

Act 294

Case Identification:

F-01482857; Donald and Patty Taylor v.
PECO Energy Company

Initial Decision By:

ALJ Herbert Smolen

Deadline for Return to OSA:

March 28, 2007

This decision has not been reviewed by OSA.

RECEIVED
2007 MAR 28 PM 12:49
OFFICE OF SPECIAL ASSISTANTS

DOCUMENT
FOLDER

* * * * *

I want full Commission review of this decision.

Commissioner

Date

I do not want full Commission review of this decision.

Chairman Holland (RIS)

Commissioner

3/29/07

Date

DOCKETED
MAR 29 2007

Act 294

Case Identification:

F-01482857; Donald and Patty Taylor v.
PECO Energy Company

Initial Decision By:

ALJ Herbert Smolen

Deadline for Return to OSA:

March 28, 2007

This decision has not been reviewed by OSA.

* * * * *

OFFICE OF SPECIAL
ASSISTANTS

2007 MAR 28 AM 11:27

RECEIVED

I want full Commission review of this decision.

Commissioner

Date

I do not want full Commission review of this decision.

James H Cawley
Commissioner

3/28/07
Date

Act 294

Case Identification:

F-01482857; Donald and Patty Taylor v.
PECO Energy Company

Initial Decision By:

ALJ Herbert Smolen

Deadline for Return to OSA:

March 28, 2007

This decision has not been reviewed by OSA.

* * * * *

RECEIVED
2007 MAR 27 PM 2:05
OFFICE OF SPECIAL
ASSISTANTS

I want full Commission review of this decision.

Commissioner

Date

I do not want full Commission review of this decision.

Kim Fitzgerald
Commissioner

3/27/07
Date

Act 294

Case Identification:

F-01482857; Donald and Patty Taylor v.
PECO Energy Company

Initial Decision By:

ALJ Herbert Smolen

Deadline for Return to OSA:

March 28, 2007

This decision has not been reviewed by OSA.

* * * * *

RECEIVED
2007 MAR 16 PM 1:39
OFFICE OF SPECIAL
ASSISTANTS

I want full Commission review of this decision.

Commissioner

Date

I do not want full Commission review of this decision.

Terrance J. Fitzpatrick
Commissioner

Commissioner

3/15/07
Date

Date

Legal Department

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

Telephone 215.841.5544
Fax 215.568.3389
www.exeloncorp.com

Business Services
Company

Direct Dial: 215.841.6841

April 10, 2007

ORIGINAL

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

RECEIVED

APR 11 2007

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Donald and Patty Taylor v. Peco Energy Company
PUC Docket No. F-01482857

Dear Mr. McNulty:

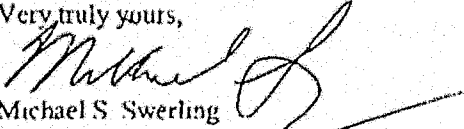
Enclosed for filing with the Commission are the following documents and copies in the matter referenced above.

- _____ Answer and New Matter (original and 3 copies)
- _____ Petition (original and 3 copies)
- _____ Preliminary Objection (original and 3 copies)
- _____ Reply to Motion/Petition (original and 3 copies)
- X Exceptions (original and 9 copies)
- _____ Reply Exceptions (original and 9 copies)
- _____ Brief (original and 9 copies)
- _____ Reply Brief (original and 9 copies)

DOCUMENT FOLDER

Also enclosed is an extra copy of this letter, which I request that you date stamp and return to me in the envelope provided as proof of filing. I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties.

Very truly yours,


Michael S. Swerling
Counsel for PECO Energy Company

MSS/zr

Enc.

Cc: Administrative Law Judge Herbert Smolen
Donald and Patty Taylor

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DONALD & PATTY TAYLOR

COMPLAINANT

v.

PECO ENERGY COMPANY

RESPONDENT

DOCKET NO. F-01482857

EXCEPTIONS OF PECO ENERGY COMPANY

DOCUMENT
FOLDER

DOCKETED
APR 13 2007

Michael S. Swerling
Counsel for PECO Energy Company
Exelon Business Services Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
Voice: 215-841-6841
Fax: 215-568-3389
E-mail: Michael.swerling@exeloncorp.com

Date: April 11, 2007

RECEIVED

APR 11 2007

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

I. Introduction

The central problem with rendering a back-bill in a theft of service/meter tampering case is that the act of tampering with the meter intentionally and permanently destroys the data that allows one to know the actual usage of the customer. True usage will never be known; all that can be created is an estimate of usage. Of course, numerous methods of estimation can be used. In choosing between those methods of estimation, "the central problem" rears its head: since one does not and cannot know the actual usage, there is no gold standard of accuracy against which to judge the various estimation methods. Put simply, it is not possible to objectively determine whether one estimation method is the most accurate measure of past, because there is no known measure of past usage against which to compare the results.

