

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

Direct Dial: 215-841-6841

March 20, 2017

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

RE: Miro Kamenik v. PECO Energy Company
PUC Docket No.: C-2017-2593898

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *Preliminary Objection of Respondent, PECO Energy Company* with regard to the matter referenced above.

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Thank you for your time and attention on this matter.

Very truly yours,



Shawane Lee
Counsel for PECO Energy Company

SL/ab

cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MIRO KAMENIK

Complainant

v.

PECO ENERGY COMPANY

Respondent

:
:
:
:
:
:
:

DOCKET NO. C-2017-2593898

NOTICE TO PLEAD

To: Miro Kamenik

Pursuant to 52 Pa. Code §§ 5.101 and 5.62(c), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Preliminary Objection within 10 days from service of this notice, a ruling may be entered against you. Your response must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Shawane L. Lee, and where applicable, the Administrative Law Judge presiding over the issue.

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

File with:

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

With a copy to:

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

Dated: March 20, 2017



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103
Tel. (215) 841-6841
Fax. (215) 568-3389
shawane.lee@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MIRO KAMENIK	:	
Complainant	:	
	:	
v.	:	DOCKET NO. C-2017-2593898
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

PRELIMINARY OBJECTION

PECO Energy Company ("PECO"), pursuant to 52 Pa. Code §5.101(a)(1), respectfully requests that your Honorable Commission dismiss the instant complaint and hold that the Commission is without jurisdiction to order payment arrangements to any utility customer who is a debtor in an active Chapter 13 Bankruptcy case, for the reasons set forth below.

I. Introduction

1. This case involves the question of whether the Commission has jurisdiction to order a payment arrangement for a utility customer who has an active Chapter 13 Reorganization Bankruptcy case pending. As explained below, the mere pendency of a Chapter 13 Bankruptcy case for the debtor/customer automatically preempts the Commission from establishing any payment arrangement with the utility, regardless of the specifics of the debtor/customer's case. When a Chapter 13 Bankruptcy is pending, the Bankruptcy Court has exclusive jurisdiction of all property of the debtor, and therefore, the Commission has no jurisdiction to issue an order which affects the debtor's property, such as an order directing the debtor to make payments to a utility company.

II. Procedural History

2. Complainant, Miro Kamenik (“Complainant”) filed a formal complaint against PECO on or about March 14, 2017. Mr. Kamenik’s formal complaint requests a payment agreement. A copy of Complainant’s Formal Complaint is attached hereto as Exhibit “1”.

3. Specifically, the Complainant alleges in his complaint “I want to set up a reasonable payment plan.” In his request for relief, the Complainant states “I want to pay current monthly charges + \$500.”

4. PECO filed an Answer with New Matter and Notice to Plead to the formal complaint on March 20, 2017. A copy of PECO’s Answer and New Matter is attached hereto as Exhibit 2.

5. Pursuant to 52 Pa. Code § 5.101, preliminary objections may be filed against a complaint and dismissed for lack of Commission jurisdiction. 52 Pa. Code § 5.101(a)(1).

6. Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil procedure.¹

7. In deciding preliminary objections, the Public Utility Commission must determine, based on the factual pleadings of the petitioner, if relief or recovery is possible.²

8. A complaint must be able to recover under the law to survive a preliminary objection.³

9. All of the non-moving party’s averments must be taken as true for the sake of deciding the preliminary objection.⁴

¹ *Equitable Small Transportation Interveners v. Equitable Gas Co.*, 1994 Pa.PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994)

² 2006 Pa. PUC Lexis 111, *7.

³ *Milliner v. Enck*, 709 A.2d 417, 418 (Pa. Super. Ct. 1998) (“preliminary objection should be sustained only where it appears with certainty that, upon the facts averred, the law will not allow the plaintiff to recover”).

⁴ *Id.* at 7-8.

10. The court does not, however, need to accept, “unwarranted inferences from facts, argumentative allegations, or expressions of opinions.”⁵

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

12. A hearing is required only when there is a disputed question of fact, and is not required to resolve questions of law. Dee-Dee Cab, Inc. v. Pa.Pub. Util. Comm’n, 817 A.2nd 593 (Pa.Comm. Ct. 2003), petition for allowance of appeal denied, 836 A.2d 123 (Pa. 2003).

13. Here, there are no genuine issues of fact and PECO Energy is entitled to judgment as a matter of law with respect to all of the allegations in the Complaint.

14. The U.S. Bankruptcy courts have exclusive jurisdiction over the Complainant’s assets. All claims against a debtor, including claims arising subsequent to the filing of a petition, are to be adjusted and paid in accordance with the plan required by Chapter 13. Thus, the Complainant filing a petition for personal bankruptcy has preempted the Commission from establishing any payment schedule with respect to amounts owed by the Complainant to PECO. See Michelle Chavous v. PECO Energy Company, Docket No. F-2010-2215680 (Final Order entered Dec. 20, 2011).

15. Because the pleadings in this case demonstrate that the Commission has no subject matter jurisdiction over the Complainant’s payment agreement as he has an active Chapter 13 bankruptcy. Therefore, pursuant to 52 Pa. Code §5.101(a)(1), the Commission should grant PECO’s Preliminary Objections.

⁵ Feingold v. McNulty, 2009 Phila. Ct. Com. Pl LEXIS 167, *3.

III. Statement of Undisputed Facts

16. Complainant filed for Chapter 13 Bankruptcy on February 16, 2017 in the Eastern District of Pennsylvania. The Complainant's Chapter 13 Bankruptcy was assigned Docket No. 17-11099. A copy of the docket for the Complainant's Chapter 13 bankruptcy case, confirming the filing date and docket number, is attached hereto as Exhibit "3".

17. According to the Complainant's Bankruptcy Docket, William C. Miller has been appointed the bankruptcy Trustee in connection with the Complainant's Chapter 13 reorganization. See Exhibit "3".

18. According to the Bankruptcy Docket, the Complainant's bankruptcy case is active and has not been discharged. See Exhibit "3".

IV. Legal Argument

19. The Commission lacks subject matter jurisdiction over the Complainant's request for payment terms on his PECO account balance because he has filed a Chapter 13 bankruptcy petition and his petition is still active.

20. The Commission has only duties, powers, responsibilities and jurisdiction as were expressly or by necessary implication given to it by the Legislature. Rogoff v. The Buncher Company, 395 Pa. 477, 151 A.2d 83 (1959); Western Pennsylvania Water Company, 10 Pa. Commw. 533, 311 A.2nd 390 (1973). The commission must act within, and cannot exceed, its jurisdiction. City of Pittsburgh v. Pa. P.U.C., 157 Pa. Super. 595, 43 A.2d 348 (1945). Jurisdiction may not be conferred by the parties where none exists. Roberts v. Martorano, 427 Pa. 581, 235 A.2d 602 (1967).

21. The Commission lacks jurisdiction to issue an Order affecting a customer's assets when that customer has an active Chapter 13 Bankruptcy case. In the case of Anyawu v.

