8337.07	06/14			1400
06/09/10	ELECTRIC SERVICE	05/20/10 05/27/10	6994	004513602	\$29.71							
06/09/10	BUDGET BILLING	05/20/10 05/27/10			\$569.07							
	** Budget Bill Detail **				Actual Bill Amount: 29.71							
	** Budget Bill Detail **					EB Deferred Amount: 0.00						
06/09/10	Regular Bill						\$9424.54	\$8854.58	07/01			240
07/07/10	Late Payment Charge				\$31.12							
07/07/10	Late Payment Charge				\$36.16							
07/08/10	Late Payment Charge				\$31.12							
07/08/10	Late Payment Charge				\$36.16							
08/24/10	Late Payment Charge				\$31.12							
08/24/10	Late Payment Charge				\$36.16							
08/27/10	LINEAP Payment											
09/23/10	Late Payment Charge				\$29.62		\$100.00					
09/23/10	Late Payment Charge				\$36.16							
10/07/10	Charged Off						\$9592.07					

All readings actual unless otherwise noted



**EXHIBIT "2"**



An Exelon Company

Service Denial Notice  
Aviso de Servicio Denegado

Current Date: December 31, 2012

NAME: LISA A MARTIN	
MAILING ADDRESS: 63 SELLERSVILLE RD	
CITY/STATE/ZIP: CHALFONT PA 18914	
TELEPHONE #: 215-262-3148	DATE YOU WANT SERVICE: 12/31/12

You recently applied for PECO utility service in your name at: 63 SELLERSVILLE RD CHALFONT PA 18914.

We cannot approve your application because our records indicate the following (see checked box):



You have an outstanding balance at the following address:

- Acct # (77007-48012) - (242 NEW GALENA RD \*FRNT CHALFONT PA 18914) in the amount of (\$9,582.07) for service from (08/12/2008) to (05/27/2010)
- Acct # (00000-00000) - (Address) in the amount of (Dollar value) for service from (start date) to (end date)

Outstanding balances must be satisfied before we will start new service in your name.

You do not qualify for payment terms.  You qualify for payment terms.

The following are acceptable forms of payment:

- Cash or Money Order
- A major credit, debit or ATM card. These are not accepted at our District Office located at 2301 Market St., Phila., PA 19101.
- Personal Check. If you have had TWO return checks on your unpaid balance account we will not accept any personal checks.



You may be responsible for the outstanding balance or a portion of the outstanding balance due at the property for which you are applying.

In order to get service in your name, you must provide a complete lease including signature page or settlement statement and two (2) forms of identification. One must be a photo identification.

You can bring these documents to our District Office located at 2301 Market St., Phila., PA 19101 between the hours of 8:30 AM and 5:00 PM or fax them to - Revenue Management 215-841-5160.

The following are some examples of acceptable forms of identification:

- Your valid driver's license
- Your photo identification from a recognized government agency, such as a welfare card or passport
- Your photo identification from an employer
- Your social security card
- Your birth certificate

If the service is on at this address, and you do not satisfy all of the requirements checked above, we will shut-off the service after we send the required shut-off notices. Call us at 1-800-494-4000 for questions regarding your application.

Please disregard this letter if all of the above requirements have already been met.

**If you have any questions, or if you need more information, please call the number listed on this notice. AFTER you talk with us, if you are not satisfied, you may file a complaint with the Pennsylvania Public Utility Commission (PUC). You may contact the PUC by calling their toll-free number 1-800-692-7389 or by writing to them at P.O. Box 3265, Harrisburg, PA 17105-3265.**

**PECO Company Offices**

**If you need to talk to us, you can come into our office at 2301 Market St., Philadelphia PA 19101, between 8:30 a.m. and 5:00 p.m., or call us at 1-800-494-4000, between 8:00 a.m. and 5:00 p.m., Monday through Friday, and between 9:00 a.m. and 1:00 p.m. on Saturday.**

**¡Atención!**

**Éste Es Un Mensaje Muy Importante. Si Usted No Lo Entiende, Favor De Llamar Al Número De Teléfono Que Aparece En Este Documento.**

**EXHIBIT "3"**

April 29, 2016

## Case Details Report

BCS Case #: 003056300  
Customer Name: LISA MARTIN  
Service Address: 63 SELLERSVILLE RD

BCS Bill Account #: 7700749012

Mailing Address: CHALFONT, PA 18914

Home Phone: (215) 997-4407

Business Phone: 0-

Business name:

Alternate contact: PLEASE USE CELL NUMBER FIRST FOR CONTACT

Date Case Opened: 2013-01-10

Date Cut Off: 9999-12-31

PAR Case: Y

Investigator Name: JULIE CARLIN

Investigator Phone: (717) 787-6850

Service class: R

Universal Service: N

Contact Type: TELEPHONE

Previous case #:

Amount in Arrears: \$0.00

# Adults: 1

# Children: 0

Children Ages:

Gross Income: \$1120.00

Miscellaneous Info:

PLEASE USE CELL NUMBER FIRST FOR CONTACT

### Complaint Reason:

APPLICANT/DEPOSITS - SERVICE IS ON (# 28)

### Customer Problem Description:

DENIAL OF SERVICE / ON.. MS MARTIN STATES SHE APPLIED FOR SVC IN HER NAME DEC 31ST AFTER FORMER ROOMMATE MR EARL OLIVE MOVED.. CO DENYING TRANSFER STATING SHE OWES A BAL FROM 242 NEW GALENA RD CHALFONT WHERE SHE MOVED IN 2010 DUE TO FORECLOSURE ON HOME.. CO WAS CONTACTED TO REQUEST SVC OUT OF NAME AT THAT ADDRESS.. ALSO STATES NEVER RESIDED ON GALENA RD IN 2006..CAN NOT UNDERSTAND HOW CO COULD EVEN LET A BILL ACCRUE TO OVER 9000..STATES SHE SENT CO PAPER WORK TO CONFIRM WHERE SHE LIVED IN 2006 . FORECLOSURE DATE AND WHEN SHE MOVED INTO PRESENT ADDRESS IN 2010.. WOULD LIKE TO OBTAIN

# **Exelon.**

---

**April 29, 2016**

**SVC IN HER NAME .. A CORRECT BALANCE AMT AND A PMT ARRANGEMENT FOR ANY AMT SHE MAY OWE..**

**Company Position:**

**12/31/2012 PECO... LETTER.. HAVE TO PAY 9542 PLUS OWED FROM PREVIOUS ADDRESS OF 242 NEW GALENA RD CHALFONT PA.. SVC SHUT OFF AT ADDRESS IN NAME 2012.. LETTER ALSO STATES RESIDED IN ADDRESS FROM 2006 THRU 2010...**

**EXHIBIT "4"**



April 29, 2016

**BCS Decision Report**

<b>BCS Case #:</b>	<b>003056300</b>	<b>Open Date:</b>	<b>2013-01-10</b>
<b>Customer Name:</b>	<b>LISA MARTIN</b>		
<b>Service Address:</b>	<b>63 SELLERSVILLE RD</b>		
	<b>CHALFONT, PA 18914</b>		
<b>BCS Bill Account #:</b>	<b>7700749012</b>	<b>Previous Case #:</b>	
<b>Violation Type:</b>	<b>NO</b>	<b>Chapter Type:</b>	
<b>Decision Type:</b>	<b>W</b>	<b>Section / Rule:</b>	
<b>Investigator Name:</b>	<b>JULIE CARLIN</b>		
<b>Decision Issued Date:</b>	<b>2013-03-26</b>		
<b>Case Closed Date:</b>	<b>2013-03-22</b>		

**Letter Description:**  
**BLANK LETTER - DECISION**

<b>Total Balance:</b>	<b>\$9592.07</b>	<b>Balance Date:</b>	<b>2013-01-28</b>
<b>Amount to Restore Service:</b>	<b>\$0.00</b>	<b>Amount to Continue Service:</b>	<b>\$0.00</b>
<b>Date Payment Due:</b>		<b>Regular Budget Amount:</b>	<b>\$0.00</b>
<b>Special Budget Payment:</b>	<b>\$0.00</b>	<b>Final Bill Monthly Payment:</b>	<b>\$0.00</b>
<b>Fine Arrears Payment:</b>	<b>\$0.00</b>	<b>End of Month Payment:</b>	<b>\$0.00</b>
<b>Current Monthly Payment:</b>	<b>\$0.00</b>		
<b>Payment Terms:</b>			

**PAR Description:**

**Resolution Description:**  
**CASE CLOSED. BASED UPON THE AVAILABLE INFORMATION, LISA A MARTIN IS RESPONSIBLE FOR AN OUTSTANDING BALANCE TOTALING \$9592.07. THE BALANCE INCLUDES CAP ARREARS. 1405(C) DOES NOT ALLOW THE PUC TO ISSUE A PAR ON CAP RATES. LISA A MARTIN DID NOT PROVIDE THE PUBLIC UTILITY COMMISSION WITH THE INFORMATION SHE CLAIMED SHE WOULD PROVIDE BY 3/18/2013. AS OF 3/22/2013 THE PUC HAS NOT HEARD BACK FROM HER. CO REQUIRES LISA A MARTIN TO PAY THE PRIOR BALANCE OF \$9592.07 IN FULL IN ORDER TO ESTABLISH SERVICE AT 63 SELLERSVILLE RD IN CHALFONT, PA AS IS ALLOWED UNDER 56.35(A). A LETTER HAS BEEN SENT TO THE COMPLAINANT WHICH EXPLAINS THAT THIS COMPLAINT HAS BEEN CLOSED. THE COMPANY HAS BEEN ELECTRONICALLY NOTIFIED THAT THIS COMPLAINT HAS BEEN CLOSED. THE DATE OF FINAL RESOLUTION AND THE REMOVAL OF THE HOLD OF TERMINATION EXPIRES MARCH 25, 2013.**

**EXHIBIT "5"**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Lisa Martin**

**v.**

**PECO Energy Company**

:  
:  
:  
:  
:

**F-2013-2360697**

**INITIAL DECISION**

Before  
**Elizabeth H. Barnes**  
Administrative Law Judge

**HISTORY OF THE PROCEEDING**

On April 29, 2013, Lisa Martin (Complainant) filed a formal Complaint with the Commission against PECO Energy Company (PECO or Respondent or Company) alleging improper billing and requesting that she not be held financially responsible for charges to a rear apartment unit at 242 New Galena Road, Chalfont, Pennsylvania, because she claims she did not own the property and did not reside in the rear unit. Complainant requested installation of electric service at her new residence at 63 Sellersville Road, Chalfont, PA, which had been denied to her by Respondent because of her arrears on her old account. This is an appeal of a Bureau of Consumer Services (BCS) decision issued at Case No. 3056300 on March 26, 2013. The Commission's Secretary served the Complaint on the utility on May 1, 2013.

