

COMMONWEALTH OF PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

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Charles H. & Doro M. Kerr |  
v. |  
PECO Energy Company |  
Gas Division |  
Telephonic Hearing

Docket No.: C-200552093

Pages: 1-19

**DOCUMENT  
FOLDER**

1400 Broad & Spring Garden  
Street  
State Office Building  
Room 1302  
Philadelphia, PA

Friday, January 6, 2006  
Commencing at 10:05 a.m.

BEFORE:

MARLANE R. CHESTNUT, Administrative Law Judge

APPEARANCES:

LISA LUTZ, Esquire  
PECO Counsel  
2301 Market Street  
Philadelphia, PA 19101-8699  
For the Complainant

DORO KERR, Pro Se  
For the Respondent

REPORTER: JAMES C. POLLEX

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JUDGE MARLANE R. CHESTNUT:

Ookay. Just give me your name, your address and your telephone number, please.

MS. KERR:

Doro M. Kerr, K-E-R-R. 127 North Main Street, Newhope, Pennsylvania 18938. Phone number, 215-862-2127.

JUDGE CHESTNUT:

Thank you. Ms. Lutz, would you please identify yourself for the record.

ATTORNEY LUTZ:

Thank you, Your Honor. I'm Lisa Lutz, Counsel for PECO Energy. My business address is 2301 Market Street, Philadelphia, PA. My number is 215-841-6841.

JUDGE CHESTNUT:

Thank you. Now, Ms. Kerr, by letter dated November 16th, I received a packet of proposed exhibits from you --- A through G, I think; is that correct?

MS. KERR:

That is correct.

JUDGE CHESTNUT:

1                   Now Ms. Lutz, I didn't receive anything  
2 from you; is that correct?

3                   ATTORNEY LUTZ:

4                   That is correct, Your Honor.

5                   JUDGE CHESTNUT:

6                   Now, before we actually get started and  
7 have Ms. Kerr testify, it seems to me that this is a  
8 very settleable case. Have you tried to work this out  
9 amongst yourselves?

10                  MS. KERR:

11                  Yes. PECO has called me on two  
12 occasions, the last one was earlier this morning, and  
13 basically, we can't really work it out because our  
14 feeling is that we went --- we were put to great  
15 expense because a meter was affixed 100 feet away from  
16 where it should have been. And you know, that's where  
17 we are now. And I know PUC is not going to award any  
18 financial damages --- I understand that. I want you  
19 to know I understand that. I do feel that PECO should  
20 have to acknowledge that they were not in the right by  
21 having put the meter where it was to begin with,  
22 without ever telling us what the disadvantage to us  
23 would be, they were allowed to do that. And I feel if  
24 they were to acknowledge that, then we could discuss  
25 financial damages --- not with PUC.

1                   JUDGE CHESTNUT:

2                   Well, what exactly --- I'm not quite sure  
3 Ms. Kerr, what it is you're looking to get out of  
4 this.

5                   MS. KERR:

6                   I'm looking to see if you could  
7 determine, as we think we determined, that the meters  
8 were put in the wrong --- that the meter for the house  
9 was put in the wrong place. There is two meters. One  
10 is for the rental property building and that's  
11 correctly affixed to that building. And the other one  
12 --- three years later, when the house was built, was  
13 put right next to it instead of 100 feet away where  
14 the house is. I know that the line beyond the meter  
15 is my responsibility, and if the meter had been on the  
16 house, there would have been maybe five or six feet of  
17 problem to be responsible for, and the water didn't  
18 reach that high, anyway. If it had been on the house,  
19 it would have never damaged anything.  
20 That being that it was on the other building, the line  
21 went through the other building, through the patio,  
22 across all kinds of property that later on was built  
23 up and so on, and we felt that the placement of the  
24 meter caused an electrocute.

25                   ATTORNEY LUTZ:

1                   Your Honor, if I may --- I would like to  
2 offer that PECO is certainly willing to go out and  
3 investigate and survey whether it is feasible to move  
4 the meter. But Ms. Kerr has not agreed to that. But  
5 certainly we would be willing to do that to settle  
6 this case this morning.

