

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

K & J Pizza	:	
	:	
v.	:	C-2015-2501838
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

This Initial Decision sustains the portion of K&J Pizza’s formal Complaint against PECO Energy Company, Docket No. C-2015-2501838 concerning inadequate service relating to numerous estimated bills, and denies the portion of the Complaint concerning claims of high billing, improper billing for services not rendered, improper withholding of security deposit, and improper assessment of late payment charges.

HISTORY OF THE PROCEEDING

On September 1, 2015, Tony Moss and Jerry Simotis filed a formal Complaint against PECO Energy Company (PECO or Respondent) alleging that PECO is threatening to shut off or had already shut off the electric service and gas service at their place of business, K&J Pizza located at 2601 Jenkintown Road, Glenside, PA 19038. They also alleged that there are incorrect charges on the bills from PECO and that “PECO had add (sic) some other restaurant bill to our corporation K&J Pizza [although they] never have any other business only K&J Pizza.” The relief requested in the Complaint is the removal of charges that are not related to K&J Pizza.

On September 23, 2015, PECO filed an Answer denying the material allegations of the Complaint. In its Answer, PECO averred that K&J Pizza established a commercial account for gas and electric service at 2601 Jenkintown Road, Glenside, PA on July 7, 1999. According to PECO's record, K&J Pizza also established an account for commercial electric service at 1333B Easton Road, Roslyn, PA on October 5, 2009. PECO averred that it has received electronic payments to these accounts from the same bank checking account.

A Hearing Notice dated October 28, 2015, notified the parties that an initial hearing was scheduled for Monday, December 7, 2015, at 10:00 a.m.

A Prehearing Order was issued on April 8, 2015, advising the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

On November 4, 2015, PECO filed a Motion for Judgement on the Pleadings (Motion). In its Motion, PECO averred that the Complainant is a corporation and sought to dismiss the Complaint because no attorney had entered his or her appearance on behalf of the Complainant in this matter.

The Complainant did not file a response to the Respondent's Motion for Judgement on the Pleadings.

The initial hearing convened as scheduled on December 7, 2015. Khaled Mostafa, a.k.a. Tony Moss appeared at the hearing prepared to testify on behalf of the Complaint. Shawane L. Lee, Esq. represented the Respondent. Prior to collecting testimony and evidence from the parties, I addressed PECO's Motion for Judgement on the Pleadings. Mr. Mostafa explained that K&J Pizza is a limited liability company and that it identifies itself as such in its tax returns. In view of his statement, I instructed Mr. Khaled that the Complainant, K&J Pizza, was required to have an attorney represent it in a formal adversarial proceeding before this Commission. I informed him that he had until January 7, 2016, to obtain legal representation on behalf of the Complaint.

A Hearing Notice dated December 15, 2015, notified the parties that a further hearing was scheduled in this matter for Wednesday, February 24, 2016, at 10:00 a.m.

In January of 2016, Mr. Mostafa contacted the Commission's Philadelphia Office informing the undersigned of his difficulty in hiring an attorney and seeking assistance in finding an attorney to represent the Complainant.

On February 18, 2016, Allen L. Cohen, Esq. submitted to the undersigned via facsimile a request for a continuance of the February 24, 2016, hearing. In that communication, Mr. Cohen stated that he had recently been retained by the Complainant and needed time to review the file and obtain discovery of PECO Energy Company.

By e-mail dated February 19, 2016, PECO objected to Mr. Cohen's request for a continuance of the scheduled hearing.

By e-mail dated February 23, 2016,¹ I granted the Complainant's request to continue the hearing at a later date after finding that the Complainant's efforts to obtain legal representation were reasonable and diligent. A Prehearing Order dated March 30, 2016, memorialized that ruling.

A Hearing Notice dated March 25, 2016, notified the parties that a further hearing was scheduled in this matter for Friday, April 22, 2016, at 10:00 a.m.

On March 30, 2016, I issued another Prehearing Order advising the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

¹ In my February 23, 2016 e-mail, I also reminded the Complainant: (1) that it should continue to pay the undisputed portion of its bill; (2) that this was the second continuance granted to the Complainant and that any future requests for continuance may be construed as improper attempts to delay the hearing; and (3) that the Complainant's counsel, Mr. Cohen, needed to file a Notice of Appearance with the Commission in accordance with 52 Pa.Code §§ 1.24, 1.25.

The April 22, 2016 hearing convened as scheduled. Allen L. Cohen, Esq. represented the Complainant, K&J Pizza, and presented the testimony of Khaled Mostafa. Shawane L. Lee, Esq. represented PECO Energy Company. At the hearing, Mr. Cohen requested an opportunity to file an amended complaint in this matter. Tr. 45. His request was granted (Tr. 51). Complainant was instructed to file an Amended Complaint by May 22, 2016. Tr. 61-62.

On May 19, 2016, counsel for K&J Pizza filed an Amended Complaint alleging: (1) that the Respondent has improperly withheld a security deposit assessed against the Complainant; (2) that for duration of service which began in 1998, most of the PECO bills received by K&J Pizza were estimated and not based on actual readings; (3) that Complainant's bills from PECO were abnormally high as compared to similar businesses in PECO's service territory; (4) that PECO employees informed the Complainant that the Commission lacks authority to issue a decision on a non-residential account thereby causing the customer to delay bringing the present complaint before the Commission; and (5) that by overcharging the Complainant, the Respondent rendered the Complainant unable to pay the bills in a timely manner and unfairly assessed substantial sum in late payment charges. As relief, the Complainant sought review of its accounts with PECO and a refund of all overcharges placed in its account since September 2003, which the Complainant calculated to be in the amount of \$99,192.86.

On June 8, 2016, PECO filed an Answer and New Matter denying the material allegations of the Amended Complaint.

A Hearing Notice dated June 15, 2016, notified the parties that a further hearing was scheduled in this matter for Wednesday, July 20, 2016, at 10:00 a.m.

On June 25, 2016, Complainant filed its Answer to PECO's New Matter denying all material allegations.

The July 20, 2016 hearing convened as scheduled. Allen L. Cohen, Esq. represented the Complainant, K&J Pizza, and presented the testimony of Khaled Mostafa. Shawane L. Lee, Esq. represented the Respondent, and presented the testimony of Teresa Ferrier, Margaret O'Donnell, Thomas Lerro, and Richard King. As PECO had not completed its case in chief by the close of business day on July 20, 2016, another further hearing was necessitated in this matter.

A Hearing Notice dated July 26, 2016, notified the parties that a further hearing was scheduled in this matter for Friday, September 23, 2016, at 10:00 a.m.

The further hearing convened as scheduled on September 23, 2016. Shawane L. Lee, Esq. represented the Respondent, and presented the testimony of Richard King and Michael Begley. Allen L. Cohen, Esq. represented the Complainant, K&J Pizza, and presented the rebuttal testimony of Khaled Mostafa.

The record closed on October 23, 2016, and consists of 604 pages of hearing transcripts, Complainant Exhibits 1-7, and PECO Exhibits 1-29.

FINDINGS OF FACT

1. The Complainant is K&J Pizza which is located at 2601 Jenkintown Road, Glenside, PA 19038 (Jenkintown service address). Tr. 90.

2. The Respondent is PECO Energy Company.

Improper Billing for Service at 1333B Easton Road, Roslyn, PA

3. K&J Pizza is registered with the Pennsylvania Department of State as a limited liability company.² Tr. 86-88.

² During the hearings Mr. Mostafa expressed uncertainty as to the type of business that he ran, declaring early on that K&J Pizza was a partnership, then an LLC, and later that it was merely registered as a fictitious name.

4. K&J Pizza's Tax ID # is 23-3009930. Tr. 184, PECO Exhibit 4.
5. Khaled Mustafa, a.k.a. Tony Moss, is the sole member and owner of K&J Pizza. Tr. 26.
6. Mr. Mostafa has operated K&J Pizza at the Jenkintown service address since 1999. Tr. 26, 90.
7. Mr. Mostafa resides at 404 Willard Road, Hatboro, PA. Tr. 176, 178.
8. PECO provides commercial electric and gas service to K&J Pizza at the 2601 Jenkintown Road address at account # 05254-00306. Tr. 184, PECO Exhibit 4.
9. The Tax ID # connected with PECO account # 05254-00306 is 23-3009930. Tr. 184, PECO Exhibit 4.
10. Beginning on October 5, 2009, PECO also provided commercial electric service at 1333B Easton Road, Roslyn, PA 19101 at account # is 08356-31019. Tr. 182, PECO Exhibits 1 and 4.
11. When a commercial customer establishes services with PECO, the Company collects from the customer information regarding the business' Tax ID number. Tr. 183-85, 231, 233.
12. For a business, a Tax ID number is identifying information similar to the Social Security Number assigned to individuals. Tr. 225.
13. The PECO account # 08356-31019 was opened under the name of K&J Pizza and has K&J Pizza Tax ID # 23-3009930 connected to it. Tr. 181, PECO Exhibits 1 and 4.

See original Complaint, Tr. 86-88, 143-44. As of the day of this Initial Decision, K&J Pizza is listed with the Pennsylvania Department of State as both a fictitious name and as an LLC.

14. The bills for PECO account # 08356-31019 were mailed to K&J Pizza, 1335 Easton Road, Glenside PA 19101, for services rendered to 1333B Easton Road, Glenside PA 19101. Tr. 245-46, PECO Exhibit 6.

15. Milano's Pizzeria & Family Restaurant is a limited liability company registered at 1335 Easton Road, Roslyn, PA 19101 to Nesma Mohammad, who resides at 404 Willard Road in Hatboro, PA. Tr. 175-176.

16. Nesma Mohammad is Mr. Mostafa' wife. Tr. 178, Complainant Exhibit 6.

17. On October 28, 2009, an informal complaint with the Commission's BCS at BCS Case # 2612569 by "Tony Owner" on behalf of K&J Pizza. PECO Exhibit 5.