On May 13, 2013, PECO filed its Answer denying that there are incorrect charges on Complainant's account. Respondent avers that Complainant owes \$9,592.07, all of which is CAP arrears. Respondent contends that Complainant established an account with PECO for electric service at 242 New Galena Road, Rear, Chalfont, PA on June 12, 2006 under account number 64344-00109 and that she established another account at 242 New Galena Road, Rear,

Chalfont, PA on February 2, 2007 under account number 64344-04052. On November 5, 2008, Complainant established a third account for service at 242 New Galena Road, Front, Chalfont, PA under account number 77007-49012. When Complainant established the last account, an unpaid balance of \$3,242.37 from 242 New Galena Road, Rear, transferred into the account on November 5, 2008. On or about June 9, 2010, Complainant requested discontinuance of service at 242 New Galena Road, Front. A final bill was issued in the amount of \$9,427.45. On December 31, 2012, Complainant requested new electric service at 63 Sellersville Road, Chalfont, PA. PECO advised she was denied new service because she had a \$9,595.07 unpaid balance from account 77007-49012 for service at 242 New Galena Rd., Front, Chalfont, PA.

A telephone hearing notice was issued on May 31, 2013, setting the hearing date for August 1, 2013, and assigning the matter to me. A prehearing order was issued on June 11, 2013. On July 29, 2013, counsel for the Company submitted a packet of eight proposed exhibits. Counsel provided Complainant with a copy via mail, but did not mail Complainant's counsel a copy.

The hearing was held as scheduled, with PECO represented by Shawane Lee, Esquire, who presented the testimony of one witness, Elsa Leung, Regulatory Assessor. PECO Exhibits 1-5 and 7-8 were sponsored by the witness and admitted into the record. Complainant was represented by Harry Cooper, Esquire and Complainant testified on her behalf. Respondent submitted two late-filed exhibits: (1) Exhibit 6 entitled, "Final Bill for 242 New Galena Road - Issued 9/29/2008 mailed to 242 New Galena Road, Chalfont, PA 18914-1318; and (2) Exhibit 9 - Customer Contact Activity - 1/4/2010 - 5/27/2010 which was received by the Office of Administrative Law Judge on August 5, 2013. These additional two exhibits were admitted into the record. A transcript of 62 pages was generated and filed on August 15, 2013, and the record closed on August 15, 2013.

#### FINDINGS OF FACT

1. Complainant is Lisa Martin, who currently resides at 63 Sellersville Road, Chalfont, PA 18914.

2. Respondent is PECO Energy Company, a jurisdictional electric distribution company providing residential electric service in the Commonwealth.

3. Complainant lived at 242 New Galena Road, Chalfont, PA in 2006 in one of two rental units. Complainant lived in the Front unit, but not the Rear unit. Tr. 7, 11.

4. Complainant was not on the deed to the service property at New Galena Road; however, her name and David Bushong's name were on the mortgage for the property. David Bushong owned the property and it was deeded in his name in 2006. Tr. 16.

5. Mr. Bushong rented an apartment for the rear unit of 242 New Galena Road and Complainant believes Mr. Bushong or one of the tenants may have used her information to establish electric service in Complainant's name. N.T. 17-18.

6. Complainant claims that the first time she received a bill for service to the rear unit was when she received a denial of new service letter for her current residence on December 31, 2012. She was told that she had an outstanding balance of \$9,000 to pay before service would be connected to her new address. Tr. 18, PECO Exhibit 5.

7. Complainant received a bill for service to the rear unit earlier, on at least two instances: in October, 2008 and again in June, 2010. PECO Exhibit 6.

8. Complainant asked for termination of service to 242 New Galena Rd. on May 27, 2010, because a bank owned the property. PECO Exhibit 9. Tr. 19-20, 32.

9. The total unpaid balance on the Front account was \$9,437.45 which included the balance of \$3,242.37 that was transferred to the account from the Rear account that was not paid in November, 2008, in addition to the new charges of usage that accumulated between November of 2008 and May of 2010 for the Front unit. Tr. 30.

10. Elsa Leung is a regulatory assessor at PECO. Tr. 21.

11. PECO and Complainant have an agreement regarding service at Complainant's current address (Sellersville Rd.) whereby the Company will place service in Complainant's name as of April 12, 2013, and will issue a payment arrangement for the initial bill at account number 70532-07030. Tr. 23.

12. Complainant began receiving electric service in her name at her current residence of 63 Sellersville Road, Chalfont, PA 18914, as of July 26, 2013. Tr. 12.

13. Complainant's final bill for service charges regarding account number 77007-49012, and the service property at New Galena Road was mailed on June 9, 2010 to 63 Sellersville Rd., Chalfont, PA, and the entire charges consisted of customer assistance program (CAP) arrears. Tr. 37. PECO Exhibit 6.

### DISCUSSION

The Complainant alleges a disagreement with PECO regarding an arrearage which accrued from Complainant's prior residence, which prevented her from obtaining service in her name at her present address. At the time of the filing of the Complaint, PECO required that Complainant pay the arrearage before service could be placed in her name. Complainant states that at least a portion of the arrearage accrued after she directed PECO to terminate service to the prior address as the bank was foreclosing on the property and she did not live there anymore.

Prior to the evidentiary hearing, the parties reached a partial settlement regarding the issue of service provided to the service address of 63 Sellersville Road, Chalfont, PA, where Complainant currently resides. PECO will place service in Complainant's name as of April 12, 2013, and will issue a payment arrangement for the initial bill at account number 70532-07030. Tr. 22-23. One issue remaining is whether the electric usage at 242 New Galena Road from

January, 2010, when Complainant claims she contacted Respondent and requested discontinuation of service, through May 26, 2010, when PECO terminated service, should be the financial responsibility of Complainant. Another issue whether Complainant is financially responsible for arrearages accrued regarding the 242 New Galena Rd., Rear unit because she claims never resided in the rear unit and that she was unaware the rear unit was in her name or under her social security number until she received a denial of service letter at her new address.

Complainant carries the burden of showing that the utility is responsible or accountable for the problem described in the Complaint in order to prevail. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990); *Fetinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence. *Savvas J. Lansberry, Inc. v. PA Public Utility Comm'n*, 578 A.2d 600 (Pa. Cmwith.1990), *alloc. den.*, 529 A.2d 654, 602 A.2d 863 (1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hostery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Comm'w., PA Public Utility Comm'n*, 447 A.2d 1100 (Pa. Cmwith.1982); *Edan Transportation Corp. v. PA Public Utility Comm'n*, 623 A.2d 6 (Pa. Cmwith.1993), 2 Pa.C.S. §704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. PA Public Utility Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Reststar Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super.1960); *Murphy v. Commonwealth, Dep't. of Public Welfare, Whits Haven Center*, 480 A.2d 382 (Pa. Cmwith.1984).

Certain provisions of Chapter 56 of the Pennsylvania Code apply regarding standards and billing practices apply to the instant case. Specifically, Section 56.16 provides in pertinent part:

- (a) A customer who is about to vacate premises supplied with public utility service or who wishes to have service discontinued shall give at least 7 days notice to the public utility and a noncustomer occupant specifying the date on

which it desired that service be discontinued. In the absence of a notice, the customer shall be responsible for services rendered.

(b) In the event of discontinuance or termination of service at a residence or dwelling in accordance with this chapter, a public utility may transfer an unpaid balance to a new residential service account of the same customer.

52 Pa. Code § 56.16(a),(b).

Section 56.36(b)(2) provides in pertinent part:

(2) A public utility may establish that an applicant previously resided at a property for which residential service is requested through the use of mortgage, deed or lease information, a commercially available consumer credit reporting service or other methods approved as valid by the Commission.

52 Pa. Code § 56.36(b)(2).

Additionally, Section 1405(c) of the Pennsylvania Public Utility Code provides:

(c) **Customer assistance programs.** – Customer assistance program rates shall be timely paid and shall not be the subject of payment agreements negotiated or approved by the commission.

66 Pa.C.S. § 1405(c).

Although Complainant claims she contacted PECO and asked for a discontinuance of service in January, 2010, the same month that the bank foreclosed on the property at 242 New Galena Rd. and she does not believe she called PECO in May, 2010, the testimony of Ms. Leung and PECO's exhibits of customer-contact business records support a finding that Complainant did not request a discontinuance of service in January, but rather on May 27, 2010, and that the Company did discontinue service in a timely manner thereafter. Tr. 19-28, PECO Exhibits 6 and 9. The record further supports a finding that Complainant held a mortgage on the property of 242 New Galena Rd., and that her name and social security numbers were identical on the accounts for the front and rear units at 242 New Galena Rd., PECO

Exhibits 2 and 3. Thus, Complainant has failed to show she did not reside at 242 New Galena Road, or that there was an unauthorized use of her name and social security number to establish electric service accounts in her name for the Rear unit. Her admission that she held a mortgage for the property until it was foreclosed in January, 2010 is further evidence that the Company accurately billed the Complainant.

On October 7, 2010, there was a charge off in the amount of \$9,592.07 from the account being finalized in May of 2010. N.T. 25. The entire amount in dispute is Customer Assistance Program (CAP) arrears which are not subject to a Commission-ordered payment arrangement. 66 Pa. C.S. § 1405(c). N.T. 29. I find the amount of \$9,592.07 to be appropriate because it includes the \$3,242.37 that was transferred to the account on November 2008 that came from the rear account that was not paid and because PECO discontinued service shortly after Complainant requested discontinuation in May, 2010. N.T. 30-32. PECO Exhibit 5. It is reasonable that PECO believed Complainant was the responsible account holder for both the front and rear properties given the social security numbers and name of Lisa A. Martin are the same on the accounts for both units as well as for an account held by Complainant from November 3, 2005 through March 2, 2007 at 123 Mary Street, Doylestown, PA. PECO Exhibit 3.

