

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

Catherine Kerner,
v.
PECO Energy Company

Docket No.: Z-01526213

**DOCUMENT
FOLDER**

Public Utility Commission
Hearing Room Four
400 North Street
Harrisburg, PA

Tuesday, August 24, 2004
Commencing at 12:58 p.m.

BEFORE:

WAYNE L. WEISMANDEL, Administrative Law Judge

APPEARANCES:

DOCKETED

SEP 09 2004

EDWARD KERNER, Pro Se
1519 Harvey Lane
North Coventry Township
Chester County, PA

Representing the Complainant, Catherine
Kerner
Via Telephone

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For the Respondent, PECO Energy Company
Via Telephone

REPORTER: AIMEE L. ADAMS

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P R O C E E D I N G S

JUDGE WAYNE WEISMANDEL:

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4 This is the date and time set for a
5 telephonic hearing in the matter of Catherine Kerner,
6 K-E-R-N-E-R, versus PECO Energy Company, Pennsylvania
7 Public Utility Commission, Docket Number Z-01526213.
8 I'm Administrative Law Judge Wayne L. Weisman del
9 assigned by the Commission to preside in this matter.

10 I would note for the record that I have
11 contacted Anthony D. Kanagy, Esquire representing PECO
12 Energy Company at area code 215-841-5974. I've also
13 contacted the Complainant's husband, Mr. Edward Kerner
14 at area code 610-970-0594. Mr. Kerner has indicated
15 that his wife is incapacitated and that he would be
16 participating in this proceeding on her behalf.

17 A couple of things before we go any
18 further. Mr. Kanagy, I wrote a letter dated June 30th
19 of this year to you indicating that despite the Docket
20 Number, which shows or would normally indicate that
21 this is an inability to pay this type of case, that
22 this case is not of that variety and in fact is a
23 service adequacy complaint. Did you receive that
24 letter, sir?

25 ATTORNEY KANAGY:

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Yes, Your Honor, I did.

JUDGE WEISMANDEL:

Okay. So then PECO is aware of the nature of the complaint and the possibility at least of the imposition of the Civil Penalty if the Kerners are able to sustain their complaint?

ATTORNEY KANAGY:

Yes, Your Honor.

JUDGE WEISMANDEL:

Very good. All right. Mr. Kerner, again, as I said to you before we went on the record, I apologize for the mix-up as far as the time of this proceeding. I can assure you that there was a second or a corrected notice that was sent out on July 8th of this year changing the time from 10:00 a.m. to 1:00 p.m. Be that as it may, I fully understand your --- that you said you did not receive that and I'm just glad that we were able to get the connection made now at the correct time.

MR. KERNER:

Your Honor?

JUDGE WEISMANDEL:

Yes, sir.

MR. KERNER:

If I may, please?

1 JUDGE WEISMANDEL:

2 Sure. Speak up, please.

3 MR. KERNER:

4 In August --- in August, I was talking
5 with Mr. Kanagy, he had called our residence and spoke
6 with me, and at that time we both were under the
7 understanding that this hearing was for 10:00 a.m. on
8 August the 24th, because he so indicated to me that,
9 you know, we would talk on the 24th.

10 JUDGE WEISMANDEL:

11 Well, be that as it may, we're all where
12 we should be at the right time.

13 MR. KERNER:

14 Exactly. But I wanted the record to show
15 that at that time that we did talk he and I either of
16 us, as far as I'm concerned, I didn't get one, if he
17 would have got one, he probably would have corrected
18 me because I wasn't sure, I'd have to look at my
19 calendar and he gave me the time and the date; is that
20 correct, Mr. Kanagy?

21 ATTORNEY KANAGY:

22 It may be correct. I just remember the
23 24th. I apologize if that, you know --- if it's ten
24 or one, I don't remember that.

25 MR. KERNER:

1 Okay. Well, you're there, we're here.

2 JUDGE WEISMANDEL:

3 Right. A couple of things I'd like to
4 lay out before we proceed. First of all, I want to
5 give the parties an opportunity to discuss the
6 situation if they think that that's worthwhile, off
7 the record to see the matter can be amicably resolved.
8 Mr. Kerner, if you are able to sustain your complaint,
9 I could conceivably impose a Civil Penalty on PECO
10 Energy Company up to a maximum of \$1,000. That money
11 goes to the Commonwealth. It does not go to Mr. or
12 Mrs. Kerner or to me for that matter. It goes to the
13 Commonwealth and we could order PECO to cease and
14 desist from any further violations of the Public
15 Utility Code.

