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March 28, 2017

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

Re: *KA at Fairless Hills, LP v. PECO Energy Company*
No. C-2017-2592335

Dear Ms. Chiavetta:

Enclosed for filing with the Commission please find KA at Fairless Hills
Emergency Petition to Restore Electric Service and a Certificate of Service.

Please refer this motion to the assigned Judge as soon as possible.

Very truly yours,



David S. Dessen

DSD:

cc: Shawane L. Lee, Esquire
Mark T. Kessler

Enclosure

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

KA AT FAIRLESS HILLS, LP,
Complainant

vs.

DOCKET NO. C-2017-2592335

PECO ENERGY COMPANY,
Respondent

EMERGENCY PETITION TO RESTORE ELECTRIC SERVICE

Complainant KA at Fairless Hills, LP (hereinafter referred to as “KA”), by and through its attorney, David S. Dessen, Esquire, respectfully prays that Public Utility Commission order Respondent PECO Energy Company (hereinafter referred to as “PECO”) to immediately restore electric service to the premises of the former Pathmark Supermarket located at 500 Lincoln Highway, Fairless Hills, Pennsylvania, identified by PECO as account number 55196-01001, and in support thereof avers as follows:

1. KA is the owner of the Fairless Hillis Shopping Center located at 500 Lincoln Highway, Fairless Hills, Pennsylvania.
2. On or about December 31, 2015, A & P Real Property, LLC, KA’s tenant and the operator of the Pathmark Supermarket in the shopping center, vacated the premises and notified KA that it was terminating the electric service to the building.
3. In early January, a representative of KA contacted PECO for the purpose of establishing electric service to the now vacant store in the name of KA.
4. As set forth at length in the Statement of Facts attached to KA’s Formal Complaint to the Commission and attached hereto as Exhibit “A,” PECO continued to bill KA at the rate established for the Pathmark Supermarket when it was in full operation.

5. After repeated complaints from KA, in or around August 31, 2016, PECO changed the rate at which it billed KA to what KA believes was the rate it should have been charged as of January 2, 2016.

6. Based upon the average of the amount billed by PECO from January 2, 2016 through August 31, 2016 and the average amount billed by PECO from September 1, 2016 through January 7, 2017, KA contends it was overcharged approximately \$33,075.00.

7. PECO has refused to recalculate its charges for the period January 2, 2016 through August 31, 2016 or refund any portion of the overcharge.

8. In order to recoup the overcharge, KA withheld payment of bills submitted by PECO for electric service beginning in June 2016.

9. On February 27, 2017, PECO terminated electric service to the Pathmark store.

10. At the time PECO terminated service, KA believed it was still due a refund of approximately \$9,570.

11. On March 2, 2017, KA was cited for failing to maintain the fire alarm system at the Pathmark store and fined \$1,000.00. A copy of the citation is attached hereto as Exhibit "B."

12. On March 10, 2017, counsel and the parties participated in a conference call in an attempt to reach an agreement to immediately restore electric service to the Pathmark store. If PECO would restore electric service, KA offered to pay the ongoing current charges until the Commission resolved the outstanding Formal Complaint. However, PECO was only willing to restore service if KA agreed to pay the outstanding usage amount, less \$5,000 and withdraw the instant Formal Complaint.

13. Lack of electric service and operating fire safety equipment presents an ongoing threat to the health and safety to the thousands of consumers who visit other stores in the shopping center on a daily basis as well as residents who live near the shopping center.

14. KA is both willing and able to pay amounts billed on a current basis for electric service to the vacant store.

15. PECO will suffer no prejudice if the Commission orders PECO to immediately restore electric service to the vacant Pathmark store and directs KA to promptly pay for all amounts currently billed.

WHEREFORE, Complaint KA at Fairless Hills, LP respectfully requests that the Commission enter an order, on an **emergency basis**, directing Respondent PECO Energy Company to immediately restore electric service to the premises of the former Pathmark Supermarket located at 500 Lincoln Highway, Fairless Hills, Pennsylvania identified by PECO as account number 55196-01001.

DESSEN, MOSES & ROSSITTO

Dated: March 28, 2017

BY /s/ David S. Dessen
DAVID S. DESSEN, ESQUIRE
Attorney for Complainant

EXHIBIT “A”

STATEMENT OF FACTS

Sometime prior to January 1, 2016, PECO entered into a contract with the operator of the Pathmark store in the Fairless Hills Shopping Center owned by KA at Fairless Hills, LP to supply the store with electricity pursuant to the rate set forth in PECO's tariff for "Electric High Tension Service >500KW." On or around December 31, 2015, A & P Real Property, LLC, the entity to whom KA leased the Pathmark Store, notified KA that it was surrendering possession of the Pathmark store and that the electric service supplied by PECO would be immediately terminated.

