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January 10, 2018

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

RE: KA at Fairless Hills, LP v. PECO Energy Company
PUC Docket No.: C-2017-2592335

Dear Ms. Chiavetta:

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

Very truly yours,

Shawane Lee
Counsel for PECO Energy Company

cc: Certificate of Service

SL/ab
Enclosure

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY
COMMISSION

KA at Fairless Hills, LP	:	
v.	:	C-2017-2592335
PECO Energy Company	:	

EXCEPTIONS OF PECO ENERGY COMPANY

INTRODUCTION

On December 19, 2017, PECO Energy Company ("PECO") was served with the Initial Decision of Administrative Law Judge Eranda Vero. PECO hereby excepts to two elements of that Initial Decision.[1]

This case presents a straightforward question with respect to the actions that PECO was required to take to assist a new customer at an existing location in its rate choice when PECO informed the customer that it must make a rate choice, and the customer replied that it wanted billing kept "as is" until a supervisor in its business "could get back to PECO." In the instant proceeding, PECO received such instructions -- and then billed on an "as is" basis until the customer "got back" to PECO by calling PECO six months later to request assistance on its utility bills. At that time, the customer made a new rate choice to be placed on Rate GS (followed by additional changes to its Peak Load Contribution billing determinant a few months later). If the customer had made those rate choices when it first called PECO in January 2016,

[1] Exceptions were nominally due in 20 days; that is, on January 8, 2018. Today, PECO is contemporaneously filing a Motion to File its Exceptions *Nunc Pro Tunc*.

its bills would have been about $22,000 less. PECO believed (and still believes) that it was reasonable for PECO to follow the customer's instructions and continue the billing on an "as is" basis until the customer called it back and requested otherwise. The ALJ, however, found that PECO should have continued to press the customer to make a rate choice by ignoring those instructions and that PECO should, instead, have sent the customer draft contracts implementing the rate choice that the customer ultimately made months later. Because PECO did not do so, the ALJ ordered PECO to give the customer a $22,000 credit, and imposed a $4,000 fine.

By way of further detail, in January 2016, Complainant KA at Fairless ("KA") contacted PECO and informed PECO that KA was taking over operations at an existing commercial site that had previously been operated as a grocery store. Findings of Fact 8, 30. At that time, PECO's account executive informed KA that it needed to make a selection of an appropriate rate. Finding of Fact 32, Initial Decision at 19. The customer contact "declined to engage in a rate selection for KA . . . asking instead that everything be kept 'as is' until a supervisor from KA or The Klein Group could get back to PECO." Finding of Fact 32.

As requested, PECO kept everything "as is." Over the next several months, the customer concluded that its electric bills for this location were too high for a vacant location. Its accountant, who had noticed the issue, was unable to determine why the bills were higher than KA expected. Finding of Fact 36. In addition to having the issue reviewed by its accountant, KA dispatched a property manager to the site to make sure all unnecessary electrical equipment was shut off and see if it could determine why the bills were higher than they should have been for a vacant site. Finding of Fact 37.

But KA did not contact PECO again until July 13, 2016. Finding of Fact 40. In that July 13, 2016 conversation, KA stated that its bills were too high for a vacant property, and PECO's account executive suggested that the customer should make a rate choice for PECO's Rate GS.

Finding of Fact 41. Two days later – on July 15, 2016 – PECO's account executive drafted a GS contract with an effective date of July 1, 2016. Finding of Fact 45. That contract was later executed by the parties. Finding of Fact 47.

One element of PECO's electric service bills is the "Peak Load Contribution," or "PLC." The PLC is established each summer by PJM based on the customer's usage on peak summer days, typically one of the hottest days of the year. Finding of Fact 21, Initial Decision at 19-20. Because the PLC is set once each year, it is PECO's practice to revisit PLC designations once each year, in the summer after the PJM process is complete. When a new customer at an existing location, like KA, enters the system off-cycle to the PJM process (KA entered in January, and the PJM PLC process normally would not take place until six months later in July) the customer is automatically assigned to the same procurement class and PLC as the prior customer at that location, unless an engineering estimate is conducted that establishes that the customer's new operations will have a different PLC. This practice is set forth in PECO's Tariff Rule 21.1.[2] Initial Decision at 19-20.