16 A couple of things I need to advise you
17 of, however. There is a Commission regulation that
18 covers the situation here. In fact, there's a couple
19 of regulations that may be involved. The first is
20 found at 52 Pennsylvania Code, Section 56.112, and in
21 essence, what that regulation says is that if there
22 has been a termination or if there is threatening to
23 be a termination of service and the Utility employee
24 is advised that there is a medical necessity for the
25 Utility service to be --- to remain on and that a

1 medical certification will be provided, that the
2 Utility is prohibited from going ahead with the
3 termination. So that's one regulation that might very
4 well apply to this situation.

5 There is, however, another regulation
6 found at 52 Pennsylvania Code, Section 56.115, which
7 says that if there has been a termination of service
8 and a medical certification is provided to the
9 Utility, the Utility has until the close of business
10 the next working day to restore that service. So
11 we've got the interplay of both of those regulations
12 that would seem to apply in this situation. So I
13 wanted both Mr. Kanagy and Mr. Kerner, both of you to
14 be aware that those are two of the things that I see
15 of significance in this case and I wanted Mr. Kerner
16 to understand that what we can do and the only thing
17 we can do is, if he sustains his burden of proof, he
18 is to impose a Civil Penalty and order PECO to not
19 violate the Public Utility Code any further. I don't
20 exactly know what you're looking for in the way of a
21 remedy, Mr. Kerner, but that's what my limitations are
22 in providing one. Do you understand that?

23 MR. KERNER:

24 Yes, I do, Your Honor. That's
25 specifically two points ---.

1 JUDGE WEISMANDEL:

2 Excuse me. Are you using a speaker phone
3 or something?

4 MR. KERNER:

5 No, I am not.

6 JUDGE WEISMANDEL:

7 The Court Reporter's having a lot of
8 difficulty understanding you.

9 MR. KERNER:

10 No, I'm not using any kind of ---.

11 JUDGE WEISMANDEL:

12 Okay. Can you speak up a little more?

13 MR. KERNER:

14 Yes, I will.

15 JUDGE WEISMANDEL:

16 That's better. That's better. Thank
17 you. Okay. Sir, go ahead.

18 MR. KERNER:

19 Okay. Your Honor, that is specifically
20 why violation of both Pennsylvania codes that you have
21 addressed, is why we had filed this complaint. Number
22 one, a man came to the door ---.

23 JUDGE WEISMANDEL:

24 Wait. Wait. I don't want to take
25 evidence now. You're not under oath. All I wanted to

1 know is if you understood what I said.

2 MR. KERNER:

3 Yeah, I understood what you said.

4 JUDGE WEISMANDEL:

5 Okay. And what are you looking for in
6 the way of a remedy?

7 MR. KERNER:

8 What am I looking for? That this never
9 happens again and it doesn't happen to other people,
10 as well, in the same predicament, because PE does this
11 quite often from what I understand.

12 JUDGE WEISMANDEL:

13 Okay. Are you willing to talk to Mr.
14 Kanagy off the record outside of my presence, so that
15 I don't hear something I'm not supposed to hear and
16 see if the matter can be resolved?

17 MR. KERNER:

18 I spoke with Mr. Kanagy a couple weeks
19 ago and I addressed the fact about that we are not
20 looking for any kind of punitive damages or anything.
21 We just want this individual be reprimanded and that
22 they train their people to be more professional when
23 people call them and not give them sarcastic remarks
24 and be a little compassionate when people have a
25 problem, a medical problem.

1 JUDGE WEISMANDEL:

2 All right. Mr. Kerner, are you saying
3 then that you are willing to see if Mr. Kanagy can
4 give assurances, that you would be satisfied with
5 without going through a hearing? Are you willing to
6 talk to him?

7 MR. KERNER:

8 I don't think that Mr. Kanagy's in that
9 position to make that. It would have to be done by
10 PECO Energy Board of Directors, I think.