18. The service address identified in the informal complaint form for BCS Case # 2612569 was 1333 Easton Road, Roslyn, PA 19101, and the account in dispute was 08356-31019. Tr. 187-88, PECO Exhibit 5.

19. In BCS Case # 2612569, the customer maintained that the demand for a security deposit was "ridiculous when he has business with PECO at another address in good standing." Tr. 187-88, PECO Exhibit 5.

20. Electric service at the 1333B Easton Road address was discontinued on August 30, 2014 and a final bill was rendered for \$1,018.62. Tr. 181.

21. If a customer who requests discontinuance of service under one account has another active account with PECO, the outstanding balance from the former account is transferred to the later active account. Tr. 184-85, PECO Exhibit 9.

22. On September 14, 2014, the final balance of \$1,018.62 for service at the 1333B Easton Road was transferred from account # 08356-31019 to K&J Pizza's active account # 05254-00306. Tr. 185, PECO Exhibit 9.

23. On March 10, 2015, Mr. Mostafa contacted PECO disputing the transferred balance and averring that he never had a business at 1333B Easton Road. Tr. 186, PECO Exhibit 2.

24. By letter dated March 24, 2015, PECO informed Mr. Mustafa that it was closing the dispute after failing in its attempts to reach him. Tr. 186-87, PECO Exhibit 2.

25. On April 28, 2015, Mr. Mostafa filed an informal complaint with the Commission's BCS at BCS Case # 3339449 on behalf of K&J Pizza, disputing the transfer of balance from the Easton Road service address. Tr. 200-202, PECO Exhibit 7.

26. On June 29, 2015, BCS issued a written informal decision at BCS Case # 3339449, advising the complainant that "This is a non-residential account. The PUC does not have the authority to issue a decision on a non-residential account." Tr. 203, PECO Exhibit 8.

High Billing Dispute for the Jenkintown Service Address

27. K&J Pizza's hours of operation are 10:00 a.m. to 10:00 p.m. Tr. 149-50.

28. Mr. Mostafa switched to LED lighting to conserve electricity. Tr. 149-51.

29. In his efforts to conserve electricity, Mr. Mostafa added air conditioning in his store only about two years ago. Tr. 149-51.

30. Ms. O'Donnell visited K&J Pizza's Jenkintown location on November 3, 2011, in order to conduct a high bill field investigation. Tr. 278-79, PECO Exhibit 19.

31. Ms. O'Donnell did not meet with Mr. Mostafa during the November 3, 2011 visit, but was told that he was at "the other store." Tr. 287, PECO Exhibit 19.

32. During the November 3, 2011 visit, Ms. O'Donnell captured the load of the gas and electric appliances found at the store, verified the meters of record were there (electric meter # 017305937; gas meter # 015650038), verified that the usage was in line with what PECO had been billing the Complainant, and explained to manager that based on the appliances on location K&J Pizza had the potential to use the amount of gas and electricity for which it was billed. Tr. 186-87, PECO Exhibit 19.

33. Ms. O'Donnell listed the following electric appliances found at the service address during the November 3, 2011 visit: a side by side commercial refrigerator, three freezers, five refrigerators, two chest freezers, two under counter refrigerators, a soda cooler, a rooftop air conditioner, and six 4' fluorescent light tubes.

34. Ms. O'Donnell calculated the total load on K&J Pizza's line to be 17,700 watt, of which 13,030 watt was from refrigeration. Tr. 281-82, PECO Exhibit 19.

35. Mr. O'Donnell calculated that the Complainant had the potential of using 9,382 kWh per month in refrigeration alone. Tr. 283, 285.

36. During the November 3, 2011 visit, the following gas appliances were found at the property: two ovens, a grill, a fryer and a cooktop. PECO Exhibit 19.

37. Ms. O'Donnell was unable to locate a heater or a hot water heater during the November 3, 2011 visit. Tr. 284.

38. Ms. O'Donnell calculated that because the store was open 12 hours a day, K&J Pizza had the potential of using 419 CCF per month. Tr. 284-86.

39. Ms. O'Donnell did not test the Complainant's gas and electricity meters during the November 3, 2011 visit as the customer declined the drop load test. Tr. 287-88, PECO Exhibit 19.

40. Ms. O'Donnell visited the service address again on December 15, 2015, on a field visit with Mr. Lerro.

41. During the December 2015 field visit, Mr. Lerro verified the meters of record were there (electric meter # 124442947; gas meter # 015650038), and obtained actual readings from them. PECO Exhibit 20.

42. Mr. Lerro walked through the store with Mr. Mostafa and took note of any appliances that had changed since the 2011 visit. Tr. 319.

43. Based on the plate ratings that Ms. O'Donnell had retrieved from the appliances during her 2011 field visit, as well as from accepted national standards, Mr. Lerro calculated the Complainant had the potential of using between 100 and 300 kWh of electricity a day or 3,000 to 9,000 kWh per month, as well as the potential of using between 10 and 20 CCF of gas per day or 300-600 CCF of gas per month. Tr. 322-23.

44. On February 22, 2016, a PECO technician met with the K&J's owner and tested the accuracy of Complainant's electricity meter (meter # 124442947). Tr. 325, PECO Exhibit 21.

45. Electricity meter # 124442947 was installed at the service address in September 24, 2014, and continues to service that location as of the day of the hearing. PECO Exhibit 9. Tr. 326.

46. On February 22, 2016, electricity meter # 124442947 tested 100.03% accurate on full load tests, and 100.05% accurate on light load tests. Tr. 327-28, PECO Exhibit 21.

47. Electricity meter # 124442947 was also tested before it was installed at the service address and was shown to be accurate within the limits accepted by the Commission. Tr. 328-29, PECO Exhibit 18.

48. A sample of K&J Pizza's monthly electricity usage through the years 2010-2016 reveals the following:

Billing Cycle	2010 (kWh)	2011 (kWh)	2012 (kWh)	2013 (kWh)	2014 (kWh)	2015 ³ (kWh)	2016 (kWh)
Jan-Feb	4108	4025	3285	3118	3164		2998
Feb-March	4677	4104	3664	3522	3484		3828
March-Apr	4672	4814	3700	3790	3864		
Jul-Aug	6386	7348	6062	5379	4416		8783
Aug-Sep	5655	5437	6185	4706	4873		8682
Sep- Oct	4723	4358	3993	3991	4161 (E)		

PECO Exhibit 9.

49. A sample of K&J Pizza's monthly gas usage through the years 2010-2016 reveals the following:

Billing Cycle	2010 (CCF)	2011 (CCF)	2012 (CCF)	2013 (CCF)	2014 (CCF)	2015 (CCF)	2016 (CCF)
Jan-Feb	383	403	328	350	371		243
Feb-March	397	369	323	344	353		354
March-Apr	349	369	307	330	369		
Jul-Aug	328	332	286	353	320		298
Aug-Sep	346	369	310	341	347		312
Sep- Oct	1379 (C) ⁴	336	297	334	339 (E) ⁵		

PECO Exhibit 9.

³ PECO issued estimated bills for gas and electricity all through 2015. PECO Exhibit 9.

⁴ This bill was cancelled and rebilled by PECO on November 22, 2010. PECO Exhibit 9.

⁵ This was an estimated bill. PECO Exhibit 9.

50. On June 16, 2016, at 11:59 p.m., PECO's system read the index from the Complainant's electric meter at 83978. PECO Exhibit 9.

51. On June 25, 2016, at 4:49 p.m., Mr. Mostafa took a picture of the screen from PECO's electric meter at the Jenkintown address reading 86390. Complainant Exhibit 4.

52. On June 16, 2016, at 11:59 p.m., PECO's system read the index from the Complainant's gas meter at 1889. PECO Exhibit 9.

53. On June 25, 2016, at 4:52 p.m., Mr. Mostafa took a picture of the screen from PECO's gas meter at the Jenkintown address reading at 2085 (or 1985). Complainant Exhibit 5.

54. On July 15, 2016, at 5:23 p.m., Mr. Mostafa took a picture of the screen from PECO's electric meter at the Jenkintown address reading at 92261. Complainant Exhibit 5.

55. On July 17, 2016, at 11:59 p.m., PECO's system read the index from the Complainant's electric meter at 92830. PECO Exhibit 9.

56. On August 15, 2016, at 3:14 p.m., Mr. Mostafa took a picture of the screen from PECO's electric meter at the Jenkintown address reading at 101481. Complainant Exhibit 1.

57. On August 15, 2016, at 11:59 p.m., PECO's system read the index from the Complainant's electric meter at 101613. PECO Exhibit 9.

58. On August 15, 2016, at approximately 3:00 p.m., Mr. Mostafa took a picture of the screen from PECO's gas meter at the Jenkintown address reading at 2512. Complainant Exhibit 2.

59. On August 15, 2016, at 11:59 p.m., PECO's system read the index from the Complainant's gas meter at 2517. PECO Exhibit 9.

Estimated Bills for the Jenkintown Service Address

i) Electricity – Jenkintown Service Address

60. On September 24, 2014, PECO changed the electricity meter serving the Jenkintown address from an Automatic Meter Reading (AMR) model to an Automated Meter Infrastructure (AMI) model. Tr. 398, 401, PECO Exhibit 17.

61. An AMI meter is an electric meter that measures interval data from each residential or commercial customer. Tr. 389.

62. The intervals are 15 minutes in length. Tr. 389.

63. PECO experienced technical problems with its deployment of AMI meters as some of the new meters failed to report to the system. Tr. 298-99.

64. If an AMI meter fails to report to the system, PECO's system will issue an estimated bill to the customer, while PECO's smart grid operations team tries to fine-tune the meter or tries to "buddy" the meter with another meter within the area. Tr. 399, 407.

65. The meter's failure to report is often the result of the location of the meter compared to the closest tower which intercepted the reading. Tr. 399.