Philadelphia Electric Company, 55 Pa. P.U.C. 221 (1981), the Commission dismissed a complaint seeking an amortized payment agreement by a debtor in a Chapter 13 bankruptcy, finding that: “[T]he Complainant’s filing of a petition for personal bankruptcy has pre-empted this commission from establishing any payment schedule with respect to any amounts owed by the Complainant to the Respondent. Accordingly, we must dismiss this complaint for lack of subject matter jurisdiction.” The Commission reiterated this principle in the case of Benjamin v. Equitable Gas Company, PA PUC Docket No. C-20032180 (Order entered January 20, 2005). In that case, the Commission also determined that it lacked subject matter jurisdiction over a customer’s complaint, explaining: “As provided by § 1471 of Title 28, United States Code (28 U.S.C. § 1471), a United States District Court and its Bankruptcy Court has jurisdiction over all civil proceedings arising under Title 11, and the Bankruptcy Court has exclusive jurisdiction of all property of the debtor, wherever located, as of the commencement of the proceeding.”

22. In the case of Borlak v. Columbia Gas Company of Pennsylvania, Docket No. C-2008-2064344, (Order entered July 6, 2009), the Commission stated “...[t]he Bankruptcy Court has exclusive jurisdiction over the Complainant’s property and the Commission cannot order a payment arrangement.” See also, Smith v. Equitable Gas Company, 1996 Pa. PUC LEXIS 192 (1996) (“The Commission did not have jurisdiction over the bulk of the issues raised by the Complainant.”); Hodge v. Equitable Gas Company, 1997 Pa. PUC LEXIS 76 (1997) (“Any motions or petitions pertaining to deposits, including requests for a lesser deposit must be brought before the Bankruptcy Court”); Mattson v. PECO Energy Company, Docket No. F-00349372, Order entered Sept. 23, 1998 and Saunders v. PECO Energy Company, Docket No. F-00433998, Order entered June 25, 1999).

23. The Chapter 13 preemption results from the bankruptcy court's exclusive control over all of the debtor's income and assets. Under 28 U.S.C. § 1471, no other agency or authority – including the Commission – has the authority to issue an order that affects the disposition of the debtor's income or assets, because after the filing of a Petition, the Bankruptcy Court has exclusive jurisdiction over the disposition of the debtor's assets. See Benjamin v. Equitable Gas Company, PA PUC Docket No. C-20032180 (Order entered January 20, 2005).

24. Under Section 1306(2) of the Bankruptcy Code, the debtor's Bankruptcy estate includes the debtor's "earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 11, or 12 of this title, whichever occurs first." In other words, all of the debtor's income during the pendency of the Chapter 13 Bankruptcy case is considered part of the estate that is subject to the exclusive control of the Bankruptcy Trustee.

25. A Commission Order imposing a payment agreement would violate the Bankruptcy Code's exclusive jurisdiction over a debtor's assets. An Order by the Commission fixing a monthly payment arrangement by the customer necessarily impacts the debtor's Chapter 13 proceeding. Such an Order by the Commission binds the debtor to dispose of his or her assets, i.e., it binds the debtor to use a portion of the assets to pay the utility company. This would be a clear violation of the Bankruptcy Court's exclusive jurisdiction over the debtor's assets.

26. It must be noted that the specifics of the Commission-ordered payment arrangement are irrelevant to the determination of jurisdiction. The mere pendency of a Chapter 13 Bankruptcy case for the debtor/customer automatically pre-empts the Commission from establishing a payment arrangement with a utility, regardless of the specifics of the

debtor/customer's Bankruptcy Plan or income. Any Commission decision about the debtor's assets are to be spent would result in a per se violation of the Bankruptcy Code. Therefore, once it is proven that a customer has an active Chapter 13 Bankruptcy cases, the Commission's inquiry into a possible payment arrangement should end there, and the case should be dismissed for lack of subject matter jurisdiction.

27. In the present case, PECO has supplied a publicly available record in the form of a docket which clearly shows that the Complainant has an active Chapter 13 Bankruptcy. Therefore, the inquiry should end there, and in accordance with the precedent referenced above, the Commission should recognize that it is pre-empted from ordering a payment arrangement in connection with the Complainant's unpaid post-petition PECO account.

28. PECO respectfully requests that the Commission issue an Order dismissing the Complainant's formal complaint for lack of subject matter jurisdiction.

REQUEST FOR RELIEF

WHEREFORE, for all of the reasons stated herein, PECO respectfully requests that the Commission deny Complainant, Mr. Kamenik's request for a payment agreement, and confirm that the Commission is without jurisdiction to order payment arrangements to utility customers who are debtors in active Chapter 13 Bankruptcy cases.

Respectfully submitted,



Shawane L. Lee
PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19103
(215) 841-6841
Fax: 215.568.3389
Shawane.Lee@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MIRO KAMENIK	:	
Complainant	:	
	:	
v.	:	DOCKET NO. C-2017-2593898
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Preliminary Objection upon the party listed below, in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party).

VIA First Class Mail
Miro Kamenik
3901 Charter Club Drive
Doylestown, PA 18902



Shawane L. Lee

DATED: March 20, 2017

EXHIBIT 1

Botak, Amy:(PECO)

From: eServe@pa.gov
Sent: Friday, March 17, 2017 8:41 AM
To: Lee, Shawane L:(PECO)
Cc: Botak, Amy:(PECO)
Subject: [EXTERNAL] PA PUC eServe Notice

Importance: High

Dear Shawane L. Lee,

A(n) **Formal Complaint** has been served in this proceeding. This document is docketed as **C-2017-2993898**.

You may view this document at
Formal Complaint - Kamenik

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

Thank You,
Public Utility Commission
Commonwealth of Pennsylvania

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

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint

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

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

1. Customer (Complainant) Information

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

Name Miro & Colleen Kamenick

Street/P.O. Box 394 Charter Cld Dr Apt #

City Doylesstown State Pa Zip 18902

County Bucks

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

(267) 864-6301 (home) () (mobile)

E-mail Address (optional): miro1297@verizon.net

Utility Account Number (from your bill) 21212 00705

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

Name

Street/P.O. Box

City State Zip

2. Name of Utility or Company (Respondent)

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

PECO

PA P.U.C. SECRETARY'S BUREAU

2017 MAR 16 PM 1:27

RECEIVED

3. Type of Utility Service

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

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

4. Reason for Complaint

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

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

I would like a payment agreement.

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

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

Other (explain).

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

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

5. Requested Relief

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

I want to set up a reasonable payment plan! I want to pay current monthly charges + it goes to take care of outstanding balance.

I also need a C-PAP to assist me with breathing at night. I have severe sleep apnea which could result in heart failure or other potentially fatal

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

6. Protection From Abuse (PFA)

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

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

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

YES

NO

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

7. Prior Utility Contact

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

YES

NO

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

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

YES

NO

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

9. Verification and Signature

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

Verification:

I, Miro Kamenik, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).



(Signature of Complainant)

9/14/17

(Date)

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

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

10. Two Ways to File Your Formal Complaint

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

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

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

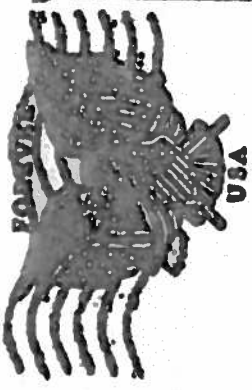
Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, Pennsylvania 17120

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

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

Keep a copy of your Formal Complaint for your records.