11 JUDGE WEISMANDEL:

12 Well, I'd ---.

13 ATTORNEY KANAGY:

14 Mr. Leslay (phonetic), I mean, I guess
15 --- I'm sorry, I have the wrong number, the wrong
16 name. Mr. Kerner, I don't know if it's helpful to you
17 or not, but those two employees are no longer with
18 PECO. I don't know if that makes you feel better or -
19 ---.

20 MR. KERNER:

21 No. And people losing their job to me is
22 not going to give me any satisfaction ---.

23 JUDGE WEISMANDEL:

24 Mr. Kerner, you're going to have to speak
25 up. The Court Reporter is just not able to hear you.

1 MR. KERNER:

2 Well, again, Your Honor, could you call
3 me back and maybe I can change phones?

4 JUDGE WEISMANDEL:

5 Okay. I'm going to ---.

6 MR. KERNER:

7 I'm willing to stay on, but I'm trying to
8 remedy the problem.

9 JUDGE WEISMANDEL:

10 Well, if you speak like that, she can
11 hear you fine. You just got to keep your voice up.

12 MR. KERNER:

13 All right.

14 JUDGE WEISMANDEL:

15 All right. I don't waste a whole more
16 time here.

17 MR. KERNER:

18 I don't either.

19 JUDGE WEISMANDEL:

20 If the matter can be resolved without a
21 hearing, I'd like to do that. I told you the
22 limitations of what I can do, Mr. Kerner. We're not
23 going to get the Board of Directors, we're not going
24 to get the president, we're not going to get any
25 officers of PECO involved here. I mean, that's just a

1 fact of life.

2 Mr. Kanagy is --- as their Counsel is
3 authorized to make whatever offers PECO is willing to
4 make to you I'm sure, but that's all we're going to be
5 able to get. And if we go to a hearing, I explained
6 to you already what the penalties that I can impose
7 are on PECO and you indicated that you weren't
8 particularly interested in anything punitive.

9 So I'm wondering if we could do everybody
10 a service here and let you guys take about five or ten
11 minutes and see if you can come to an agreement as to,
12 you know, what you're looking for, Mr. Kerner, and
13 what Mr. Kanagy is --- what assurances Mr. Kanagy is
14 in a position to give you. Are you willing to do
15 that?

16 MR. KERNER:

17 Will this made part in the record, Your
18 Honor?

19 JUDGE WEISMANDEL:

20 No.

21 MR. KERNER:

22 If we come to an agreement?

23 JUDGE WEISMANDEL:

24 If you come to an agreement, certainly.

25 MR. KERNER:

1 If it stays with the PUC, in the event
2 that it stays there later on if other people have the
3 same problems that this shows?

4 JUDGE WEISMANDEL:

5 That can certainly be done, yes, sir.

6 MR. KERNER:

7 All right. That's acceptable to me.

8 JUDGE WEISMANDEL:

9 Mr. Kanagy?

10 ATTORNEY KANAGY:

11 Yes, Your Honor. We would like to talk
12 to Mr. Kerner.

13 JUDGE WEISMANDEL:

14 All right. What we'll do then --- and
15 Mr. Kanagy, I know you're aware of this. Mr. Kerner,
16 if I hang up or --- because I initiated the call, it
17 would also disconnect you and Mr. Kanagy from each
18 other. So what I will do is take a recess, the Court
19 Reporter will stop transcribing what's being said and
20 I will literally leave the room so I don't hear
21 something I'm not supposed to hear in case we do end
22 up having to go through a hearing. Okay?

23 MR. KERNER:

24 All right. Your Honor. And there's one
25 thing that I did address in --- that my wife did

1 address in the letter to your office in regards to
2 your investigator. Every time that you call with a
3 problem and exactly with his one here, Lionel Kanzolis
4 (phonetic), investigator, came up with a solution of
5 setting up a payment plan and I didn't appreciate that
6 and I think that should be addressed, as well, with
7 the PUC that they have some kind of training for these
8 investigators themselves.