In such a situation, all one can hope to do is create a reasonable method of estimating past usage. The Commission has a long-standing procedure in place for determining what the reasonable method is for a given customer. If the customer challenges the utilities back-bill, then the customer comes forward as a complainant and meets its burden of proving that there are reasonable factual grounds for challenging the utility's back-billing method as applied to the customer. Then the utility presents its case defending its estimation method.

This case has strayed from that sensible time-tested approach. The customer stopped participating in this proceeding long ago. Although the Commission remanded this proceeding for the specific reason of taking evidence on factors that may have affected the Taylor's past usage, the Taylor's did not participate in those hearings and presented no evidence.

What does this mean for the Taylor's case? As set forth below in PECO's first exception, it means that the Commission should take this opportunity to re-affirm its commitment to its long-standing (and statutorily required) approach to having individual litigants prove their evidentiary cases. Also, as explained in PECO's second exception, it means that the record evidence in this case clearly establishes that, *in the Taylor household*, changes in occupancy, weather, and potential for conservation had no material effect on their electricity usage.

Finally, in PECO's third exception, it demonstrates that this case does not involve the sort of behavior that should result in a civil fine being imposed.

Exception 1: PECO's reliance on the *Waldron* rule is not misplaced. To the contrary, the Commission should re-affirm that the *Waldron* rule is still a valid rule in Commission law.

As noted above, in the Initial Decision ALJ Smolen made a statement with respect to PECO's arguments on the *Waldron* rule:¹

¹ The *Waldron* case sets forth the following rule with respect to the burden in back-billing cases.

In order to aid our determination as to whether complainant has established a prima facie case, we adopt the policy of the Michigan Public Service Commission [citation omitted]. In *Hallifax*, the Michigan commission held that while the accuracy of the meter is an important factor in resolving billing disputes, it is not the sole criterion: 'The commission will also consider the billing history of the complainant, any change in the number of occupants residing at the household, the potential for energy utilization, and any other relevant facts or circumstances that are brought to light during the complaint proceeding.' After the complainant shows these things, the burden shifts to the respondent.

Malcolm Waldron v. Philadelphia Electric Company, 1980 Pa. PUC LEXIS 90, 4-5, 54 Pa. PUC 98 (March 14, 1980).

Further, PECO's reliance on the *Waldron* doctrine is misplaced where, as aforesaid, PECO's own analysis discloses a 3% difference between estimation approaches and admits of at least a 3% difference attributable to such factors as occupancy, weather, and conservation.

PECO will deal with the substance of the evidence in this case in its second exception. However, PECO believes that this statement by the ALJ, when viewed together with the procedural history of this case, has the potential to create confusion with respect to future applications of the *Waldron* rule. It therefore respectfully requests that the Commission re-affirm that the *Waldron* rule is still Commission law and will be used in future back-billing cases.

The *Waldron* rule, originally established in *Malcolm Waldron v. Philadelphia Electric Company*, Docket No. C-771000047 (1980 Pa. PUC LEXIS 90; 54 Pa. PUC 98 (1980)), establishes several important aspects of Commission procedure in back-billing cases. Perhaps most importantly, the *Waldron* rule establishes the burden of proof and burden of going forward in a back-billing case. *Waldron* tells us that, when a complainant challenges a utility's back-billing determination, the complainant can satisfy his burden of going forward by presenting evidence that his usage likely differed from period to period. *Waldron* specifically notes that a complainant can satisfy his burden of moving forward by proving change in the number of occupants (before and after the meter tampering was discovered), "the potential for energy utilization" in the before and after periods, and "any other relevant facts or circumstances."

Once those factors have been established via substantial record evidence, the burden shifts to the utility to demonstrate that its back-billing is reasonable.

What is critical to understand about the *Waldron* case is that the a mere assertion or allegation by a Complainant does not satisfy his burden of proof or burden of going forward. For example, Mr. Waldron testified in detail regarding changes in his usage patterns, including that his residence was empty for six months during one of the periods, and also put on testimony by a professional engineer “that such amount of electricity could not have been consumed. . . .” It was in that context that the Commission concluded that the burden of going forward had shifted to Philadelphia Electric Company, which was then required to put on additional evidence regarding Mr. Waldron’s potential usage.