The prior customer at this location was a Procurement Class 3 customer, with a PLC of 494 kW. Findings of Fact 49-50. As noted above, under PECO's normal procedures and tariff rules, the PLC for the new customer at that existing location would remain unchanged at Procurement Class 3 and 494kW until the next PJM process, which would occur sometime in July 2016. Independently, in January 2016 KA instructed PECO to leave billing "as is" until it contacted PECO. As a consequence of this normal tariff practice to use the prior customer's

[2] Tariff Rule 22.1(f) states that: "New customers' procurement class shall be based upon an engineering estimate of their diversified peak demand for a new facility or an existing facility with a substantially different use. Tariff Rule 22.1(g) states that: "A new customer in an existing facility shall be assigned to the same procurement class as the last customer in that facility unless rule 22.1 f applies."

PLC and customer instructions to use the prior customer's billing determinants "as is, " PECO -- not surprisingly -- thus continued to bill the customer as a Procurement Class 3 customer with a PLC of 494 kW over the next several months (lowered to 433 kW at a later point). Finding of Fact 33, Initial Decision at 28.

In early September 2016, KA's attorney contacted PECO to dispute the Complainant's PLC value. Finding of Fact 53. By mid-September, PECO had reviewed the PLC challenge, made a new engineering estimate of KA's diversified peak demand, and lowered the PLC for the site to 50 kW, with an effective date of September 1, 2016. Findings of Fact 52-56.

If the customer had been moved to rate GS in January 2016, rather than July 2016, its bills for electric service would have been lower by $2,800. Initial Decision at 28. If the customer's PLC had been lowered to 50 kW in January 2016 rather than September 2016, its bills for electric service would have been lower by a little over $19,000. Initial Decision at 28.

Based on the above fact pattern, the Administrative Law Judge concluded that PECO had received implied actual notice of "a new applicant at an existing service address from the conversation .... in January of 2016." Initial Decision at 28. The ALJ further held that, given that implied actual notice, "PECO failed to provide the Complainant with reasonable service when it failed to send the Complainant the Contract for Commercial/Industrial Class Electric Service, and the Transfer of Information Form following the January 2016 conversation .... By its failure to act, PECO deprived the Complainant of its right to choose the most advantageous rate for its service, or to determine what its load would be as a new customer at an existing premises." Initial Decision at 28. The ALJ therefore ordered PECO to credit the account $22,000, and to pay a civil penalty of $4,000.

In PECO's view, that decision is incorrect. PECO agrees that in January 2016 it had actual notice that there was a new customer at this location – who might continue to operate the

site as a grocery store, or might operate it for some other purpose, or might leave it empty for a shorter or longer period of time while it made that decision. And, in January 2016, PECO met its obligation to assist the customer in choosing the most advantageous rate by advising the customer that it needed to make a rate choice and offering to work with it to do so. But the customer instructed PECO to leave all billing "as is" until the customer called PECO back. That is what PECO did – it left billing "as is" until the customer called back in July, at which point PECO re-initiated the discussion of rate choice and changed to the rate chosen by the customer, effective immediately. Moreover, based on both its tariff and customer instructions to leave billing "as is," PECO carried through the PLC from the prior customer. When the customer called in September to challenge its PLC level, PECO analyzed and responded (favorably) to the customer challenge in a few days, changing the PLC to a new lower level, effective immediately.

PECO does not dispute the possibility that, if it had aggressively re-contacted the customer to further press the customer to make a rate choice decision, the customer may have obtained earlier advantageous rate treatment. It should be noted, however, that if KA had quickly begun to use the site as a grocery store or other similar operation, the carry-through "as is" billing determinants that it asked to be left in place may have been perfectly appropriate for such business operations. But speculation about what might have happened is neither here nor there. PECO followed its tariff and the customer's instructions. PECO is not required to be a co-manager of its customers operations. PECO thus was not required to keep track of whether KA had leased or otherwise operationalized the property (as KA clearly hoped to do), or whether KA had left the property vacant (as it actually did). PECO also had no responsibility to review KA's bills and usage to determine whether KA's choice to remain "as is" was the best rate choice for it, either for Rate GS or PLC purposes. Rather, having informed the customer in

January 2016 that KA needed to make choices regarding its rate, and having been informed by the customer that the customer wanted everything "as is" until it contacted PECO, and with a practice and tariff provision that requires carryover of the prior customer's PLC absent a new engineering estimate, it was entirely reasonable for PECO to bill on an "as is" basis until the customer did what it said it would do: call PECO back to discuss rates.