Complainant bears the burden of proving that she told the utility to discontinue service in January, 2010. Evidence to support this claim is comprised entirely of her testimony. In contrast, PECO's evidence includes its customer contact sheet, which is a business record indicating that the Complainant called on May 27, 2010 and indicated that service should be taken out of her name because the bank had foreclosed upon the property and she did not live there anymore. Accordingly, I find Complainant has not sustained her burden of proving that PECO has violated an order, regulation or statute of the Commission.

#### CONCLUSIONS OF LAW

1. The proponent of a rule or order carries the burden of proof. 66 Pa. C.S.

§ 332(a). This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. PA Public Utility Comm'n*, 578 A.2d 600 (Pa. Cmwith.1990), *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hostery v. Margules*, 364 Pa. 45, 70 A.2d 854 (1950).

2. Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Comm'w., PA Public Utility Comm'n*, 447 A.2d 1100 (Pa. Cmwith.1982); *Edan Transportation Corp. v. PA Public Utility Comm'n*, 623 A.2d 6 (Pa. Cmwith.1993), 2 Pa.C.S. §704.

3. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. PA Public Utility Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super.1960); *Murphy v. Commonwealth, Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwith.1984).

4. Customer assistance program rates shall be timely paid and shall not be the subject of payment agreements negotiated or approved by the commission. 66 Pa. C.S. § 1405(c).

5. A public utility may establish that an applicant previously resided at a property for which residential service is requested through the use of mortgage, deed or lease information, a commercially available consumer credit reporting service or other methods approved as valid by the Commission. 52 Pa. Code § 56.36(b)(2).

6. A customer who is about to vacate premises supplied with public utility service or who wishes to have service discontinued shall give at least 7 days notice to the public utility and a noncustomer occupant specifying the date on which it desired that service be discontinued. In the absence of a notice, the customer shall be responsible for services rendered. 52 Pa. Code § 56.16(a),(b).

7. In the event of discontinuance or termination of service at a residence or dwelling in accordance with this chapter, a public utility may transfer an unpaid balance to a new residential service account of the same customer. 52 Pa. Code §56.16(a),(b).

**ORDER**

**THEREFORE,**

**IT IS ORDERED:**

1. That the Complaint filed by Lisa A. Martin against PECO Energy Company at Docket No. F-2013-2360697 is denied and dismissed.
2. That the Secretary mark this docket closed.

Dated: September 18, 2013

EB  
Elizabeth H. Barnes  
Administrative Law Judge

**EXHIBIT "6"**

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

**Public Meeting held December 19, 2013**

**Commissioners Present:**

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

**Lisa Martin**

**F-2013-2360697**

**v.**

**PECO Energy Company**

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Reconsideration (Petition)<sup>1</sup> of Lisa Martin (Complainant) filed on October 21, 2013, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Elizabeth H. Barnes, which was issued on September 27, 2013, in the above-captioned proceeding. An Answer to the Petition was

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<sup>1</sup> As discussed further herein, the filing was labeled "Exceptions," but because it was not timely filed, we will treat the filing as a Petition for Reconsideration. For the sake of consistency, the "Exceptions" will be referred to herein as the Petition and the "Replies to Exceptions" will be referred to as an Answer to the Petition for Reconsideration.

filed by PECO Energy Company (PECO or Company) on October 29, 2013. For the reasons stated below, we shall deny the Complainant's Petition.

### **History of the Proceeding**

On April 29, 2013, Lisa Martin filed a Formal Complaint<sup>2</sup> with the Commission against PECO Energy Company alleging incorrect billing and requesting that she not be held responsible for charges to a rear apartment unit at 242 New Galena Road, Chalfont, Pennsylvania (rear unit). She stated that she never had electric in her name for the rear unit. She also disputed the dates for which PECO billed her for the front unit of the same address (front unit).

On May 13, 2013, PECO filed an Answer denying that there were incorrect charges included in the Complainant's account and stating that the Complainant had established an account for the rear unit and was responsible for the associated charges. PECO also averred that the Complainant is responsible for charges transferred to her current account from the front unit as she never requested discontinuance of service. Also on May 13, 2013, PECO filed New Matter with the appropriate Notice to Plead. In its New Matter, PECO alleged that the Complainant's entire balance contained arrearages that accumulated while she was participating in PECO's customer assistance program (CAP) and therefore, the Commission could not issue her a payment arrangement. No responsive pleading was filed.

The ALJ convened the Initial Hearing as scheduled on August 1, 2013. The Complainant appeared, was represented by counsel, and testified on her own behalf. PECO was also represented by counsel and presented one witness and seven exhibits, which were entered into the record. PECO also submitted two late-filed exhibits which

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<sup>2</sup> The Formal Complaint was a timely appeal of a decision by the Bureau of Consumer Services on an informal complaint in Case No. 3056300.

were received by the Office of Administrative Law Judge on August 5, 2013. These additional two exhibits were admitted into the record. The record closed on August 15, 2013, with the receipt of the transcript.

In the Initial Decision, issued on September 27, 2013, ALJ Barnes found that the Complainant failed to satisfy her burden of proof and was not eligible for a payment arrangement.<sup>3</sup> The ALJ therefore dismissed the Complaint. As previously indicated, the Complainant filed the Petition on October 21, 2013. PECO filed an Answer to the Petition on October 29, 2013.

#### Discussion

We begin by considering the nature of the Complainant's filing, as the analysis to be applied depends on the type of filing before us. In this case, Exceptions to the Initial Decision were due on October 17, 2013. Exceptions were not filed, within the meaning of 52 Pa. Code § 1.11, by the required due date. Therefore, in accordance with Section 332(h) of the Public Utility Code (Code), 66 Pa. C.S. § 332(h), the decision of the ALJ became final without further Commission action on October 17, 2013.

As discussed above, the Complainant filed "Exceptions" on October 21, 2013 (i.e., within fifteen days of the date that the Initial Decision became the final action of the Commission). In the interest of securing a just, speedy, and inexpensive determination, we will exercise our discretion and consider the Complainant's "Exceptions" as a Petition for Reconsideration of the Commission's final decision. 52 Pa. Code §§ 1.2(a) and 5.572(c). Consequently, we will treat the Replies to Exceptions filed by PECO as an Answer to the Petition for Reconsideration.

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<sup>3</sup> The Complainant did not request a payment arrangement in her Complaint, but later requested it during the hearing. Tr. at 11.

Reconsideration is essentially a two-step process. First, we determine whether there are considerations, such as new or novel arguments set forth in the Petition, that convince us to exercise our discretion under the Code to consider the case again. If so, we proceed to consider whether we should modify our conclusion or rationale. In this case, we find considerations that cause us to exercise our discretion to consider this case a second time. Specifically, the Complainant has raised issues regarding procedural matters and arguments not explicitly addressed by the ALJ. Upon review, however, we find the Complainant's arguments are without merit and will adopt the Initial Decision.

### **Legal Standards**

The Code establishes a party's right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. § 703(f) and § 703(g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision.

The standards for granting a Petition for Reconsideration were set forth in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (1982):

A Petition for Reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part.

In this regard we agree with the court in the *Pennsylvania Railroad Company* case, wherein it was stated that:

Parties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them . . . what we expect to see raised in

such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked by the Commission.

*Duick*, 56 Pa. P.U.C. at 559 (quoting *Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission*, 179 A. 850, 854 (Pa. Super. Ct. 1935)).

Under the standards of *Duick*, a petition for reconsideration may properly raise any matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Such petitions are likely to succeed only when they raise "new and novel arguments" not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Duick*, 56 Pa. P.U.C. at 559.

Before addressing the Petition, we note that any issue not specifically discussed shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwith. 1993); also see, generally, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwith. 1984).

#### **ALJ's Initial Decision**

ALJ Barnes made thirteen Findings of Fact and reached seven Conclusions of Law. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

In her Initial Decision, the ALJ identified two issues. The ALJ first addressed the Complainant's contention that PECO was charging her for several months of service after she requested that the service be terminated. Second, the ALJ addressed the Complainant's assertion that she had never requested service for the rear unit. I.D. at 4-5.

At the hearing, the Complainant testified that she had moved into the front unit at the New Galena Road service address at some point in 2006. Although she did not own the property, her name was on the mortgage along with another individual. She explained that, in addition to the main house, there was an apartment over the garage, the rear unit, which had a separate meter. The rear unit was rented to several different tenants during the time she was associated with the property. She testified that she left the property in October of 2006 and returned in 2008 and moved out again on January 11, 2010, when the property was foreclosed upon. She further testified that she called on January 11, 2010, to have service discontinued and that she had never requested service for the rear unit. Tr. at 7-9.

PECO presented its business records at the hearing detailing the Complainant's accounts and its contacts with the Complainant and argued before the ALJ that the Complainant had not requested discontinuance of service for the front unit until May 27, 2010. Tr. at 32. PECO also presented evidence that the Complainant had requested, and was responsible for, service to the rear unit. According to its records, PECO stated that the Complainant had electric service for the front unit from June 12, 2006, through October 13, 2006. Tr. at 25. PECO explained that the Complainant then had service for the rear unit from February 2, 2007, through September 27, 2008, and, finally, she had service again for the front unit from November 5, 2008, through May 27, 2010. Tr. at 27 and 29. PECO reported that the total unpaid balance for both accounts was \$9,437.45. Tr. at 30.

Upon consideration of the evidence presented, the ALJ first found that PECO's exhibits supported a finding that the Complainant did not request a discontinuance of service on January 11, 2010, but rather on May 27, 2010, and that the Company discontinued service in a timely manner thereafter. Likewise, she found that PECO's records also supported a finding that the Complainant was responsible for the charges accrued on the account for the rear unit. She reasoned that the Complainant held a mortgage on the property, the name and social security numbers on the accounts for both units were exactly the same, and the Complainant did not show that there was any unauthorized use of her name or social security number to establish service for the rear unit. Finally, the ALJ found that the entire amount in dispute accrued under customer assistance program rates and was not subject to a Commission-ordered payment arrangement. I.D. at 6-7.