This basic construct has been a very useful part of the Commission’s jurisprudence for nearly 30 years, and effectively all of the Commission’s case law on back-billing incorporates, in some manner, the *Waldron* rule.

The instant case presents a bit of a challenge to the *Waldron* rule. In the first evidentiary hearing in this case – held prior to the remand order on January 12, 2005 – the Taylor’s primary argument was that they themselves had not engaged in meter tampering and therefore were not responsible for any unmetered usage. The Taylors testified regarding changes in occupancy – N.T. 16-18 – in detail that may have been sufficient to shift to PECO the burden of moving forward to review occupancy issues. (As discussed in the next section, PECO conducted a lengthy examination of that issue during the remand hearings.) But the Taylors presented no testimony – indeed, they made no mention – of changes in weather or the possibility that they might have engaged in conservation if given different price signals.

The Commission's remand order, entered on March 17, 2006, directed (p. 11) that additional evidentiary hearings be conducted in order to arrive at a "more accurate rebilling amount." It is PECO's belief that this directive was given within the framework of the Commission's existing jurisprudence, including the *Waldron* rule. Under that view of the remand order, the Taylors may already have satisfied their burden of moving forward with respect to occupancy² – and PECO would therefore be required to put on a case on occupancy on remand – but the Taylors would have a not-yet-met obligation to go forward with a case on weather and energy conservation.³ Under the *Waldron* rule, only after the presentation of a prima facie case on that issue would PECO have an obligation to move forward with its case on those issues.

² PECO notes that it is not at all clear that the level of proof put on by the Taylors with respect to occupancy was sufficient to shift the burden to PECO. For example, in LGS Donuts v. PECO Energy Company, Docket No. C-20054485 (March 06, 2006), as adopted by the Commission at public hearing held on June 01, 2006, the Complainant argued that PECO Energy "made no adjustment for the Complainant's earlier fewer employees, less equipment, reduced hours and less sales revenues." In LGS Donuts, the Complainant alleged his re-billing amount was too high and based this point on his testimony that there were more employees working currently at the establishment during the re-bill calculation period (using more electricity) than in the past unauthorized usage period and, therefore, the bills should be reduced. The Administrative Law Judge explained that "[t]he Complainant's testimony about its earlier fewer employees, less equipment, reduced hours and less revenue was of a general nature and only assertions. No matter how honest and strong its assertions are, they cannot form a basis for a finding in its favor. 'Mere bald assertions, personal opinions or perceptions do not constitute evidence.' Pennsylvania Bureau of Corrections v. City of Pittsburgh, 516 Pa. 75, (1987) " Id at 8.

However, if the Commission makes the clarification PECO requests with respect to the *Waldron* rule, this issue has little additional importance.

³ Consider *Thomas E Mack v. PP&L, Inc.*, Docket No. C-00981147, 1998 Pa. PUC LEXIS 246 (1998), where the Commission held that: "considering the size of the home and its electric appliances, one could conclude that Mr. Mack has not demonstrated that the potential for consumption is low. on the other hand, Mr. Mack maintains that he lowered the potential for consumption by installing various conservation measures. While Mr. Mack may have undertaken such measures, there is no evidence in the record by which to judge by how much Mr. Mack's usage should decrease when the house is winterized. Without such information, it is impossible to determine precisely how much of any change in consumption is due to factors such as changes in the weather. Because Mr. Mack bears the burden of proof, I have no alternative but to rule against him on this point." In the *Mack* case the customer failed to meet his burden because he provided nothing more than testimony. In the instant case, the Taylors did not even testify as to conservation and weather.

As it turned out, however, at the remand hearing on these issues, the Taylors did not appear and presented absolutely no evidence. PECO, however, was cognizant that the Commission wished to see a full evidentiary record on these issues, and so it put on a full case on these issues (the substance of which is discussed in PECO's second exception.) We are therefore faced with the somewhat unusual circumstance in which the Commission gave the complainants a second hearing in which to meet their burden of proof – and even gave the complainants some very specific suggestions on the areas in which the Commission would like to see that proof elicited – but the Complainants did not move forward in any respect to establish that evidentiary record.