In support thereof, PECO states as follows:

Exception 1: PECO excepts to the ALJs conclusion that "PECO failed to provide the Complainant with reasonable service when it failed to send the Complainant the Contract for Commercial/Industrial Class Electric Service, and the Transfer of Information Form following the January 2016 conversation. . . . By its failure to act, PECO deprived the Complainant of its right to choose the most advantageous rate for its service, or to determine what its load would be as a new customer at an existing premises." Initial Decision at 28.[3]

The Initial Decision correctly refers (p. 25) to the long-established Commission rule, which has been upheld by the Commonwealth Court, that a public utility is not required to bill customers on the most advantageous rate until after the utility receives actual notice of service conditions.[4] Generally, these cases apply Section 1303 of the Public Utility Code, which addresses utilities' obligation to assist customers in their choice of rate. It states that:

> No public utility shall, directly or indirectly, by any device whatsoever, or in anywise, demand or receive from any person, corporation, or municipal corporation a greater or

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[3] Normally, exceptions are to be taken to findings of fact or conclusions of law. 52 Pa. Code §5.533(c). In the instant Initial Decision, however, the ultimate finding – that PECO provided unreasonable utility service -- is only stated in the Discussion text, not in a finding of fact or conclusion of law. PECO therefore requests leave to identify and except to the above-noted language.

[4] In that discussion, the Initial Decision cites (p. 25) *Springfield Twp. v. Pa.Pub. Util. Comm'n*, 676 A.2d 304 (Pa. Cmwlth. 1996); *The Victory Condominium Association v. PECO Energy Co.*, Opinion and Order, Docket No. C-2011-2268126, entered September 27, 2012; *City of Pittsburgh v. Duquesne Light Co.*, 54 Pa. PUC 460 (1980); and *Mauro v. Duquesne Light Co.*, 69 Pa. PUC 105 (1989).

> less rate for any service rendered or to be rendered by such public utility than that specified in the tariffs of such public utility applicable thereto. The rates specified in such tariffs shall be the lawful rates of such public utility until changed, as provided in this part. *Any public utility, having more than one rate applicable to service rendered to a patron, shall, after notice of service conditions, compute bills under the rate most advantageous to the patron.*

(emphasis added). The Initial Decision concludes, based on its analysis of the Commission's Section 1303 jurisprudence, that as of January 2016 PECO had actual notice of service conditions that triggered an obligation to compute bills under the most advantageous rate, leading to the ordered $22,000 refund.

PECO does not take exception to the conclusion that, in January 2016, it had actual notice that KA would – or at least might – change operations at this site such that other rates choices and billing determinants might be best.[5] Nor does PECO contest the view that, in January 2016, it had an obligation to assist the customer to make a rate choice. That is why, in January 2016, PECO informed KA that KA needed to make a rate choice, and that PECO would assist it in doing so.

PECO's exception is that, having been told by the customer to continue billing on an "as is" basis until the customer contacted PECO, the January actual notice was eliminated. Once KA told PECO in January 2016 to continue billing on "as is" basis until KA called it back, PECO no longer had actual notice of KA's service conditions. And the *Springfield Township* line of cases cited in the Initial Decision strongly suggest that, once PECO received those instructions, it no longer had actual notice, and had no duty to assist KA to choose a rate or to calculate bills differently.

Review of the four cases cited in the Initial Decision will make this clear.

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[5] "Might" change operations because it appears that, as of January 2016, even KA was not sure how it was going to operate the site, at least not with sufficient certitude to allow it to make the rate choice PECO had already informed it that it needed to make.

