



An Exelon Company

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

Direct Dial: 215.841.6841

August 21, 2017

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

RE: Wade De Loe v. PECO Energy Company
PUC Docket No.: F-2016-2581905

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is the *Exceptions of PECO Energy Company*.

Very truly yours,

A handwritten signature in black ink, appearing to read "Shawane Lee", with a stylized flourish at the end.

Shawane Lee
Counsel for PECO Energy Company

cc: Certificate of Service

SL/ab
Enclosure

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

WADE DE LOE	:	
Complainant	:	
v.	:	DOCKET NO. F-2016-2581905
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

EXCEPTIONS OF PECO ENERGY COMPANY

Pursuant to 52 Pa Code § 5.533, Respondent PECO Energy Company (“PECO”) hereby files its Exceptions to the Initial Decision (“I.D.”) of Administrative Law Judge Katrina Dunderdale (“ALJ”) issued on July 31, 2017, in the above-referenced matter and states the following:

I. INTRODUCTION

As a part of the company’s compliance with Act 129 of 2008, PECO is required to install AMI meters to all of the customers in the company’s service territory. Tr. 62. Beginning in 2012, PECO began contacting the company’s customers to request access to change the AMR meter to an AMI meter. PECO makes telephone calls to customers requesting access to install the meter. Tr. 62. If there is no response to the telephone calls, PECO follows up with friendly letters to the customer sent to the address on file requesting access. Tr. 62. If PECO customers do not respond to the company’s requests for access, PECO sends a 10-day termination notice for failure to give access to install the AMI meter but gives the customer the option to prevent service termination by allowing the company to change the meter. Tr. 63; 72. If the customer does not respond to the 10-day termination notice, PECO sends a technician to the service address

to drop a 72-hour termination notice. Tr. 63. The 72-hour notice advises the customer to call the company to give access to change the meter to prevent service termination. Tr. 73. If there is still no response to the company's notices and requests to give access to change the meter, service is terminated. Tr. 63.

For the past four years, PECO has been contacting its customer Mr. Wade DeLoe (hereinafter "Complainant" or "Mr. DeLoe") by telephone, letters and termination notices in an effort to gain access to change his AMR meter to an AMI meter. PECO Exhibit 2. The Complainant requested that all of his bills and correspondence be sent to his New York City address. Tr. 12. For three years, PECO sent letters to Mr. DeLoe's New York City address requesting access and termination notices for failure to give access. Tr. 79-88. In October 2015, however, due to an administrative error while processing a gas disconnection order, PECO changed Mr. DeLoe's mailing address to his Chester, Pennsylvania service address. Tr. 88; Tr. 148-149. Thereafter, PECO continued its efforts to contact Mr. DeLoe by telephone and in writing at the Chester service address. Tr. 94-98. There is undisputed evidence in the record that Mr. DeLoe received PECO's notices at his Chester service address. Tr. 19-20; Tr. 50; Tr. 55. After all, he admitted that he lived there half of the year and had been spending most of the summer there. Tr. 9; Tr. 20. Mr. DeLoe even called PECO in June 2016 and scheduled a July 2016 appointment to have his meter changed. Tr. 49; Tr. 95. However, Mr. DeLoe did not keep his scheduled appointment and went back to New York. Tr. 17. He admits that he did not think it was an urgent matter and had a million other things to do. Tr. 55. In September 2016, PECO sent a ten-day termination notice for failure to give access and followed up with a 72-hour notice in October 2016. Tr. 96-97. Mr. DeLoe admits in the

record that he received the notice but did not think his service would be terminated. Tr. 50. PECO terminated Mr. DeLoe's service on October 18, 2016, for failure to give access to change the meter. Tr. 98.