Those unusual circumstances led to the development of an extensive evidentiary record, notwithstanding the fact that the Complainant had not presented even the most fundamental evidence on key issues – or even showed up for the hearing. While PECO is perfectly happy to take that record as it is (again, this is discussed in PECO's second exception), it does not believe that the Commission intended to override the *Waldron* rule. Nor, for that matter, is there any evidentiary record in this proceeding that would warrant overriding the *Waldron* rule. Notwithstanding the unusual circumstances of this case, PECO requests that the Commission re-affirm the *Waldron* rule and the 30 years of jurisprudence that has developed from it.

If, however, the Commission actually meant to order that PECO and other utilities should have to do an analysis of occupancy, weather and conservation in every back-billing case whether or not the Complainant raises those issues, PECO believes that such an order does constitute an abandonment of the *Waldron* principles. PECO notes that there is no record evidence to support such an abandonment. Moreover, such an

abandonment of the *Waldron* principles would run distinctly contrary to the more general principle of Commission jurisprudence, as set forth at 66 Pa. C.S. § 332(a), that the party seeking affirmative relief – in this case, the Taylors – have the burden of proof. In sum, PECO respectfully offers that any rule requiring PECO and other utilities to examine occupancy, weather, and conservation even when the Complainant has not raised those issues is unsupported by the record in this proceeding, would be bad policy because it would abandon years of working jurisprudence, and would run directly contrary to the statutory mandates of 66 Pa. C.S. § 332(a).

At the end of the day, PECO recognizes that, when ALJ Smolen wrote his Initial Decision, he took the extensive record as it stood before him, and that his statement regarding PECO's reliance on the *Waldron* rule may simply have been a statement that, given the full record and the Commission's order to develop a record on remand, there was no point in parsing burdens of proof under the *Waldron* rule. Nonetheless, as it tried to work through how it might have to apply the Taylor holding in future proceedings, it became apparent to PECO that it needed a clear statement from the Commission regarding the state of *Waldron*. PECO requests that the Commission make clear that this is, in fact, the ongoing state of Commission law in back-billing cases.

Exception 2: The record evidence in this case does not prove that a more accurate estimate of prior usage was obtained by looking at changes in occupancy, weather, and conservation, and the Commission therefore should not order PECO and other utilities to examine occupancy, weather, and conservation on a global basis, but instead should only require them to be examined where Complainants have made a *prima facie* showing that these factors have had a meaningful affect on usage.

The Commission's remand decision ordered (p. 11) additional hearings "as deemed appropriate to arrive at a more accurate re-billing amount." The Commission generally ordered that additional evidence be taken on PECO's current method of preparing back-bills, including supporting schedules and calculations, and that evidence be taken on the effect on usage caused by changes in occupancy, weather, and potential for conservation.

As noted above, the Taylors did not take advantage of this second opportunity to put on evidence with respect to the effect of occupancy, weather, and conservation. PECO, however, not only put on extensive evidence on those issues, it presented the supporting schedules and calculations for its current method, as directed by the Commission. The record evidence on these issues is thus effectively limited to PECO's evidence.⁴

The Initial Decision gives a detailed description of PECO's evidentiary case (pp. 7-15, and then briefly responds (pp. 15-16) to that record evidence as follows:

... PECO does not suggest that the Commission order a 3% correction to the makeup bill because PECO believes that the foregoing analyses strongly suggest that it is not necessary or appropriate to go to these great lengths to assess the effect of such exigent factors.

The Administrative Law Judge disagrees. PECO's own analysis, as directed by the Commission, admits to at least a 3% reduction in electric usage during the meter tampering period. Further, PECO's reliance on the Waldron doctrine is

⁴ As noted in Exception 1, the Taylors put on limited testimony with regard to occupancy in the initial January 2005 hearing, but presented no evidence on weather or conservation.

misplaced where, as aforesaid, PECO's own analysis discloses a 3% difference between estimation approaches and admits of at least a 3% difference attributable to such factors as occupancy, weather, and conservation.

It is no justification for an overestimated make-up bill that it is easier to compile same as against a more comprehensive analysis, even though the latter may consume additional time.