#### **Positions of the Parties and Disposition**

In her Petition, the Complainant disagrees with the ALJ's conclusions and Findings of Fact. She requested that another hearing be held in a fair and impartial setting with all evidence produced in a timely fashion. Petition at 2. PECO filed an Answer arguing that the ALJ correctly determined that the Complainant is responsible for the entire arrearage and that the Commission should sustain the Initial Decision. Answer to the Petition at 2.

The Complainant first contends that she was improperly denied discovery prior to the hearing, which deprived her of the ability to properly prepare for the hearing. She further objected to a denial of a continuance. Petition at 1. In its Answer to the Petition, PECO states that the Complainant never issued a request for discovery nor filed any discovery motions and averred that this contention is baseless and should be denied. Answer to the Petition at 5. Our review of the record reveals that the Complainant never made any discovery requests nor did she request a continuance. As these requests were

never made, they were not denied by the ALJ. Thus, we find that the Complainant was not improperly denied discovery or a continuance.

Second, the Complainant asserts that she was prejudiced by the admittance of PECO's late-filed exhibits. She asserts that the hearing should have been rescheduled in order to allow her time to respond to the exhibits. Petition at 1. In response, PECO states that both late-filed exhibits were relevant to resolve the dispute between the Parties and asserts that the Complainant was sent a copy of the late-filed exhibits but did not file an objection before the record was closed and has waited to object until this stage of the proceeding. Answer to the Petition at 5-6.

We find that the Complainant was not prejudiced by the admittance of the late-filed exhibits as she had adequate time to respond to them. At any stage of the hearing, or thereafter, the presiding officer may call for further admissible evidence which may be presented at either the hearing or at the adjournment of the hearing. 52 Pa. Code § 5.404(a). Here, the ALJ held the record open for the submission of two late-filed exhibits and the nature of the exhibits was described at the hearing. Tr. at 41. The exhibits were filed on August 5, 2013, and the record did not close until August 15, 2013. The Complainant neither objected to the two exhibits at the hearing, nor did she state any objections after they were filed despite having ten days to do so. Having not filed objections before the close of the record, the Complainant has waived her right to do so and cannot now object at this stage of the proceeding.

Next, the Complainant argues that she never requested electric service for the rear unit and that, at the hearing, PECO had acknowledged that anyone with the right information could open an account in her name. Petition at 1 and 2. In its Answer to the Petition, PECO asserts that the ALJ correctly determined that PECO reasonably believed that the Complainant was responsible for the account for the rear unit. PECO points to the evidence that: (1) the Complainant held a mortgage for the property; (2) the account

was established using her social security number; (3) the Complainant was enrolled in CAP under this account, which required completing and signing a verification of income, providing copies of paystubs and unemployment and social security information; and (4) the Complainant did not submit any proof of another address during the time period at issue. PECO argues that all of this evidence points to the Complainant being the responsible account holder for the rear unit. Answer to the Petition at 2-3.

We agree with the ALJ that the Complainant is responsible for the charges associated with the rear unit. In deciding disputes as to whether or not a customer actually requested utility service, the Commission has considered the type of personal information that was provided to the utility and the Complainant's association with the service address. The Commission has also considered whether or not a police report for identity theft was filed. *Martins v. PECO Energy Company*, Docket No. F-2008-2059421 (Order entered November 5, 2009); see also, *Milbee v. Duquesne Light Company*, Docket No. F-2012-2299572 (Initial Decision of ALJ John H. Corbett, Jr., issued August 8, 2012; Final Order entered September 17, 2012) (complainant found to have not requested service because her reporting of identity theft to the police tipped the scale in her favor). In *Martins*, the complainant alleged that he had not requested the utility service for which the utility was holding him responsible. Despite evidence that the complainant did not reside at the service address, the Commission found persuasive the facts that both his social security information and driver's license number were given to the utility to establish service, his name was on the lease, and no police report for identity theft was filed. *Martins* at 6.

Similar to the complainant in the *Martins* case, here the Complainant testified that she never requested service for the rear unit. Nonetheless, the evidence demonstrates that the name and social security numbers for the accounts for both the front and rear units were identical, that her personal financial information was submitted in writing during the CAP application process, and that her name was on the mortgage.

**Additionally, no police report regarding identity theft was filed nor is there anything in the record to indicate that she resided elsewhere during the pertinent period.**

**The Complainant next objects to the ALJ's finding that she had received bills for the rear unit on at least two occasions in October 2008 and June 2010. She argues that she never received a bill for the rear unit, nor did she receive a final bill for the front unit, until she was denied service at her current address on July 26, 2013. She asserts that, because she never saw the bill for the rear unit, she could not dispute it. In reference to copies of bills submitted into evidence by PECO, she alleges that the computer can generate the bills with any date. Finally, she notes that, if PECO was trying to collect \$9,000, it would be reasonable to send correspondence via certified mail in order to confirm receipt. Petition at 1-2.**

**We find that the record supports the conclusion that the Complainant received bills for the rear unit prior to being denied service at her current address. Not only were bills mailed to the Complainant on the dates specified by the ALJ, but the balance from the rear unit was transferred to her account for the front unit when she established service on November 5, 2008. PECO Exhs. 3 and 6. This balance would have been included on her monthly bills thereafter. Until the Complainant was denied service by PECO at her current address, she did not dispute this balance.**

**Finally, the Complainant takes issue with the ALJ's conclusion that she requested termination of service for the front unit on May 27, 2010. She states that she requested termination on January 11, 2010, and argues that she can only provide testimony with regard to when she called PECO. She contends that the burden of proof should be shifted to the Company, which keeps the records. Petition at 1 and 2. In its Answer to the Petition, PECO avers that it has produced business records showing that the Company did not receive a call from the Complainant in January 2010, but did receive a call from her in May 2010 requesting that service be discontinued. PECO also**

argues that the burden of proof did shift to the Company and it provided evidence of the date termination was requested. Answer to the Petition at 4.

We find that the Complainant has failed to meet her burden of proving she requested termination of service on January 11, 2010. At the hearing, she testified that she called PECO on that date. The burden of going forward with the evidence then shifted to PECO to rebut her testimony. In response, PECO produced business records showing that the Complainant called on May 27, 2010, to have service terminated. PECO then acted on that request in a timely manner. No further evidence was produced by the Complainant. We find PECO's records to be persuasive and that the Complainant did not request termination of service until May 27, 2010.

#### **Conclusion**

Based upon the foregoing discussion, we shall deny the Petition of the Complainant; **THEREFORE,**

#### **IT IS ORDERED:**

1. That the Petition for Reconsideration of Lisa Martin, filed on October 21, 2013, is denied, consistent with this Opinion and Order.

2. That the proceeding docketed at F-2013-2360697 be marked closed

**BY THE COMMISSION,**



**Rosemary Chiavetta  
Secretary**

**(SEAL)**

**ORDER ADOPTED: December 19, 2013**

**ORDER ENTERED: December 19, 2013**

**EXHIBIT "7"**

April 29, 2016

## Case Details Report

BCS Case #: 003359572  
Customer Name: LISA MARTIN  
Service Address: 63 SELLERSVILLE RD

BCS Bill Account #: 8888888888

Mailing Address: CHALFONT, PA 18914

Home Phone: 0 -  
Business Phone: 0 -  
Business name:  
Alternate contact: CALL BACK ANYTIME.

Date Case Opened: 2015-06-25  
PAR Case: N  
Investigator Name: BCS CASE POOL  
Investigator Phone: (717) 787-0000  
Service class: R  
Previous case #: 3201819

Date Cut Off: 9999-12-31

Universal Service: N  
Contact Type: TELEPHONE  
Amount in Arrears: \$0.00

# Adults: 0  
# Children: 0  
Children Ages:  
Gross Income: \$0.00  
Miscellaneous Info:  
CALL BACK ANYTIME.

Complaint Reason:  
CAP DISPUTE (#67)

**Customer Problem Description:**  
CUSTOMER WAS GIVEN AN 11,000 ELECTRIC BILL FROM UTILITY IN 2013 FROM AN OLD ADDRESS AT 242 NEW GALINA ROAD, CHALFONT, PA 18914. CUSTOMER MOVED OUT OF THAT ADDRESS ON JANUARY 11, 2010. CUSTOMER WAS TOLD SHE SHOULD ENROLL IN CAP RATE AND THERE WOULD BE ARREARAGE FORGIVENESS AS LONG AS SHE PAID ON TIME AND IN FULL. CUSTOMER ENROLLED IN CAP RATE AND STATES SHE HAS NOT MISSED A PAYMENT NOR HAS SHE BEEN LATE IN ANY PAYMENTS. UTILITY IS THREATENING TERMINATION FOR JUNE 29TH BECAUSE THIS BILL THEY ARE NOW HOLDING HER RESPONSIBLE FOR. CUSTOMER DISPUTES OWING THIS BILL AS SHE DID NOT



**Exelon.**

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**April 29, 2016**

**LIVE THERE WHEN BALANCE WAS ACCRUED AND DISPUTES THAT UTILITY WOULD FORGIVE THIS ARREARAGE THROUGH THE CAP RATE PROGRAM. THE CELL PHONE NUMBER (215) 262 - 3148 HAS BEEN ALLOWED TO BE SHARED. THE EMAIL ADDRESS LMINTERIORS@AOL.COM HAS BEEN ALLOWED TO BE SHARED.**

**Company Position:**

**06/23/2015 UTILITY TOLD CUSTOMER TO CONTACT PUC.**

**EXHIBIT "8"**

April 29, 2016

## BCS Decision Report

BCS Case #: 003359572 Open Date: 2015-06-25  
Customer Name: LISA MARTIN  
Service Address: 63 SELLERSVILLE RD  
CHALFONT, PA 18914  
BCS Bill Account #: 888888888 Previous Case #: 3201819  
Violation Type: NO Chapter Type:  
Decision Type: W Section / Rule:  
Investigator Name: JAMIE HENRY  
Decision Issued Date: 2015-08-27  
Case Closed Date: 2015-08-25

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

Total Balance:	\$11632.26	Balance Date:	2015-07-21
Amount to Restore Service:	\$0.00	Amount to Continue Service:	\$0.00
Date Payment Due:		Regular Budget Amount:	\$114.00
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 DECISION THE CUSTOMER'S PAYMENT AND CREDIT HISTORY IS POOR. THE CUSTOMER DOES NOT PAY THE MONTHLY BILLS IN FULL BY THE DUE DATES AND EVERY PAYMENT AGREEMENT DEFAULTED DUE TO YOUR FAILURE TO PAY THE MONTHLY BILLS. THE CUSTOMER'S ACCOUNT IS ACTIVELY ENROLLED IN THE COMPANIES, CAP PROGRAM AND YOU ARE NEXT SCHEDULED FOR CAP RECERTIFICATION ON 5/1/17. A DECISION FOR A PRIOR PUC INFORMAL COMPLAINT AT BCS # 3056300 AND FORMAL COMPLAINT F-2013-2360697 UPHOLD THE COMPANIES??? POSITION THAT YOU WERE RESPONSIBLE FOR THE FORMER ADDRESS BALANCE OF \$9,592.07 THAT WAS TRANSFERRED INTO YOUR CURRENT ACCOUNT. THE CAP PRE-PROGRAM ARREARS OF \$4,002.38 WERE FORGIVEN ON 6/19/08 AND NO ADDITIONAL FORGIVENESS IS WARRANTED. CLOSING CASE, CAP ENROLLED, DISPUTE, DECISION RENDERED, 1405 (C) REGULATIONS.

