

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

Direct Dial: 215.841.6841

May 17, 2018

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

**RE: James Senesie v. PECO Energy Company**  
**Docket No. F-2018-3000619**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *PECO Energy's Motion for Judgment on the Pleadings* 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/alb  
Enclosure

cc: Certificate of Service

PENNSYLVANIA PUBLIC UTILITY COMMISSION

**JAMES SENESIE** :  
**Complainant** :  
 :  
v. : **DOCKET NO. F-2018-3000619**  
 :  
**PECO ENERGY COMPANY** :  
**Respondent** :

**NOTICE TO PLEAD**

*To: James Senesie*

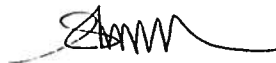
Pursuant to 52 Pa. Code §§5.101 and 5.62(c), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Motion for Judgment on the Pleadings within 20 days from service of this notice, the facts set forth by PECO Energy Company may be deemed to be true, thereby requiring no other proof. All pleadings, such as a Reply to Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Shawane Lee, and where applicable, the Administrative Law Judge presiding over the issue.

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

File with:  
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, May 17, 2018



---

Shawane L. Lee  
Counsel for PECO Energy Company  
2301 Market Street S-23  
Philadelphia, PA 19101-8699  
215-841-6863

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>JAMES SENESIE</b>	:	
<b>Complainant</b>	:	
	:	
v.	:	<b>DOCKET NO. F-2018-3000619</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	
	:	

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**MOTION FOR JUDGMENT ON THE PLEADINGS**

Respondent, PECO Energy Company (“PECO”), pursuant to 52 Pa. Code § 5.101(a)(4) respectfully petitions this Honorable Commission to dismiss the instant Complaint as legally insufficient.

1. On March 22, 2018, PECO was served with a formal complaint filed by James Senesie (hereafter “Complainant”). A copy of the Complaint is attached hereto as Exhibit “1”.

2. In his formal complaint, Complainant states that he has told PECO several times that something is wrong with his bill. The Complainant requests a payment agreement.

3. On April 3, 2018, PECO filed an Answer, New Matter and Notice to Plead. A copy of PECO’s Answer and New Matter is attached hereto as Exhibit 2.

4. PECO averred in its New Matter that this is the Complainant’s second formal complaint in which the Complainant alleges that PECO incorrectly billed him. New Matter ¶2.

5. PECO averred that the Complainant filed a formal complaint docketed at F-2016-2551332. In that Complaint, the Complainant alleged that his bills were too high because his charges are incorrect. The Complainant requested a payment agreement. New Matter ¶3

6. PECO averred that the issues raised in the formal complaint at docket number F-2016-2551332 were ruled on by Administrative Law Judge Darlene D. Heep (“Judge Heep”), who dismissed the Complainant’s complaint. New Matter ¶6.

7. PECO averred that Judge Heep issued an Initial Decision wherein she determined “nothing in the record supports a finding that Complainant’s bills were extraordinarily high or that his PECO charges are incorrect.” New Matter ¶7-8.

8. Accordingly, PECO averred that all of the allegations in the Complainant’s current formal case should be dismissed on the grounds of res judicata. New Matter ¶10.

9. The allegations raised in the current complaint were previously raised by the Complainant in his 2016 complaint. The incorrect billing and high bill allegations were dismissed by Judge Heep and the Commission issued a Final Order on April 6, 2017. New Matter ¶9.

10. The Commission’s regulations at 52 Pa. Code §5.102(a) permits any party to move for summary judgment or judgment on the pleadings after the pleadings are closed, but within such time as to not delay a hearing. Under 52 Pa. Code §5.102(d)(1), the presiding officer will grant the motion if the pleadings, depositions, answers to interrogatories, admissions and affidavits show that there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law.

11. The moving party bears the burden of showing that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law. The Commission must view the record in the light most favorable to the non-moving party, giving that party the benefit of all reasonable inferences. *First Mortgage Co. of Pennsylvania v. McCall*, 459 A.2d 406 (Pa. Super. 1983).