In early January 2016, a representative of KA contacted PECO to apply for electric service to the vacant Pathmark store. At the time KA contacted PECO, PECO knew or should have known that the Pathmark store was vacant and that the transfer of service from Pathmark to KA would result in a significant decrease in the electric load of the Pathmark store. Further, at the time KA contacted PECO, PECO knew that two or more Base Rates were available for service to the Pathmark store.

In violation of the provisions of § 11.1 of the approved tariff for electric service, PECO did not offer KA the opportunity to select the Base Rate of service that KA desired PECO to provide to the Pathmark store. In violation of § 11.2 of the approved tariff for electric service, PECO did not advise KA that it would provide assistance to help KA select the most economically advantageous Base Rate.

Even though PECO knew that the vacant Pathmark store would not generate an electric load at the level that would require "Electric High Tension Service >500KW" service with a Peak Load Contribution of 494KW, PECO nevertheless assigned to KA the same "Electric High

Tension Service >500KW” with a Peak Load Contribution of 494KW used by the Pathmark store when it was open and serving thousands of customers a day.

In or around July 2016, KA contacted PECO in an effort to understand why it was being billed approximately \$7,550 per month for electric service to a vacant building. After speaking with the KA representative, PECO prepared a document titled “Contract for Commercial/Industrial Class Electric Service (Rates GS, PD and HT)” (hereinafter referred to as “Contract”). A copy of the Contract is attached hereto as Exhibit “A.” At the time PECO prepared the Contract, PECO knew that in January 2016, KA sought a transfer of service at an existing premise, that because the Pathmark store was vacant there was a significant change in load and that “Electric High Tension Service >500KW” was not required.

In an e-mail dated July 15, 2016, PECO representative Christopher Cavaliero (hereinafter referred to as “Cavaliero”) advised KA that if it signed and sent back the Contract, he would “[h]ave the account processed to switch to the new rate which will bill based on the usage.” A copy of the July 15th e-mail is attached hereto as Exhibit “B.” At the time he prepared the contract that would allegedly “bill based on the usage,” Cavaliero knew that the Contract provided for the same fixed minimum Base Rate service previously supplied to the Pathmark store with the exception that the Peak Contribution Load was reduced to 433KW. As before, PECO did not tell KA that two or more Base Rates were available for service to the Pathmark store or offer to KA assistance in selecting the most economically advantageous Base Rate for electric service.

The modified electric service began July 1, 2016 and over the next 3 months, reduced KA’s average monthly electric bill to approximately \$5,205 from \$7,550. On September 15, 2016, in response to KA’s continued complaints that the electric bills it was receiving from

PECO were unreasonably high for a vacant store, Cavaliero sent KA a “Transfer of Information” form that Cavaliero requested KA copy onto its letterhead and return. A copy of the September 15th e-mail is attached hereto as Exhibit “C.” According to Cavaliero, the “Transfer of Information” form would allow PECO to change the “PLC”. As requested by Cavaliero, KA copied the “Transfer of Information” form onto its letterhead and returned it to PECO on or about September 22, 2016.

Beginning with the bill dated September 30, 2016 for electric service supplied between August 31, 2016 and September 30, 2016, PECO is providing “Electric Commercial Service 100KW – 500KW” to the Pathmark store with a Peak Load Contribution of 50KW. During the approximately 4 months from August 31, 2016 through January 6, 2017, KA’s average monthly electric bill based on the more appropriate level of service has been approximately \$1,170, a reduction of approximately \$6,380 per month from the totally inappropriate level of service selected by PECO in January 2016.

Copies of the bills submitted by PECO to KA between January 2016 and January 2017 are enclosed.

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

KA AT FAIRLESS HILLS, LP,
Complainant

vs.

DOCKET NO. C-2017-2592335

PECO ENERGY COMPANY,
Respondent

CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of Complainant's Emergency Motion to Restore Electric Service was forwarded on the date below via first class mail, postage pre-paid to:

Shawane L. Lee, Esquire
PECO ENERGY COMPANY
2301 Market Street, S23-1
Philadelphia, PA 19103

Dated: March 28, 2017

/s/ David S. Dessen
DAVID S. DESSEN