**EXHIBIT "9"**

CUAR030

PECO Account Activity Statement

Date: 04/28/16

\*\*\* Account Information \*\*\*

Account Number: 70532-07030  
 Account Status: Active  
 Requested By: LISA A MARTIN  
 (215)262-3166 Extension:  
 Mail To: LISA A MARTIN  
 63 SELLERSVILLE RD  
 CHALFOUNT PA 18914

\*\*\* Current Account Status \*\*\*

Current Bill: \$200.94  
 Billed Prior: \$12613.45  
 Balance Due: \$12014.39  
 Service Address: 63 SELLERSVILLE RD  
 CHALFOUNT PA 18914  
 Credit Amount: \$0.00  
 Deposit Requested: \$100.00  
 Deposit On-Hand: \$0.00  
 Meter Bill Grp: 16  
 Rate: CAP Opt E Electric Residential Service

DATE	CHARGE TYPE	BILLING PERIOD	READ	METER #	CHARGE AMOUNT	CREDIT AMOUNT	TOTAL BILL	BALANCE FORWARD	DUE DATE	AGE	OCF	EN
07/29/13	Transfer Debit				\$9592.07							
07/29/13	DEPOSIT				\$50.00							
08/21/13	ELECTRIC SERVICE	04/12/13 08/20/13	99031	107117065	\$520.41							
08/21/13	CONNECTION CHARGE - STANDARD				\$6.00							
08/21/13	Regular Bill						\$10168.48		09/12	3261		
08/20/13	Payment					\$100.00						
09/12/13	Payment					\$58.00						
09/17/13	Late Payment Charge				\$6.19							
09/18/13	Late Payment Charge				\$6.19							
09/20/13	ELECTRIC SERVICE	08/20/13 09/19/13	556	107117065	\$119.00							
09/20/13	DEPOSIT				\$25.00							
09/20/13	Regular Bill						\$10154.48	\$10010.48	10/15	725		
09/30/13	Miscellaneous					\$9592.07						
09/30/13	Transfer Debit				\$9592.07							
10/09/13	Payment Agreement					\$537.41						
10/09/13	DEFERRED PAYMENT AGREEMENT				\$177.00							
10/10/13	Payment					\$177.00						
10/21/13	ELECTRIC SERVICE	09/19/13 10/20/13	1049	107117065	\$83.18							
10/21/13	DEPOSIT				\$25.00							
10/21/13	DEFERRED PAYMENT AGREEMENT				\$51.49							
10/21/13	Regular Bill						\$184.67	\$25.00	11/12	493		
11/11/13	Payment					\$135.00						
11/18/13	Bill Out DPA due to Default					\$333.59						
11/19/13	ELECTRIC SERVICE	10/20/13 11/18/13	1456	107117065	\$69.90							
11/19/13	Regular Bill						\$428.49	\$358.59	12/11	407		
11/27/13	Transfer Debit				\$142.26							
12/10/13	Payment					\$121.39						
12/10/13	Payment Agreement					\$307.10						
12/20/13	ELECTRIC SERVICE	11/18/13 12/19/13	2379	107117065	\$153.43							
12/20/13	DEFERRED PAYMENT AGREEMENT				\$51.18							
12/20/13	Regular Bill						\$204.61		01/13	923		
12/26/13	Payment Agreement					\$10194.86						

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DATE	CHARGE TYPE	BILLED PERIOD	READ	METER #	CHARGE AMOUNT	CREDIT AMOUNT	TOTAL BILL	BALANCE FORWARDED	DUE DATE	AGE	CCY	EN
01/15/14	Payment					\$204.51						
01/24/14	ELECTRIC SERVICE	12/19/13 01/23/14	3659	107117065	\$208.01							
01/24/14	DEFERRED PAYMENT AGREEMENT				\$1699.14							
01/24/14	Regular Bill						\$1702.66		02/18	1260		
02/24/14	Bill Out DPA due to Default											
02/24/14	ELECTRIC SERVICE	01/23/14 02/23/14	5226	107117065	\$253.06		\$10194.86					
02/24/14	DEFERRED PAYMENT AGREEMENT				\$1699.14							
02/24/14	Regular Bill											
02/25/14	Late Payment Charge						\$3654.84	\$1702.64	03/18	1567		
03/12/14	Payment Agreement				\$150.66							
03/25/14	ELECTRIC SERVICE	02/23/14 03/24/14	5942	107117065	\$112.32	\$10602.00						
03/25/14	DEFERRED PAYMENT AGREEMENT				\$803.51							
03/25/14	Regular Bill											
04/21/14	Bill Out DPA due to Default						\$995.83		04/16	716		
04/22/14	Payment				\$9718.57							
04/23/14	ELECTRIC SERVICE	03/24/14 04/22/14	6462	107117065	\$84.06	\$112.32						
04/23/14	Regular Bill											
05/16/14	Payment						\$10486.14	\$10602.00	05/15	520		
05/20/14	Late Payment Charge					\$84.06						
05/22/14	ELECTRIC SERVICE	04/22/14 05/21/14	6943	107117065	\$154.64							
05/22/14	Regular Bill				\$78.29							
06/18/14	Payment						\$10935.01	\$10756.72	06/13	481		
06/19/14	ELECTRIC SERVICE	05/21/14 06/19/14	7231	107117065	\$115.94	\$78.29						
06/19/14	REG-ADDITIONAL METER		457	124735729								
06/19/14	Regular Bill											
07/15/14	Payment						\$10872.66	\$10756.72	07/11	745		
07/21/14	ELECTRIC SERVICE	06/19/14 07/21/14	1638	124735729	\$179.63	\$115.94						
07/21/14	Regular Bill											
08/19/14	ELECTRIC SERVICE	07/21/14 08/19/14	2590	124735729	\$146.17		\$10936.35	\$10756.72	08/12	1181		
08/19/14	Regular Bill											
08/25/14	Payment						\$11082.52	\$10936.35	09/10	952		
09/10/14	ELECTRIC SERVICE	08/19/14 09/18/14	3560	124735729	\$148.47	\$179.63						
09/10/14	Regular Bill											
09/22/14	Payment						\$11051.36	\$10902.89	10/10	990		
10/17/14	ELECTRIC SERVICE	09/18/14 10/17/14	4269	124735729	\$105.49	\$146.17						
10/17/14	Regular Bill											
10/23/14	Payment						\$11010.68	\$10905.19	11/10	689		
11/17/14	Payment					\$150.00						
11/17/14	ELECTRIC SERVICE	10/17/14 11/17/14	4897	124735729	\$96.78	\$105.49						
11/17/14	Regular Bill											
12/10/14	Deposit Interest						\$10851.97	\$10755.19	12/09	628		
12/16/14	Payment					\$6.90						
12/18/14	ELECTRIC SERVICE	11/17/14 12/18/14	5595	124735729	\$112.50	\$96.78						
12/18/14	Regular Bill											
01/22/15	ELECTRIC SERVICE	12/18/14 01/22/15	6468	124735729	\$139.23		\$10860.79	\$10748.29	01/09	698		
01/22/15	Regular Bill											
							\$11000.02	\$10860.79	02/13	873		

DATE	CHARGE TYPE	BILLING PERIOD	FEAD	METER #	CHARGE AMOUNT	CREDIT AMOUNT	TOTAL BILL	BALANCE FORWARD	DOB DATE	EMI	OCY	EM
01/20/15	Payment											
02/10/15	Late Payment Charge					\$112.50						
02/20/15	ELECTRIC SERVICE	01/22/15 02/20/15	7109	124735729	\$156.59							
02/20/15	Regular Bill				\$116.23							
03/04/15	Payment						\$11160.34	\$11044.11	03/16	721		
03/23/15	Late Payment Charge					\$139.23						
03/24/15	Payment				\$156.24							
03/24/15	ELECTRIC SERVICE	02/20/15 03/24/15	7030	124735729	\$102.67		\$116.23					
03/24/15	Regular Bill											
04/21/15	ELECTRIC SERVICE	03/24/15 04/21/15	0269	124735729	\$70.56		\$11163.79	\$11061.12	04/15	649		
04/21/15	Late Payment Charge					\$156.04						
04/21/15	Regular Bill											
05/01/15	Deposit						\$11390.39	\$11319.03	05/13	431		
05/19/15	Late Payment Charge					\$101.35						
05/20/15	ELECTRIC SERVICE	04/21/15 05/20/15	0002	124735729	\$155.50							
05/20/15	Regular Bill				\$52.20							
06/01/15	Payment						\$11496.02	\$11444.62	06/11	533		
06/16/15	Late Payment Charge					\$70.56						
06/17/15	Payment				\$155.30							
06/19/15	ELECTRIC SERVICE	05/20/15 06/19/15	9741	124735729	\$102.90		\$52.20					
06/19/15	Regular Bill											
07/20/15	Payment						\$11632.26	\$11529.36	07/13	939		
07/21/15	ELECTRIC SERVICE	06/19/15 07/21/15	10920	124735729	\$136.22	\$102.90						
07/21/15	Regular Bill											
08/10/15	Payment						\$11665.50	\$11529.36	08/12	1107		
08/19/15	ELECTRIC SERVICE	07/21/15 08/19/15	12025	124735729	\$123.22	\$136.22						
08/19/15	Regular Bill											
09/15/15	Late Payment Charge						\$11652.50	\$11529.36	09/10	1097		
09/18/15	ELECTRIC SERVICE	08/19/15 09/18/15	13020	124735729	\$156.32							
09/18/15	Regular Bill				\$111.75							
09/23/15	Payment						\$11920.65	\$11000.90	10/13	1003		
10/19/15	ELECTRIC SERVICE	09/18/15 10/19/15	13770	124735729	\$74.45	\$123.22						
10/19/15	Regular Bill											
10/20/15	Payment						\$11071.00	\$11797.43	11/10	750		
10/20/15	Late Payment Charge					\$111.75						
11/11/15	Payment				\$154.51							
11/17/15	ELECTRIC SERVICE	10/19/15 11/17/15	14393	124735729	\$56.71	\$74.75						
11/17/15	Late Payment Charge											
11/17/15	Regular Bill				\$154.51							
12/15/15	Payment						\$12051.11	\$11994.40	12/09	615		
12/15/15	Late Payment Charge					\$56.71						
12/10/15	ELECTRIC SERVICE	11/17/15 12/10/15	15174	124735729	\$154.51							
12/10/15	Regular Bill				\$79.43							
01/19/16	Payment						\$12220.34	\$12140.91	01/11	701		
01/19/16	Late Payment Charge				\$154.51	\$79.43						