Kamenik
391 Charter Club Dr
Doylesstown Pa 18902



PHILADELPHIA PA 190

13 MAR 2017 PM 9 L

Secretary
Pa PVC
4cc North St
Harrisburg Pa 17120

17120-021199



EXHIBIT 2



PENNSYLVANIA
PUBLIC UTILITY COMMISSION

CONSUMERINFO UTILITY&INDUSTRY FILING&RESOURCES ABOUTPUC CONTACTUS

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eFiling Successfully Transmitted



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

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

If your filing exceeds 250 pages, you are required to submit one paper copy of the filing within 3 business days of submitting the electronic filing. This paper copy can be mailed to: Secretary, Pennsylvania Public Utility Commission, Commonwealth Keystone Building, 400 North Street, 2nd Floor, Harrisburg, PA 17120 . Please print a copy of this page and attach it to the paper copy of your filing as the first page.

eFiling Confirmation	
Docket Number:	C-2017-2593898
Description:	Miro Kamenik v. PECO Energy Company Answer to Formal Complaint
Transmission Date:	3/20/2017 12:21:40 PM
Filed On:	3/20/2017 12:21:40 PM
eFiling Confirmation Number:	1670153

Uploaded File List

File Name	Document Class	Document Type
Kamenik - Answer.pdf	Communication	Answer to Formal Complaint



An Exelon Company

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

Direct Dial: 215-841-6841

March 20, 2017

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

RE: Miro Kamenik v. PECO Energy Company
PUC Docket No.: C-2017-2593898

Dear Ms. Chiavetta:

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

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Thank you for your time and attention on this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Shawane Lee".

Shawane Lee
Counsel for PECO Energy Company

SL/ab
Enclosure

cc: *Scheduling Recommendation: Call of the Docket*

PENNSYLVANIA PUBLIC UTILITY COMMISSION

MIRO KAMENIK

Complainant

v.

PECO ENERGY COMPANY

Respondent

DOCKET NO. C-2017-2593898

NOTICE TO FLEAD

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

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

With a copy to:
Shawane L. Lee, Esq.
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103

Dated at Philadelphia, PA, March 20, 2017



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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MIRO KAMENIK
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v.

PECO ENERGY COMPANY
Respondent

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DOCKET NO. C-2017-2593898

ANSWER OF RESPONDENT,
PECO ENERGY COMPANY

On March 17, 2017, PECO Energy Company ("PECO Energy") was served with a formal complaint filed by Miro Kamenik, hereafter ("Complainant") in the above captioned docket.

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

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

In his formal complaint, Complainant states that PECO Energy is threatening to terminate his utility service. The Complainant requests a reasonable payment plan. The Complainant states that he wants to pay current monthly charges plus \$500.00. PECO Energy avers that the Complainant is not entitled to another payment agreement pursuant to 66 Pa. C.S. §1405(d).

The Complainant established an account for gas and electric service with PECO Energy at 3901 Charter Club Drive, Doylestown, PA 18901 under account number 21212-00705. See Account Activity Statement, attached hereto as Exhibit "1".

On October 24, 2011, the Complainant filed an informal complaint with the Bureau of Consumer Services ("BCS") at case number 002902844, requesting a payment agreement. The BCS issued a Level 4 payment agreement on the Complainant's \$17,439.92 balance. Under the agreement, the Complainant was to pay a budget bill of \$324.00 per month plus a monthly arrears payment of \$2,907.00. See BCS Decision Report #002902844, attached hereto as Exhibit "2". The agreement defaulted.

The Complainant filed a formal complaint at docket number F-2012-2281997, requesting a payment agreement. Special Agent Tiffany Hunt issued an Initial Decision on August 3, 2012, dismissing the Complainant's complaint. In the Decision, Special Agent Hunt stated the Complainant remained a Level 4 income customer and was to pay the balance in six months. See Initial Decision, dated 8/3/12, attached hereto as Exhibit "3".

On July 22, 2013, the Complainant filed an informal complaint at case number 003125605, requesting a payment agreement on his \$18,765.71 balance. The BCS issued a Decision Report, dismissing the Complainant's case as follows:

CASE DISMISSED PER 1405D.... PRIOR PUC PAR BCS 2902844 ISSUED ON 11/9/2011; NOT SATISFIED..... THIS PAR WAS BASED ON 2 ADULTS, 1 CHILD W/ 5900.00 GMI.... WHEN CUST FILED BCS# 3125605, HH GMI RECORDED AS 4000.00 FOR 3 ADULS AND 1 CHILD..... WHEN CUST RETURNED CII FORM ON 8/5/2013, CUST WROTE THAT HIS HH GMI IS 2352.02 FOR 3 ADULTS AND 1 CHILD..... THERE IS A DISCREPANCY IN THE AMT OF INCOME REPORTED TO THE PUC IN MATTER OF 2 WEEKS.

See BCS Decision Report #003125605, attached hereto as Exhibit "4".

On February 16, 2017, the Complainant filed for Chapter 13 bankruptcy in the Eastern District of Pennsylvania under docket number 17-11099. PECO set aside \$24,193.96 of Pre-

Bankruptcy arrears in a non-service account and assessed a \$625.00 bankruptcy deposit. The bankruptcy is still active. See Bankruptcy Docket, attached hereto as Exhibit "5". The bankruptcy is still active.

The Complainant has a balance of \$73.25. See Exhibit "1". PECO Energy avers that the Complainant is not entitled to another payment agreement pursuant to 66 Pa. C.S. §1405(d).

5. Denied.

6. Admitted.

7. Denied.

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

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

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

NEW MATTER OF RESPONDENT, PECO ENERGY COMPANY

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

1. On February 16, 2017, the Complainant filed for Chapter 13 bankruptcy in the Eastern District of Pennsylvania under docket number 17-11099.

2. PECO set aside \$24,193.96 of Pre-Bankruptcy arrears in a non-service account and assessed a \$625.00 bankruptcy deposit. See Exhibit "1".

3. The Complainant has an active Chapter 13 bankruptcy petition pending. See Bankruptcy Docket, attached hereto as Exhibit "5".

4. Accordingly, the Commission does not have jurisdiction over the Complainant's request for a payment agreement.

5. The U.S. Bankruptcy courts have exclusive jurisdiction over the Complainant's assets. All claims against a debtor, including claims arising subsequent to the filing of a petition, are to be adjusted and paid in accordance with the plan required by Chapter 13. Thus, the Complainant filing a petition for personal bankruptcy has preempted the Commission from establishing any payment schedule with respect to amounts owed by the Complainant to PECO Energy. See Michelle Chavous v. PECO Energy Company, Docket No. F 2010-2215689 (Final Order entered Dec. 20, 2011).

6. The Complainant's payment agreement request should be dismissed for lack of subject matter jurisdiction.

7. The Complainant must seek relief from the bankruptcy courts.

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

Respectfully Submitted,



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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MIRO KAMENIK

Complainant

v.