7                   JUDGE CHESTNUT:

8                   Okay. What I was going to suggest, Ms.  
9 Kerr and Ms. Lutz --- Ms. Kerr, you're taking a big  
10 risk by proceeding with this. You're asking me to  
11 find that PECO rendered you inadequate service, by  
12 placing the meter where it did. Even though it was in  
13 violation of --- it wasn't in violation of their  
14 tariff or any kind of professional standard. So  
15 that's kind of risky. It's a very marginal kind of  
16 call. On the other hand, I may find that, so PECO has  
17 a bit of a risk here, also. But Ms. Kerr, I would  
18 think that you would be concerned with the placement  
19 of the meter in the future --- to avoid this happening  
20 again.

21                   MS. KERR:

22                   As I told PECO this morning, I will be  
23 glad to be concerned with that after we get the past  
24 settled. My concern right now is that I have paid at  
25 least \$10,000 worth of repairs and property damage and

1 so on, after having --- and having to put this line  
2 in. And I just felt that that was an inequity, and I  
3 wanted to determine whether PECO was not somewhat  
4 responsible for this, because of the placement of the  
5 meter to begin with. Then they have offered to come  
6 and investigate and adjudicate and all kinds of things  
7 --- not adjudicate, but investigate and perhaps place  
8 the meter on the house as a result of the  
9 investigation. All of this again, at my expense. So  
10 all I'm thinking of is, I've paid this \$10,000 in the  
11 past, I'm about to pay some more. I will have to  
12 consider that, and I did not refuse it. I just said  
13 this is the next step. First, I want to get the past  
14 settled, and then we'll talk about the future. But  
15 the two have nothing to do with each other at this  
16 moment.

17 JUDGE CHESTNUT:

18 Well, I'm sorry, I disagree with that. I  
19 think you would be very wise to consider the future in  
20 connection with what's happened in the past, in terms  
21 of determining how much risk of exposure you want to  
22 assume. Be that as it may, Ms. Lutz, are you willing  
23 to make some kind of financial movement here?

24 ATTORNEY LUTZ:

25 No, Your Honor. We are not going to make

1 any kind of financial commitment at this time. We are  
2 simply offering to go out and investigate the  
3 feasibility of changing the meter.

4 JUDGE CHESTNUT:

5 Now, that's not very much, frankly. I  
6 would expect you to do that anyway in response to  
7 request by Ms. Kerr.

8 ATTORNEY LUTZ:

9 Yes. We certainly have been asking her  
10 to do that, and that's what we want to do.

11 JUDGE CHESTNUT:

12 Well, it doesn't seem to me though  
13 --- in terms of giving up anything as part of a  
14 settlement, that that's committing that you're doing  
15 anything. Agreeing to go out and look at it just  
16 doesn't cut it, frankly.

17 ATTORNEY LUTZ:

18 Well, Your Honor, the meters are in the  
19 front of the property, and it is one parcel. And she  
20 had damage to her customer equipment.

21 JUDGE CHESTNUT:

22 I understand that. That's why I'm saying  
23 Ms. Kerr assumes a huge risk in not settling this  
24 case. But on the other hand, it's one parcel now, may  
25 not be one parcel in the future. At some point, the

1 meter should be put on the house. And if you do it in  
2 settlement of this case, it just seems like it would  
3 be a win/win for everybody. Now that assumes, Ms.  
4 Kerr, that you recognize that there's a big chance  
5 you're not going to get any money out of this.

6 MS. KERR:

7 I understand that risk.

8 JUDGE CHESTNUT:

9 Okay.

10 MS. KERR:

11 Since you're not able to award any  
12 damages, I just want to point out again that these are  
13 considered by PECO to be two properties inasmuch as  
14 they send us separate bills to separate addresses, and  
15 charge us separate rates. So you know, to me that is  
16 no question --- you know, this has been going on for  
17 40 years. This is not something sudden, and I just  
18 want to correct one impression. I did not refuse to  
19 considering moving the meter.

20 And I certainly will keep the past in  
21 mind when I do, you know. I know the risks now. But  
22 I didn't know the risks before --- I was never made  
23 aware of this. And here suddenly, I realize that  
24 because PECO for --- apparently for their convenience,  
25 put the meters near the street where they could quick

1 come in and read both of them, which is fine with me.  
2 I'm not against convenience. But I did not know that  
3 this convenience to them could potentially put me  
4 through such a big disadvantage.