9 JUDGE WEISMANDEL:

10 Okay. Well, you understand that
11 obviously Mr. Kanagy and PECO can do nothing about
12 that?

13 MR. KERNER:

14 No, but the PUC can.

15 JUDGE WEISMANDEL:

16 Yes, again, you'll have to keep your
17 voice up for the Court Reporter.

18 MR. KERNER:

19 I said that the PUC can.

20 JUDGE WEISMANDEL:

21 Right. Okay.

22 MR. KERNER:

23 And that's what you also addressed in
24 these issues, as well, because we had to deal with
25 them, as well.

1 JUDGE WEISMANDEL:

2 Okay. Understood. All right. We'll
3 take a ten-minute recess. I've got about a quarter
4 after 1:00. I'll check with you gentlemen at 1:25 and
5 see how we're doing. All right?

6 MR. KERNER:

7 All right. Your Honor.

8 ATTORNEY KANAGY:

9 Okay. Your Honor.

10 JUDGE WEISMANDEL:

11 All right. We'll go off the record at
12 this point. Give me about 30 seconds to get out the
13 door, if you would.

14 BRIEF RECESS

15 JUDGE WEISMANDEL:

16 The parties advised me that they have not
17 been able to satisfactorily resolve the matter and
18 that a hearing will be necessary.

19 Mr. Kerner, you understand that as the
20 Complainant, you have the burden of proof in this
21 matter, it will be your responsibility to prove by
22 what's called a preponderance of the evidence that
23 PECO Energy Company violated the Public Utility Code
24 or regulation or order of the Public Utility
25 Commission that it has authority to enforce. When I

1 say that your burden is by a preponderance of the
2 evidence, that is usually explained or illustrated, I
3 guess, is a better word, by the analogy to a balance
4 scale. If the balance scale at the conclusion of the
5 receipt of evidence tips ever so slightly in your
6 favor, then you have carried your burden of proof and
7 you are entitled to a decision in your favor.

8 On the other hand, if the balance scale
9 ends up in perfect equilibrium, then you have not
10 carried your burden of proof and PECO would be
11 entitled to a decision in its favor. And then just to
12 complete the illustration, obviously, I guess, if the
13 balance scale tips ever so slightly in PECO's
14 directions, then again, they are entitled to a
15 decision in their favor.

16 Do you understand that you have the
17 burden of proof and what that means?

18 MR. KERNER:

19 I think my burden of proof is that I
20 followed all the procedures, Your Honor, and I ---.

21 JUDGE WEISMANDEL:

22 I just need a yes or a no at the moment.
23 Do you understand?

24 MR. KERNER:

25 I'm giving you my yes/no. I'm going to

1 lose this anyway, because I know that --- because I'm
2 not for anything that I'm going to lose anyway. So,
3 you know, what can I say?

4 JUDGE WEISMANDEL:

5 Well, right now you can answer my
6 question. Do you understand ---

7 MR. KERNER:

8 I do.

9 JUDGE WEISMANDEL:

10 --- the burden of proof?

11 MR. KERNER:

12 Yes.

13 JUDGE WEISMANDEL:

14 All right. You're going to have to speak
15 up. The Court Reporter is having difficulty hearing
16 you again, sir.

17 MR. KERNER:

18 I said yes.

19 JUDGE WEISMANDEL:

20 Okay. Do you want to testify, Mr.
21 Kerner?

22 MR. KERNER:

23 Yes.

24 JUDGE WEISMANDEL:

25 All right.

1 -----
2 EDWARD KERNER, HAVING FIRST BEEN DULY SWORN, TESTIFIED
3 AS FOLLOWS:
4 -----

5 A. I do.

6 JUDGE WEISMANDEL:

7 Okay. Please proceed. Yes, keep
8 speaking like that and we'll be fine. Go ahead, sir.

9 A. I'm here.

10 JUDGE WEISMANDEL:

11 Yes. Go ahead with your testimony.

12 A. All right. My complaint is that, on October 27th
13 of 2003 at approximately 2:00 p.m., an employee
14 representing the PECO Energy Company came to my door
15 at my residence 1519 Harvey Lane, North Coventry
16 Township, Chester County, Pennsylvania and shut off
17 our electricity for nonpayment of electric bill. My
18 wife informed him that our bill had been paid on
19 October the 1st ---.

20 ATTORNEY KANAGY:

21 Your Honor, ---

22 JUDGE WEISMANDEL:

23 Yes.

24 ATTORNEY KANAGY:

25 --- I object to any statements made by

1 his wife as hearsay.