PECO ENERGY COMPANY

Respondent

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:
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DOCKET NO. C-2017-2593898

VERIFICATION

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



Date: March 20, 2017

Shawane L. Lee

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MIRO KAMENIK

Complainant

v.

PECO ENERGY COMPANY

Respondent

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DOCKET NO. C-2017-2593898

CERTIFICATE OF SERVICE

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

Miro Kamenik
3901 Charter Club Drive
Doylestown, PA 18902

Dated at Philadelphia, Pennsylvania, March 20, 2017



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19103
(215) 841-6841
Fax: 215.568.3389
Shawane.Lee@exeloncorp.com

EXHIBIT "1"

TRCO Account Activity Statement

Date: 03/20/17
Page: 1 of 8

*** Account Information ***

Account Number: 21212-00705
Account Status: Active
Requested By: KIRO PARTNIX
(267)247-5233 Extension:

Bill To:
KIRO PARTNIX
3901 CHRYSLER CTR EM
DORTMUN PA 19702

Current Bill:
Billed Prior: \$0.00
Balance Due: \$73.28
Service Address:
3901 CHRYSLER CTR EM
DORTMUN PA 19702

Credit Account:
Propose Forwarded: \$0.00
Propose Co-Fund: \$0.00
Meter Bill Grp: 17
Rate: One Residential Meeting Service
Electric Residential Service

*** Current Account Status ***

DATE	CHARGE TYPE	RELATIONSHIP	READ	AMOUNT	STATUS	AMOUNT	TOTAL	PAID	FORWARD	DATE	END	CCY	TR
07/20/11	Late Payment Charge						0170.96						
07/25/11	045 SERVICE		06/22/11 07/24/11	3768	010050390	039.77							
07/25/11	ELECTRIC SERVICE		06/22/11 07/24/11	90871	014404372	0397.94							
07/25/11	Regular Bill												
08/23/11	045 SERVICE		07/24/11 08/22/11	3790	010050390	039.77							
08/23/11	ELECTRIC SERVICE		07/24/11 08/22/11	90873	014404372	0393.54							
08/23/11	Regular Bill												
09/20/11	Late Payment Charge						0176.33						
09/20/11	Late Payment Charge						0181.12						
09/22/11	045 SERVICE		08/22/11 09/21/11	2822	010050390	040.04							
09/22/11	ELECTRIC SERVICE		08/22/11 09/21/11	1260	014404372	0267.01							
10/19/11	Late Payment Charge						0179.44						
10/24/11	045 SERVICE		09/21/11 10/20/11	2076	010050390	039.65							
10/24/11	ELECTRIC SERVICE		09/21/11 10/21/11	2302	014404372	0197.65							
10/24/11	Regular Bill												
11/10/11	Miscellaneous						013976.26						
11/10/11	Payment Agreement						013976.26						
11/10/11	Transfer						013976.26						
11/10/11	Debit Transfer Payment						013976.26						
11/10/11	Transfer Debit						013976.26						
11/10/11	TRCO Agreement						013976.26						
11/21/11	TRCO BILLING		10/20/11 11/20/11				02906.65						
11/21/11	Regular Bill												
12/10/11	Bill due to Default						014830.97						
12/30/11	Late Payment Charge						0193.02						
12/30/11	TRCO BILLING		11/20/11 12/21/11				0326.00						
12/30/11	Regular Bill												
01/26/12	TRCO BILLING		12/21/11 01/25/12				0326.00						
01/26/12	Regular Bill												
02/24/12	Payment Agreement						0326.00						
02/24/12	TRCO BILLING		01/25/12 02/23/12				00710.97						
02/27/12	Regular Bill												

DATE	CHARGE TYPE	RELATIONSHIP	READ	AMOUNT	STATUS	AMOUNT	TOTAL	PAID	FORWARD	DATE	END	CCY	TR
02/24/12	Payment Agreement						0326.00						
02/27/12	Regular Bill						00710.97						
02/27/12	Regular Bill						00966.37						
02/27/12	Regular Bill						00642.37			03/20			222

DATE	GLN TYPE	PROGNOSED PERIOD	2016	2017	0	CHARGE	CHARGE	TOTAL	PAID	DEFERRED	PAID	DEFERRED	DATE	AGE	CD	TR
02/27/13	EMONEY PER - COT-007	01/26/13 02/26/13														
02/27/13	REGULAR BILL	** Budget Bill Detail **	Actual Bill Amount: 395.42			\$272.00		\$667.74			03/21	032				270
02/27/13	REGULAR BILL	** Budget Bill Detail **	Actual Bill Amount: 395.42			\$376.07										
02/27/13	REGULAR BILL	** Budget Bill Detail **	Actual Bill Amount: 395.42			\$157.07										
03/26/13	LATE PAYMENT CHARGE					\$155.00										
03/27/13	LATE PAYMENT CHARGE					\$210.52										
03/27/13	LATE PAYMENT CHARGE					\$4.36										
03/27/13	EMONEY PER - COT-007	02/26/13 03/26/13				\$272.00										
03/26/13	REGULAR BILL	** Budget Bill Detail **	Actual Bill Amount: 331.04			\$272.00		\$17056.62			04/22	009				197
04/26/13	EMONEY PER - COT-007	03/26/13 04/26/13				\$272.00										
04/26/13	REGULAR BILL	** Budget Bill Detail **	Actual Bill Amount: 220.64			\$272.00		\$10159.62			05/20	021				109
04/26/13	REGULAR BILL	** Budget Bill Detail **	Actual Bill Amount: 220.64			\$210.72										
04/26/13	LATE PAYMENT CHARGE					\$272.00										
04/26/13	LATE PAYMENT CHARGE					\$205.60										
05/26/13	EMONEY PER - COT-007	04/26/13 05/26/13				\$272.00										
05/26/13	LATE PAYMENT CHARGE	** Budget Bill Detail **	Actual Bill Amount: 175.40			\$272.00		\$10450.14			06/19	597				65
05/26/13	REGULAR BILL	** Budget Bill Detail **	Actual Bill Amount: 175.40			\$272.00										
06/26/13	EMONEY PER - COT-007	05/26/13 06/26/13				\$272.00										
06/26/13	LATE PAYMENT CHARGE	** Budget Bill Detail **	Actual Bill Amount: 219.17			\$272.00		\$10702.77			07/16	1024				35
07/26/13	EMONEY PER - COT-007	06/26/13 07/26/13				\$272.00										
07/26/13	REGULAR BILL	** Budget Bill Detail **	Actual Bill Amount: 265.73			\$272.00		\$10702.77			08/19					
07/26/13	REGULAR BILL	** Budget Bill Detail **	Actual Bill Amount: 265.73			\$272.00										
08/26/13	EMONEY PER - COT-007	07/26/13 08/26/13				\$272.00										
08/26/13	LATE PAYMENT CHARGE	** Budget Bill Detail **	Actual Bill Amount: 201.70			\$272.00		\$12865.77			09/16	1006				24
09/26/13	EMONEY PER - COT-007	08/26/13 09/26/13				\$272.00										
09/26/13	REGULAR BILL	** Budget Bill Detail **	Actual Bill Amount: 261.67			\$272.00		\$12865.77			10/16	1173				39
10/26/13	EMONEY PER - COT-007	09/26/13 10/26/13				\$272.00										
10/26/13	REGULAR BILL	** Budget Bill Detail **	Actual Bill Amount: 261.67			\$272.00		\$12865.77			11/14	097				30
11/26/13	EMONEY PER - COT-007	10/26/13 11/26/13				\$272.00										
11/26/13	REGULAR BILL	** Budget Bill Detail **	Actual Bill Amount: 121.63			\$272.00		\$12865.77			11/26	097				50