PECO Energy takes exception to this statement. As noted in the introduction to these Exceptions, the central problem with a meter tampering case is that the meter data on actual usage has been destroyed. There is no "gold standard" of known, actual usage against which the accuracy of estimation methods can be determined. Put most simply, when PECO adjusted for occupancy, weather, and conservation, the result was 3% different than the results from an estimation method that did not adjust for those factors. But there was not one word of evidence, much less the required level of substantial evidence, to prove that the estimation method using weather, etc. adjustments was a more accurate measure of what occurred in prior years, only that it was different. In effect, the Initial Decision assumes without proof that a method in which weather adjustment is used will *necessarily* result a more accurate estimation method. Look beneath that assumption, and one will find the further assumption that occupancy, weather, and conservation must logically cause a change in usage, and that therefore any method which adjusts for them will, perforce, be more accurate.

The record evidence did not demonstrate that. Instead, the record evidence convincingly demonstrates that when the Taylors dramatically changed the occupancy of their home, usage changed barely a whit; when the weather swung dramatically to much hotter or much colder, the Taylors used the same amount of electricity; when price signals were available and obvious, the Taylors did not conserve. As a result, in the case

of the Taylors, PECO's estimation resulted in an outcome that was virtually indistinguishable from the much more complex method involving occupancy, weather, etc.

PECO recognizes that there may be cases in which occupancy, weather, or other factors⁵ might cause a significant shift in usage. In any case in which the complainant comes forward and demonstrates that such is the case for the usage specifics at that home or business, such an adjustment might be appropriate. For example, if a customer presented evidence that a great deal of their summer load was driven by heavy use of air conditioning, and if they showed that the weather was sufficiently different in the two periods to cause changes in air conditioning use, then an adjustment would be appropriate.

But no such evidence was elicited in this proceeding. Indeed, Ms. Ferrier testified (N.T. 40-43) that numerous factors including the size and type of appliances and other usage factors could be expected to affect a household's reaction to changes in weather, or potential for conservation and that the Taylor's did not appear to have meaningful changes in usage despite extremely broad changes in occupancy, weather, and potential for conservation.

To the extent that the Commission sought additional record evidence to determine the effect of changes in occupancy, weather and conservation on usage in the Taylor

⁵ PECO does not include potential for conservation on the list of valid factors for a rebilling analysis. The fact that a customer might have had a different usage profile if given different price signals may not be considered in a rebilling context. The filed rate doctrine clearly holds that if the electric utility service is used, the customer must pay for that service. This is true even when the customer is able to demonstrate that, given a different set of information, it would have acted differently. In a rebilling context, the question to be answered, to the best extent possible given limited data, is what was actually used.

household, the record evidence is clear – changes in those factors in the Taylor household were reflected by virtually no change in usage.

To the extent that Commission remanded this matter because it sought additional record evidence to help it determine whether to establish a global rule requiring utilities to adjust for these factors whether or not raised by the Complainants, the record evidence in this proceeding is also extremely helpful in answering that inquiry. The record here proves that there are customers for whom changes in occupancy, weather, and conservation are effectively non-factors. Granted there may be other customers for whom it is a factor, the best way of distinguishing between the two situations is already embedded in Commission jurisprudence – before requiring the utility to conduct such an extensive analysis, require complainants to meet their initial burden of proving that these factors do affect usage in their household.

As a closing note on this issue, PECO also notes the following policy implications of this discussion. Everyone's interests – the customers, PECO's, and the Commission's -- are served by quick resolution and back-billing in meter tampering cases. In this case, there was a great deal of data available that would not normally be available at the time PECO calculates and renders a back-bill because of when the hearing occurred. If the Commission were to order that PECO and other utilities should evaluate occupancy, weather and conservation in every case, whether or not the complainant first meets its burden of proving that these factors affect its usage, then back-billing will be delayed in those cases.⁶ The record evidence in this proceeding not only does not support that

⁶ PECO respectfully submits that, contrary to the statement in the Initial Decision that "It is no justification for an overestimated make-up bill that it is easier to compile. . .," there are strong policy reasons to have the estimation method be easy and quick to perform. This is especially true where, as here, the record evidence demonstrates that using a more complex method results in virtually no difference in outcome –

approach, it demonstrates that there are cases where those factors have virtually no effect on usage.

Exception 3: PECO Energy's actions did not rise to the level of unreasonable service requiring a fine.

PECO Energy takes exception to the conclusion in the Initial Decision that it violated 66 Pa. C.S. § 1501 by failing "to observe and report a visible defective condition for a period of approximately four years," (I.D., Pg 18), under the *Rosi v. Bell Atlantic* test.