DATE	CHARGE TYPE	RELATES PERIOD	READ	METER #	CHARGE AMOUNT	CREDIT AMOUNT	TOTAL BILL	BALANCE FORWARDED	DUE DATE	IGN	OCY	EN
01/22/16	ELECTRIC SERVICE	12/10/15 01/22/16	16039	124735729	\$90.56							
01/22/16	Regular Bill						\$12393.98	\$12303.42	02/16	065		
02/22/16	ELECTRIC SERVICE	01/22/16 02/22/16	16740	124735729	\$67.62							
02/22/16	Regular Bill						\$12461.60	\$12393.98	03/15	701		
02/23/16	Payment											
02/23/16	Late Payment Charge					\$90.56						
03/22/16	ELECTRIC SERVICE	02/22/16 03/22/16	17263	124735729	\$154.51							
03/22/16	Late Payment Charge				\$67.99							
03/22/16	Regular Bill				\$155.52		\$12729.06	\$12601.07	04/13	523		
03/23/16	Payment											
04/10/16	Payment					\$67.62						
04/19/16	Late Payment Charge					\$47.99						
04/20/16	ELECTRIC SERVICE	03/22/16 04/20/16	17767	124735729	\$154.51							
04/20/16	Regular Bill				\$46.43		\$12814.39	\$12767.96	05/12	504		

**EXHIBIT “3”**



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

IN REPLY PLEASE  
REFER TO OUR FILE

September 27, 2013

F-2013-2360697

Lisa Martin  
v.  
PECO Energy Company

TO ALL PARTIES:

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

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

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

If using U.S. Postal Service:

If using Overnight or Hand Delivery Service:

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

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

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

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

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

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

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

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

Very truly yours,

Rosemary Chiavetta  
Secretary

JF  
Enclosures  
Certified Mail  
Receipt Requested

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lisa Martin

v.

PECO Energy Company

:  
:  
:  
:  
:

F-2013-2360697

**INITIAL DECISION**

Before  
Elizabeth H. Barnes  
Administrative Law Judge

**HISTORY OF THE PROCEEDING**

On April 29, 2013, Lisa Martin (Complainant) filed a formal Complaint with the Commission against PECO Energy Company (PECO or Respondent or Company) alleging improper billing and requesting that she not be held financially responsible for charges to a rear apartment unit at 242 New Galena Road, Chalfont, Pennsylvania, because she claims she did not own the property and did not reside in the rear unit. Complainant requested installation of electric service at her new residence at 63 Sellersville Road, Chalfont, PA, which had been denied to her by Respondent because of her arrears on her old account. This is an appeal of a Bureau of Consumer Services (BCS) decision issued at Case No. 3056300 on March 26, 2013. The Commission's Secretary served the Complaint on the utility on May 1, 2013.

On May 13, 2013, PECO filed its Answer denying that there are incorrect charges on Complainant's account. Respondent avers that Complainant owes \$9,592.07, all of which is CAP arrears. Respondent contends that Complainant established an account with PECO for electric service at 242 New Galena Road, Rear, Chalfont, PA on June 12, 2006 under account number 64344-00109 and that she established another account at 242 New Galena Road, Rear,

Chalfont, PA on February 2, 2007 under account number 64344-04052. On November 5, 2008, Complainant established a third account for service at 242 New Galena Road, Front, Chalfont, PA under account number 77007-49012. When Complainant established the last account, an unpaid balance of \$3,242.37 from 242 New Galena Road, Rear, transferred into the account on November 5, 2008. On or about June 9, 2010, Complainant requested discontinuance of service at 242 New Galena Road, Front. A final bill was issued in the amount of \$9,427.45. On December 31, 2012, Complainant requested new electric service at 63 Sellersville Road, Chalfont, PA. PECO advised she was denied new service because she had a \$9,595.07 unpaid balance from account 77007-49012 for service at 242 New Galena Rd., Front, Chalfont, PA.

A telephone hearing notice was issued on May 31, 2013, setting the hearing date for August 1, 2013, and assigning the matter to me. A prehearing order was issued on June 11, 2013. On July 29, 2013, counsel for the Company submitted a packet of eight proposed exhibits. Counsel provided Complainant with a copy via mail, but did not mail Complainant's counsel a copy.

The hearing was held as scheduled, with PECO represented by Shawane Lee, Esquire, who presented the testimony of one witness, Elsa Leung, Regulatory Assessor. PECO Exhibits 1-5 and 7-8 were sponsored by the witness and admitted into the record. Complainant was represented by Harry Cooper, Esquire and Complainant testified on her behalf. Respondent submitted two late-filed exhibits: (1) Exhibit 6 entitled, "Final Bill for 242 New Galena Road – Issued 9/29/2008 mailed to 242 New Galena Road, Chalfont, PA 18914-1318; and (2) Exhibit 9 – Customer Contact Activity – 1/4/2010 – 5/27/2010 which was received by the Office of Administrative Law Judge on August 5, 2013. These additional two exhibits were admitted into the record. A transcript of 62 pages was generated and filed on August 15, 2013, and the record closed on August 15, 2013.

#### FINDINGS OF FACT

1. Complainant is Lisa Martin, who currently resides at 63 Sellersville Road, Chalfont, PA 18914.

2. Respondent is PECO Energy Company, a jurisdictional electric distribution company providing residential electric service in the Commonwealth.

3. Complainant lived at 242 New Galena Road, Chalfont, PA in 2006 in one of two rental units. Complainant lived in the Front unit, but not the Rear unit. Tr. 7, 11.

4. Complainant was not on the deed to the service property at New Galena Road; however, her name and David Bushong's name were on the mortgage for the property. David Bushong owned the property and it was deeded in his name in 2006. Tr. 16.

5. Mr. Bushong rented an apartment for the rear unit of 242 New Galena Road and Complainant believes Mr. Bushong or one of the tenants may have used her information to establish electric service in Complainant's name. N.T. 17-18.

6. Complainant claims that the first time she received a bill for service to the rear unit was when she received a denial of new service letter for her current residence on December 31, 2012. She was told that she had an outstanding balance of \$9,000 to pay before service would be connected to her new address. Tr. 18, PECO Exhibit 5.

7. Complainant received a bill for service to the rear unit earlier, on at least two instances: in October, 2008 and again in June, 2010. PECO Exhibit 6.

8. Complainant asked for termination of service to 242 New Galena Rd. on May 27, 2010, because a bank owned the property. PECO Exhibit 9. Tr. 19-20, 32.

9. The total unpaid balance on the Front account was \$9,437.45 which included the balance of \$3,242.37 that was transferred to the account from the Rear account that was not paid in November, 2008, in addition to the new charges of usage that accumulated between November of 2008 and May of 2010 for the Front unit. Tr. 30.

10. Elsa Leung is a regulatory assessor at PECO. Tr. 21.

11. PECO and Complainant have an agreement regarding service at Complainant's current address (Sellersville Rd.) whereby the Company will place service in Complainant's name as of April 12, 2013, and will issue a payment arrangement for the initial bill at account number 70532-07030. Tr. 23.

12. Complainant began receiving electric service in her name at her current residence of 63 Sellersville Road, Chalfont, PA 18914, as of July 26, 2013. Tr. 12.

13. Complainant's final bill for service charges regarding account number 77007-49012, and the service property at New Galena Road was mailed on June 9, 2010 to 63 Sellersville Rd., Chalfont, PA, and the entire charges consisted of customer assistance program (CAP) arrears. Tr. 37. PECO Exhibit 6.

### DISCUSSION

The Complainant alleges a disagreement with PECO regarding an arrearage which accrued from Complainant's prior residence, which prevented her from obtaining service in her name at her present address. At the time of the filing of the Complaint, PECO required that Complainant pay the arrearage before service could be placed in her name. Complainant states that at least a portion of the arrearage accrued after she directed PECO to terminate service to the prior address as the bank was foreclosing on the property and she did not live there anymore.

Prior to the evidentiary hearing, the parties reached a partial settlement regarding the issue of service provided to the service address of 63 Sellersville Road, Chalfont, PA, where Complainant currently resides. PECO will place service in Complainant's name as of April 12, 2013, and will issue a payment arrangement for the initial bill at account number 70532-07030. Tr. 22-23. One issue remaining is whether the electric usage at 242 New Galena Road from

January, 2010, when Complainant claims she contacted Respondent and requested discontinuation of service, through May 26, 2010, when PECO terminated service, should be the financial responsibility of Complainant. Another issue whether Complainant is financially responsible for arrearages accrued regarding the 242 New Galena Rd., Rear unit because she claims never resided in the rear unit and that she was unaware the rear unit was in her name or under her social security number until she received a denial of service letter at her new address.