12. The provision at 52 Pa. Code §5.102(c) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of the case exists, a hearing is unnecessary. *Lehigh Valley Power Committee v. Pennsylvania Public Utility Commission*, 563 A.2d. 557 (Pa. Cmwlth. 1989).

13. The pleadings in this case reveal that the Complainant's case is barred on res judicata grounds.

14. The doctrine of res judicata operates to prevent re-litigation of claims already litigated on the merits. As stated by the Commission in Frank Tomazin v. Pennsylvania-American Water Company, 1997 Pa. PUC Lexis 52 (1997), "the policies underlying the doctrine of res judicata are minimizing judicial energy devoted to individual cases, establishing certainty and respect for court judgments, and protecting the party relying on the prior adjudication from vexatious litigation."

15. Res judicata includes any issue, claim or defense that was raised or could have been raised in the prior proceedings. Glynn v. Glynn, 2001 PA Super 359, ¶ 27, 789 A.2d 242, 250.

16. The doctrine of res judicata, which is also known as claim preclusion, holds that a final judgment on the merits by a court of competent jurisdiction will bar any future action on the same cause of action between the parties and their privies. Hopewell Estates, Inc. v. Kent, 435 Pa. Superior Ct. 471. 476, 646 A.2d 1192 (1994). The doctrine of res judicata applies to cases before the Commission. See, O'Toole v. Bell Telephone Co. of Pennsylvania, Inc., 77 Pa. P.U.C. 98, 104 (1992). The doctrine of res judicata reflects the refusal of the law to tolerate the re-litigation of a matter decided by a court of competent jurisdiction. For the doctrine to prevail four conditions must be met:

- (1) Identity of issues;
- (2) Identity of causes of action;
- (3) Identity of persons and parties to the action; and
- (4) Identity of the quality and capacity of the parties suing or sued.

Day v. Volkswagenwerk Aktiengesellschaft, 318 Pa. Superior Ct. 255, 474 A.2d 1313, 1316, 1317 (1983).

17. In the present case all four elements of res judicata are met.

18. Consistent with the requirement of res judicata, the issue sued upon in the 2016 matter and the current complaint is the same. Complainant's issue is founded on his belief that his bills are incorrect and there is something wrong with his bill.

19. The cause of action in the most recent Complaint is also the same. In the 2016 matter, Complainant requested that the PUC rule upon whether PECO had correctly billed him, including whether his meter was functioning properly. The Complainant makes the same complaint in his current formal complaint where he still claims that he has told PECO several times that something is wrong with his bill.

20. However, Judge Heep already determined that the Complainant's bills are correct and PECO billed him correctly. Indeed, Judge Heep stated "when asked to clarify his complaint, Mr. Senesie alleged that his bills are high because he is charged for more energy than he uses." Judge Heep determined that the Complainant "lives in an all-electric home" and what Mr. Senesie "is charged by PECO for electricity is related to his use of [his] appliances, not any violation by PECO." See James Senesie v. PECO, F-2016-2551332 (Initial Decision entered January 9, 2017) (Final Order entered April 6, 2017)..

21. In his current formal complaint, the Complainant confirms his billing concerns have already been litigated when he states: “I want to thank the PUC for their concerns to try to resolve this matter.”

22. Res judicata also requires the parties to the instant action be the same or stand in privity to the parties of the original action. Hopewell Estates, Inc. v. Kent, 435 Pa. Superior Ct. 471. 476,646 A.2d 1192 (1994). The parties in the most recent action are the same as the 2016 complaint which was already dismissed. This matter is again initiated by James Senesie against PECO Energy.

23. As required by the fourth tenant of the doctrine of res judicata, the quality and capacity of the parties involved is the same as it was in 2016.

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

25. Here, the issues presented have all been litigated previously. Therefore, PECO Energy is entitled to judgment as a matter of law with respect to all of the incorrect billing and high bill allegations in the Complaint.

26. The allegations raised in the Complaint were previously raised by the Complainant in a former complaint and were dismissed.