5 JUDGE CHESTNUT:

6 Now, I understand that, and I have some  
7 sympathy, but from a legal perspective that's not all  
8 that important, Ms. Kerr, and I hope you understand  
9 that. The fact is, from what you've sent me and what  
10 you've had on your complaint, you never asked them to  
11 move it. It's not like you asked them to move it and  
12 they refused.

13 MS. KERR:

14 No, because I didn't know there was any  
15 reason to.

16 JUDGE CHESTNUT:

17 Well, the fact is, perhaps you should  
18 have known. That really was your responsibility to  
19 find out the extent of your responsibility as a  
20 property owner. Be that as it may, Ms. Lutz, do you  
21 want to talk some more to Ms. Kerr privately, or  
22 should we just go on here?

23 ATTORNEY LUTZ:

24 Your Honor, I would like the opportunity  
25 to continue our discussion, if that's okay with Ms.

1 Kerr.

2 JUDGE CHESTNUT:

3 Ms. Kerr?

4 MS. KERR:

5 Your Honor?

6 JUDGE CHESTNUT:

7 Yes.

8 MS. KERR:

9 PECO called me as long ago as 20 minutes  
10 ago to offer to come and look --- to move the meter  
11 and all of it sort of thing. My thought is while I  
12 should have known, as you say, I really couldn't have  
13 known unless I'd been told by PECO. And nobody ever  
14 advised us what the difference would be if the meters  
15 were put in the front or the back. I did not realize  
16 ---.

17 JUDGE CHESTNUT:

18 We understand that, Ms. Kerr. We're past  
19 that point now, okay? I understand that.

20 MS. KERR:

21 All right.

22 JUDGE CHESTNUT:

23 The fact is, you should have known. They  
24 should have told you, but you should have known. So  
25 let's deal with the situation as it is. Because of

1 where the meter was placed, you had to incur a large  
2 expense in replacing the line that was damaged; right?

3 MS. KERR:

4 Correct.

5 JUDGE CHESTNUT:

6 Well, I would think that you understand  
7 that this could happen again in the future --- and  
8 that you would want to avoid this.

9 MS. KERR:

10 And we will talk about this once we know  
11 what happens at this point.

12 JUDGE CHESTNUT:

13 Well, I don't understand --- again, Ms.  
14 Kerr, I just don't understand you. Because it seems  
15 to me that what you should be doing is talking to Ms.  
16 Lutz about resolving the situation that happened, as  
17 well as dealing with the future. This is your best  
18 opportunity to do that.

19 MS. KERR:

20 But once we do that, what recourse do we  
21 have for the past situations? At the moment, I'm  
22 interested in getting some relief from what has  
23 happened. And instead, PECO now suddenly tells me oh,  
24 they're willing to look into it and investigate, send  
25 somebody out. That was a long drawn-out story that

1 sounds like money to me, since they say it will be at  
2 my cost, you know.

3 JUDGE CHESTNUT:

4 Well Ms. Kerr, what I'm going to do is  
5 let you talk to Ms. Lutz. I've expressed my opinion  
6 that you would be assuming a huge risk in proceeding  
7 with this complaint; okay?

8 MS. KERR:

9 When you say a huge risk, what you mean  
10 is that it would then no longer be actionable; is that  
11 correct?

12 JUDGE CHESTNUT:

13 No, not at all. That you would lose your  
14 complaint. And again, PECO also has some risk here,  
15 so I would think that PECO would be very willing to  
16 talk to you about some money, as well as the  
17 possibility of moving your meter.

18 MS. KERR:

19 Well, they have in the past  
20 absolutely refused to do that.

21 JUDGE CHESTNUT:

22 Well, I think --- Ms. Lutz, do you want  
23 to talk to her on those terms, or not?

24 ATTORNEY LUTZ:

25 I certainly am, Your Honor.

1                   JUDGE CHESTNUT:

2                   All right. Then Ms. Kerr, what I'm going  
3 to do is --- I think Ms. Lutz is a very good attorney  
4 and I think she understands what I'm saying here. And  
5 I hope you understand what I'm saying, too, which is  
6 I'm trying to get a result here that is in your  
7 interest as well as PECO's interest.