FICO Account Activity Statement

Date: 03/20/17
Page: 4 of 6

DATE	CHARGE TYPE	STARTED PERIOD	END	AMOUNT \$	CHARGE NUMBER	CHARGE NUMBER	START DATE	STARTED PERIOD	END	AMOUNT	CHARGE NUMBER	CHARGE NUMBER	START DATE	STARTED PERIOD	END	AMOUNT	CHARGE NUMBER
11/25/13	GAS SERVICE	10/21/13	11/19/13	5717	016850290					936.15							
11/25/13	ELECTRIC SERVICE	10/21/13	11/19/13	20106	014464372					658.21							
11/25/13	REGULAR BILL									697.26							
12/30/13	GAS SERVICE	11/19/13	12/23/13	5930	016850290					9237.72							
12/30/13	ELECTRIC SERVICE	11/19/13	12/22/13	29339	014464372					699.37							
12/30/13	REGULAR BILL									9160.67							
01/30/14	GAS SERVICE	12/23/13	01/26/14	6303	016850290					9336.43							
01/30/14	ELECTRIC SERVICE	12/23/13	01/26/14	30776	014464372					680.46							
01/30/14	REGULAR BILL									9139.73							
02/28/14	GAS SERVICE	01/26/14	02/24/14	6586	016850290					9373.00							
02/28/14	ELECTRIC SERVICE	01/26/14	02/24/14	31575	014464372					654.44							
02/28/14	REGULAR BILL									9103.79							
03/31/14	GAS SERVICE	02/24/14	03/23/14	6094	016850290					9360.57							
03/31/14	ELECTRIC SERVICE	02/24/14	03/23/14	32610	014464372					660.50							
03/31/14	REGULAR BILL									9135.49							
04/29/14	GAS SERVICE	03/23/14	04/23/14	7001	016850290					9170.78							
04/29/14	ELECTRIC SERVICE	03/23/14	04/23/14	33159	014464372					663.41							
04/29/14	REGULAR BILL									9126.00							
05/29/14	GAS SERVICE	04/23/14	05/22/14	7077	016850290					935.50							
05/29/14	ELECTRIC SERVICE	04/23/14	05/22/14	1572	122198375					978.18							
05/29/14	REGULAR BILL									9159.05							
06/27/14	GAS SERVICE	05/22/14	06/23/14	7109	016850290					946.37							
06/27/14	ELECTRIC SERVICE	05/22/14	06/23/14	3067	122198375					905.17							
06/27/14	REGULAR BILL									9143.32							
07/29/14	GAS SERVICE	06/23/14	07/23/14	7129	016850290					920.00							
07/29/14	ELECTRIC SERVICE	06/23/14	07/23/14	4234	122198375					933.23							
07/29/14	REGULAR BILL									9150.23							
08/27/14	A/C SEWER	07/23/14	08/21/14	7148	016850290					920.00							
08/27/14	GAS SERVICE	07/23/14	08/21/14	5176	122198375					921.15							
08/27/14	ELECTRIC SERVICE	07/23/14	08/21/14	5176	122198375					963.90							
08/27/14	REGULAR BILL									906.57							
09/26/14	A/C SEWER	08/21/14	09/22/14	7176	016850290					920.00							
09/26/14	GAS SERVICE	08/21/14	09/22/14	7176	016850290					920.00							

FICO Account Activity Statement

Date: 03/20/17
Page: 8 of 8

DATE	CHANGE TYPE	ISSUING PERIOD	READ	ISSUE #	CHARGE AMOUNT	CREDIT AMOUNT	TOTAL BILL	PAID AMOUNT	DATE PAID	EMI	OCF	EM
11/19/16	GAS SERVICE	10/19/16	176	018050290	\$27.64		\$27.64					
11/18/16	ELECTRIC SERVICE	10/19/16	33145	122190375	\$67.42		\$67.42					
11/18/16	Regular Bill	11/17/16			\$103.59		\$103.59					
12/19/16	Late Payment Charge				\$325.99		\$325.99					
12/19/16	Late Payment Charge				\$329.79		\$329.79					
12/21/16	GAS SERVICE	11/17/16	403	018050290	\$172.63		\$172.63					
12/21/16	ELECTRIC SERVICE	11/17/16	34517	122190375	\$101.84		\$101.84					
12/21/16	Regular Bill				\$164.50		\$164.50					
01/18/17	Late Payment Charge				\$23001.15		\$23001.15					
01/25/17	GAS SERVICE	12/20/16	694	018050290	\$336.38		\$336.38					
01/25/17	ELECTRIC SERVICE	12/20/16	35913	122190375	\$220.38		\$220.38					
01/25/17	ELF-NonErgonom Energy				\$103.19		\$103.19					
01/25/17	Regular Bill				\$367.38		\$367.38					
02/22/17	ELECTRIC SERVICE	01/24/17	36604	122190375	\$59.05		\$59.05					
02/22/17	ELF-NonErgonom Energy				\$92.44		\$92.44					
02/22/17	Regular Bill				\$24099.97		\$24099.97					
02/23/17	GAS SERVICE	01/24/17	933	018050290	\$103.03		\$103.03					
02/23/17	ELECTRIC SERVICE	02/17/17	36842	122190375	\$24.21		\$24.21					
03/10/17	Subjcty Pre Billing Cr				\$24893.96		\$24893.96					

EXHIBIT 2

EXHIBIT 3



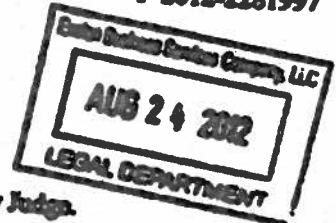
COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

August 21, 2012

Miro Kamouk
v.
PECO Energy Company

P-2012-2281997



TO WHOM IT MAY CONCERN:

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

If you do not agree with any part of this decision, you may send written comments (called **Exceptions**) to the Commission. An original and nine (9) copies of your signed Exceptions to the decision, if any, **MUST BE FILED WITHIN TWENTY (20) DAYS OF THE ISSUANCE DATE OF THIS LETTER, 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; OR DOCUMENTS MAY BE E-FILED ACCORDING TO THE E-FILEING PROCEDURES.**

IN ADDITION, BY THE SAME DATE AND TIME INDICATED ABOVE, A COPY OF EXCEPTIONS MUST BE IN THE HANDS OF THE OFFICE OF SPECIAL ASSISTANTS, 3RD FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA; AND, A COPY IN THE HANDS OF EACH PARTY OF RECORD. 52 Pa. Code §1.56(b) ~~may~~ be used to extend the prescribed period for the filing of Exceptions or Replies to Exceptions.