27. For purposes of determining whether res judicata applies, the essential inquiry is whether the ultimate and controlling issues have been decided in a prior proceeding where the parties had an opportunity to appear and to be heard. Stevens Painton Corp. v. First State Ins. Co., 746 A.2d 649, 654 (Pa. Super. 2000) (emphasis added). The Complainant was provided a hearing before Judge Heep where he testified and gave evidence to support his incorrect

billing claims. Judge Heep considered the merits of Mr. Senesie's testimony and evidence and issued an Initial Decision with a concise analysis of the billing issues raised. Accordingly, the Complainant had an opportunity to be heard.

28. Because the present Complaint asserts the same factual and legal basis for relief as the dismissed 2016 Complaint, the Complainant is estopped from attempting to re-assert his incorrect billing and high bill claims here.

29. The doctrine of res judicata is meant to protect against just the type of re-litigation that the Complainant is attempting with his present formal Complaint. It is pointless and a waste of the Commission's time and resources to permit the new Complaint to go forward with respect to any incorrect billing or high bill issues already raised in the earlier Complaint.

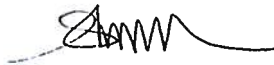
30. For the reasons set forth above, the Complainant's incorrect billing and high bill claims should be dismissed on the grounds of res judicata.



**REQUEST FOR RELIEF**

WHEREFORE, for the reasons set forth above, PECO Energy Company respectfully requests that your Honorable Commission summarily dismiss the Complainant's incorrect billing and high bill allegations, which were raised in the 2016 formal complaint at docket number F-2016-2551332 and the hearing proceed on the Complainant's request for a payment agreement only.

Respectfully submitted,



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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**JAMES SENESIE**

**Complainant**

v.

**PECO ENERGY COMPANY**

**Respondent**

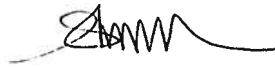
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**DOCKET NO. F-2018-3000619**

**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: May 17, 2018



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Shawane L. Lee

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>JAMES SENESIE</b>	:	
<b>Complainant</b>	:	
	:	
<b>v.</b>	:	<b>DOCKET NO. F-2018-3000619</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

**CERTIFICATE OF SERVICE**

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

*Via E-mail & First Class Mail*  
Honorable F. Joseph Brady  
PA Public Utility Commission  
Suite 4063  
801 Market Street  
Philadelphia, PA 19107

James Senesie  
2659 South 69<sup>th</sup> Street, House  
Philadelphia, PA 19142

Dated at Philadelphia, Pennsylvania, May 17, 2018.



---

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

# **EXHIBIT 1**

**Botak, Amy:(PECO)**

---

**From:** eServe@pa.gov  
**Sent:** Thursday, March 22, 2018 3:27 PM  
**To:** Lee, Shawane L:(PECO)  
**Cc:** Botak, Amy:(PECO)  
**Subject:** [EXTERNAL] PA PUC eServe Notice

**Importance:** High

Dear Shawane L Lee,

A(n) **Formal Complaint Form** has been served in this proceeding. This document is docketed as **F-2018-3000619**. You may view this document at **Formal Complaint Form**

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

Thank You,  
Public Utility Commission  
Commonwealth of Pennsylvania

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

RECEIVED

MAR 08 2018

BCS 3570201

PECO ENERGY (ED)

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Must be returned by MARCH 15, 2018

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint

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

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

1. Customer (Complainant) Information

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

Name James Senesie

Street/P.O. Box 2659 South 69<sup>th</sup> street Apt # House

City Philadelphia State PA Zip 19142

County \_\_\_\_\_

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

(267) 258-7760 (home) (267) 258-7760 (mobile)

E-mail Address (optional): N/A

Utility Account Number (from your bill) 59601-08020

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

Name \_\_\_\_\_

Street/P.O. Box \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

2. Name of Utility or Company (Respondent)

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

PECO Account # 59601-08020  
2301 Market Street  
Phila PA 19103-1380

RECEIVED  
2018 FEB 26 AM 10:26  
PA PUC  
SECRETARY'S BUREAU

**3. Type of Utility Service**

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

- ELECTRIC                       WASTEWATER/SEWER  
 GAS                                       TELEPHONE/TELECOMMUNICATIONS (local, long distance)  
 WATER                                       MOTOR CARRIER (e.g. taxi, moving company, limousine)  
 STEAM HEAT