66. The deployment of AMI meters has made it necessary for PECO to install and maintain the Meter Data Management System (MDM).

67. The MDM holds all of the interval data from each customer, which it sends off to the billing system for the calculation and production of a bill. Tr. 400.

68. Even if the AMI meter is delivering some actual readings during the day or during some days, the new PECO system needs to receive at least 50% of the interval data to bill the account as an actual bill. Tr. 407.

69. K&J Pizza received four consecutive estimated electricity bills during the period September 2014 to January 2015 for service at the Jenkintown address. Tr. 402-404, PECO Exhibits 9 and 17.

70. K&J Pizza received an actual electricity bill for the period January – February 2015, as PECO was able to get enough interval data for the period January 22, 2015, to February 19, 2015. Tr. 402, PECO Exhibits 9 and 17.

71. The actual reading in February 2015 was followed by another three consecutive estimated electricity bills during the period February 18, 2015 to May 20, 2015, for service at the Jenkintown address. Tr. 406-407, PECO Exhibits 9 and 17.

72. On June 10, 2015, PECO performed a rebilling of the electricity bills for the period February 18, 2015, through June 10, 2015. PECO Exhibits 9, 14, 17, and 27.

73. The June 10, 2015 billing revision was performed to put usage in line with the actual reading of the meter obtained on June 9, 2015, during a field visit to address a gas meter malfunction at the Jenkintown address. Tr. 456, PECO Exhibits 9, 14, 17, and 27.

74. The information on the monthly usage reflected in the June 10, 2015 rebilling was based on the actual readings received by the system, which had been deemed insufficient for the issuance of actual bills because they were either not received at midnight or did not amount to 50% interval data for the billing period. Tr. 408, 457-58, PECO Exhibits 9, 14, 17, 24 and 27.

75. K&J Pizza received another six consecutive estimated electricity bills during the period May 20, 2015, to November 17, 2015, for service at the Jenkintown address. Tr. 408-409, PECO Exhibit 9.

76. On December 4 and 7, 2015, PECO performed two other rebillings of the electricity bills for the period May 20, 2015 through August 19, 2015, and August 19, 2015 through November 17, 2015, respectively. Tr. 404, PECO Exhibits 9, 28, and 29.

77. The December 2015 rebillings were based on actual readings received by the system which had been deemed insufficiently frequent or untimely for the issuance of actual bills. Tr. 409-410, 555, PECO Exhibit 9.

78. PECO's system continued to issue estimated electricity bills for K&J Pizza for two additional months, December 2015 and January 2016. PECO Exhibit 9.

79. A fourth rebilling occurred on December 28, 2015, following actual readings obtained during Mr. Lerro's December 15, 2015 field visit. PECO Exhibits 9 and 20.

80. The last rebilling occurred on February 8, 2016, when PECO rebilled the electricity bill issued to K&J Pizza on January 25, 2016, for service during the period December 18, 2015 through January 22, 2016. PECO Exhibit 9.

81. Beginning with the bill issued on February 22, 2016, PECO has consistently billed K&J based on actual readings. Tr. 410, PECO Exhibit 9.

82. During the period September 24, 2014 to January 22, 2016, Complainant received 15 estimated electricity bills, only one actual bill, and only three actual readings (February 18, 2015, and June 9, 2015, and December 4, 2015).

83. During the period September 24, 2014, to January 22, 2016, PECO only attempted to fine tune the system remotely from its offices. Tr. 413.

ii) Gas – Jenkintown Service Address

84. The gas meter serving the Jenkintown address malfunctioned during the period September 2014 through January 22, 2016. Tr. 399, 407.

85. During the period September 2014 to February 2016, PECO issued a total of 13 estimated gas bills to K&J Pizza: on October 20, 2014, November 18, 2014, March 24, 2015, April 22, 2015, May 21, 2015, June 22, 2015, July 22, 2015, August 20, 2015, September 21, 2015, October 20, 2015, November 18, 2015, December 21, 2015 and January 25, 2016. Tr. 455, PECO Exhibit 9.

86. On April 28, 2015, PECO attempted to contact the Complainant via telephone concerning a maintenance issue with regard to the gas meter serving the Jenkintown address (meter # 0155650038).

87. On April 28, 2015, a PECO field representative visited the Jenkintown address and left a 72-hour notice due to inability to gain access to the gas meter for maintenance. PECO Exhibit 14.

88. On May 5, 2015, a 10-day termination notice was mailed to the Complainant due to inability to gain access to the gas meter for maintenance. *Id.*

89. On May 15, 2015, the termination process was suspended as a result of the filing of an informal complaint by the Complainant. *Id.*

90. On May 26, 2015, PECO installed an AMI gas module to Complainant's gas meter. *Id.*

91. The AMI module installed on May 26, 2015, was not in sync with the meter register – while the meter register was registering usage correctly, the module was reporting something different. Tr. 548-49.

92. On June 9, 2015, PECO noted in its system that the Complainant's gas meter needed to be reprogrammed to current index reading. PECO Exhibit 14.

93. On July 7, 2015, PECO attempted to contact the Complainant via telephone concerning a maintenance issue with regard to the gas meter. *Id.*

94. The call was repeated on July 8, 2015.

95. On July 9, 2015, PECO sent a letter to the Complainant in an effort to set an appointment concerning a maintenance issue with the gas meter. *Id.*

96. On July 21, 2015, PECO was able to reprogram the module on Complainant's gas meter. *Id.*

97. PECO continued to issue estimated bills to the Complainant after July 21, 2015. PECO Exhibit 9.

98. Notes from PECO's system dated September 30, 2015, remark that a new appointment was needed to reprogram the gas meter again. PECO Exhibit 14.

99. Complainant continued to receive estimated gas bills until February 2016. PECO Exhibits 9 and 14.

100. Complainant's gas bills were part of the rebillings that PECO performed on June 10, 2015, December 4 and 7, 2015, and December 28, 2015. PECO Exhibits 9 and 20.

Security Deposits and Late Payment Charges

101. Since 2007, PECO has assessed a total of \$3,649 in security deposits to K&J Pizza for the Jenkintown service address. Tr. 216, PECO Exhibit 9.

102. The initial deposit of \$814.00 was assessed on June 30, 1999. Tr. 216-17, PECO Exhibit 10.

103. Three additional security deposits were requested on May 15, 2007, July 16, 2007, and September 17, 2007, for \$2,115.00, \$310.00 and \$410.00, respectively. Tr. 216-17, PECO Exhibit 10.

104. None of these deposits have been returned or refunded to the Complainant. Tr. 217, PECO Exhibit 10.

105. The Respondent is holding K&J Pizza's security deposits because the Complainant has a credit issue caused by a poor payment history. Tr. 209, 218, PECO Exhibit 9.

106. PECO will refund the deposits when the account is current and has made payments timely and in full for 24 consecutive months. Tr. 218, PECO Exhibit 11.

107. PECO assesses late payment charges if an outstanding balance is not paid in full within five days from the due date stated in the bill. Tr. 249-250.

108. From 2005 to the present, PECO has assessed to K&J Pizza's Jenkintown account a total of \$1,833.30 in late payment charges. Tr. 212-14, PECO Exhibit 12.

109. Following instances of bill cancellation and rebilling, PECO credited back to K&J Pizza's account \$770.31 in late payment charges. *Id.*

110. PECO did not assess late payment charges to K&J Pizza from September 2011, to March 2012, while PECO was investigating K&J Pizza's claims. Tr. 209-210.

DISCUSSION

In its Amended Complaint, K&J Pizza alleges that: (1) that the Respondent has improperly withheld a security deposit assessed against the Complainant; (2) that for the duration of service which began in 1998, most of the PECO bills received by K&J Pizza were estimated and not based on actual readings; (3) that Complainant's bills from PECO were abnormally high as compared to similar businesses in PECO's service territory; (4) that PECO employees informed the Complainant that the Commission lacks authority to issue a decision on a non-residential account thereby causing the customer to delay bringing the present complaint before the Commission; and (5) that by overcharging the Complainant, the Respondent rendered the Complainant unable to pay the bills in a timely manner and unfairly assessed substantial sum in late payment charges. As relief, the Complainant sought review of its accounts with PECO and a refund of all overcharges placed in its account since September 2003, which the Complainant calculated to be in the amount of \$99,192.86.

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S.A. § 332(a). To satisfy this burden, the Complainant must demonstrate that the Respondent was responsible for the problems alleged in the Complaint through a violation of the Code or a regulation or order of the Commission. This must be shown by a preponderance of the evidence. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990). Preponderance of the evidence means that the party with the burden of proof has presented evidence that is more convincing than that presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlt. 1990) *alloc. den.*, 602 A.2d 863 (Pa.1992). In addition, the Commission's decision must be supported by "substantial evidence," which consists of evidence that a reasonable mind might accept as adequate to support a conclusion. A mere "trace of evidence or a suspicion of the existence of a fact" is insufficient. *Norfolk and Western Railway Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa.1980).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence

of the Complainant shifts to the Respondent. If the evidence presented by the Respondent is of co-equal weight, the Complainant has not satisfied her burden of proof. The Complainant would be required to provide additional evidence to rebut the evidence of the Respondent. *Burleson v. Pa. Pub. Util. Comm'n*, 443 A.2d 1373 (Pa.Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa.1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa.Cmwlth. 2001).

a) Statute of Limitations

Of the various claims made in K&J Pizza's Amended Complaint I shall address first the Complainant's claim that statements made by PECO employees caused the Complainant to delay bringing the present Complaint before the Commission.

Pursuant to Section 3314 of the Public Utility Code (the Code), 66 Pa.C.S. § 3314,

No action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefor arose, except as otherwise provided in this part.