2 JUDGE WEISMANDEL:

3 Yes, Mr. Kerner, any statements that ---
4 were you present at the time?

5 A. No, I was not. He was at our door ---.

6 JUDGE WEISMANDEL:

7 All right. Then Mr. Kanagy --- just wait
8 a minute. Mr. Kanagy's objection is that if you were
9 not present, you have no personal knowledge of what
10 your wife said or didn't say and did or didn't do. If
11 she's available and able to testify, we certainly can
12 take her testimony, but you cannot testify as to what
13 she said or did if you were not present.

14 MR. KERNER:

15 Okay.

16 JUDGE WEISMANDEL:

17 All right, sir. All right. Please
18 proceed. The object is sustained, Mr. Kanagy.

19 A. All right. On October the 27th, 2003 at 3:00
20 p.m., 1500 hours, I arrived home from work, in the
21 conversations from my wife, she told me that the
22 electricity was shut off, which I did notice, I
23 immediately called the PECO Energy Company and I
24 informed the lady on the phone that my wife was under
25 doctor's care. She asked for my doctor's fax number,

1 which my husband gave --- which I gave to her. I
2 stated that I was going to fax a form and she stated
3 that she was going to fax the form to my doctor and
4 that he was to fax it back to PECO Energy Company
5 immediately.

6 I called my doctor. My doctor did this
7 immediately at 4:55 p.m. I then immediately called
8 the PECO Energy Company at 4:55 and I spoke to a Robin
9 and she told me that they did receive the fax from
10 Doctor Pearlstein and that the electric would be back
11 on my 8:00 p.m. and I said, can you get it on
12 beforehand, she said, no, she says, I can't assure
13 anything, she said, but it will be on 8:00 p.m. this
14 evening.

15 And then I waited a while and I called at 7:30
16 again on the same date, October 27th --- or 7:00, I'm
17 sorry, at 1900 hours. I spoke with a Cheryl. She
18 stated they did receive the fax and that the electric
19 would be on by 8:00 p.m. or a little bit after. And
20 then on the 27th --- I'm sorry, at 10:30 p.m., our
21 electric still wasn't on. I tried to contact PECO
22 Energy to inform them the electricity still had not
23 been turned on yet and there was a recording informing
24 callers that the business office was closed until 9:00
25 p.m. --- or 9:00 a.m. the next day. I had to pack up

1 my wife and myself and go to my daughter's so that we
2 would have electricity and have the necessities for my
3 wife at that time.

4 And then on October the 28th, 2003 at 9:00 a.m., I
5 called PECO Energy again, informed the lady that our
6 electricity still had not been turned on and that we
7 had to stay at my daughter's home and that she had to
8 go work and we had to return --- and then we had to
9 return to our home without electricity. She informed
10 that the electricity would be on by 4:30 in the
11 afternoon. I stated --- and then I informed the lady
12 -- I called her --- when I spoke with the lady on the
13 phone, I told her that my wife had a medical problem
14 and that --- and then she told me to take her to the
15 nearest hospital and my response to her was, is PECO
16 Energy going to pay for the hospital bill and she
17 laughed and stated that that was our problem.

18 And then on October the 28th at 2:45, I called
19 Senator John Rafferty's office in Harrisburg and spoke
20 with John Rafferty and asked him if he could do
21 anything, and John Rafferty told me he'd get back to
22 me, which he did, and he told me that he spoke with
23 PECO Energy and my electric would be back on within an
24 hour which it was. Now my question again is, why do I
25 have to wait or go to that extreme to contact a

1 politician in order to get something done?

2 And then on November the 23rd, I received a letter
3 from the Public Utility Commission, a Lionel Kanzolis,
4 an investigator, stating that I had --- I asked for
5 help in a presenting a termination of my utility
6 service and that PECO Energy set up a payment plan of
7 \$15 per month, which was unprofessional as far as I
8 was concerned. That's my testimony.

9 JUDGE WEISMANDEL:

10 Thank you, Mr. Kerner. Mr. Kanagy, any
11 questions?

12 ATTORNEY KANAGY:

13 Just one question, Your Honor.

14 CROSS EXAMINATION

15 BY ATTORNEY KANAGY:

16 Q. Mr. Kerner, do you know the name of the employee
17 who said that you should take your wife to the
18 hospital if you're having medical problems?