**4. Reason for Complaint**

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

- The utility is threatening to shut off my service or has already shut off my service.
- I would like a payment agreement.
- Incorrect charges are on my bill. Provide dates that are important and an explanation about any amounts or charges that you believe are not correct. Attach a copy of the bill(s) in question if you have it/them.
- I am having a reliability, safety or quality problem with my utility service. Explain the problem, including dates, times or places and any other relevant details that may be important.
- Other (explain).

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

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

5. Requested Relief

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

I want to thank the PUC for their concerns to try<sup>to</sup> resolve this matter. First of all, I have told Peco energy that something is wrong with my bill. Several times. All I want you guys to do for me, is, I want payment agreement that will be reasonable for me. I am willing to work hard to pay my bill. Thank you. God Bless!

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



6. **Protection From Abuse (PFA)**

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

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

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

YES

NO

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

7. **Prior Utility Contact**

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

YES

NO

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

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

YES

NO

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

c. If you tried to speak to a utility company representative about your complaint but were not able to do so, please explain why.

I Have try to speak to a utility company representative several times, all they can tell me is my bill is <sup>the</sup> correct bill. And I definitely disagree ~~It~~ is not the correct bill.

Note: Even if you are not required to contact the utility or company, you should always try to speak to a utility or company representative about your problem before you file a Formal Complaint with the PUC.

8. Legal Representation

If you are filing a Formal Complaint as an individual on your own behalf, you are not required to have a lawyer. You may represent yourself at the hearing.

If you are already represented by a lawyer in this matter, provide your lawyer's name, address, telephone number, and e-mail address, if known. Please make sure your lawyer is aware of your complaint. If represented by a lawyer, both you and your lawyer must be present at your hearing.

Lawyer's Name \_\_\_\_\_

Street/P.O. Box \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Area Code/Phone Number \_\_\_\_\_

E-mail Address (if known) \_\_\_\_\_

Note: Corporations, associations, partnerships, limited liability companies and political subdivisions are required to have a lawyer represent them at a hearing and to file any motions, answers, briefs or other legal pleadings.

9. **Verification and Signature**

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

**Verification:**

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

James Senesie 2/21/18  
(Signature of Complainant) (Date)

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

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

10. **Two Ways to File Your Formal Complaint**

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

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

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

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

RECEIVED

MAR 08 2018

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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

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

Keep a copy of your Formal Complaint for your records.

From: James ~~Senesive~~  
2659 South 69<sup>th</sup> Street  
Philadelphia PA  
19142



U.S. POSTAGE  
PAID  
PHILADELPHIA, PA  
19138  
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Secretary  
To: Pennsylvania Public Utility  
Commission  
400 North Street  
Harrisburg, Pennsylvania  
17120

Ready **P**ost.

Document Mailer

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## **EXHIBIT 2**



**PENNSYLVANIA**  
PUBLIC UTILITY COMMISSION

CONSUMER INFO UTILITY & INDUSTRY FILING & RESOURCES ABOUT PUC CONTACT US

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## eFiling Successfully Transmitted

Your filing has been electronically received. Upon review of the filing for conformity with the Commission's filing requirements, a notice will be issued acknowledging acceptance or rejection (with reason) of the filing. The matter will receive the attention of the Commission and you will be advised if any further action is required on your part.

The date filed on will be the current day if the filing occurs on a business day before or at 4:30 p.m. (EST). It will be the next business day if the filing occurs after 4:30 p.m. (EST) or on weekends or holidays.