The crux of the ALJ's I.D. was that PECO failed to provide reasonable and adequate customer service when it terminated Mr. DeLoe's service due to his failure to allow PECO access to change his meter after the company sent numerous letters and made numerous telephone calls to Complainant over a period of four years in an attempt to do so. The ALJ focused on the fact that PECO sent termination correspondence to the service address in Chester despite the fact that Complainant had informed PECO to send such mailings to his address in New York City. However, the unrefuted evidence shows that Complainant did have actual notice that PECO was going to terminate his service and that he ignored the notice because he simply did not believe the matter was urgent and that PECO would terminate his electricity.

The ALJ also argued that after PECO terminated service, the company did not immediately reconnect the electricity after it learned it had sent the termination notices to the Chester, PA address instead of the New York City address. However, PECO did not reconnect the service because, after four years, Mr. DeLoe still did not allow access to change the meter for many months after termination. Thus, PECO's actions were reasonable; the company did provide adequate customer service and the company should not have been fined the excessive \$5,000 amount imposed by the ALJ.

II. RELEVANT FACTUAL HISTORY

A. 2013 – Beginning of the AMI Notification Process

The first year PECO began contacting Mr. DeLoe requesting access to change his AMR meter to an AMI meter was in 2013. Beginning May 14, 2013, PECO made three telephone calls to the Complainant and a technician went to the Complainant's service address in attempts to install the AMI meter. See PECO Exhibit 2, p. 1.

B. 2014 – PECO Renews Communications to Gain Access

The second year PECO tried to contact the Complainant to change the meter was in 2014. On September 25, 2014, the Complainant changed his mailing address to 560 West 170th Street, New York, NY and updated his telephone number to (646) 206-6492. Tr. 74; PECO Exhibit 2, p. 1. Thereafter, beginning October 22, 2014, PECO made two telephone calls to the (646) 206-6492 telephone number provided by Mr. DeLoe requesting access to change his meter. Tr. 77; PECO Exhibit 2, p. 2. Mr. DeLoe confirmed this was the telephone number where he could be reached at that time. Tr. 41. PECO sent a friendly letter to the Complainant's New York City address on October 28, 2014, requesting access to change the meter. Tr. 79; PECO Exhibit 2, p. 3. Mr. DeLoe failed to respond to PECO's telephone calls and friendly notice. Therefore, on November 7, 2014, PECO sent a ten-day termination notice to the Complainant's New York address, advising him that service would be terminated if he did not give access to change the meter. Tr. 84. PECO Exhibit 2, p. 3. PECO did not terminate the Complainant's service at that time. But rather, began the access notification process once again. Tr. 84-85.

C. 2015 – PECO Continues Communication Efforts to Gain Access

The third year PECO tried to contact the Complainant to change his meter was in 2015. Beginning in February 2015, PECO sent two written notices to the Complainant at his New York address requesting access to change the meter. PECO Exhibit 2, p. 4. In September 2015, PECO made two telephone calls to the Complainant, requesting access to the meter. PECO Exhibit 2, p. 4-5. PECO sent a friendly letter to the Complainant's New York address on September 24, 2015, requesting access to change the meter. Tr. 86-87. On October 1, 2015, PECO changed Mr. DeLoe's mailing address from the New York City address to the Chester, Pennsylvania address when a gas disconnect order was processed. Tr. 150. The company sent a letter to Mr. DeLoe at his service address in Chester, Pennsylvania on November 11, 2015, requesting access to change the meter. Tr. 94; PECO Exhibit 2, p. 5.