19 A. No, I do not, because I was so angry at the time
20 that I didn't know which way to turn, because there we
21 are in the morning and the next day and then I have to
22 take sarcasm like that, and that's when I hung up and
23 I said, thank you very much and I hung up, and that's
24 when I called John Rafferty.

25 Q. Okay.

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ATTORNEY KANAGY:

I have no further questions for Mr. Kerner, Your Honor.

JUDGE WEISMANDEL:

Okay. Thank you. Do you have any other witnesses, Mr. Kerner?

A. No, I do not, Your Honor.

JUDGE WEISMANDEL:

All right. Mr. Kanagy?

ATTORNEY KANAGY:

Yes, Your Honor. I'd like to call Renee Tarpley.

JUDGE WEISMANDEL:

Okay. Mr. Tarpley, can you hear me all right?

MS. TARPLEY:

Yes, Your Honor.

RENEE TARPLEY, HAVING FIRST BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

A. Yes, Your Honor.

JUDGE WEISMANDEL:

Please proceed, Mr. Kanagy.

DIRECT EXAMINATION

1 BY ATTORNEY KANAGY:

2 Q. Ms. Tarpley, by whom are you employed?

3 A. PECO Energy.

4 Q. And how long have you been employed by PECO?

5 A. Approximately 19 years.

6 Q. What is your current position with PECO?

7 A. Currently, I'm a regulatory assessor with the
8 company.

9 Q. And how long have you been a regulatory assessor?

10 A. Approximately six years.

11 Q. Okay. Would you please describe your job duties
12 as a regulatory assessor?

13 A. I'm responsible for reviewing informal and formal
14 complaints filed with the Public Utility Commission.

15 Q. Are you familiar with the complaint today?

16 A. Yes.

17 Q. Okay. In his Direct testimony, Mr. Kerner stated
18 that his service was terminated on October 27th, 2003;
19 is that correct?

20 A. That's correct.

21 Q. And why was the service terminated?

22 A. The service was terminated for nonpayment of
23 \$177.07.

24 Q. Okay. And when was that service restored?

25 A. October the 28th, 2003.

1 Q. At what time was the service restored?

2 A. That's approximately around 2:30, 2:38 p.m.

3 Q. Okay. Ms. Tarpley, do you have ---?

4 ATTORNEY KANAGY:

5 Your Honor, some of these exhibits relate
6 to --- we just kind of covered the basis and did an
7 ability to pay, as well.

8 JUDGE WEISMANDEL:

9 Some of those exhibits are irrelevant.

10 ATTORNEY KANAGY:

11 All right. And so I think I'm not even
12 going to worry about PECO Exhibits One and Two. Your
13 Honor, may I have about five minutes or two minutes?

14 JUDGE WEISMANDEL:

15 Sure. Mr. Kerner?

16 MR. KERNER:

17 Yes, Your Honor?

18 JUDGE WEISMANDEL:

19 Did you receive the documents that Mr.
20 Kanagy had marked for identification as potential PECO
21 exhibits?

22 MR. KERNER:

23 For the payment plans?

24 JUDGE WEISMANDEL:

25 Well, there were four documents marked as

1 PECO Exhibits One, Two, Three and Four. Did you
2 receive those?

3 MR. KERNER:

4 Yes.

5 JUDGE WEISMANDEL:

6 Okay. I just wanted to make sure you had
7 copies. Thank you.

8 ATTORNEY KANAGY:

9 Yes, Your Honor. I'm ready.

10 JUDGE WEISMANDEL:

11 Okay. Mr. Kanagy, go ahead.

12 BY ATTORNEY KANAGY:

13 Q. Ms. Tarpley, what is the restore policy when a
14 customer informs PECO of a medical condition?

15 A. When customers inform us of a medical condition,
16 we ask for the doctor's information --- talk to us by
17 telephone and we would then --- they had to fax the
18 information, we will fax them a medical certificate
19 over the doctor and look for the return from there.

20 Q. And when is service restored in the event there's
21 a medical condition?

22 A. Well, whether it's a medical condition or the
23 customer's paying by cash, we would then make every
24 attempt to restore it that same day of the receipt of
25 the document or payment, and if not, at least by the

1 end of the next business day.