**Print this page for your records.**



eFiling Confirmation	
Docket Number:	F-2018-3000619
Description:	James Senesie - Answer with New Matter
Transmission Date:	4/3/2018 10:42:53 AM
Filed On:	4/3/2018 10:42:53 AM
eFiling Confirmation Number:	1715438

### Uploaded File List

File Name	Document Class	Document Type
Senesie - Answer with New Matter.pdf	Communication	Answer to Formal Complaint

For filings exceeding 250 pages, the PUC is requiring that filers submit one paper copy to the Secretary's Bureau within three business days of submitting the electronic filing online. Please mail the paper copy along with copy of this confirmation page to Secretary, Pennsylvania

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

Direct Dial: 215-841-6841

April 3, 2018

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
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**RE: James Senesie v. PECO Energy Company**  
**PUC Docket No.: F-2018-3000619**

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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

PENNSYLVANIA PUBLIC UTILITY COMMISSION

JAMES SENESIE

Complainant

v.

PECO ENERGY COMPANY

Respondent

DOCKET NO. F-2018-3000619

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NOTICE TO PLEAD

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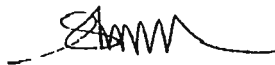
File with:

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, April 3, 2018



---

Shawane L. Lee  
Counsel for PECO Energy Company  
2301 Market Street S-23  
Philadelphia, PA 19103  
215-841-6841  
Shawane.lee@exeloncorp.com



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**JAMES SENESIE**

**Complainant**

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**DOCKET NO. F-2018-3000619**

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**ANSWER OF RESPONDENT,**  
**PECO ENERGY COMPANY**

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On March 22, 2018, PECO Energy Company ("PECO Energy") was served with a formal complaint filed by James Senesie (hereafter "Complainant") in the above captioned docket. Pursuant to 52 Pa. Code § 5.61, PECO responds to the Complaint and states:

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

In his Formal Complaint, the Complainant alleges that his bills are incorrect and requests a payment agreement. PECO avers that the Complainant's incorrect billing allegations have been investigated and are unfounded and he is not eligible for a payment agreement pursuant to 66 Pa. C.S. §1405(d) because he has defaulted on previous payment agreements with the Public Utility Commission ("PUC").

The Complainant established an account for electric service at 2659 South 69<sup>th</sup> Street, Philadelphia, PA under account number 59601-08020 on November 17, 2014. See Account Activity Statement, attached hereto as Exhibit “1”.

The Complainant complained of high bills; accordingly, PECO went to the premises on December 14, 2015 to investigate. The field technician verified the meter number and obtained an additional meter reading, which verified the accuracy of the last billed meter reading. The high bill field technician performed an appliance analysis, which justified the Complainant’s potential to use the service. A passing load test was performed, which demonstrated the meter was working accurately. There was no foreign wiring found at the time of the visit. The technician determined the Complainant has been properly billed for his usage.

On November 2, 2015, the Complainant filed an informal complaint with the BCS at case number 003398488, requesting a payment agreement. At the time, the Complainant reported a gross monthly income of \$1863.33 for two adults and two children. See BCS Case Details Report #003398488, attached hereto as Exhibit “2”. The BCS issued the Complainant a Level 1 payment agreement on his \$2,774.05 balance. Under the terms of the agreement, the Complainant was to pay a monthly arrears payment of \$47.00 per month plus a budget bill payment of \$254.00. See BCS Decision Report #003398488, attached hereto as Exhibit “3”. The agreement defaulted on December 9, 2015.

On January 5, 2016, the Complainant filed another informal complaint at BCS case number 003408298, alleging that he was still not satisfied with the meter readings he was obtaining and requested a payment agreement on his \$4,400.90 balance. At the time, the Complainant reported monthly gross income of \$1,733.33 for two adults and two children. See BCS Case Details Report #003408298, attached hereto as Exhibit “4”. On May 10, 2016, the

BCS dismissed the Complainant's case. See BCS Decision Report #003408298, attached hereto as Exhibit "5".