D. 2016 – PECO's Notification and Termination

The fourth year PECO tried to gain access and made attempts to contact the Complainant to change the company's meter was in 2016. On January 7, 2016, PECO tried to call the Complainant to request access. Tr. 95; PECO Exhibit 2, p. 6. On March 3, 2016, PECO sent a friendly letter to the Complainant's Chester, PA address. Tr. 95; PECO Exhibit 2, p. 6. On March 10, 2016, PECO sent the Complainant a 10-day termination notice to his Chester address, advising him to give the company access to change the meter or the service would be terminated. Tr. 95; PECO Exhibit 2, p. 6. Mr. De Loe lived at the Chester service address six months out of the year. Tr. 49. In fact, in 2016, he had spent most of the summer at his Chester address. Tr. 20. In the

summer of 2016, Mr. De Loe received notice from PECO at his Chester address that he needed to give access to change the meter. Tr. 16-7. He called PECO on June 29, 2016, to set up an appointment to have his meter changed on July 11, 2016. Tr. 49; PECO Exhibit 2, p. 6. However, Mr. DeLoe did not show up at the property on July 11, 2016, at the agreed upon time to give the technician access to change the meter. Tr. 95; PECO Exhibit 2, p. 6. Instead, because “it wasn’t like a big – a big urgency for [Mr. DeLoe] to get it done” he went back to New York for jury duty and stayed there longer than he expected – approximately six weeks. Tr. 17.

On September 21, 2016, PECO tried to call the Complainant twice – once in the morning and in the evening, requesting access to change his meter. Tr. 96. PECO followed up with a friendly notice sent to the Chester service address on September 23, 2016. Tr. 96. PECO sent a ten-day termination notice to the Chester service address on September 28, 2016. Tr. 97. On October 11, 2016, PECO dropped a 72-hour termination notice at the premises. Tr. 97. On October 8, 2016, PECO terminated Mr. DeLoe’s service at the weatherhead due to no access to the indoor meter. Tr. 98. On October 28, 2016, Mr. DeLoe called PECO and said he had received the notice but did not think that his service would be cut. Tr. 50; PECO Exhibit 2, p. 9. Mr. DeLoe did not take any action to give access because “he wasn’t told that there was an urgent matter.” Tr. 50. Mr. DeLoe admitted that he has “a million other things to do. Meter maintenance doesn’t sound like it’s a particular urgent matter.” Tr. 55.

After PECO terminated Mr. DeLoe’s service, he was told by a customer service representative that he needed to have his meter changed and a technician could be out the following day. Tr. 130; PECO Exhibit 2, p. 10. However, Mr. DeLoe began cursing

and hung up the telephone when told he would have to pay a \$260.00 reconnection fee. Tr. 27; Tr. 51; PECO Exhibit 2, p. 10. PECO representative, Fred Mahugu spoke to Mr. DeLoe a few days later on November 3, 2016. Tr. 99. Mr. Mahugu advised Mr. DeLoe that he would have to provide access to PECO's equipment; however, Mr. DeLoe wanted PECO to restore his service without giving access and at his convenience. Tr. 101-102. Mr. Mahugu said if Mr. DeLoe wanted PECO to assist him with the reconnection fee or service restoration, he would need to give the company access to change the meter. Tr. 102-103. Mr. DeLoe had conversations with several people and he was told to "do all of these things before [PECO] would connect service." Tr. 28. Mr. DeLoe finally gave access to the meter on Saturday, March 25, 2017, at which time the meter was changed and his service was restored. Tr. 24.

III. LEGAL ARGUMENT

Preliminarily, the Commission has upheld PECO's right to terminate service pursuant to Section 18.3 of the company's Commission-approved tariff, in instances where customers did not provide access to install the AMI meter. *See Louise Francis v. PECO Energy Company*, Docket No. C-2014-2451351 (Order entered August 20, 2015); *Art Larson v. PECO Energy Company*, Docket No. C-2014-2451754 (Order entered June 11, 2015); *Alexander Solowij v. PECO Energy Company*, Docket No. F-2015-2491428 (Order entered April 7, 2016). In finding that PECO failed to provide Complainant with reasonable and adequate customer service and imposing the \$5,000 civil penalty, the ALJ focused on PECO sending termination notices to Claimant's service address in Chester, Pennsylvania instead of his address in New York City. However, the ALJ ignored the

unrefuted evidence that Complainant received notice that PECO was going to terminate his service. Tr. 50. He simply failed to comply with PECO's need to replace the meter because he did not believe PECO would terminate his service. Tr. 17. The ALJ also erroneously placed emphasis on the fact that Complainant's service was not reconnected until after PECO gained access to the meter. Once service was terminated, PECO would not reconnect the service until the meter was replaced, and Complainant failed to grant PECO access from October 18, 2016 to March 25, 2017. The delay in restoring service was also caused by Complainant refusing to pay the reconnection fee.