2 ATTORNEY KANAGY:

3 Your Honor, I have no further questions
4 for Ms. Tarpley. I'm not going to introduce any of
5 the exhibits that we have.

6 JUDGE WEISMANDEL:

7 All right. Mr. Kerner, do you have any
8 questions for Ms. Tarpley?

9 MR. KERNER:

10 Yes, I do.

11 JUDGE WEISMANDEL:

12 Go ahead, sir.

13 CROSS EXAMINATION

14 BY MR. KERNER:

15 Q. You claim that at 2:38 p.m., you turned the
16 service on. At 2:45 is when I talked with John,
17 Senator Rafferty, and it wasn't until after 3:45 the
18 service was turned on?

19 A. According to our field documents, the person was
20 at your property and restored the service at the
21 property around 2:38 p.m.

22 Q. Well, I dispute that, because I spoke with John
23 Rafferty, and at the time I spoke with John Rafferty,
24 Senator Rafferty, my electric still was not on, but
25 that's besides the point, that's one of the things

1 that ---. And didn't I call --- do your records show
2 that I called your company on three different
3 occasions, that there were two different occasions
4 that day, and then the third time, which was the next
5 day, was when I got the sarcastic remark about taking
6 her to a hospital?

7 A. It wouldn't say a sarcastic remark, but it shows
8 that you did contact the company numerous times to try
9 and get a definite restoration time?

10 Q. That's correct. And my questions again, Your
11 Honor, my question is, why didn't they turn it on
12 right away when they knew that there was a medical
13 problem? My doctor faxed the documentation right away
14 showing that there was a medical problem and that
15 should have been taken care of immediately when
16 there's a medical problem.

17 A. Are you asking me a question?

18 Q. Yes, I am.

19 A. And what is your question?

20 Q. Why wasn't it restored right away?

21 A. No, not according to the restore policy, sir, was
22 the medical ---.

23 JUDGE WEISMANDEL:

24 Hold it. You can't both talk at the same
25 time. The Court Reporter cannot take down what two

1 people are saying at the same time.

2 BY MR. KERNER:

3 Q. Go ahead.

4 A. According to the restore policy, whether the
5 payment is a medical verification or by cash, we'll
6 make an attempt that day, but we have until the next
7 day working day to do such. It is never immediate.

8 Q. Wasn't it the gentleman who shut the electric off
9 and it's still in the same area?

10 A. He may have been. That's not necessary to say
11 he's the same individual that's responsible for
12 restoring the service.

13 Q. Well, why couldn't he have been notified the same
14 as he was notified to come and shut it off? You have
15 in this day of age of communication. You couldn't
16 contact him and tell him to come back and turn it on
17 if a certification was received at your office at 4:05
18 p.m.?

19 A. That's not the practice, Mr. Kerner.

20 Q. Putting the practice aside, you couldn't have done
21 that?

22 A. They could have. You couldn't do anything, but
23 that wasn't the practice. He was there only to
24 terminate services within the area.

25 Q. But it was negligence on your office staff to not

1 inform him that there was a medical problem, to send
2 him back and turn it on; right?

3 A. You're saying it's negligent on his part?

4 Q. No, I'm saying it's negligent on your office
5 staff's part. When they received the fax, why didn't
6 they contact him immediately?

7 A. Sir, they weren't obligated, so they tried to make
8 an attempt that day upon notification and they had the
9 end --- to the end of the next working day to do such.

10 Q. Wouldn't you say there was no attempt made?

11 A. Well, the order was there but again ---.

12 Q. Wouldn't you say there was no attempt made?

13 A. The service was restored October 28th and
14 obviously no attempt was made on that day, I'm not
15 sure. I'm not sure about the workload, but they did
16 restore within the restore policy.

17 Q. But there was no attempt made when it was done
18 immediately. When I called PECO Energy at 3:45, I had
19 my doctor fax them a copy. I called PECO Energy at
20 3:00, had them --- got their fax number and asked them
21 to fax a copy to my doctor. I called my doctor and
22 said, this is actually coming, he said it was already
23 there, that they faxed it to me and then turned around
24 and then gave him their fax number to make sure that
25 they had the fax number to send this back to him ---

1 the medical certificate back to him --- back to your
2 company, and they did so right away. And one of your
3 employees at 4:55 even admitted that they received it.