Complainant carries the burden of showing that the utility is responsible or accountable for the problem described in the Complaint in order to prevail. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. PA Public Utility Comm'n*, 578 A.2d 600 (Pa. Cmwlth.1990), *alloc. den.*, 529 A.2d 654, 602 A.2d 863 (1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Comm'w.*, *PA Public Utility Comm'n*, 447 A.2d 1100 (Pa. Cmwlth.1982); *Edan Transportation Corp. v. PA Public Utility Comm'n*, 623 A.2d 6 (Pa. Cmwlth.1993), 2 Pa.C.S. §704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. PA Public Utility Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super.1960); *Murphy v. Commonwealth, Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth.1984).

Certain provisions of Chapter 56 of the Pennsylvania Code apply regarding standards and billing practices apply to the instant case. Specifically, Section 56.16 provides in pertinent part:

- (a) A customer who is about to vacate premises supplied with public utility service or who wishes to have service discontinued shall give at least 7 days notice to the public utility and a noncustomer occupant specifying the date on

which it desired that service be discontinued. In the absence of a notice, the customer shall be responsible for services rendered.

(b) In the event of discontinuance or termination of service at a residence or dwelling in accordance with this chapter, a public utility may transfer an unpaid balance to a new residential service account of the same customer.

52 Pa. Code § 56.16(a),(b).

Section 56.36(b)(2) provides in pertinent part:

(2) A public utility may establish that an applicant previously resided at a property for which residential service is requested through the use of mortgage, deed or lease information, a commercially available consumer credit reporting service or other methods approved as valid by the Commission.

52 Pa. Code § 56.36(b)(2).

Additionally, Section 1405(c) of the Pennsylvania Public Utility Code provides:

(c) **Customer assistance programs.** – Customer assistance program rates shall be timely paid and shall not be the subject of payment agreements negotiated or approved by the commission.

66 Pa.C.S. § 1405(c).

Although Complainant claims she contacted PECO and asked for a discontinuance of service in January, 2010, the same month that the bank foreclosed on the property at 242 New Galena Rd. and she does not believe she called PECO in May, 2010, the testimony of Ms. Leung and PECO's exhibits of customer-contact business records support a finding that Complainant did not request a discontinuance of service in January, but rather on May 27, 2010, and that the Company did discontinue service in a timely manner thereafter. Tr. 19-28, PECO Exhibits 6 and 9. The record further supports a finding that Complainant held a mortgage on the property of 242 New Galena Rd., and that her name and social security numbers were identical on the accounts for the front and rear units at 242 New Galena Rd., PECO

Exhibits 2 and 3. Thus, Complainant has failed to show she did not reside at 242 New Galena Road, or that there was an unauthorized use of her name and social security number to establish electric service accounts in her name for the Rear unit. Her admission that she held a mortgage for the property until it was foreclosed in January, 2010 is further evidence that the Company accurately billed the Complainant.

On October 7, 2010, there was a charge off in the amount of \$9,592.07 from the account being finalized in May of 2010. N.T. 25. The entire amount in dispute is Customer Assistance Program (CAP) arrears which are not subject to a Commission-ordered payment arrangement. 66 Pa. C.S. § 1405(c). N.T. 29. I find the amount of \$9,592.07 to be appropriate because it includes the \$3,242.37 that was transferred to the account on November 2008 that came from the rear account that was not paid and because PECO discontinued service shortly after Complainant requested discontinuation in May, 2010. N.T. 30-32. PECO Exhibit 5. It is reasonable that PECO believed Complainant was the responsible account holder for both the front and rear properties given the social security numbers and name of Lisa A. Martin are the same on the accounts for both units as well as for an account held by Complainant from November 3, 2005 through March 2, 2007 at 123 Mary Street, Doylestown, PA. PECO Exhibit 3.

Complainant bears the burden of proving that she told the utility to discontinue service in January, 2010. Evidence to support this claim is comprised entirely of her testimony. In contrast, PECO's evidence includes its customer contact sheet, which is a business record indicating that the Complainant called on May 27, 2010 and indicated that service should be taken out of her name because the bank had foreclosed upon the property and she did not live there anymore. Accordingly, I find Complainant has not sustained her burden of proving that PECO has violated an order, regulation or statute of the Commission.

#### CONCLUSIONS OF LAW

1. The proponent of a rule or order carries the burden of proof. 66 Pa. C.S.

§ 332(a). This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. PA Public Utility Comm'n*, 578 A.2d 600 (Pa. Cmwlth.1990), *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

2. Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Comm'w., PA Public Utility Comm'n*, 447 A.2d 1100 (Pa. Cmwlth.1982); *Edan Transportation Corp. v. PA Public Utility Comm'n*, 623 A.2d 6 (Pa. Cmwlth.1993), 2 Pa.C.S. §704.

3. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. PA Public Utility Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super.1960); *Murphy v. Commonwealth, Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth.1984).

4. Customer assistance program rates shall be timely paid and shall not be the subject of payment agreements negotiated or approved by the commission. 66 Pa. C.S. § 1405(c).

5. A public utility may establish that an applicant previously resided at a property for which residential service is requested through the use of mortgage, deed or lease information, a commercially available consumer credit reporting service or other methods approved as valid by the Commission. 52 Pa. Code § 56.36(b)(2).

6. A customer who is about to vacate premises supplied with public utility service or who wishes to have service discontinued shall give at least 7 days notice to the public utility and a noncustomer occupant specifying the date on which it desired that service be discontinued. In the absence of a notice, the customer shall be responsible for services rendered. 52 Pa. Code § 56.16(a),(b).

7. In the event of discontinuance or termination of service at a residence or dwelling in accordance with this chapter, a public utility may transfer an unpaid balance to a new residential service account of the same customer. 52 Pa. Code §56.16(a),(b).

**ORDER**

THEREFORE,

IT IS ORDERED:

1. That the Complaint filed by Lisa A. Martin against PECO Energy Company at Docket No. F-2013-2360697 is denied and dismissed.
2. That the Secretary mark this docket closed.

Dated: September 18, 2013

/s/  
Elizabeth H. Barnes  
Administrative Law Judge

**EXHIBIT "4"**

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

Public Meeting held December 19, 2013

**Commissioners Present:**

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

Lisa Martin

F-2013-2360697

v.

PECO Energy Company

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Reconsideration (Petition)<sup>1</sup> of Lisa Martin (Complainant) filed on October 21, 2013, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Elizabeth H. Barnes, which was issued on September 27, 2013, in the above-captioned proceeding. An Answer to the Petition was

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<sup>1</sup> As discussed further herein, the filing was labeled "Exceptions," but because it was not timely filed, we will treat the filing as a Petition for Reconsideration. For the sake of consistency, the "Exceptions" will be referred to herein as the Petition and the "Replies to Exceptions" will be referred to as an Answer to the Petition for Reconsideration.

PECO ENERGY  
EXHIBIT 4

filed by PECO Energy Company (PECO or Company) on October 29, 2013. For the reasons stated below, we shall deny the Complainant's Petition.

### **History of the Proceeding**

On April 29, 2013, Lisa Martin filed a Formal Complaint<sup>2</sup> with the Commission against PECO Energy Company alleging incorrect billing and requesting that she not be held responsible for charges to a rear apartment unit at 242 New Galena Road, Chalfont, Pennsylvania (rear unit). She stated that she never had electric in her name for the rear unit. She also disputed the dates for which PECO billed her for the front unit of the same address (front unit).

On May 13, 2013, PECO filed an Answer denying that there were incorrect charges included in the Complainant's account and stating that the Complainant had established an account for the rear unit and was responsible for the associated charges. PECO also averred that the Complainant is responsible for charges transferred to her current account from the front unit as she never requested discontinuance of service. Also on May 13, 2013, PECO filed New Matter with the appropriate Notice to Plead. In its New Matter, PECO alleged that the Complainant's entire balance contained arrearages that accumulated while she was participating in PECO's customer assistance program (CAP) and therefore, the Commission could not issue her a payment arrangement. No responsive pleading was filed.

The ALJ convened the Initial Hearing as scheduled on August 1, 2013. The Complainant appeared, was represented by counsel, and testified on her own behalf. PECO was also represented by counsel and presented one witness and seven exhibits, which were entered into the record. PECO also submitted two late-filed exhibits which

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<sup>2</sup> The Formal Complaint was a timely appeal of a decision by the Bureau of Consumer Services on an informal complaint in Case No. 3056300.

were received by the Office of Administrative Law Judge on August 5, 2013. These additional two exhibits were admitted into the record. The record closed on August 15, 2013, with the receipt of the transcript.

In the Initial Decision, issued on September 27, 2013, ALJ Barnes found that the Complainant failed to satisfy her burden of proof and was not eligible for a payment arrangement.<sup>3</sup> The ALJ therefore dismissed the Complaint. As previously indicated, the Complainant filed the Petition on October 21, 2013. PECO filed an Answer to the Petition on October 29, 2013.

### **Discussion**

We begin by considering the nature of the Complainant's filing, as the analysis to be applied depends on the type of filing before us. In this case, Exceptions to the Initial Decision were due on October 17, 2013. Exceptions were not filed, within the meaning of 52 Pa. Code § 1.11, by the required due date. Therefore, in accordance with Section 332(h) of the Public Utility Code (Code), 66 Pa. C.S. § 332(h), the decision of the ALJ became final without further Commission action on October 17, 2013.

As discussed above, the Complainant filed "Exceptions" on October 21, 2013 (i.e., within fifteen days of the date that the Initial Decision became the final action of the Commission). In the interest of securing a just, speedy, and inexpensive determination, we will exercise our discretion and consider the Complainant's "Exceptions" as a Petition for Reconsideration of the Commission's final decision. 52 Pa. Code §§ 1.2(a) and 5.572(c). Consequently, we will treat the Replies to Exceptions filed by PECO as an Answer to the Petition for Reconsideration.

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<sup>3</sup> The Complainant did not request a payment arrangement in her Complaint, but later requested it during the hearing. Tr. at 11.