The termination provisions are set forth in 66 Pa. C.S. § 1406, and provides:

(a) Authorized termination. — A public utility may notify a customer and terminate service provided to a customer after notice as provided in subsection

(b) for any of the following actions by the customer:

...

(4) Failure to permit access to meters, service connections or other property of the public utility for the purpose of replacement, maintenance, repair or meter reading.

(b) Notice of termination of service.

(1) Prior to terminating service under subsection (a), a public utility:

(i) Shall provide written notice of the termination to the customer at least ten days prior to the date of the proposed termination. The termination notice shall remain effective for 60 days.

(ii) Shall attempt to contact the customer or occupant to provide notice of the proposed termination at least three days prior to the scheduled termination using one or more of the following methods:

(A) in person;

(B) by telephone. Phone contact shall be deemed complete upon attempted calls on two separate days to the residence between the hours of 8 a.m. and 9 p.m. if the calls were made at various times each day; or

(C) by email, text message or other electronic messaging format consistent with the commission's privacy guidelines and approved by commission order.

(iv) After complying with paragraphs (ii) and (iii), the public utility shall attempt to make personal contact with the customer or responsible adult at the time service is terminated. Termination of service shall not be delayed for failure to make personal contact.

A. PECO's Exception No. 1 – Complainant Had Actual Notice of Termination

The ALJ lists four reasons that PECO allegedly failed to provide reasonable and adequate customer service. *See* I.D. at p. 14. However, each of these reasons ignores and/or misreads the evidence. The first reason in the I.D. was that PECO failed to mail the September 23, 2016 “friendly” letter and the September 28, 2016, 10-day termination notice to the correct address (PECO mailed these documents to the service address in Chester, PA, and not to the address in New York City where Complainant wanted mailings sent). However, Complainant testified at the hearing that he did in fact have notice that PECO intended to terminate his service, yet he did act upon it because he did not believe PECO would follow through with the termination. Complainant admitted that in the summer of 2016, he received notice from PECO at the Chester, PA address while he was residing there that PECO needed to gain access to the property to change the meter. Tr. 49. Complainant even called PECO on June 29, 2016, to schedule an appointment on July 11, 2016 to have PECO replace his meter. Tr. 49; PECO Exhibit 2, at p. 6. The PECO technician went to the property on July 11, 2016, but was unable to

gain access to the meter. Tr. 49; PECO Exhibit 2, at p. 6. PECO unsuccessfully attempted to contact Complainant via telephone on September 21 and 22, 2016, to replace his meter. Tr. 96-98; PECO Exhibit 2 at p. 7. On September 23, 2016, PECO sent another “friendly” letter to Complainant’s Chester, PA address, sent a 10-day termination notice to the Chester, PA address on September 28, 2016, and on October 11, 2016, posted a 72-hour termination notice at the Chester, PA property. Tr. 96-97; PECO Exhibit 2 at p. 7-8. PECO terminated the Complainant’s electric service on October 18, 2016. Tr. 97-98; PECO Exhibit 2 at p. 9.

The Complainant testified that he received notice of the termination yet did not make an effort to grant PECO access to the property to have the meter replaced because he did not think it was an urgent matter:

Question: And do you recall saying to the PECO rep that you received the notice but you didn’t think that your service would be cut?

Answer: Yes.

Tr. at 50. *See also* PECO Exhibit 2 at p. 9.