4 A. Mr. Kerner, we did receive your medical
5 verification and the only thing I can testify to is
6 that we restored the services within the restore
7 policy.

8 Q. And I'm saying wasn't there negligence on your
9 office staff in order to notify the person who's
10 terminated the service to come back and turn it on at
11 that time being as you had all the documentation?

12 A. I would have to say no to that.

13 MR. KERNER:

14 I have no further questions, Your Honor.

15 JUDGE WEISMANDEL:

16 All right. I have no questions for Ms.

17 Tarpley. Mr. Kanagy, anything else?

18 ATTORNEY KANAGY:

19 Nothing further, Your Honor.

20 JUDGE WEISMANDEL:

21 All right. Both parties have introduced
22 all of the evidence that they care to at this hearing
23 in the form of testimony by Mr. Kerner and Ms.
24 Tarpley. There has been no documentary evidence
25 offered into evidence.

1 Gentlemen, there is --- I have to make
2 available to you the opportunity to file a brief. A
3 brief, Mr. Kerner, for your benefit, is a written
4 document that says here are the facts that we're
5 proving, here is the law that applies, and if you mesh
6 the applicable law with these proven facts, you should
7 reach a decision in my favor. That's essentially what
8 a brief is. It's a written document that does those
9 things.

10 I'll be quite candid and say I don't
11 think either side would be prejudiced by not doing
12 briefs in this case. However, I do need to offer you
13 the opportunity. You do have the right to file briefs
14 if you want to, and I'd be happy to receive them and
15 utilize them in preparing my decision. Although, as I
16 said, I don't think either side is going to be hurt if
17 you don't do briefs.

18 Mr. Kerner, what's your pleasure, do you
19 --- are you interested in doing a brief?

20 MP KERNER:

21 No, Your Honor. I'm just pleased that I
22 had the opportunity to have my day in Court and let
23 you know of what went on in this circumstance and that
24 Mr. Kanagy understand my side of the case and that ---
25 and again, I'm not looking for any kind of justice as

1 far as money goes, I just want justice as far as
2 professionalism, that's all I'm asking.

3 JUDGE WEISMANDEL:

4 Understood.

5 MR. KERNER:

6 That's all I have to say.

7 JUDGE WEISMANDEL:

8 Understood. Thank you. Mr. Kanagy, Mr.
9 Kerner is willing to waive briefs. Are you also?

10 ATTORNEY KANAGY:

11 Yes, Your Honor.

12 JUDGE WEISMANDEL:

13 All right. I will get a written decision
14 out in due course and due course means within 90 days.
15 It will --- I hope, barring any unforeseen
16 circumstances. It will be a lot less than 90 days,
17 but I do have 90 days to do it. You will receive my
18 written decision in the mail. Along with that written
19 decision will come instructions as to how to take an
20 appeal from my decision. If either side feels it's
21 necessary to take an appeal, that appeal would be
22 directed to the Commission to the five Commissioners.
23 The nomenclature that the Commission uses for an
24 appeal is called exceptions, and as I said, there will
25 be written instructions that indicate how you go about

1 filing exceptions. I would caution both parties that
2 if you are intending or do intend to appeal my
3 decision by doing exceptions, please comply with the
4 time frame that's set forth in that cover letter. The
5 Commission has gotten much stricter about enforcing
6 the time limit for filing exceptions than it used to
7 be.

8 Any questions about that, Mr. Kerner?

9 MR. KERNER:

10 No, Your Honor.

11 JUDGE WEISMANDEL:

12 Mr. Kanagy?

13 ATTORNEY KANAGY:

14 No, Your Honor.

15 JUDGE WEISMANDEL:

16 All right. Thank you all very much.
17 That'll conclude the hearing in this matter and the
18 record is closed. Thank you.

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HEARING CONCLUDED AT 12:58 P.M.

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C E R T I F I C A T E

I hereby certify that the foregoing proceeding 8/24/04 Weismandel was reported by me, that I have read this transcript on 9/1/04, and I attest that this transcript is a true and accurate record of the proceeding.

Aimee Adams

Court Reporter

RECORDS BUREAU
09/01/04 1:40