Chronologically, the earliest case cited in the Initial Decision is *City of Pittsburgh v. Duquesne Light Co.*, 54 Pa. PUC 460 (1980). That case has some striking similarities to the KA scenario. In *City of Pittsburgh*, the City planned to operate an ice skating rink. The City and Duquesne discussed a rate for the ice skating rink and one was chosen (Rate GL) – just as, in the case of KA, it chose a rate ("as is") after discussions with PECO. The City "did not utilize the rink for all of the functions that were contemplated when the rink was built." *City of Pittsburgh* Finding of Fact 8, 54 Pa. PUC at 461. This parallels the fact, in KA, that ultimately KA did not use the site as contemplated for the "as is" rates (which admittedly were not appropriate for a site that would be left empty). Just as the City "did not notify Duquesne that its original summer demand estimates were inappropriate," *City of Pittsburgh* Finding of Fact 8, 54 Pa. PUC at 461, KA did not notify PECO that its summer demand estimates (which were reflected in the carryover PLC from the "as is" billing) were inappropriate for KA's purposes (until its lawyer called PECO in September 2016 to challenge KA's PLC level).

On those very similar facts, the Commission dismissed the City's claim, stating that when the only way that a utility can determine whether a customer is on the correct rate is by examining its usage patterns and bills, that does not constitute actual notice of the service condition – it is constructive notice that does not trigger any further obligation to assist the customer in choosing a rate. The Commission stated, 54 Pa. PUC at 462-63 (emphasis added) that:

> The crucial issue in this matter is whether §1303 should be construed to require a retroactive adjustment to the most advantageous rate where Duquesne had at best constructive, not actual, notice. . . . .
>
>> [The ALJ held that] "over a period of several years, Duquesne charged the City a rate higher than the service use of its monthly and bimonthly billings warranted. Constructive notice of this higher billing was readily apparent by security of the kilowatt-hour use registered at the South Side rink."

> This interpretation of §1303 would place an affirmative duty upon Duquesne and, therefore, all utilities continually to monitor the consumptive habits of all its customers, and on the basis of those habits immediately to apply the tariff rate most advantageous to the customer. This is impractical and is not the intent of §1303. . . . *Utilities cannot be expected to know more about their customers' businesses than the customers themselves and cannot be expected to make their decisions for them. A utility is not the co-manager of its customers operations. Commercial and industrial customers are in business to make a profit and it must be assumed that their energy costs are significant enough to cause them to monitor carefully their energy consumption and costs.*

In the case of KA, once it instructed PECO to continue billing on an "as is" basis, the only information that PECO had in its possession that could demonstrate that those instructions were resulting in high bills to KA was a comparison of the bills to the consumption habits of KA at the site – and the *City of Duquesne* Order clearly states that a utility is not required to monitor such consumption habits. Certainly PECO could have speculated as to whether KA was making appropriate business choices, including rate choices – but "utilities cannot be expected to know more about their customers' businesses than the customers themselves and cannot be expected to make decisions for them." The *City of Duquesne* thus makes it quite clear that, once KA instructed PECO to bill on "as is" basis, PECO no longer had actual notice of service conditions requiring it to assist in a rate choice. From that point forward, the rate choice obligation fell on KA – which chose not to call PECO for months.

It should also be recalled that, once KA called PECO back (in July 2016). PECO immediately assisted it in its rate choice. And when KA called in September 2016 to challenge its PLC, PECO immediately worked to assist it on that rate choice, as well. In other words, once PECO again had actual notice of service conditions and a request to assist in making a rate choice, it acted quickly and reasonably to assist the customer in making its rate choices.

Chronologically, the second case cited in the Initial Decision is *Mauro v. Duquesne Light Co.*, 69 Pa. PUC 105 (1989). The *Mauro* facts are, if anything, even more strikingly similar to

the KA complaint – just as KA changed operations from a supermarket to an empty building, in *Mauro* a commercial customer changed operations from a "Super Market type operation" to a "Sunday 'Flea Market.'" *Mauro* at 110. As with KA, the change from an existing supermarket to a different customer operational profile meant that there was a better rate (in *Mauro*, Duquesne's "Rider 5") that would have been advantageous to the customer. In KA, the customer failed to call PECO to follow-up on the rate choice discussion for six months even though it was admittedly aware that its bills were higher than it expected for a vacant facility; in *Mauro*, the customer failed to call Duquesne even though he was fully aware that he had changed his business operations. In both *Mauro* and KA, the customer claimed that they were not aware that their business operations had rate implications.[6] And in *Mauro*, the Commission held that it was the customer, not the utility, that should have taken action:

> We know from the record that in approximately 1980, Ben Mauro, changed his business from a "Super Market type operation" to a Sunday "Flea Market."
>
> We feel that Mr. Mauro, at that time, had an inherent responsibility to inform Duquesne of its changed operations. It is not difficult to distinguish the differences in the operations, that being a shift from a full week operation to a one day (Sunday) operation. Therefore, with a *little initiative* by the Complainant to make a call to Respondent, the problem could have been resolved . . . .