However, Complainant’s erroneous belief that PECO would not terminate service does not relieve him from his obligation to grant PECO access to replace the meter. Further, PECO’s termination of service because it was not able to gain access to the meter does not provide support for the ALJ’s finding that PECO failed to provide reasonable and adequate customer service. PECO had provided more than reasonable customer service to Mr. DeLoe by providing ample notice over the past four years that the company needed access to the meter or his service would be terminated. Mr. De Loe received the letters and notices through September 2015 at his New York address and

admitted that he received the termination notice at issue at his Chester address.

Accordingly, the company provided proper notification pursuant to 66 Pa. C.S. § 1406.

The intent of 66 Pa. C.S. § 1406 is that a customer's service should not be terminated without PECO providing adequate notice. In the present case, Complainant did have actual and adequate notice. Thus, it was error for the ALJ to conclude that PECO failed to provide reasonable and adequate customer service based on this factor.

B. PECO's Exception No. 2 – PECO Did Provide Notice of the Termination of Complainant's Service

The second alleged reason the ALJ found against PECO was because PECO allegedly terminated service on October 18, 2016, without providing written notification to Complainant. However, PECO complied with 66 Pa. C.S. § 1406 by providing the 72-hour termination notice in person at the service address in Chester, PA, and by attempting to make personal contact with Complainant at the time service was terminated. *See* PECO Exhibit 2 at p. 9, showing that the PECO technician went to the service address on October 17, 2016 and there was no answer from Complainant. Further, the Complainant admits that he received the notice. Tr. 50. After complying with 66 Pa. C.S. § 1406 by providing the 10-day and 72-hour termination notices, and attempting to make personal contact with Complainant on October 17, 2016, the failure to make personal contact shall not delay termination of service. *See* 66 Pa. C.S. §1406(b)(1)(iv). However, PECO is being fined \$5,000 for failure to provide notice? The Complainant himself admits that he received notice. Tr. 50. While the notice was not sent to his New York address, the Complainant did receive it at his Chester address where he admits that resides half the

year. Tr. 9. Thus, it was error for the ALJ to conclude that PECO failed to provide reasonable and adequate customer service based on this factor.

C. PECO's Exception No. 3 – PECO Was Justified in Not Reconnecting Service

The third alleged reason the ALJ found against PECO was because PECO did not immediately reconnect service after it learned it had sent the termination notices to the service address in Chester, Pennsylvania, instead of New York City. However, this argument ignores the reality of the situation. PECO had been contacting Mr. DeLoe for the past four years requesting access to change the meter and he ignored the company every step of the way. PECO was justified in terminating Complainant's service because he refused to provide access to allow PECO to switch his meter. Even after the service was terminated, there is no evidence in the record that Mr. DeLoe made efforts to give PECO access, but rather, he delayed until March 25, 2017, to finally provide the company access. PECO representative Fred Mahugu testified that Mr. DeLoe wanted his restored without giving access and this was not an option. It does not make sense that the company would restore Mr. DeLoe's service (simply because the company learned that the termination notice was sent to the service address) after the company had been trying for four years to gain access without actually receiving the access needed to change the meter. Thus, PECO's action of not reconnecting service after the company learned it sent the termination notices to the service address in Chester, PA, and not New York City, was justified and does not support the ALJ's finding that PECO failed to provide reasonable and adequate customer service.

D. PECO's Exception No. 4 – PECO Was Justified in Not Reconnecting Service Until it Had Access to Replace Complainant's Meter

The ALJ cited PECO's continued refusal to reconnect service for a period in excess of five months as the last reason why the company did not provide reasonable and adequate customer service. Again, Complainant had ample notice of PECO's intention to terminate his service if the company could not gain access to the property and replace the meter. The evidence proves that Complainant knew this but failed to cooperate with PECO and allow the company access to replace his meter. The ALJ also ignored the fact that PECO employee, Fred Mahugu, did attempt to get Complainant financial assistance to pay the restoration fee. Tr. 100. Mr. Mahugu advised Complainant that PECO needed access to the meter to replace it, and could not restore service without gaining access. Tr. 100. Mr. DeLoe ignored this advice from PECO for over four months. Thus, PECO's refusal to reconnect service for the period in question does not support the ALJ's finding that PECO failed to provide reasonable and adequate customer service.