The Administrative Law Judge analyzed the following *Rosi* factors:

- Was the violation intentional? The ALJ found that it was not, and that upon discovering the error PECO took immediate corrective action. I.D., p. 18. This factor thus counsels AGAINST a fine.
- Was the customer returned to the appropriate carrier? The ALJ found that this factor applies only to telephone slamming cases and is not relevant in this case. I.D., p. 19. This factor is thus IRRELEVANT to a fine.

and no way of determining whether that outcome is more or less accurate as an estimation than the original estimate. Even the pursuit of accuracy must have its limits, which are defined in part by the resources that it takes to reach an additional quantum of accuracy. This is especially true where the resources are being expended in a quest for what may well be "false accuracy." The Commission previously made a similar ruling in LGS Donuts v. PECO Energy Co., Docket C-20054485 (entered June 1, 2006), in which it found (p. 6) that "[i]t is unrealistic to use a sample calculator of 426 days to calculate the Complainant's DAU. *Twenty days is a reasonable period of time that is needed to arrive at the Complainant's DAU.* [emphasis added].

- Did PECO take steps to ensure that this error would not happen again? The ALJ found that PECO took global remedial action by installing AMR meters. I.D. p. 19. This factor thus counsels AGAINST a fine.

- How many customer were involved? The ALJ found that only one customer was involved in the violation. I.D., p. 19. This factor thus counsels AGAINST a fine.

- Was the case settled, or litigated? The ALJ found that, although the case was litigated, PECO's position of issuing a back-bill was upheld by the Commission, noting further that in the remanded proceeding PECO fully explained its position and method, followed the Commission's directives on remand, and provided the data requested by the Commission. I.D., p. 19. This factor thus counsels AGAINST a fine.

- What is the compliance history of the Company? Although the ALJ made no specific finding on this issue, I.D., p. 19, PECO respectfully submits that it has a strong compliance history with the Commission, and that at a minimum there was no record evidence in this proceeding to suggest that it is a "problem" company. PECO therefore believes that this factor also counsels AGAINST a fine.

- Did the Company cooperate with the Commission? As the ALJ noted in his earlier discussion, I.D., p. 19 "In this remanded proceeding, PECO fully explained its rationale for the make-up bill rendered and, in addition, following the Commission's directive, presented other methodologies for computing same." PECO respectfully

submits that this statement demonstrates that this *Rosi* factor also counsels AGAINST a fine.

- Is a fine necessary to deter future violations? The ALJ found that PECO already, and voluntarily, affected a comprehensive system fix, via AMR, to avoid future violations. PECO respectfully submits that, given those developments, no fine is needed to deter future violations and that this factor also counsels AGAINST a fine.

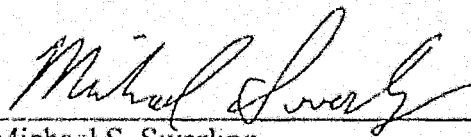
- Did the Company act in good faith to comply with the applicable law? The ALJ specifically stated that he “recognizes the Company’s good faith effort to comply with the applicable law,” which should mean that this factor counsels AGAINST a fine.

The ALJ did not identify or discuss a single factor that counsels FOR a fine. PECO respectfully submits that, given the above, no fine is warranted in this case.

CONCLUSION

PECO Energy respectfully requests that the Commission re-affirm its commitment to the Waldron rule, conclude that the record evidence in this case does not demonstrate that changes in occupancy, weather, or potential conservation affected usage in the Taylor household, and withdraw the civil fine recommended by the Administrative Law Judge.

Respectfully Submitted,



Michael S. Swerling
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
(215) 841-6841
Michael.Swerling@exeloncorp.com

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DONALD & PATTY TAYLOR

COMPLAINANT

v.

PECO ENERGY COMPANY

RESPONDENT

DOCKET NO. F-01482857

VERIFICATION

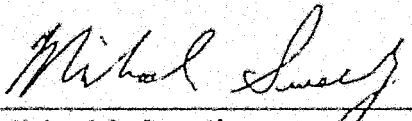
I, Michael S. Swerling, hereby declare that I am an attorney representing PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification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

RECEIVED

APR 11 2007

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Date: April 11, 2007



Michael S. Swerling

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DONALD & PATTY TAYLOR

COMPLAINANT

v.

PECO ENERGY COMPANY

RESPONDENT

DOCKET NO. F-01482857

CERTIFICATE OF SERVICE

I 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:

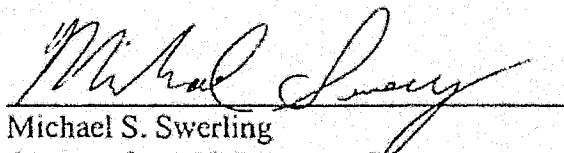
DONALD & PATTY TAYLOR
4907 Parkside Avenue
Philadelphia, PA 19131

Dated at Philadelphia, Pennsylvania, April 11, 2007.