Mauro at 110 (emphasis in original).

The parallel is quite clear. KA asked for "as is" billing that was based upon use of the site by a supermarket. KA knew that it was not operating the site as a supermarket, and indeed that the site was an empty property. KA had actual knowledge and belief that its bills were too high for an empty property; indeed, KA conducted both an accounting review and a property manager field assessment to try to solve the problem. But KA did not take a *little initiative* to call PECO

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[6] In an interesting contrast between *Mauro* and KA, in *Mauro* the customer claimed that Duquesne never informed him of the existence of the alternative rate, whereas in KA the ALJ reached Findings of Fact that PECO did inform KA of the need to make a rate change. Findings of Fact 32 and 33.

until July. *Mauro* thus also makes it clear that PECO's actions were reasonable, and that the fault here lies with KA, which kept its information to itself and did not take the simple step of making a call to PECO to ask it for assistance – a step that, once taken by KA, resulted in swift and appropriate action by PECO.

Chronologically, the third case cited by the Initial Decision is *Springfield Twp. v. Pa.Pub. Util. Comm'n*, 676 A.2d 304 (Pa. Cmwlth. 1996). In this case, a local municipality purchased streetlights from PennDOT and operated them for many years. It later became clear that, for years, those facilities had been eligible for a much cheaper streetlight rate – PECO's Rate SL-E – based on the municipal ownership of the streetlights. Drawing on the *City of Duquesne* and *Mauro*, the Commission held that, until such time as the municipality actually called PECO and informed it that it owned the streetlights and was thus eligible for the lower rate, PECO had no actual notice and no Section 1303 obligation. The Commonwealth Court affirmed the Commission, focusing on the fact that the municipality had not informed PECO of its ownership of the streetlights:

> [W]e agree with PUC that the imposition of an affirmative duty upon the public utility to continually monitor its customers' accounts for the purpose of computing the most advantageous rate would be unreasonable. . . . In the matter sub judice, the record fails to demonstrate that before its March 25, 1993 oral request for the rate change, the Township ever notified PECO of its ownership and maintenance of the DOT-installed street lights, or requested the rate change or PECO's assistance in selecting the more favorable rate. At the hearing, the Township manager admitted that he never discussed the DOT-installed street lights with PECO's account representative . . . Consequently, the Township failed to establish that PECO was obligated before March 25, 1993 to compute the bills under the SL-E rate pursuant to Section 1303 of the Code.

676 A. 2d at 308-09. Again, the parallels are obvious. KA knew about its use of and plans for future use of the property, but PECO did not. PECO offered to assist in a rate choice, but was told to continue billing on an "as is" basis until KA called it back. Until that callback occurred months later, only KA had knowledge of its operations, and of whether the electric bills were

appropriate to those operations. The KA employees admitted that, once they told PECO to bill on an "as is" basis, they "never discussed" the KA operations or billing issues "with PECO's account representative." Consequently, KA "failed to establish that PECO was obligated before" the dates on which KA later contacted PECO "to compute the bills under" the most advantageous rate pursuant to Section 1303 of the Code.