Parties are also requested to provide the Commission's Office of Special Assistants with a copy of the Exceptions or Replies to Exceptions on CD-ROM or DVD, in Microsoft Word 2007 format. If Word 2007 is not available, any Microsoft Office compatible format is acceptable including PDF.

Replies to Exceptions, if any, must be served on the Secretary of the Commission, Office of Special Assistants, and each party of record, in the manner described above, **WITHIN TEN (10) DAYS OF THE DATE THAT THE EXCEPTIONS ARE DUE.**

It is your responsibility to serve all the parties with your Exceptions and Replies to Exceptions. Failure to do so may render your filing unenforceable. A certificate of service shall be attached to the filed Exceptions or Replies to Exceptions.

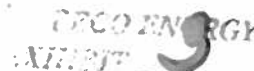
Exceptions and Replies to Exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for Exceptions and the 25-page limit for Replies to Exceptions. Exceptions should clearly be labeled as **"EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)"**. Any reference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

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

JF
Encls.
Certified Mail
Receipt Requested

Very truly yours,

Rosemary Chiavetta
Secretary



**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Miro Kamenik

v.

PECO Energy Company

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:
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:
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F-2012-2281997

INITIAL DECISION

**Before
Tiffany A. Hunt
Special Agent**

INTRODUCTION

The customer filed this Complaint to appeal the payment arrangement issued by the Commission's Bureau of Consumer Services (BCS). This decision denies the customer's request for a more favorable payment arrangement. The BCS decision is correct and there has not been a change in the customer's financial circumstances.

HISTORY OF THE PROCEEDING

On December 28, 2011, Miro Kamenik (Mr. Kamenik or Complainant) filed a formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO or Respondent) which alleged an inability to pay his electric and natural gas utility bills. As relief, Mr. Kamenik requested a payment agreement. The Complaint is a timely appeal of the decision issued, on November 14, 2011, by BCS at BCS Case No. 2902344. BCS directed Mr. Kamenik, a Level 4 customer, to pay a monthly special budget amount on his electric and natural gas utility bill, consisting of his monthly budget bill, plus \$2,907, towards his arrearages.

On January 26, 2012, PECO filed an Answer (Answer) to the Complaint. In its Answer, PECO denied that the Complainant is unable to pay his electric and natural gas utility bills. A copy of the Complainant's Account Activity Statement was attached to the Answer as PECO Exhibit 1. A copy of the informal complaint, report and decision at BCS Case No. 2902844 was attached to the Answer as PECO Exhibit 2.

A Telephone Hearing Notice dated March 9, 2012, advised the parties that an initial telephonic hearing was scheduled for Monday, May 14, 2012, at 10:00 a.m. The case was assigned to me, pursuant to 52 Pa. Code § 56.174.

A Prehearing Order dated March 9, 2012, advised the parties of the date and time of the scheduled hearing, and informed them of the procedures applicable to this proceeding which included the submission of documents prior to the hearing.

The initial telephonic hearing convened as scheduled on Monday, May 14, 2012, at 10:00 a.m.¹ Mr. Kamenik appeared *pro se* and testified on his own behalf. Shawana L. Lee, Esq., counsel for Respondent, presented the testimony of one (1) witness, Elen Leung, a Regulatory Assessor for Respondent, and sponsored the two (2) exhibits, PECO Exhibits 1 and 2, attached to PECO's Answer. Both exhibits were admitted into the record. On May 15, 2012, PECO submitted two (2) late-filed exhibits, PECO Exhibits 3 and 4. Mr. Kamenik was instructed at the hearing to file objections to the late-filed exhibits within ten (10) days of their receipt. Mr. Kamenik did not file any objections to the late-filed exhibits. PECO Exhibits 3 and 4 are admitted into the record.

At the hearing, I granted the parties' request for additional time to pursue settlement.

On May 29, 2012, the Office of Administrative Law Judge received a letter, dated May 23, 2012, from Mr. Kamenik. In the letter, Mr. Kamenik stated "I am formally appealing the decision made on May 14 for the hearing that was held by the Pennsylvania Public Utility

¹ A tape recording of the hearing was made, no court reporter being present.

between PECO and me." There was no indication that the letter had been served on PECO's counsel. On June 6, 2012, I forwarded a copy of the letter to PECO's counsel, Ms. Lee. The Complainant's appeal is not procedurally proper at this point in the proceeding and will not be further addressed in this Initial Decision.

The parties were unable to reach a settlement by the agreed upon deadline of June 1, 2012. Therefore, the record is closed as of June 1, 2012.

FINDINGS OF FACT

1. The Complainant is **Mike Kamencik**, who receives electric and natural gas utility service from the Respondent at 3901 Charter Club Drive, Doylestown, PA (Service Address).
2. The Respondent is **PECO Energy Company**.
3. On October 24, 2011, Mr. Kamencik filed an informal complaint. On November 14, 2011, BCS issued its decision at BCS Case No. 2902844. BCS directed Mr. Kamencik, a Level 4 customer, to pay a monthly special budget amount on his electric and natural gas utility bill, consisting of his monthly budget bill, plus \$2,907, towards his arrearages. PECO Exhibit 2.
4. On December 23, 2011, Mr. Kamencik filed a formal Complaint with the Commission in which he alleged an inability to pay his electric and natural gas utility bills. As relief, Mr. Kamencik requested a payment agreement.
5. On January 26, 2012, PECO filed an Answer to the Complaint.
6. The Complainant lives at the Service Address with his wife and their fourteen (14) year old child.
7. The Complainant has been unemployed since December 2011. He currently receives \$1,000 bi-weekly in unemployment compensation.

8. The Complainant's wife works full-time and earns \$3,000 bi-weekly.
9. The Complainant's annual household income is \$104,000 ($\$1,000 \times 26 = \$26,000$; $\$3,000 \times 26 = \$78,000$; $\$26,000 + \$78,000 = \$104,000$).
10. As of the date of the hearing, the Complainant's electric and natural gas service had not been terminated and he still received electric and natural gas utility service from the Respondent.
11. As of May 14, 2012, the Complainant's account balance was \$17,811.89.
PECO Exhibit 4.

DISCUSSION

In his formal Complaint, Mr. Kamenik alleged an inability to pay his electric and natural gas utility bills. As relief, Mr. Kamenik requested a payment agreement.

This proceeding is a *de novo* review of the BCS determination of an appropriate payment plan for this account. 52 Pa. Code § 56.403(a). The term "*de novo*" simply means "new" or "over again." As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proving by substantial evidence that he is entitled to the requested relief. 66 Pa. C.S. § 332(a).