RECEIVED

APR 11 2007

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU



Michael S. Swerling
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
(215) 841-6841
Michael.Swerling@exeloncorp.com

Legal Department

Exelon Business Services Company
2301 Market Street/5231
P.O. Box 8699
Philadelphia, PA 19101 8699

Telephone 215 841 5544
Fax 215 568 3389
www.exeloncorp.com

Business Services
Company

ORIGINAL

Direct Dial 215 841 6841
Fax 215 568 3389

April 11, 2007
Via Fax and Express Delivery

DOCUMENT FOLDER

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

RECEIVED
APR 11 2007
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RE: Donald & Patty Taylor v. PECO Energy Company
PUC Docket No. F-01482857

Dear Secretary McNulty:

Enclosed are an original and 9 copies of PECO Energy's Exceptions in this matter.

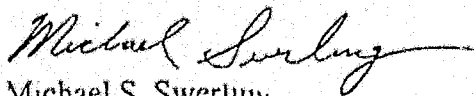
These Exceptions were due on April 4, 2007. However, the ALJ's Initial Decision, which was issued by the Commission on March 15, 2007, was delayed in the U.S Mail and did not arrive at PECO's office until six days later, on March 21, 2007. A few days after the Initial Decision arrived, I was hit by a horrible virus that lasted, with vigor, for about 10 days, during which time I worked very limited hours.

PECO requests that the Commission accept these Exceptions nunc pro tunc. No party will be prejudiced by accepting PECO's Exceptions at this time. Although this litigation has been ongoing since 2004, the Taylor's ceased participating in this proceeding long ago, and there is no other active participant. However, to the extent that the Taylors or any other party wish to file Reply Exceptions, PECO has no objection to extending the period of time for such Reply Exceptions. Also note that the Taylors originally filed exceptions late before this case was remanded and those exceptions were allowed for consideration.

Therefore, please accept PECO Energy's late-filed Exceptions nunc pro tunc as being filed timely due to factors that beyond my control.

If you have any questions regarding this PECO's Exceptions or this request, please contact me at (215) 841-6841.

Sincerely,

A handwritten signature in cursive script that reads "Michael Swerling". The signature is fluid and extends to the right with a long horizontal stroke.

Michael S. Swerling
Counsel for PECO Energy

Cc: Donald & Patty Taylor
Ms. Teresa Ferrier

Legal Department

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

Telephone 215 841 5544
Fax 215 568 3389
www.exeloncorp.com

Business Services
Company

DOCUMENT
FOLDER

Direct Dial 215 841 6841
Fax 215 568 3389

April 17, 2007
Via Fax and Express Delivery

ORIGINAL

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

RECEIVED

APR 17 2007

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RE: Donald & Patty Taylor v. PECO Energy Company
PUC Docket No. F-01482857

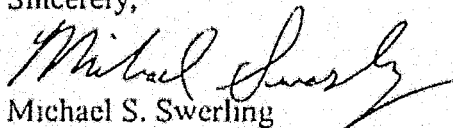
Dear Secretary McNulty:

Pursuant to Administrative Law Judge Herbert Smolen's Initial Decision, which was issued by the Commission on March 15, 2007, PECO Energy was ordered to submit written confirmation to the Commission that it had revised Complainant's make-up bill down to \$4,721.38.¹

Please allow this letter to serve as the written confirmation that PECO Energy has adjusted the Taylors' make-up bill amount down to \$4,721.38 as ordered in the Initial Decision at paragraphs 1 and 2.

If you have any questions regarding this adjustment, please contact me at (215) 841-6841.

Sincerely,



Michael S. Swerling
Counsel for PECO Energy

Cc: Donald & Patty Taylor
Administrative Law Judge Herbert Smolen
Ms. Teresa Ferrier

¹ For your convenience please see the attached excerpts from the Order requiring PECO Energy to make the billing adjustment.