(Emphasis added). 66 Pa.C.S. § 3314(a). This provision provides a general limitation period of three years for any action under the Code, except as otherwise provided. See, *Duquesne Light Co. v. Pa. PUC*, (*Duquesne*), 611 A.2d 370 (Pa.Cmwlth. 1992). The statute of limitations can be tolled by the doctrine of equitable estoppel. See *Lester Ely v. Pennsylvania American Water Company*, C-20055616 (Order entered July 10, 2006), see also, *Mary Esther Battle v. PECO Energy Co.*, C-00003804 (Order entered July 16, 2001). In *Ely*, the Commission held that

[The theory of estoppel] provides that a defendant may not invoke the statute of limitations if through fraud or concealment he causes the plaintiff to relax his vigilance or deviate from his right of

inquiry into the facts. The doctrine does not require fraud in the strictest sense, but rather, fraud in the broadest sense, which includes an unintentional deception.

Lester Ely v. Pennsylvania American Water Company, C-20055616 (Order entered July 10, 2006); According to the Commission, Respondent's repeated assurances that it would restore Complainant's driveway caused the Complainant to essentially "relax his vigilance." *Id.*

During the evidentiary hearings, Mr. Mostafa testified that he had a long history of questioning PECO regarding K&J Pizza's high bills. Tr. 90-91. He stated that he contacted PECO three or four times in 2003 to dispute K&J Pizza's high bills. Tr. 106. He contacted PECO four or five times in 2004 for the same purpose. Tr. 107. On those instances, PECO's position was that the bills were correct as rendered and that service would be terminated unless the balance was paid. Tr. 108. The situation persisted in 2005 and 2006. Tr. 109. According to Mr. Mostafa, instead of investigating and resolving the issue, PECO sent him termination notices. Tr. 109. He testified that between 2003 and 2014 K&J Pizza received a total of 12 or 13 termination notices. Tr. 110. In 2009, PECO technician checked Complainant's meter and concluded that the meter was accurate and the bill was correct as rendered. Tr. 115-17.

In his testimony Mr. Mostafa listed various events or actions occurring before and after September 1, 2012, which according to him showed fraud or concealment on the part of PECO. He testified that in 2010, K&J Pizza received correspondence from PECO stating that there was an incorrect gas meter reading from September 16, 2010 to November 15, 2010. Tr. 100. He also testified that from 2000 to 2001, K&J Pizza was enrolled with an alternative supplier without his permission. Tr. 100-103. No supporting documentation or additional details were provided with regard to these events.

Next, Mr. Mostafa explained that K&J Pizza was billed for services rendered to another business, Milano's Pizzeria and Family Restaurant, located approximately one mile away from the Complainant. Tr. 93. He stated that he has received bills from PECO addressed to K&J Pizza but bearing charges and account number that did not belong to the Complainant. Tr. 93. When he called PECO in 2014 to dispute these bills, he was told that the bills reflected

Complainant's high usage and he had to enter into a payment arrangement with PECO on behalf of the Complainant in order to pay those bills. Tr. 93, 98.

Mr. Mostafa testified that, when he informed PECO that he intended to file a complaint with the Commission, PECO sent him a letter, dated June 29, 2015, informing him that the Commission does not have authority to issue a decision on a nonresidential account. Tr. 91-93. During cross-examination, he conceded that the information regarding Commission's authority on non-residential accounts had not come from PECO but from an informal decision rendered by the Commission's BCS, at BCS Case # 003339449. Tr. 129-33, PECO Exhibit 8.

Finally, Mr. Mostafa argued that PECO failed to inform him that he could file a formal complaint with the Commission on behalf of the Complainant as a way to pursue its claims. However, the record in this case indicates that this information had been available to him at least as early as February of 2012. During the course of the hearing, PECO produced evidence showing that on December 8, 2011, Mr. Mostafa filed an informal complaint with BCS on behalf of K&J Pizza at BCS Case # 002918963 alleging a high billing dispute with regard to PECO services rendered to the Jenkintown Road service address. In particular, he disputed alternative supplier charges in his account. Tr. 345-46, PECO Exhibit 22. On February 17, 2012 BCS orally closed the complaint advising the customer that BCS does not issue written informal decision on complaints involving commercial accounts, but that the customer could file a formal complaint to continue his dispute. BCS explained the formal complaint process to the customer and mailed a formal complaint form to him. Tr. 347, PECO Exhibit 23. There is no record that Mr. Mostafa availed himself of the process.

After considering Mr. Mostafa's testimony, I found that none of the events or statements listed warranted the tolling of the statute of limitations for any of the Complainant's claims. Tr. 141. The Complainant failed to make a *prima facie* case that PECO engaged in fraud or concealment causing the Complainant to deviate from its right of inquiry into the facts.

b) Improper Billing for Service at 1333B Easton Road, Roslyn, PA

Mr. Mostafa testified that he is the sole owner of K&J Pizza which is a limited liability corporation located and doing business at 2601 Jenkintown Road, Glenside PA (Jenkintown address). K&J Pizza receives gas and electric service from PECO at the Jenkintown address under account # 05254-00306. According to Mr. Mostafa, in addition to being billed for gas and electric service at the Jenkintown address, K&J Pizza was also billed regularly for electricity service at another business location, the Milano's Pizzeria & Family Restaurant (Milano's Pizzeria) located on 1333B Easton Road, Roslyn PA 19101 (Easton Road address). Tr. 268. Mr. Mostafa testified that he paid the charges for the Easton Road address because the bill was addressed to K&J Pizza. Tr. 147. He stated that he was not aware that he was paying two different PECO bills for two different service locations until he called PECO and was provided with the account number and the service address for Milano's Pizzeria. Tr. 269-273.

Mr. Mostafa testified that he holds no financial interest in Milano's Pizzeria. Tr. 147. He further explained that when Milano's Pizzeria went out of business in the summer of 2014, he obtained from them two ovens, their store sign, and even the rights to their website <http://milanosroslyn.com>. Tr. 152-3, 155-6, see PECO Exhibit 3.

During cross-examination, Mr. Mostafa admitted that, per his instructions, Milano's Pizzeria's old website now directs customers to K&J Pizza's website, gives K&J Pizza's location at 2601 Jenkintown Road, Glenside PA, and Mr. Mostafa's telephone number as contact information. Tr. 159, 160. It informs customers that "Milano's and its friendly staff have merged shops with K&J Pizza." Tr. 159, PECO Exhibit 3. In turn, K&J Pizza's menu and flyer reads "K&J Pizza and Milano's Pizzeria." Tr. 160-161, PECO Exhibit 3. It directs its clients to the website www.kjandmilanospizzeria.com. Tr. 161, PECO Exhibit 3.

Mr. Mostafa vehemently denied that he bought the business of Milano's Pizzeria from its previous owners. Tr. 159, 174. He maintained that Milano's Pizzeria was out of business when he bought its equipment, sign and website. Tr. 160.

During cross-examination, Mr. Mostafa testified that he resides at 404 Willard Road, Hatboro, PA. Tr. 176, 178. According to the Pennsylvania Department of State, Bureau of Corporations, Milano's Pizzeria & Family Restaurant is a limited liability company, registered at 1335 Easton Road, Roslyn, PA, to Nesma Mohammad who also resides at 404 Willard Road in Hatboro, PA. Tr. 175-176. Mr. Mostafa admitted that the owner of Milano Pizzeria, Nesma Mohammad is his wife. Tr. 178, Complainant Exhibit 6.

In response to Mr. Mostafa's testimony, Teresa Ferrier testified as senior regulatory assessor at PECO Energy Company. Ms. Ferrier testified that when a commercial customer establishes services with PECO, the Company collects information regarding the business' Tax ID. For a business, a Tax ID number is identifying information similar to the Social Security Number assigned to individuals. Tr. 225. This information is provided to PECO by the customer when service is established at the service address. Tr. 231, 233. Ms. Ferrier testified that to her knowledge Milano's Pizzeria never had an account with PECO in its name. Tr. 246. Instead, she testified that K&J Pizza had two different account numbers with PECO for two different service addresses. Tr. 247. Ms. Ferrier explained that K&J Pizza receives electric and gas service at the 2601 Jenkintown Road address under account # 05254-00306. Tr. 184, PECO Exhibit 4. The Tax ID # connected to that account is 23-3009930. Tr. 184, PECO Exhibit 4. PECO also provided commercial electric service at 1333B Easton Road in Roslyn, PA also under the name of K&J Pizza under account # is 08356-31019. Tr. 181, PECO Exhibits 1 and 6. The Tax ID # connected to that account is 23-3009930. PECO Exhibit 4. The mailing address for PECO bills under account # 08356-31019 was K&J Pizza, 1335 Easton Road, Roslyn, PA. PECO Exhibit 6. This is the account that the Complainant claims it was wrongfully placed in its name.

Ms. Ferrier explained that electric service at the 1333B Easton Road address was established on October 5, 2009, and was discontinued on August 30, 2014. Tr. 181-82. PECO's final bill for commercial electric service at the 1333B Easton Road address was \$1,018.62. Tr. 181. Ms. Ferrier further explained that if a customer who requests discontinuance of service under one account has another active account with PECO, the outstanding balance from the former account is transferred to the r active account. Tr. 184-85, PECO Exhibit 9. On

September 14, 2014, the final balance of \$1,018.62 for service at the 1333B Easton Road was transferred from account # 08356-31019 to K&J Pizza's active account # 05254-00306. Tr. 185, PECO Exhibit 9.

On March 10, 2015, Mr. Mostafa contacted PECO disputing the transferred balance and averring that he never had a business at 1333B Easton Road. Tr. 186, PECO Exhibit 2. By letter dated March 24, 2015, PECO informed Mr. Mustafa that it was closing the dispute after failing in its attempts to reach him. Tr. 186-87, PECO Exhibit 2.