Chronologically, the fourth and final case cited by the Initial Decision is *The Victory Condominium Association v. PECO Energy Co.*, Opinion and Order, Docket No. C-2011-2268126, entered September 27, 2012. For all of the remarkable and striking similarities to KA found in the prior cases, *Victory Condominium* is simply an extraordinary parallel. In *Victory*, as in KA, a property management company took over management of an existing facility (in *Victory*, it had previously been operated as a residential condominium). *Victory* Initial Decision at 2 and Finding of Fact 4. In *Victory*, as in KA, the customer had discussions with the PECO account manager about whether to use rates, contract limits, and other billing determinants from the prior customer, or to use new rates, contract limits, and billing determinants that would be chosen by the new customer. *Victory* Finding of Fact 5. In KA the customer asked to be billed "as is"; in *Victory* the customer stated that "nothing is changing." *Victory* Finding of Fact 6. In *Victory*, PECO therefore instituted service with a carryover contract minimum of 560 kW, *Victory* Finding of Fact 8, which was higher than Victory's subsequent actual demand and resulted in bills that were higher than would have been rendered if the bills had been based on Victory's actual usage. Victory ultimately became aware of this situation and wrote a letter to PECO on January 24, 2011 requesting that Victory's contract limits be lowered immediately, which PECO did effective February 9, 2011. Victory filed a formal complaint seeking retroactive application of the lower contract limit for several years, claiming that PECO had an obligation, under Section 1303, to provide such a refund. Administrative Law Judge Pell

dismissed Victory's complaint *without a hearing*, in words that resonate powerfully, given KA's instruction to use "as is" billing:

> The record is clear that Victory did not directly notify PECO that anything had changed or request any assistance from PECO in picking a more advantageous rate until January 24, 2011. Clearly, PECO was under no obligation prior to that date to determine a more favorable rate for Victory, *especially in light of the fact that Victory specifically indicated that the service rates and contract were to remain unchanged*. Moreover, the record demonstrates that once Victory actually notified PECO of the need for a rate change, PECO changed the rate effective the next billing period. Consequently, once PECO had actual notice of a change in Victory's circumstances, it made the requested change to complainant's rate.

Victory Condominium Initial Decision, June 7, 2012, pp. 12-13 (emphasis added). The Commission later affirmed ALJ Pell's Initial Decision.

In KA, clearly, PECO was under no obligation to determine a more favorable rate for KA prior to its July and September calls, "especially in light of the fact that [KA] specifically indicated that the service rates and contract were to remain unchanged."

In sum, the Commission's Section 1303 jurisprudence, when examined closely, makes it abundantly clear that, once KA told PECO to bill on an "as is" basis until KA called it back, PECO did not have actual notice of service conditions and thus had no obligation under Section 1303. The Commission should reject the Initial Decision's conclusion to the contrary.

Exception 2: PECO excepts to the imposition of a civil penalty in this matter.

In Ordering Paragraph number 4, the Initial Decision imposes a civil penalty of $4,000 on PECO. PECO excepts to the imposition of the civil penalty.

Of course, if the Commission accepts PECO's first exception, then it will conclude that PECO did not violate Section 1303 of the Public Utility Code and will, perforce, also remove the $4,000 civil penalty.

Moreover, in its first exception discussion, PECO clearly demonstrated a good faith basis for it to have relied upon the instructions it received from KA – "as is" billing until a KA supervisor called back – and that PECO's decision to follow those instructions fell squarely within the Commission's Section 1303 jurisprudence as reasonable and acceptable utility behavior. Indeed, PECO believes that, if the Commission rules that PECO had a responsibility to do more, the Commission will be creating a new rule of utility law in Pennsylvania. Given that PECO was operating in good faith compliance with prior Commission orders, a civil penalty is inappropriate even if the Commission now decides to impose a responsibility on utilities to ignore the instructions received by customers and press those customers to make rate decisions -- whether the customer is ready to make such a decision or not.

Conclusion

PECO respectfully requests that the Commission accept its two exceptions and modify the Initial Decision accordingly.

Respectfully submitted,

Ward Smith
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215-841-6863

January 10, 2018

PENNSYLVANIA
PUBLIC UTILITY COMMISSION

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An Exelon Company

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January 10, 2018

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

RE: KA at Fairless Hills v. PECO Energy Company
PUC Docket No.: C-2017-2592335

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is ***PECO Energy's Company Motion to file Exceptions Nunc Pro Tunc*** with regard to the matter referenced above.