Reconsideration is essentially a two-step process. First, we determine whether there are considerations, such as new or novel arguments set forth in the Petition, that convince us to exercise our discretion under the Code to consider the case again. If so, we proceed to consider whether we should modify our conclusion or rationale. In this case, we find considerations that cause us to exercise our discretion to consider this case a second time. Specifically, the Complainant has raised issues regarding procedural matters and arguments not explicitly addressed by the ALJ. Upon review, however, we find the Complainant's arguments are without merit and will adopt the Initial Decision.

### **Legal Standards**

The Code establishes a party's right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. § 703(f) and § 703(g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision.

The standards for granting a Petition for Reconsideration were set forth in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (1982):

A Petition for Reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part.

In this regard we agree with the court in the Pennsylvania Railroad Company case, wherein it was stated that:

Parties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them . . . what we expect to see raised in

such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked by the Commission.

*Duick*, 56 Pa. P.U.C. at 559 (quoting *Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission*, 179 A. 850, 854 (Pa. Super. Ct. 1935)).

Under the standards of *Duick*, a petition for reconsideration may properly raise any matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Duick*, 56 Pa. P.U.C. at 559.

Before addressing the Petition, we note that any issue not specifically discussed shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); also see, generally, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

### **ALJ’s Initial Decision**

ALJ Barnes made thirteen Findings of Fact and reached seven Conclusions of Law. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

In her Initial Decision, the ALJ identified two issues. The ALJ first addressed the Complainant's contention that PECO was charging her for several months of service after she requested that the service be terminated. Second, the ALJ addressed the Complainant's assertion that she had never requested service for the rear unit. I.D. at 4-5.

At the hearing, the Complainant testified that she had moved into the front unit at the New Galena Road service address at some point in 2006. Although she did not own the property, her name was on the mortgage along with another individual. She explained that, in addition to the main house, there was an apartment over the garage, the rear unit, which had a separate meter. The rear unit was rented to several different tenants during the time she was associated with the property. She testified that she left the property in October of 2006 and returned in 2008 and moved out again on January 11, 2010, when the property was foreclosed upon. She further testified that she called on January 11, 2010, to have service discontinued and that she had never requested service for the rear unit. Tr. at 7-9.

PECO presented its business records at the hearing detailing the Complainant's accounts and its contacts with the Complainant and argued before the ALJ that the Complainant had not requested discontinuance of service for the front unit until May 27, 2010. Tr. at 32. PECO also presented evidence that the Complainant had requested, and was responsible for, service to the rear unit. According to its records, PECO stated that the Complainant had electric service for the front unit from June 12, 2006, through October 13, 2006. Tr. at 25. PECO explained that the Complainant then had service for the rear unit from February 2, 2007, through September 27, 2008, and, finally, she had service again for the front unit from November 5, 2008, through May 27, 2010. Tr. at 27 and 29. PECO reported that the total unpaid balance for both accounts was \$9,437.45. Tr. at 30.

Upon consideration of the evidence presented, the ALJ first found that PECO's exhibits supported a finding that the Complainant did not request a discontinuance of service on January 11, 2010, but rather on May 27, 2010, and that the Company discontinued service in a timely manner thereafter. Likewise, she found that PECO's records also supported a finding that the Complainant was responsible for the charges accrued on the account for the rear unit. She reasoned that the Complainant held a mortgage on the property, the name and social security numbers on the accounts for both units were exactly the same, and the Complainant did not show that there was any unauthorized use of her name or social security number to establish service for the rear unit. Finally, the ALJ found that the entire amount in dispute accrued under customer assistance program rates and was not subject to a Commission-ordered payment arrangement. I.D. at 6-7.

#### **Positions of the Parties and Disposition**

In her Petition, the Complainant disagrees with the ALJ's conclusions and Findings of Fact. She requested that another hearing be held in a fair and impartial setting with all evidence produced in a timely fashion. Petition at 2. PECO filed an Answer arguing that the ALJ correctly determined that the Complainant is responsible for the entire arrearage and that the Commission should sustain the Initial Decision. Answer to the Petition at 2.

The Complainant first contends that she was improperly denied discovery prior to the hearing, which deprived her of the ability to properly prepare for the hearing. She further objected to a denial of a continuance. Petition at 1. In its Answer to the Petition, PECO states that the Complainant never issued a request for discovery nor filed any discovery motions and averred that this contention is baseless and should be denied. Answer to the Petition at 5. Our review of the record reveals that the Complainant never made any discovery requests nor did she request a continuance. As these requests were

never made, they were not denied by the ALJ. Thus, we find that the Complainant was not improperly denied discovery or a continuance.

Second, the Complainant asserts that she was prejudiced by the admittance of PECO's late-filed exhibits. She asserts that the hearing should have been rescheduled in order to allow her time to respond to the exhibits. Petition at 1. In response, PECO states that both late-filed exhibits were relevant to resolve the dispute between the Parties and asserts that the Complainant was sent a copy of the late-filed exhibits but did not file an objection before the record was closed and has waited to object until this stage of the proceeding. Answer to the Petition at 5-6.

We find that the Complainant was not prejudiced by the admittance of the late-filed exhibits as she had adequate time to respond to them. At any stage of the hearing, or thereafter, the presiding officer may call for further admissible evidence which may be presented at either the hearing or at the adjournment of the hearing. 52 Pa. Code § 5.404(a). Here, the ALJ held the record open for the submission of two late-filed exhibits and the nature of the exhibits was described at the hearing. Tr. at 41. The exhibits were filed on August 5, 2013, and the record did not close until August 15, 2013. The Complainant neither objected to the two exhibits at the hearing, nor did she state any objections after they were filed despite having ten days to do so. Having not filed objections before the close of the record, the Complainant has waived her right to do so and cannot now object at this stage of the proceeding.

Next, the Complainant argues that she never requested electric service for the rear unit and that, at the hearing, PECO had acknowledged that anyone with the right information could open an account in her name. Petition at 1 and 2. In its Answer to the Petition, PECO asserts that the ALJ correctly determined that PECO reasonably believed that the Complainant was responsible for the account for the rear unit. PECO points to the evidence that: (1) the Complainant held a mortgage for the property; (2) the account

was established using her social security number; (3) the Complainant was enrolled in CAP under this account, which required completing and signing a verification of income, providing copies of paystubs and unemployment and social security information; and (4) the Complainant did not submit any proof of another address during the time period at issue. PECO argues that all of this evidence points to the Complainant being the responsible account holder for the rear unit. Answer to the Petition at 2-3.

We agree with the ALJ that the Complainant is responsible for the charges associated with the rear unit. In deciding disputes as to whether or not a customer actually requested utility service, the Commission has considered the type of personal information that was provided to the utility and the Complainant's association with the service address. The Commission has also considered whether or not a police report for identity theft was filed. *Martins v. PECO Energy Company*, Docket No. F-2008-2059421 (Order entered November 5, 2009); *see also, Milbee v. Duquesne Light Company*, Docket No. F-2012-2299572 (Initial Decision of ALJ John H. Corbett, Jr., issued August 8, 2012; Final Order entered September 17, 2012) (complainant found to have not requested service because her reporting of identity theft to the police tipped the scale in her favor). In *Martins*, the complainant alleged that he had not requested the utility service for which the utility was holding him responsible. Despite evidence that the complainant did not reside at the service address, the Commission found persuasive the facts that both his social security information and driver's license number were given to the utility to establish service, his name was on the lease, and no police report for identity theft was filed. *Martins* at 6.

Similar to the complainant in the *Martins* case, here the Complainant testified that she never requested service for the rear unit. Nonetheless, the evidence demonstrates that the name and social security numbers for the accounts for both the front and rear units were identical, that her personal financial information was submitted in writing during the CAP application process, and that her name was on the mortgage.

Additionally, no police report regarding identity theft was filed nor is there anything in the record to indicate that she resided elsewhere during the pertinent period.

The Complainant next objects to the ALJ's finding that she had received bills for the rear unit on at least two occasions in October 2008 and June 2010. She argues that she never received a bill for the rear unit, nor did she receive a final bill for the front unit, until she was denied service at her current address on July 26, 2013. She asserts that, because she never saw the bill for the rear unit, she could not dispute it. In reference to copies of bills submitted into evidence by PECO, she alleges that the computer can generate the bills with any date. Finally, she notes that, if PECO was trying to collect \$9,000, it would be reasonable to send correspondence via certified mail in order to confirm receipt. Petition at 1-2.

We find that the record supports the conclusion that the Complainant received bills for the rear unit prior to being denied service at her current address. Not only were bills mailed to the Complainant on the dates specified by the ALJ, but the balance from the rear unit was transferred to her account for the front unit when she established service on November 5, 2008. PECO Exhs. 3 and 6. This balance would have been included on her monthly bills thereafter. Until the Complainant was denied service by PECO at her current address, she did not dispute this balance.

Finally, the Complainant takes issue with the ALJ's conclusion that she requested termination of service for the front unit on May 27, 2010. She states that she requested termination on January 11, 2010, and argues that she can only provide testimony with regard to when she called PECO. She contends that the burden of proof should be shifted to the Company, which keeps the records. Petition at 1 and 2. In its Answer to the Petition, PECO avers that it has produced business records showing that the Company did not receive a call from the Complainant in January 2010, but did receive a call from her in May 2010 requesting that service be discontinued. PECO also

argues that the burden of proof did shift to the Company and it provided evidence of the date termination was requested. Answer to the Petition at 4.

We find that the Complainant has failed to meet her burden of proving she requested termination of service on January 11, 2010. At the hearing, she testified that she called PECO on that date. The burden of going forward with the evidence then shifted to PECO to rebut her testimony. In response, PECO produced business records showing that the Complainant called on May 27, 2010, to have service terminated. PECO then acted on that request in a timely manner. No further evidence was produced by the Complainant. We find PECO's records to be persuasive and that the Complainant did not request termination of service until May 27, 2010.

### **Conclusion**

Based upon the foregoing discussion, we shall deny the Petition of the Complainant; **THEREFORE,**

### **IT IS ORDERED:**

1. That the Petition for Reconsideration of Lisa Martin, filed on October 21, 2013, is denied, consistent with this Opinion and Order.

2. That the proceeding docketed at F-2013-2360697 be marked closed

**BY THE COMMISSION,**

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

**Rosemary Chiavetta  
Secretary**

**(SEAL)**

**ORDER ADOPTED: December 19, 2013**

**ORDER ENTERED: December 19, 2013**