Ms. Ferrier testified that, despite closing the dispute, PECO investigated Mr. Mostafa's claims and discovered that on October 28, 2009, Mr. Mostafa had filed an informal complaint with the Commission's BCS (BCS Case # 002612569) on behalf of K&J Pizza. PECO Exhibit 5. The service address identified in the informal complaint form is 1333 Easton Road, Roslyn PA. The account in dispute was 08356-31019. Mr. Mostafa was disputing PECO's demand for a security deposit on that account. Tr. 187-88, PECO Exhibit 5. According to BCS' summary of the complaint, the customer maintained that the demand for a security deposit was "ridiculous when he has business with PECO at another address in good standing." Tr. 187-88, PECO Exhibit 5.

In addition, Ms. Ferrier pointed out that the same credit card or bank account number was used to make payments to both PECO accounts in K&J Pizza's name: to account # 05254-00306 on April 17, 2015, and to account # 08356-31019 on January 20, 2014. Tr. 194-95, PECO Exhibit 6. Furthermore, a personal or commercial check belonging to Milano Pizzeria & Family Restaurant LLC, 1335 Easton Road Roslyn Road, PA 19001 in the amount of \$475 was used to make a payment on May 19, 2014 towards the PECO account # 08356-31019 in accordance with a PECO bill addressed to K&J Pizza, 1335 Easton Rd, Roslyn, PA 19001-2401. Tr. 189-90, PECO Exhibit 6.

After carefully reviewing the evidence collected on this matter, I find that the Complainant has failed to carry its burden of proving by a preponderance of the evidence that PECO has improperly billed it for electricity service unrelated to it. Implausible as it is,

Mr. Mostafa's statement that for years he was not aware that he was paying two different PECO bills for two different service locations simply because the bills were addressed to K&J Pizza, is rebutted by PECO Exhibit 6 which shows that the PECO bills for service to 1333B Easton Road address (Account # 08356-31019) were mailed to K&J Pizza, 1335 Easton Road, Roslyn PA 19101 - and not to K&J Pizza's 2601 Jenkintown address – at least until May of 2014. This means that Mr. Mostafa never received those bills at 2601 Jenkintown Road. When asked how he knew that a bill for services to 1333B Easton Road was connected to service to Milano's Pizzeria which is registered at 1335 Easton Road, Mr. Mostafa said that it was PECO who first provided the account number (# 08356-31019) and name of Milano's Pizzeria to him. The coincidence that the other account for which PECO was improperly billing K&J Pizza is connected to the business owned by Mr. Mostafa's wife is too strong to be ignored. The fact that the owner of K&J Pizza filed an informal complaint with the Commission's BCS (BCS Case # 002612569) with regard to service at 1333 Easton Road, Roslyn, PA under PECO account # 08356-31019 and mentioned having "another business in good standing," indicates that rightfully or wrongfully, Milano's Pizzeria and K&J Pizza were treated as family businesses owned jointly by Mr. Mostafa and his wife. Tr. 187-88, PECO Exhibit 5. More importantly, PECO had K&J Pizza's Tax ID and name on file as the customer of record for the 1333B Easton Road address. That information essentially instructed PECO to bill K&J Pizza for service at 1333B Easton Road. That information could have only been known and provided to PECO by someone connected to K&J Pizza. In view of the above, the Complainant's claim that it was improperly billed for another business's electricity service is denied.

c) High Billing Dispute for the Jenkintown Service Address

In *Waldron v. Philadelphia Electric Company*, (Waldron), 54 Pa. PUC 98 (1980), the Commission adopted the Michigan Public Service Commission's (PSC's) policy announced in *Hallifax v. O & A Electric Co-Op*, Case No. U-5825 (May 1979), which stated that, while the accuracy of the meter is an important factor in resolving billing disputes, it is not the sole criterion. The Michigan PSC stated that it will also consider the following factors: the billing history of the complainant; any change in the number of occupants residing at the household; the

potential for energy utilization; and any other relevant facts or circumstances that are brought to light during the complaint proceeding. *Waldron* at 100.

In support of his high billing dispute concerning K&J Pizza's Jenkintown account with PECO, Mr. Mostafa testified the following electrical appliances are found in his place of business: a side by side commercial refrigerator, three chest freezers, four soda coolers, two under-the-counter refrigerators, a slicer, a microwave oven, two computers and a cash register. Tr. 166-69. There are also a gas water heater, a grill, a fryer and two gas ovens at his shop. Tr. 165-66.

Mr. Mostafa testified that K&J Pizza's hours of operation are 10:00 a.m. to 10:00 p.m. and maintained that in the last 20 years he never changed K&J Pizza's equipment. Tr. 149-50. However, he also stated that he switched to LED lighting to conserve electricity and that he only added air conditioning in his store about two years ago in his efforts to conserve electricity. Mr. Mostafa argued that despite his efforts to conserve energy his bills have increased. Tr. 31-32, 149-51. He did not state with any degree of specificity when his bills began to increase, nor did he provide a time frame for comparison.

In response to Mr. Mostafa's testimony, PECO put forth the testimony of Ms. O'Donnell and Mr. Lerro. Ms. O'Donnell testified as PECO's high bill field investigator. Tr. 278. She testified that she first visited K&J Pizza's Jenkintown location on November 3, 2011, in order to conduct a high bill field investigation. Tr. 278-79, PECO Exhibit 19. She did not meet with Mr. Mostafa during that visit but was told that he was at "the other store." Tr. 287, PECO Exhibit 19. She testified that while at the service address, she captured the load of the gas and electric appliances found at the store, verified the meters of record were there (electric meter # 017305937; gas meter # 015650038), verified that the usage was in line with what PECO had been billing the Complainant, and explained to the manager that based on the appliances on location K&J Pizza had the potential to use the amount of gas and electricity for which it was billed. According to Ms. O'Donnell, the manager indicated that he understood. Tr. 186-87, PECO Exhibit 19.

Ms. O'Donnell listed the following electric appliances found at the service address: a side by side commercial refrigerator, three freezers, five refrigerators, two chest freezers, two under counter refrigerators, a soda cooler, a rooftop air conditioner, and six 4' fluorescent light tubes. The total wattage was 17,700 watt of which 13,030 watt was from refrigeration alone. Tr. 281-82, PECO Exhibit 19. Because the store was open 12 hours a day but refrigeration ran 24 hours a day, Mr. O'Donnell calculated that the Complainant had the potential of using 9,382 kWh per month in refrigeration alone. Tr. 283, 285.

The following gas appliances were found at the property: two ovens, a grill, a fryer and a cooktop. PECO Exhibit 19. Ms. O'Donnell was unable to locate a heater or a hot water heater during this visit. Tr. 284. She calculated that because the store was open 12 hours a day, K&J Pizza had the potential of using 419 CCF per month. Tr. 284-86.

Ms. O'Donnell explained that she did not test the Complainant's gas and electricity meters during this visit. The customer declined the drop load test because it would have interrupted their work. PECO Exhibit 19. She explained that she would have had to unplug every appliance, isolate one, get the wattage or BTU from that appliance, and clock the meter for accuracy. Tr. 287-88, PECO Exhibit 19.

Next, Ms. O'Donnell stated that she visited the service address on December 15, 2015, on a field visit with PECO's senior foreman, Thomas Lerro. During the December 2015 field visit, Mr. Lerro verified the meters of record were there (electric meter # 124442947; gas meter # 015650038), and obtained actual readings from them. PECO Exhibit 20. He walked through the store with Mr. Mostafa and took note of any appliances that had changed since the 2011 visit. Tr. 319. According to Mr. Lerro, the appliances were just about the same with the exception of a 30 gallon gas water heater, three computers/registers, new LED lighting, a meat slicer, a microwave and a flat screen TV. Tr. 320-21, PECO Exhibit 20. He calculated the Complainant had the potential of using between 100 and 300 kWh of electricity a day or 3,000 to 9,000 kWh per month, as well as the potential of using between 10 and 20 CCF of gas per day or 300-600 CCFS of gas per month. Tr. 322-23. He explained that he based his calculations on the

plate ratings that Ms. O'Donnell had retrieved from the appliances during her 2011 field visit, as well as from accepted national standards.

Mr. Lerro also testified on February 22, 2016, a PECO technician met with the K&J's owner and tested the accuracy of Complainant's electricity meter (meter # 124442947). Tr. 325, PECO Exhibit 21. This meter was installed at the service address in September 24, 2014, and continues to service that location as of the day of the hearing. PECO Exhibit 9. Tr. 326. Meter # 124442947 tested 100.03% accurate on full load tests, and 100.05% accurate on light load tests. Tr. 327-28, PECO Exhibit 21. These results are within the 2% margin of error allowed by the Commission's regulation at 52 Pa.Code § 59.22. Tr. 328. Mr. Lerro added that the meter was also tested before it was installed at the service address and was shown to be accurate within the limits accepted by the Commission. Tr. 328-29, PECO Exhibit 18. Based on these results, PECO determined that there was no high billing issue at the service address. Tr. 330.

A sample of K&J Pizza's monthly electricity usage through the years 2010-2016 reveals the following:

Billing Cycle	2010 (kWh)	2011 (kWh)	2012 (kWh)	2013 (kWh)	2014 (kWh)	2015 ⁶ (kWh)	2016 (kWh)
Jan-Feb	4108	4025	3285	3118	3164		2998
Feb-March	4677	4104	3664	3522	3484		3828
March-Apr	4672	4814	3700	3790	3864		
Jul-Aug	6386	7348	6062	5379	4416		8783
Aug-Sep	5655	5437	6185	4706	4873		8682
Sep- Oct	4723	4358	3993	3991	4161 (E)		

⁶ PECO issued estimated bills for gas and electric all through 2015. PECO Exhibit 9.

PECO Exhibit 9. As I mentioned above, Mr. Mostafa did not specify when his bills began to increase, nor did he provide a time frame for comparison. However, the Account Activity Statement for K&J Pizza (PECO Exhibit 9) shows that the Complainant’s electricity usage is seasonal, characterized by higher usage in the warmer months. In addition, the usage decreased during the period 2012-2014 when compared to the period 2010-2011. The usage increased again in the warmer months of July-October 2016, however, this could be the effect of the air conditioning unit which according to Mr. Mostafa’s testimony was not available until two years prior to the hearing. More importantly, all recorded usage is within the Complainant’s potential for electricity usage as calculated by PECO.