E. PECO's Exception No. 5 – The 52 Pa. Code § 69.1201(c) Factors do not Support the Civil Penalty

The ALJ also erroneously applied the factors under 52 Pa. Code § 69.1201(c) when concluding these factors warranted a high penalty. With respect to the first criterion, PECO's inadvertent change of Complainant's mailing address from New York City to the service address in Chester, PA was not egregious, as it was an administrative error. Just as importantly, Complainant did receive notice that PECO was going to terminate his service – he admitted so – and he testified that he thought PECO was not going to follow through with the termination. Thus, this behavior was not a serious violation.

Regarding the second criterion, Complainant submitted no proof that his refrigerator was damaged or incapable of being repaired, and he did not submit any dollar amount for the alleged loss of food or having to spend the night in a hotel. Thus, this property damage does not warrant a higher penalty.

With respect to the third criterion, as discussed above, PECO's conduct was negligent, not intentional. The ALJ admitted that it was only negligence when the PECO employee changed the mailing address from New York City to Chester, PA. However, the ALJ argues that PECO intentionally refused to reconnect service and insisted that Complainant pay the reconnection fee and allow access before service would be reconnected. However, as also discussed above, PECO had to change Complainant's meter, so there was no logical reason to reconnect service without doing so. Complainant's conduct in ignoring PECO's attempts to replace his meter prevented PECO from switching the meter. Thus, this factor does not warrant a higher penalty.

With respect to the fourth criterion – whether PECO made efforts to modify its internal practices and procedures – Complainant knew since 2013 that PECO had to change the meter, yet he took no steps to allow PECO to do this. Further, Complainant did have actual notice that PECO was going to terminate service despite mailing the notices to the Chester, PA address. Thus, this criterion does not justify a higher penalty.

With respect to the eighth criterion, the amount of the civil penalty – \$5,000 – is excessive and not necessary to deter future violations. As discussed above, PECO had to replace Complainant's meter, and thus did not reconnect service immediately upon Complainant informing PECO that he allegedly did not receive the termination notice. The fact of the matter is that Complainant had ignored PECO's attempts for years to

switch his meter, and he did have actual notice that his service was to be terminated, but he simply did not believe that PECO would actually terminate his service. Thus, PECO's actions did not warrant a \$5,000 penalty to deter future violations.¹

IV. CONCLUSION

When properly viewed, the evidence in this case cannot support the excessive civil fine imposed on PECO nor the finding that PECO did not provide reasonable and adequate customer service to Complainant. For four years, PECO advised Complainant that it needed access to the service address to replace his meter. Complainant continually ignored PECO, under the mistaken belief that PECO would not terminate his service. Further, Complainant admitted he had actual notice that PECO was going to terminate his service. Once service was terminated, PECO was justified in not reconnecting service until Complainant allowed access to the property so PECO could replace the meter. Thus, PECO did provide reasonable and adequate customer service, and PECO respectfully submits that the I.D. should be vacated and the Commission should dismiss the Complaint in its entirety with no finding of a violation against PECO.

Respectfully submitted,



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

¹ The fifth, sixth, seventh, ninth and tenth criteria do not need to be addressed, as they did not affect the ALJ's decision to impose the penalty.

Dated: August 21, 2017

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

WADE DE LOE	:	
Complainant	:	
v.	:	DOCKET NO. F-2016-2581905
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

CERTIFICATE OF SERVICE

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

Wade De Loe
560 West 170th Street
Apartment #6B
New York, NY 10032



Shawane L. Lee, Esquire

DATED: August 21, 2017