29



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

IN REPLY PLEASE
REFER TO OUR FILE

ISSUED: March 15, 2007

ZULMA RODRIGUEZ

MAR 21 2007

F-01482857

Due - 4/4

MICHAEL S SWERLING ESQUIRE
PECO ENERGY COMPANY
2301 MARKET STREET S23-1
PO BOX 8699
PHILADELPHIA PA 19101-8699

Donald and Patty Taylor
v.
PECO Energy Company

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision on Remand of Administrative Law Judge Herbert Smolen. This decision is being issued and mailed to all parties on the above specified date.

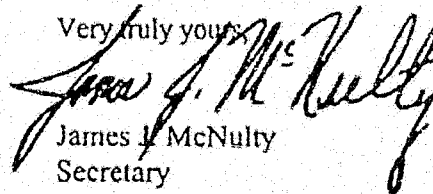
If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions MUST BE FILED WITH THE SECRETARY OF THE COMMISSION 2ND FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265, within twenty (20) days of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within ten (10) days of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

If no exceptions are received within twenty (20) days, 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,


James J. McNulty
Secretary

Encls.
Certified Mail
Receipt Requested
MH

ORDER

THEREFORE,

IT IS ORDERED:

1. That PECO Energy Company, to the extent that it has not already done so, revise the make-up bill for Complainants for the period of time from March 27, 1998 to January 11, 2002 so that it totals the amount of \$4,721.38.

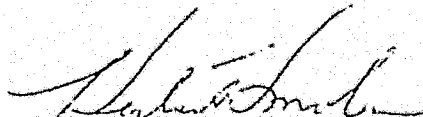
2. That within thirty (30) days of the date of the entry of the Commission's Order in this matter, PECO Energy Company shall submit to the Commission written confirmation of compliance with Paragraph 1 of this Order.

3. That for the violation of 66 Pa. C.S. §1501, PECO Energy Company shall pay a civil penalty of One Thousand Dollars (\$1,000.00) by sending a certified check or money order within twenty days after the date of the entry of the Commission's Order in this matter payable to:

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

4. That this matter be marked closed.

Date: February 13, 2007


Herbert Smolen
Administrative Law Judge

PECO Energy Company
2301 Market Street
PO Box 8699
Philadelphia, PA 19101-5699

www.exeloncorp.com



An Exelon Company

ORIGINAL

April 19, 2007

ORIGINAL

Mr. James J. McNulty
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

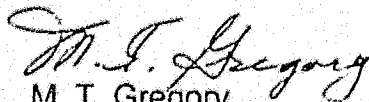
Re: Donald & Patty Taylor v. PECO Energy Company
Docket No. F-01482857

Dear Secretary McNulty:

PECO Energy's check No. 0028011881 for \$1000 to satisfy the civil penalty in the referenced case will arrive under separate cover. Enclosed is company confirmation that the check has been generated and mailed.

Please accept our apologies for the delay in closing this case. If you have any questions regarding this matter, please call T. Ferrier at 215.841.6330.

Very truly yours,


M. T. Gregory

Enclosure

DOCUMENT
FOLDER

Copy: T. Ferrier

DOCKETED
APR 23 2007

2007 APR 23 11 59 23

11

POOR ORIGINAL

20071113 23 11:05 AM

11/13/07 PAYMENT DETAILS | FID Production (PDGP)

File Edit Navigate Options View Help

Select to view check. Exit or Cancel to return to the payment processing panel.

Payment Ref #: 900201200000 Pymt Status: PAID [04/9/2007]

Invoice No: 031507 Inv. Status: COMPLETE [04/9/2007]

Vendor Code: 0041 Lins: 0001 Line Status: COMPLETE [04/9/2007]

Personnel ID: Separate Chk: Apply Int: Acct Date: 04/01/2007

Bank ID: 057001 Acct: 29675521 Currency: USD RTN: 031100047

Code	Remit Comments
	Taylor v. PECO CNE
	Penalty \$1000 F-01482857

Code	Remit Comments

Date	Status	Check No	Amount	Cur	Chk Date	Mthl	Recon	Amien
04/09/2007	PAID		\$1,000.00	USD	04/09/2007	CHK		

DATE: April 23, 2007

SUBJECT: F-01482857

TO: Cheryl W. Davis, Director
Office of Special Assistants

FROM: James J. McNulty
Secretary
nvl

DOCKETED
APR 25 2007

DONALD PATTY TAYLOR
v.
PECO ENERGY COMPANY

DOCUMENT
FOLDER

Copies of the Initial Decision have been served upon all parties of interest.

Exceptions have been filed by:

PECO ENERGY COMPANY

Reply Exceptions have been received from:

cc: Susan Hoffner

BTL