A sample of K&J Pizza’s monthly electricity usage through the years 2010-2016 reveals the following:

Billing Cycle	2010 (CCF)	2011 (CCF)	2012 (CCF)	2013 (CCF)	2014 (CCF)	2015 (CCF)	2016 (CCF)
Jan-Feb	383	403	328	350	371		243
Feb-March	397	369	323	344	353		354
March-Apr	349	369	307	330	369		
Jul-Aug	328	332	286	353	320		298
Aug-Sep	346	369	310	341	347		312
Sep- Oct	1379 (C) ⁷	336	297	334	339 (E) ⁸		

PECO Exhibit 9. The Account Activity Statement for K&J Pizza (PECO Exhibit 9) shows that the Complainant’s gas usage is not seasonal and has been constant through the years although it seems to have experienced a slight decrease in 2011 and 2016.

⁷ This bill was cancelled and rebilled by PECO on November 22, 2010. PECO Exhibit 9.

⁸ This was an estimated bill. PECO Exhibit 9.

At the hearing on September 23, 2016, the Complainant offered rebuttal testimony on the issue of meter accuracy concerning the gas and electric meters serving the Jenkintown address. Tr. 536-561. Mr. Mostafa stated that he took his own meter readings in very close proximity to the dates in which PECO performed its readings. Tr. 537, 541, 562. Yet Mr. Mostafa argued that his meter readings are inconsistent with PECO's readings, which led him to further question the accuracy of PECO's meters. Tr. 536. In turn, PECO witness, Richard King, responded to Mr. Mostafa's evidence by pointing out the closest PECO readings to Mr. Mostafa's readings and by explaining that PECO's readings are collected at midnight. Based on these testimonies the following came to light:

- On June 16, 2016, at 11:59 p.m., PECO's system read the index from the Complainant's electric meter at 83978. PECO Exhibit 9.
- On June 25, 2016, at 4:49 p.m., Mr. Mostafa took a picture of the screen from PECO's electric meter at the Jenkintown address reading 86390. Complainant Exhibit 4.
- Mr. Mustafa's later reading of the electric meter indicates that 2412 kWh were recorded on the meter during the eight and a half days from the last PECO reading of the meter.
- On June 16, 2016, at 11:59 p.m., PECO's system read the index from the Complainant's gas meter at 1889. PECO Exhibit 9.
- On June 25, 2016, at 4:52 p.m., Mr. Mostafa took a picture of the screen from PECO's gas meter at the Jenkintown address reading at 2085 (or 1985). Complainant Exhibit 5.
- Mr. Mustafa's later reading of the gas meter indicates that 98 (or 198) CCFs of gas were recorded on the meter during the eight and a half days from the last PECO reading of the meter.
- On July 15, 2016, at 5:23 p.m., Mr. Mostafa took a picture of the screen from PECO's electric meter at the Jenkintown address reading at 92261. Complainant Exhibit 5.
- On July 17, 2016, at 11:59 p.m., PECO's system read the index from the Complainant's electric meter at 92830. PECO Exhibit 9.
- PECO's later reading of the electric meter indicates that 569 kWh were recorded on the meter during the two and a half days from the last reading of the meter performed by Mr. Mostafa.

- On August 15, 2016, at 3:14 p.m., Mr. Mostafa took a picture of the screen from PECO's electric meter at the Jenkintown address reading at 101481. Complainant Exhibit 1.
- On August 15, 2016, at 11:59 p.m., PECO's system read the index from the Complainant's electric meter at 101613. PECO Exhibit 9.
- PECO's later reading of the electric meter indicates 132 kWh were recorded on the meter during the seven hours of store operation since the last reading of the meter performed by Mr. Mostafa.
- On August 15, 2016, at approximately 3:00 p.m., Mr. Mostafa took a picture of the screen from PECO's gas meter at the Jenkintown address reading at 2512. Complainant Exhibit 2.
- On August 15, 2016, at 11:59 p.m., PECO's system read the index from the Complainant's gas meter at 2517. PECO Exhibit 9.
- PECO's later reading of the gas meter indicates that five CCFs were recorded on the meter during the seven hours of store operation since the last reading of the meter performed by Mr. Mostafa.

After carefully considering all of the evidence collected with regard to the Complainant's high billing dispute, I find that the Complainant has failed to show that his gas and/or electricity bills from PECO were abnormally large. Complainant failed to show that one or more of its bills were abnormally high as compared to the rest – as I mentioned above the Complainant did not single out any bills or billing period for comparison purposes- nor did the Complainant show that its bills were higher than those of comparative businesses – as alleged in the Amended Complaint. Therefore, the Complainant has failed to carry his burden of proving that PECO has incorrectly billed it for services rendered.

d) Estimated Bills for the Jenkintown Service Address

At the hearings, Mr. Mostafa testified that K&J Pizza's recent bills for its 2601 Jenkintown location had been based on estimated readings. Tr. 148-149. He believes he has been unfairly charged by PECO. Tr. 149.

i) Electricity – Jenkintown address

The billing manager for PECO, Richard King, testified in response to Mr. Mustafa's testimony regarding estimated billings. Mr. King stated that in September 2014, PECO changed the electricity meter serving the Jenkintown address from an AMR model to an AMI model. Tr. 398, 401, PECO Exhibit 17. He explained that an AMI meter is an electric meter that measures interval data from each residential or commercial customer. Tr. 389. The intervals are 15 minutes in length. *Id.*

According to Mr. King, PECO experienced some technical problems with its deployment of AMI meters as some of the new meters failed to report to the system. Tr. 298-99. He explained that if an AMI meter failed to report to the system, PECO's system would issue estimated bills to the customer. In the meanwhile, PECO's smart grid operations team tried to fine-tune the meter or tried to "buddy" the meter with another meter within the area in an attempt to strengthen the signal reading out of that meter. Tr. 399, 407. According to Mr. King, the failure to report was often the result of the location of the meter compared to the closest tower which intercepted the reading. Tr. 399.

Mr. King testified that the deployment of AMI meters has necessitated PECO's installation and maintenance of the Meter Data Management System (MDM). The MDM holds all of the interval data from each customer, which is sent off to the billing system for the calculation and production of a bill. Tr. 400. He explained the meter reading, reporting, and billing process performed by PECO for the new AMI meters as follows: the meter reading comes out of the AMI meter and is received by the tower, which takes the readings and uploads a file every night at midnight with all of the interval data received that day. That file is then processed into the MDM, and then at the time of billing that information is "pushed" from the MDM to the Customer Information System to produce a bill. Tr. 400-401, 409. Even if the meter is delivering some actual readings during the day or during some days, the new PECO system needs to receive at least 50% of the interval data to bill the account as an actual bill. Tr. 407.

K&J Pizza received four consecutive estimated electricity bills during the period September 2014 to January 2015 for service at the Jenkintown address. Tr. 402-404, PECO

Exhibits 9 and 17. K&J Pizza received an actual electricity bill for the period January – February 2015, as PECO was able to get enough interval data for the period January 22, 2015 to February 19, 2015. Tr. 402, PECO Exhibits 9 and 17. The actual reading in February 2015 was followed by another three consecutive estimated electricity bills during the period February 18, 2015 to May 20, 2015, for service at the Jenkintown address. Tr. 406-407, PECO Exhibits 9 and 17.

On June 10, 2015, PECO performed a rebilling of the electricity bills for the period February 18, 2015 through June 10, 2015. The June 10, 2015 billing revision was performed to put usage in line with the actual reading of the meter obtained on June 9, 2015, during a field visit to address a gas meter malfunction at the Jenkintown address. Tr. 456, PECO Exhibits 14, 17, and 27. The information on the monthly usage reflected in the June 10, 2015 rebilling was based on the actual readings received by the system which had been deemed insufficient for the issuance of actual bills because they were either not received at midnight or did not amount to 50% interval data for the billing period. Tr. 408, 457-58, PECO Exhibits 9, 14, 17, 24 and 27.

K&J Pizza received another six consecutive estimated electricity bills during the period May 20, 2015 to November 17, 2015, for service at the Jenkintown address. Tr. 408-409, PECO Exhibit 9.

On December 4 and 7, 2015, PECO performed two other rebillings of the electricity bills for the period May 20, 2015 through August 19, 2015, and August 19, 2015 through November 17, 2015, respectively. Tr. 404, PECO Exhibits 9, 28, and 29. Like the June 10, 2015 rebilling, the December 2015 rebillings were based on actual readings received by the system which had been deemed insufficiently frequent or untimely for the issuance of actual bills Tr. 409-410, 555, PECO Exhibit 9. PECO's system, however, continued to issue estimated electricity bills for K&J Pizza for two additional months, December 2015 and January 2016. PECO Exhibit 9. A fourth rebilling occurred on December 28, 2015 following actual readings obtained during Mr. Lerro's December 15, 2015 field visit. PECO Exhibits 9 and 20. The last rebill occurred on February 8, 2016, when PECO rebilled the electricity bill issued to K&J Pizza

on January 25, 2016, for service during the period December 18, 2015 through January 22, 2016. PECO Exhibit 9.

The issue was resolved in February of 2016. Beginning with the bill issued on February 22, 2016, PECO has consistently billed K&J based on actual readings. Tr. 410, PECO Exhibit 9. During the period September 24, 2014 to January 22, 2016, Complainant received 15 estimated bills, only one actual bill, and only three actual readings (February 18, 2015, and June 9, 2015, and December 4, 2015). During this period, PECO only attempted to fine tune the system remotely from its offices. Tr. 413. The record contains no indication that other attempts were made to correct the situation on location to improve signal transmission from the meter. Tr. 416-17.