8                   MS. KERR:

9                   I very much appreciate that, Your Honor.

10                  JUDGE CHESTNUT:

11                  So I'm telling you that this --- if this  
12 actually goes ahead and I have to write a decision,  
13 it's not going to be good for you. It might not be  
14 good for you, put it that way. There's a very real  
15 risk that you're not going to like it, and it's going  
16 to foreclose you from any kind of future action. So  
17 what I'm going to do now is I'm going to remove  
18 myself. And I'm going to let you talk with Ms. Lutz  
19 without me here, without it being on the record, and  
20 seeing if you can work this out, okay --- in terms of  
21 ---?

22                  MS. KERR:

23                  If we can talk beyond where we have  
24 already. In the past I talked ---.

25                  JUDGE CHESTNUT:

1 Well, I think we're past that point now;  
2 aren't we, Ms. Lutz?

3 ATTORNEY LUTZ:

4 Yes, we are, Your Honor.

5 JUDGE CHESTNUT:

6 Okay. Well, why don't you give Ms. Lutz  
7 a chance to see if she can resolve it with you, and  
8 let me know when you're done, and I'm come back; okay?

9 MS. KERR:

10 All right. Thank you, Your Honor.

11 JUDGE CHESTNUT:

12 Thank you.

13 ATTORNEY LUTZ:

14 Thank you.

15 OFF RECORD DISCUSSION

16 JUDGE CHESTNUT:

17 Ms. Lutz?

18 ATTORNEY LUTZ:

19 Yes, Your Honor?

20 MS. KERR:

21 Yes, Your Honor.

22 JUDGE CHESTNUT:

23 I'm back, and we'll go back on the  
24 record. Let me state that I gave the parties a chance  
25 to discuss this amongst themselves. Ms. Lutz, do you

1 have a report on that please?

2 ATTORNEY LUTZ:

3 Yes, Your Honor. We have reached a  
4 tentative settlement which would involve coming out  
5 and doing a survey and addressing some financial cost  
6 sharing. But that survey will take 30 to 45 days, and  
7 I believe Ms. Kerr has asked that this hearing be  
8 continued for 60 days pending a full settlement within  
9 those 60 days.

10 JUDGE CHESTNUT:

11 Okay. Do you object to that, Ms. Lutz?

12 ATTORNEY LUTZ:

13 No, that would be fine.

14 JUDGE CHESTNUT:

15 Okay. Ms. Kerr, is that correct?

16 MS. KERR:

17 Yes, that is correct.

18 JUDGE CHESTNUT:

19 Okay. Then what I'll do is, we will  
20 adjourn and I will have this hearing continued for 60  
21 days, and on or before that time, you'll report back  
22 to me whether or not that hearing will be necessary,  
23 or if it can be cancelled.

24 ATTORNEY LUTZ:

25 That is correct, Your Honor. And if it

1 has been settled, I will also file a Certification of  
2 Satisfaction with you.

3 JUDGE CHESTNUT:

4 Okay, that's fine. Ms. Kerr, do you  
5 understand that?

6 MS. KERR:

7 Yes, I do, and I thank you very much,  
8 Your Honor.

9 JUDGE CHESTNUT:

10 Well, thank you both.

11 ATTORNEY LUTZ:

12 Thank you.

13 JUDGE CHESTNUT:

14 Ms. Lutz, before we adjourn here --- Ms.  
15 Lutz, do you want a copy of the transcript?

16 ATTORNEY LUTZ:

17 No, Your Honor, I do not.

18 JUDGE CHESTNUT:

19 Okay. Thank you very much then. This  
20 hearing is adjourned.

21 ATTORNEY LUTZ:

22 Thank you.

23 \* \* \* \* \*

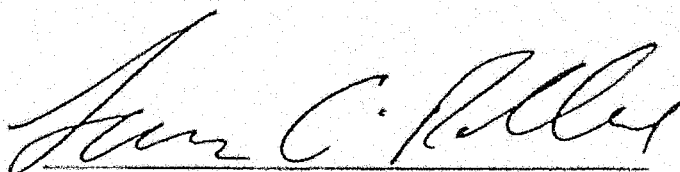
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