To satisfy this burden, the Complainant must show that the named utility is responsible or accountable for the problem described in the Complaint. Patterson v. Bell Telephone Co. of Pa., 72 Pa. PUC 196 (1990); Reinstein v. Philadelphia Suburban Water Co., 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. Samuel J. Lashberry, Inc. v. Pa. Public Utility Comm., 578 A.2d 600 (Pa. Cmwith. 1990), alioq. den., 602 A.2d 863 (Pa. 1992); Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950). Additionally, any finding of fact necessary to support the Commission's adjudication

must be based upon substantial evidence. Mill v. Pa. Public Utility Comm., 447 A.2d 1100 (Pa. Cirwith. 1982); Egan Transportation Corp. v. Pa. Public Utility Comm., 623 A.2d 6 (Pa. Cirwith. 1993); 2 Pa. C.S.A. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk and Western Ry. v. Pa. Public Utility Comm., 413 A.2d 1037 (Pa. 1980); Eria Register Corp. v. Unemployment Compensation Bd. of Review, 166 A.2d 96 (Pa. Super. 1960); Murphy v. Dep't. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa. Cirwith. 1984).

The Responsible Utility Customer Protection Act, 66 Pa. C.S. § 1401, *et seq.* (the Act or Chapter 14) applies to this proceeding. This law provides strict guidelines that the Commission must follow in handling customer complaints.

Section 1403 of the Public Utility Code defines "Payment agreement" as follows:

An agreement whereby a customer who admits liability for billed service is permitted to amortize or pay the unpaid balance of the account in one or more payments.

66 Pa. C.S. § 1403 (Definition of "Payment agreement").

Section 1405 of the Public Utility Code regarding payment agreements reads in pertinent part:

(b) Length of payment agreements. - The length of time for a customer to resolve an unpaid balance on an account that is subject to a payment agreement that is investigated by the commission and is entered into by a public utility and customer shall not extend beyond

(1) Five years for customers with a gross monthly household income level not exceeding 150% of the Federal poverty level.

(2) Two years for customers with a gross monthly household income level exceeding 150% and not more than 250% of the Federal poverty level.

(3) One year for customers with a gross monthly household income level exceeding 250% of the Federal poverty level and not more than 300% of the Federal poverty level.

(4) Six months for customers with a gross monthly household income level exceeding 300% of the Federal poverty level.

(d) Number of payment agreements. – Absent a change in income, the Commission shall not establish or order a public utility to establish a second or subsequent payment agreement if a customer has defaulted on a previous payment arrangement. A public utility may, at its discretion, enter into a second or subsequent payment agreement with a customer.

66 Pa. C.S. § 1405 (b) and (d).

The Public Utility Code permits the Commission to grant one (1) payment agreement and dictates its terms. 66 Pa. C.S. § 1405 (b) and (d). BCS directed the Complainant, a Level 4 customer, to pay a monthly special budget amount on his electric and natural gas utility bill, consisting of his monthly budget bill, plus \$2,907, towards his arrearages. PECO Exhibit 2.

The Commission has determined that a BCS issued payment agreement is subject to review upon the timely filing of a formal complaint. Since this Complaint is a timely appeal of a BCS decision, the Commission must determine if the BCS determination is in compliance with the mandates of Chapter 14. Ehant v. PPL Gas Utilities Corporation, Docket No. F-02077784 (Order entered November 17, 2006), Kakwani v. Columbia Gas of PA, Inc., Docket No. Z-01701441 (Order entered October 14, 2005). Here, the BCS decision is correct. There has not been a change in the Complainant's financial circumstances from the time of the BCS decision; therefore he remains a Level 4 customer entitled to a payment agreement of six (6) months. 66 Pa. C.S. § 1405(b)(4).

The Complainant lives at the Service Address with his wife and their fourteen (14) year old child. The Complainant has been unemployed since December 2011. He currently receives \$1,000 bi-weekly in unemployment compensation. The Complainant's wife works full-

time and earns \$3,000 bi-weekly². The Complainant's current household income of \$104,000³ places his family of three (3) above 300% of the Federal poverty level.

As stated above, the Complainant remains a Level 4 income customer from the time of the BCS decision. The BCS issued payment agreement complies with Chapter 14 and the Complainant must retire the arrearage in his account as ordered by BCS at BCS Case No. 2902844. The Complaint is denied.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa. C.S.A. §701.
2. The Complainant had the burden of proof. 66 Pa. C.S.A. § 332(a).
3. The Responsible Utility Customer Protection Act, 66 Pa. C.S. § 1401, *et seq.* (the Act or Chapter 14) applies to this proceeding.
4. The Commission has the authority to review a payment arrangement to ensure compliance with the provisions of Chapter 14.

² It is unclear if the Complainant correctly testified as to his wife's income. At the hearing, the Complainant testified that his wife earns \$3,000/bi-weekly. However, at the underlying informal complaint, the Complainant reported to BCS that his wife earned \$3,500/month. Regardless, the Complainant's household income places his family of three (3) above 300% of the Federal poverty level and the Complainant is a Level 4 customer. 66 Pa. C.S. § 1403(b)(4).

³ $31,000 \times 26 = 826,000$; $33,000 \times 26 = 878,000$; $826,000 + 878,000 = 1,704,000$.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint filed by Miro Kamenik against PECO Energy Company at Docket No. F-2012-2281997 is denied.
2. That Miro Kamenik shall make monthly payments consisting of his budget bill plus one-sixth (1/6) of the balance accrued on his account, beginning with the first billing due date following the entry of a final Commission Order in this case.
3. That as long as Miro Kamenik keeps the payment schedule stated in this Order, PECO Energy Company shall not suspend or terminate his electric and natural gas utility service except for valid safety or emergency reasons or assess late payments or finance charges against his account.
4. That, if Miro Kamenik does not keep the payment schedule stated in this Order, PECO Energy Company is authorized to suspend or terminate his utility service in accordance with the Commission's statutes or regulations.
5. That the record at Docket No. F-2012-2281997 is marked closed.

Date: August 3, 2012


Tiffany A. Hunt
Special Agent

EXHIBIT 4

July 7, 2015

BCS Decision Report

BCS Case #: 003125605 Open Date: 2013-07-22
Customer Name: MIRO KAMENIK
Service Address: 3901 CHARTER CLUB DR
DOYLESTOWN, PA 18902
BCS Bill Account #: 2121200705 Previous Case #: 2902844
Violation Type: NO Chapter Type:
Decision Type: W Section / Rule:
Investigator Name: MEIKE WIJAYA
Decision Issued Date: 2013-08-12
Case Closed Date: 2013-08-08

Letter Description: CHAPTER 14 BGW ON DISMISS LETTER

Total Balance:	\$18765.71	Balance Date:	2013-07-22
Amount to Restore Service:	\$0.00	Amount to Continue Service:	\$0.00
Date Payment Due:		Regular Budget Amount:	\$0.00
Special Budget Payment:	\$0.00	Final Bill Monthly Payment:	\$0.00
Plus Arrears Payment:	\$0.00	End of Month Payment:	\$0.00
Current Monthly Payment:	\$0.00		
Payment Terms:			

PAR Description:

Resolution Description:
CASE DISMISSED PER 1405D.... PRIOR PUC PAR BCS 2902844 ISSUED ON 11/9/2011;
NOT SATISFIED..... THIS PAR WAS BASED ON 2 ADULS, 1 CHILD W/ 5900.00 GMI....
WHEN CUST FILED BCS# 3125605, HH GMI RECORDED AS 4000.00 FOR 3 ADULS
AND 1 CHILD..... WHEN CUST RETURNED CII FORM ON 8/5/2013, CUST WROTE
THAT HIS HH GMI IS 2352.02 FOR 3 ADULS AND 1 CHILD..... THERE IS A
DISCREPANCY IN THE AMT OF INCOME REPORTED TO THE PUC IN MATTER OF 2
WEEKS..... INVESTIGATOR LEFT A VM ON 8/5/2013 ASKING THE CUST TO RE-
VERIFY AND RE-SEND THE INCOME INFO, SUCH AS: PROVIDE MORE THAN ONE
PAYSTUB, PROVIDE PAYSTUB THAT INCLUDES MORE THAN JUST THE NET AMT,
ETC... TO DATE, THE PUC HASN'T RECVD ANY INFORMATION FROM THE CUST....
UNABLE TO VERIFY CII..... CUST OWES A VERY LARGE ACCT BAL; AS OF 7/22/2013,
IT WAS 18,765.71.... CASE CLOSED. LTR SENT....