The Commission's regulations at 52 Pa.Code § 56.12 (relating to meter reading; estimated billing; customer readings) state as follows:

(2) *Estimates for bills rendered on a monthly basis.* If a public utility bills on a monthly basis, it may estimate usage of service every other billing month, so long as the public utility provides a customer with the opportunity to read the meter and report the quantity of usage in lieu of the estimated bill. The resulting bills must be based on the information provided, except for an account when it is apparent that the information is erroneous.

- (i) Upon the request of the customer, the public utility shall, at least annually, provide preaddressed postcards on which the customer may report the reading. The public utility shall provide additional preaddressed postcards on request. The public utility may choose to make available electronic and telephonic methods for customers to report meter reading information.
- (ii) The public utility may establish due dates by which the customer supplied reading shall be received for a bill to be based upon the meter reading of the customer or occupant. If the reading of a customer or occupant is not received by that due date, the public utility may estimate the quantity of usage. The public utility may establish due dates for submitting a meter reading when the customer or occupant utilizes an electronic method for reporting meter readings.

(3) *Estimates permitted under exigent circumstances.* A public utility may estimate the bill of a customer if extreme weather conditions, emergencies, equipment failure, work stoppages or other circumstances prevent actual meter reading.

(4) *Estimates when public utility personnel are unable to gain access exigent circumstances.* A public utility may estimate the bill of a customer if public utility personnel are unable to gain access to obtain an actual meter reading, as long as the following apply:

(i) The public utility has undertaken reasonable alternative measures to obtain a meter reading, including, but not limited to, the provision of preaddressed postcards upon which the customer may report the reading or the telephone reporting of the reading.

(ii) The public utility, at least every 6 months, or every four billing periods for public utilities permitted to bill for periods in excess of 1 month, obtains an actual meter reading or customer supplied reading to verify the accuracy of the estimated readings.

(iii) The public utility, at least once every 12 months, obtains an actual meter reading to verify the accuracy of the readings, either estimated or customer read.

52 Pa.Code § 56.12. In the present case, Complainant has a commercial electric account with PECO, which PECO bills on a monthly basis. Because PECO bills the Complainant on a monthly basis, it may estimate usage of service every other billing month unless the Company is experiencing exigent circumstances or is unable to gain access to the meter. In the present case, there is no indication that PECO personnel were unable to gain access to the meter. However, the record indicates that PECO experienced equipment failure when the signals transmitted from its meter failed to comply with the requirements or demands of its new system. While the Commission's regulation allows for estimated bills to be issued under these circumstances, it is mute on how many estimated bills can be issued before the utility is found to be providing unreasonable or inadequate service to its customer.

It is every public utility's duty to "furnish and maintain adequate, efficient, safe, and reasonable service and facilities" in conformity with the regulations and orders of the

Commission. 66 Pa.C.S.A. § 1501. “The term "service" is [u]sed in its broadest and most inclusive sense, [and] includes any and all acts done, rendered or performed and any and all things furnished or supplied, and any and all facilities used, furnished or supplied...in the performances of their duties....” 66 Pa.C.S. § 102. The statutory definition of "service" is to be broadly construed. *Country Place Waste Treatment Co., Inc. v. Pa. Public Utility Commission*, 654 A.2d 72 (Pa.Cmwlt. 1995). Thus, the term "service" is clearly broad enough to include the billing and collection practices of a public utility, and also the conduct of its employees towards its customers. I find that PECO’s failure to correct the communication between the Complainant’s electric meter and the rest of its system for a prolonged period of 15 months is tantamount to providing inadequate service to Complainant.

ii) Gas – Jenkintown address

Mr. King testified that during the period September 2014, through January 22, 2016, PECO had hoped to correct the communication issue between the electricity meter and its system by “buddying” the electricity meter with the gas meter serving the Jenkintown address. Tr. 399, 407. However, the gas meter was malfunctioning, too. PECO issued estimated gas bills on October 20, 2014, November 18, 2014, March 24, 2015, April 22, 2015, May 21, 2015, June 22, 2015, July 22, 2015, August 20, 2015, September 21, 2015, October 20, 2015, November 18, 2015, December 21, 2015, and January 25, 2016. Tr. 455, PECO Exhibit 9.

Mr. King testified that on April 28, 2015, PECO attempted to contact the Complainant via telephone concerning a maintenance issue with regard to the gas meter serving the Jenkintown address (meter # 0155650038). On April 28, 2015, a PECO field representative visited the Jenkintown address and left a 72-hour notice due to inability to gain access to the gas meter for maintenance. PECO Exhibit 14. On May 5, 2015, a 10-day termination notice was mailed to the Complainant due to inability to gain access to the gas meter for maintenance. *Id.* On May 15, 2015, the termination process was suspended as a result of the filing of an informal complaint by the Complainant. *Id.* On May 26, 2015, PECO installed an AMI gas module to Complainant’s gas meter. *Id.* On June 9, 2015, PECO notes in its system that the Complainant’s gas meter needs to be reprogrammed to current index reading. On July 7, 2015, PECO attempted

to contact the Complainant via telephone concerning a maintenance issue with regard to the gas meter. The call was repeated on July 8, 2015. On July 9, 2015, PECO sent a letter to the Complainant in an effort to set an appointment concerning a maintenance issue with the gas meter. On July 21, 2015, PECO was able to reprogram the module on Complainant's gas meter. The reprogramming, however, appears to have been unsuccessful, as PECO was still issuing estimated bills to the Complainant while notes from PECO's system dated September 30, 2015, remark that a new appointment was needed to reprogram the gas meter again. *Id.*

Michael Begley's testimony shed additional light with regard to the problem experienced by PECO's gas meter. Mr. Begley testified as a regulatory assessor at PECO energy Company. Tr. 461-561. According to Mr. Begley, the AMI module installed on May 26, 2015, in PECO's gas meter was not in sync with the meter register. While the meter register was registering usage correctly, the module was reporting something different. Tr. 548-49.

The record contains no other details as to what happened to the gas meter after September 30, 2015, other than the fact that the Complainant continued to receive estimated gas bills until February 2016. PECO Exhibits 9 and 14. However, Complainant's gas bills were part of the rebillings that PECO performed on June 10, 2015 (following actual readings obtained during the June 9, 2015 field visit), December 4 and 7, 2015, and December 28, 2015 (following actual readings obtained during Mr. Lerro's December 15, 2015 field visit). PECO Exhibits 9 and 20.

Overall, the Complainant received 13 estimated bills during the period October 2014, to February 2016. The estimated bills were the result of equipment malfunction as the AMI module failed to report correctly the readings from the gas meter register. The AMI module was not installed correctly on May 26, 2015, the problem was not remedied after the visit on July 21, 2015, which necessitated a third visit sometime between September 30, 2015 and February 2016. I find that PECO's failure to rectify the situation between May 2015 and February 2016 was the result of human error (see PECO Exhibit 14) and was tantamount to providing inadequate service to Complainant.

iii) Civil Penalty

Under Public Utility Code Sections 3301(a) and (b), “the Commission may levy a fine of up to \$1,000 per day for continuing violations of the Public Utility Code.” 66 Pa.C.S.A. § 3301.

The Commission has set forth, in a statement of policy, the factors and standards for evaluating proceedings involving violations of the Public Utility Code for purposes of determining appropriate civil penalty amounts. See, 52 Pa.Code § 69.1201(c). These factors and standards are as follows:

- (1) Whether the conduct at issue was of a serious nature. When conduct of a serious nature is involved, such as willful fraud or misrepresentation, the conduct may warrant a higher penalty. When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty.
- (2) Whether the resulting consequences of the conduct at issue were of a serious nature. When consequences of a serious nature are involved, such as personal injury or property damage, the consequences may warrant a higher penalty.
- (3) Whether the conduct at issue was deemed intentional or negligent. This factor may only be considered in evaluating litigated cases. When conduct has been deemed intentional, the conduct may result in a higher penalty.
- (4) Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered.
- (5) The number of customers affected and the duration of the violation.
- (6) The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant

utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty.

(7) Whether the regulated entity cooperated with the Commission's investigation. Facts establishing bad faith, active concealment of violations, or attempts to interfere with Commission investigations may result in a higher penalty.

(8) The amount of the civil penalty or fine necessary to deter future violations. The size of the utility may be considered to determine an appropriate penalty amount.

(9) Past Commission decisions in similar situations.

(10) Other relevant factors.

52 Pa.Code § 69.1201(c). These factors, relative to these consolidated proceedings, are examined below.

The first factor is whether the conduct was of a serious nature. There is not sufficient evidence on the record to conclude that PECO's failure to correct the communication problem between its electric meter and the rest of its billing system was the result of a willful or fraudulent act. By all accounts, PECO was dealing with a new technology and was hoping to "buddy" the electric meter with the gas meter in order to "strengthen the signal that was emitted to the towers. Similarly, the record collected in this case does not indicate that PECO's failure to correct the module problem in Complainant's gas meter was the result of a willful or fraudulent act. More than anything, the failure appears to be the failure resulted from a series of human errors on the part of PECO technicians.

The second factor is whether the consequences of the utility's conduct were of a serious nature resulting in damages to property or injury to persons. There is no evidence that PECO's failure to comply with 66 Pa.C.S.A § 1501 had any consequences of a serious nature. There were also no damages to property or injury to persons.

The third factor is whether the offending conduct was intentional or negligent. Based largely on the testimony of Mr. King, I find that PECO's failure to correct the problem with the electric meter for a period spanning 15 months resulted from a business or technological

decision made by PECO on how to address the issue. While PECO may not have intended to provide the Complainant with inadequate service, it intended to continue to address the problem “from the office” even after many months of repeated failures. As for PECO’s failure to repair the module in Complainant’s gas meter, there is no substantial evidence in the record to indicate that the offending conduct was intentional.

The fourth factor is whether the utility has modified its internal practices and procedures to address the offensive conduct at issue to deter and prevent similar conduct in the future. In these cases, PGW strongly defended both practices which this Initial Decision finds to be in violation of Commission’s statutes and regulations.