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

Very truly yours,

Shawane Lee
Counsel for PECO Energy Company

SL/ab

cc: Certificate of Service

PENNSYLVANIA PUBLIC UTILITY COMMISSION

KA at FAIRLESS HILLS **Complainant**	:	
v.	:	**DOCKET NO. C-2017-2592335**
PECO ENERGY COMPANY **Respondent**	:	

NOTICE TO PLEAD

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

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

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

Dated at Philadelphia, PA, January 10, 2018

Shawane L. Lee
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Shawane.Lee@exeloncorp.com

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

KA at FAIRLESS HILLS	:	
Complainant	:	
	:	
v.	:	**DOCKET NO. C-2017-2592335**
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

PECO ENERGY'S MOTION TO FILE EXCEPTIONS NUNC PRO TUNC

Respondent, PECO Energy Company ("PECO"), pursuant to 52 Pa. Code §1.2 respectfully petitions this Honorable Commission to accept the attached Exceptions for filing *nunc pro tunc*.

1. On December 19, 2017, the Initial Decision of Administrative Law Judge Eranda Vero was served on PECO, fining PECO $4,000 and ordering PECO to refund the Complainant $22,000 in billed electric usage charges.

2. Pursuant to 52 Pa. Code § 5.533, PECO's Exceptions to the Initial Decision were due for filing on or before January 8, 2018.

3. Due to the holiday period, PECO is filing Exceptions two days beyond the January 8, 2018, due date.

4. PECO respectfully requests that this Honorable Commission accept the filing of PECO Energy's Exceptions *nunc pro tunc*.

5. 52 Pa. Code § 1.1 et seq. governs the rules of administrative practice and procedure before the Public Utility Commission.

6. 52 Pa. Code § 1.2 states that the procedural rules of Title 52 shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which it is applicable. The section further states that the "presiding officer at any stage of an action or proceeding may disregard an error or defect of procedure which does not affect the substantive rights of the parties."

7. Furthermore, the Pennsylvania Commonwealth Court has held that the PUC has authority to waive procedural defects when they do not affect the substantive rights of the parties. Info. Connections, Inc. v. Pennsylvania Public Utility Commission, 630 A.2d 498 (Pa. Cmwlth. 1993).

8. Pursuant to 52 Pa. Code 1.15(a)(1), the Commission may consider PECO's Exceptions if the Commission finds that "reasonable grounds are shown" for not timely filing Exceptions.

9. PECO avers there are reasonable grounds the Exceptions are being filed two days after the January 8, 2018, due date.

10. Exceptions were nominally due in 20 days; that is, on January 8, 2018. However, that period included both the Christmas and New Year's holidays. PECO's lead trial counsel on this matter was marked unavailable with the Public Utility Commission from December 21, 2017 through January 3, 2018 for the holiday vacation period. On January 4 and January 5 a severe snow storm impacted the Philadelphia area closing all schools and City offices, including the Philadelphia Office of Administrative Law Judge. That left one full working day (December 20) for PECO's counsel to draft exceptions. Accordingly, this accounted for the delay in preparing and filing the Exceptions.

11. This case involves a financial controversy between two commercial entities that has been ongoing since at least mid-2016; this short delay therefore does not prejudice the rights of any party. To that end, PECO does not object if the Reply Exception period is extended by two days.

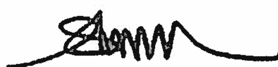
12. Consideration of the Exceptions will assist the Commission in securing a just determination in the proceeding. 52 Pa. Code § 1.2(a)

13. More importantly, the acceptance of its Exceptions *nunc pro tunc* does not affect the substantive rights of the Complainant in this matter and does not delay the adjudication of this case as the Commission has not issued a Final Order.

14. Accordingly, PECO Energy respectfully requests that PECO's Exceptions be accepted for filing *nunc pro tunc* so that this matter can be decided on the merits.

WHEREFORE, PECO Energy Company respectfully requests that PECO's Exceptions be accepted for filing *nunc pro tunc*.

Respectfully Submitted,



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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

KA at FAIRLESS HILLS **Complainant**	:	
	:	
v.	:	**DOCKET NO. C-2017-2592335**
	:	
PECO ENERGY COMPANY **Respondent**	:	

VERIFICATION

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

Date: January 10, 2018

Shawane L. Lee

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

KA at FAIRLESS HILLS **Complainant**	:	
v.	:	**DOCKET NO. C-2017-2592335**
PECO ENERGY COMPANY **Respondent**	:	

CERTIFICATE OF SERVICE

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

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Counsel for Plaintiff, KA at Fairless Hills, LP

Dated at Philadelphia, Pennsylvania, January 10, 2018

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