EXHIBIT "5"

Repeat-PAEB, PinDua, RepeatPACER

**U.S. Bankruptcy Court
Eastern District of Pennsylvania (Philadelphia)
Bankruptcy Petition #: 17-11099-mdc**

Assigned to: Judge Magdeline D. Coleman
Chapter 13
Voluntary
Asset

Date filed: 02/16/2017
Deadline for filing claims (govt.): 08/15/2017

Debtor
Miro Kamenik
3901 Charter Club Dr.
Doylestown, PA 18902
BUCKS-PA
SSN / ITIN: xxx-xx-2633

represented by Miro Kamenik
PRO SE

Trustee
WILLIAM C. MILLER
Chapter 13 Trustee
1234 Market Street
Suite 1813
Philadelphia, PA 19107
215-627-1377

U.S. Trustee
United States Trustee
Office of the U.S. Trustee
833 Chestnut Street
Suite 500
Philadelphia, PA 19107
(215) 597-4411

Filing Date	#	Docket Text
02/16/2017	1 (8 pgs)	Chapter 13 Voluntary Petition for Individual . Receipt Number O, Fee Amount \$0.00 Filed by Miro Kamenik . Certification Concerning Credit Counseling and/or Certificate of Credit Counseling due 3/2/2017. Matrix List of Creditors due 2/23/2017. Government Proof of Claim Deadline: 8/15/2017. Chapter 13 Plan due by 3/2/2017. Pro Se Statement due 3/2/2017. Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment

PECO ENERGY

EXHIBIT 5

		Period Form 122C-1 Due 3/2/2017 Means Test Calculation Form 122C-2 Due: 3/2/2017. Schedules AB-J due 3/2/2017. Statement of Financial Affairs due 3/2/2017. Summary of Assets and Liabilities Form B106 due 3/2/2017. Incomplete Filings due by 3/2/2017. (G., Jennifer) (Entered: 02/16/2017)
02/16/2017		WILLIAM C. MILLER added to case. (G., Jennifer) (Entered: 02/16/2017)
02/16/2017	2	Statement of Social Security Number Received. Filed by Miro Kamenik . (G., Jennifer) (Entered: 02/16/2017)
02/16/2017	3 (1 pg)	Order Entered the debtor having failed to file or submit with the petition all of the documents required by Fed. R. Bankr.P.1007. It is hereby ORDERED that this case MAY BE DISMISSED WITHOUT FURTHER NOTICE if the documents listed are not filed by deadlines listed: Certification Concerning Credit Counseling and/or Certificate of Credit Counseling due 3/2/2017. Matrix List of Creditors due 2/23/2017. Chapter 13 Plan due by 3/2/2017. Pro Se Statement due 3/2/2017.Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period Form 122C-1 Due 3/2/2017 Means Test Calculation Form 122C-2 Due: 3/2/2017. Schedules AB-J due 3/2/2017. Statement of Financial Affairs due 3/2/2017. Summary of Assets and Liabilities Form B106 due 3/2/2017. Any request for an extension of time must be filed prior to the expiration of the deadlines listed. (G., Jennifer) (Entered: 02/16/2017)
02/18/2017	4 (2 pgs)	BNC Certificate of Mailing - Voluntary Petition. Number of Notices Mailed: (related document(s) (Related Doc # 3)). No. of Notices: 1. Notice Date 02/18/2017. (Admin.) (Entered: 02/19/2017)
02/21/2017	5 (3 pgs; 2 docs)	Motion to Dismiss Case. Lack of Good Faith Filed by PECO Energy Company Represented by LYNN R. ZACK (Counsel). (Attachments: # 1 Proposed Order) (ZACK, LYNN) (Entered: 02/21/2017)
02/21/2017	6 (3 pgs; 2 docs)	Notice of (related document(s): 5 Motion to Dismiss Case. Lack of Good Faith) Filed by PECO Energy Company. Hearing scheduled 3/23/2017 at 11:00 AM

		at nix2 - Courtroom #2. (Attachments: # <u>1</u> Certificate of Service) (ZACK, LYNN) (Entered: 02/21/2017)
03/08/2017	<u>7</u> (1 pg)	(Letter) Motion to extend time to file schedules Filed by Miro Kamenik Represented by Self(Counsel). (D., Stacey) (Entered: 03/09/2017)
03/09/2017	<u>8</u> (1 pg)	Order Granting Motion to Extend Time (Related Doc # <u>7</u>) Chapter 13 Plan due by 3/21/2017. Matrix List of Creditors due 3/21/2017. Pro Se Statement due 3/21/2017. Schedules AB-J due 3/21/2017. Statement of Financial Affairs due 3/21/2017. Statistical Summary of Certain Liabilities Form B206 due 3/21/2017. Summary of Assets and Liabilities Form B106 due 3/21/2017. Means Test Calculation Form 122C-2 Due: 3/21/2017. (D., Stacey) (Entered: 03/10/2017)
03/12/2017	<u>9</u> (2 pgs)	BNC Certificate of Mailing - PDF Document. (related document(s) (Related Doc # <u>8</u>)). No. of Notices: 1. Notice Date 03/12/2017. (Admin.) (Entered: 03/13/2017)
03/16/2017	<u>10</u> (1 pg)	(Letter) Response to Motion to Dismiss Case for Other filed by Creditor PECO Energy Company Filed by Miro Kamenik (related document(s) <u>9</u>). (D., Stacey) (Entered: 03/16/2017)

PACER Service Center			
Transaction Receipt			
03/20/2017 08:51:35			
PACER Login:	pe0017:2612767:0	Client Code:	4101
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Billable Pages:	2	Cost:	0.20

EXHIBIT 3

Repeat-PAEB, PlnDue, RepeatPACER

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Date filed: 02/16/2017

Assigned to: Judge Magdeline D. Coleman
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Voluntary
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02/16/2017		WILLIAM C. MILLER added to case. (G., Jennifer) (Entered: 02/16/2017)
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02/18/2017	<u>4</u> (2 pgs)	BNC Certificate of Mailing - Voluntary Petition. Number of Notices Mailed: (related document(s) (Related Doc # <u>3</u>)). No. of Notices: 1. Notice Date 02/18/2017. (Admin.) (Entered: 02/19/2017)
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