The fifth factor is the number of customers affected and the duration of the violation. There was only one customer affected by PECO’s violations, the Complainant, but PECO’s failure to correct the issues with the gas and electric meters lasted approximately 15 months.

The sixth factor is the compliance history of the offender, PECO. The record does not include a history of PECO’s past offenses. Neither party provided evidence of a compliance history.

The seventh factor is whether the actions of the regulated entity were cooperative or discordant with a Commission investigation. This standard is not applicable to this proceeding because the Commission did not conduct an investigation.

The eighth, ninth and tenth factors are inter-related in this case and they are, respectively: the amount of a civil penalty required to deter future violations; prior Commission decisions in similar cases; and the catch-all “other relevant factors.”

After reviewing the evidence collected in this matter, I conclude that a civil penalty in the amount of \$1,000.00 is appropriate to deter PECO from allowing its electric meters to not communicate properly with its system for prolonged periods of time. Similarly, an

additional civil penalty in the amount of \$1,000.00 is appropriate to draw PECO's attention to better train its gas technicians on the field.

e) Security Deposits and Late Payment Charges

At the evidentiary hearings, Mr. Mostafa challenged the security deposit that PECO assessed against K&J Pizza's account and had not refunded as of the day of the hearing. Tr. 47-50.

Ms. Ferrier responded that PECO assessed a total of \$3,649 in security deposits to K&J Pizza for the Jenkintown service address in 2007. Tr. 216, PECO Exhibit 9. The initial deposit of \$814.00 was assessed on June 30, 1999. Three additional security deposits were requested May 15, 2007, July 16, 2007, and September 17, 2007, for \$2,115.00, \$310.00 and \$410.00, respectively. Tr. 216-17, PECO Exhibit 10. None of these deposits have been returned or refunded to the Complainant. Tr. 217, PECO Exhibit 10. Ms. Ferrier explained that the Company is holding the deposits because the Complainant has a credit issue caused by a poor payment history. Tr. 209, 218, PECO Exhibit 9. According to PECO, the Company will refund the deposits when the account is current and has made payments timely and in full for 24 consecutive months. Tr. 218, PECO Exhibit 11.

Respondent's Tariff Rule 5.5 provides in pertinent part as follows:

5.5 RETURN OF DEPOSIT. ...Deposits secured from a non-residential customer, plus accrued interest, which may be held until a timely payment history is established, are refunded when a ratepayer is not currently delinquent and has made on time and in full payments for service provided by the Company for 24 consecutive months....

PECO Exhibit 11.⁹ Tariffs filed with state regulatory agencies such as the public utility commission are not mere contracts but have the force of law and are binding on the consumer and the utility. *Stiteler v. Bell Telephone Company*, 379 A.2d 339 (Pa. Commw. 1977); *Brockway Glass Company v. Pennsylvania Public Utility Commission*, 437 A.2d 1067 (Pa.

⁹ Supplement No. 3 to PECO Tariff Electric Pa. P.U.C. No. 5, First revised Page 14, Rule 5.5.

Commw. 1981); *Pennsylvania Electric Company v. Pennsylvania Public Utility Commission*, 663 A.2d 281 (Pa. Commw. 1995).

In this present matter, it appears that PECO has held one of the security deposits for approximately 18 years, and the rest for approximately 10 years. The Commission's statute, regulations or orders and PECO's own tariff state no limit as to the amount of time that a security deposit can be withheld by the utility if the requirements for refunding it are not met by the customer. The Complainant failed to rebut PECO's evidence that the Complainant has yet to satisfy those requirements.

In the Amended Complaint, the Complainant challenges the late payment charges assessed by PECO to K&J Pizza's Jenkintown account. At the hearings, PECO addressed these allegations by presenting the testimony of Ms. Ferrier, who testified that K&J Pizza has a poor payment history with PECO at its Jenkintown Road service address. Tr. 209, PECO Exhibit 9. She explained that PECO assesses late payment charges if an outstanding balance is not paid in full within five days from the due date stated in the bill. Tr. 249-250. From 2005 to the present, PECO assessed to K&J Pizza's Jenkintown account a total of \$1,833.30 in late payment charges, of which \$770.31 were credited back to K&J Pizza's account, following instances of bill cancellation/rebilling. Tr. 212-14, PECO Exhibit 12. Ms. Ferrier further explained that PECO did not assess late payment charges to K&J Pizza from September 2011 to March 2012, while PECO was investigating K&J Pizza's claims. Tr. 209-210.

The Commission's regulation at 52 Pa.Code § 56.22 governs the accrual of late payment charges. Section 56.22 states in pertinent part:

§ 56.22. Accrual of late payment charges.

(a) Every public utility subject to this chapter is prohibited from levying or assessing a late charge or penalty on any overdue public utility bill, as defined in § 56.21 (relating to payment), in an amount which exceeds 1.5% interest per month on the overdue balance of the bill. These charges are to be calculated on the overdue portions of the bill only. The interest rate, when annualized, may not exceed 18% simple interest per annum.

52 Pa.Code § 56.22(a). The regulation sets the maximum rate of interest of 1.5% per month or 18% per year that a public utility may charge on the overdue balance of the bill. After carefully reviewing the evidence collected on this issue, I find that the Complaint has failed to carry his burden of proving that PECO improperly assessed late payment charges against its Jenkintown account. The portion of the Amended Complainant challenging security deposits and late payment charges assessed by PECO against K&J Pizza's Jenkintown account is dismissed for failure to carry the burden of proof.

In view of the above, the portion of K&J Pizza's formal Complaint against PECO Energy Company, Docket No. C-2015-2501838 concerning inadequate service relating to numerous estimated bills is granted. The portion of the Complaint concerning claims of high billing, improper billing for services not rendered, improper withholding of security deposit, and improper assessment of late payment charges is denied due to Complainant's failure to carry the burden of proof.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. The complainant seeking affirmative relief from the Commission has the burden of proving the Complaint allegations by producing evidence which established material facts by a preponderance of the evidence. 66 Pa.C.S. § 332(a).
3. No action for the recovery of any penalties or forfeitures incurred under the provisions of Title 66 of the Pennsylvania Consolidated Statutes shall be maintained unless brought within three years from the date at which the liability therefor arose. 66 Pa.C.S. § 3314(a).
4. The statute of limitations can be tolled by the filing of an informal complaint with the Commission, and by the doctrine of equitable estoppel. *Duquesne Light Co.*

v. Pa. PUC, 611 A.2d 370 (Pa.Cmwlth. 1992), *Lester Ely v. Pennsylvania American Water Company*, C-20055616 (Order entered July 10, 2006).

5. In establishing whether a “high bill” has been demonstrated, while the accuracy of the meter is an important factor in resolving billing disputes, the Commission will also consider the billing history of the Complainant; any change in the number of occupants residing at the household; the potential for energy utilization; and any other relevant facts or circumstances that are brought to light during the complaint proceeding. *Waldron v. Philadelphia Electric Co.*, 54 Pa. PUC 98, 100 (1980).

6. A public utility may estimate the bill of a customer if extreme weather conditions, emergencies, equipment failure, work stoppages or other circumstances prevent actual meter reading. 52 Pa.Code § 56.12 (3).

7. It is every public utility’s duty to “furnish and maintain adequate, efficient, safe, and reasonable service and facilities” in conformity with the regulations and orders of the Commission. 66 Pa.C.S.A. § 1501.

8. The term "service" is used in its broadest and most inclusive sense, and includes any and all acts done, rendered or performed and any and all things furnished or supplied, and any and all facilities used, furnished or supplied in the performances of their duties. 66 Pa.C.S. § 102.

9. The Commission may levy a fine of up to \$1,000 per day for continuing violations of the Public Utility Code. 66 Pa.C.S.A. § 3301.

10. Tariffs filed with state regulatory agencies such as the public utility commission are not mere contracts but have the force of law and are binding on the consumer and the utility. *Stiteler v. Bell Telephone Company*, 379 A.2d 339 (Pa. Commw. 1977); *Brockway Glass Company v. Pennsylvania Public Utility Commission*, 437 A.2d 1067 (Pa.

Commw. 1981); *Pennsylvania Electric Company v. Pennsylvania Public Utility Commission*, 663 A.2d 281 (Pa. Commw. 1995).

11. Every public utility is prohibited from levying or assessing a late charge or penalty on any overdue public utility bill in an amount which exceeds 1.5% interest per month on the overdue balance of the bill. These charges are to be calculated on the overdue portions of the bill only. The interest rate, when annualized, may not exceed 18% simple interest per annum. 52 Pa.Code § 56.22(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the formal Complaint filed by K&J Pizza against PECO Energy Company at Docket No. C-2015-5601838 is granted, in part, with regard to claims concerning inadequate service relating to numerous estimated bills.

2. That the formal Complaint filed by K&J Pizza against PECO Energy Company at Docket No. C-2015-5601838 is denied in part, with regard to claims of high billing, improper billing for services not rendered, improper withholding of security deposit, and improper assessment of late payment charges.

3. That PECO Energy Company is hereby assessed the penalty of Two Thousand Dollars (\$2,000.00) for its repeated violations of the Public Utility Code and the Commissions regulations.

4. That PECO Energy Company shall pay a civil penalty in the amount of Two Thousand Dollars (\$2,000.00) by sending a certified check or money order payable to the

Commonwealth of Pennsylvania, within thirty (30) days from the entry of the Final Commission Order to:

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

5. That PECO Energy Company cease and desist from further violations of the Public Utility Code, 66 Pa.C.S.A. §§ 101 *et seq.*, and the regulations of the Pennsylvania Public Utility Commission, 52 Pa.Code §§ 1.1 *et seq.*

6. That the Secretary mark this docket closed.

Dated: July 6, 2017

_____/s/
Eranda Vero
Administrative Law Judge