The Complainant filed a formal complaint at docket number F-2016-2551332 on June 10, 2016, alleging there were incorrect charges on his bill and requested a payment agreement. The case proceeded to a hearing before Administrative Law Judge Darlene D. Heep on September 19, 2016. ALJ Heep issued an Initial Decision on January 9, 2017, which dismissed the complaint. ALJ Heep determined "nothing in the record supports a finding that Complainant's bills were extraordinarily high or that his PECO charges are incorrect. He cannot prevail on this claim." See Initial Decision, attached hereto as Exhibit "6". On April 6, 2017, the Commission adopted ALJ Heep's Initial Decision. See Final Order, attached hereto as Exhibit "7".

On October 13, 2017, the Complainant filed another informal complaint with the BCS at case number 003570201, complaining that his bill is too high because he received a bill for \$7,000. He requested that the PUC investigate his bill to determine if he is being billed accurately. See Case Details Report #003570201, attached hereto as Exhibit "8". On January 23, 2018, the BCS issued a Decision Report, dismissing the informal complaint as follows "BILLS ARE CORRECT AS RENDERED. COMPLAINT IS DISMISSED." See BCS Decision Report #003570201, attached hereto as Exhibit "9".

The Complainant's current balance is \$8,655.63. See Account Activity Statement, attached hereto as Exhibit "1". The account activity statement demonstrates that the Complainant does not pay the entire amount billed, frequently misses payments and does not make the payments by the due date. See Exhibit "1".

PECO Energy avers that the Complainant's high bill concerns have been investigated and are unfounded. PECO Energy avers that the Complainant is not entitled to another payment

agreement pursuant to 66 Pa. C.S. §1405(d) as he has defaulted on a PUC agreement and has not demonstrated a significant change in income.

5. Denied.

6. Admitted.

7. Denied.

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

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

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

**NEW MATTER OF RESPONDENT, PECO ENERGY COMPANY**

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

1. PECO incorporates by reference responses contained in Paragraphs 1 through 10 above as though fully set forth at length.

2. This is the Complainant's second formal complaint against PECO Energy in which the Complainant alleges that PECO Energy incorrectly billed him.

3. The Complainant filed formal complaint docketed at F-2016-2551332. In that Complaint, he alleged that his bills are high because his charges are incorrect. The Complainant requested that the Commission give him a payment agreement. See Initial Decision, F-2016-2551332, attached hereto as Exhibit "6"

4. On July 5, 2016, PECO Energy filed an Answer to the Complainant's Complaint.

5. On September 19, 2016, the issues raised in the formal complaint were heard before Administrative Law Judge Darlene D. Heep.

6. ALJ Heep issued an Initial Decision on January 9, 2017, dismissing the Complainant's Complaint. See Initial Decision, attached hereto as Exhibit "6".

7. In that Decision, ALJ Heep addressed the incorrect billing claims. See Exhibit "6".

8. In her Initial Decision, ALJ Heep determined:

1) There was also no evidence that there was a problem with the meter itself. During this investigation in December 2015, Technician Murray conducting a passing load test, which showed that Complainant's meter was recording usage accurately. (Tr. 69-71). On August 29, 2016, PECO Field Technician Eric Reilly visited the property and conducted two meter tests. Each test showed the meters at least 100 percent accurate (Exhibit 7, Tr. 72).

Nothing in the record supports a finding that Complainant's bills were extraordinarily high or that his PECO charges are incorrect. He cannot prevail on this claim.

See James Senesie v. PECO Energy Company, Docket Number F-2016-2551332 (Initial Decision entered January 9, 2017), attached hereto as Exhibit "6".

9. On April 6, 2017, the Commission issued a Final Order, dismissing the complaint.

10. The Complainant's allegations of incorrect billing in the current formal complaint should be dismissed on the grounds of res judicata.

11. The doctrine of res judicata reflects the refusal of the law to tolerate the re-litigation of a matter decided by a court of competent jurisdiction. For the doctrine to prevail four conditions must be met:

- (1) Identity of issues;
- (2) Identity of causes of action;
- (3) Identity of persons and parties to the action; and
- (4) Identity of the quality and capacity of the parties suing or sued.

Day v. Volkswagenwerk Aktiengesellschaft, 318 Pa. Superior Ct. 255, 474 A.2d 1313, 1316, 1317 (1983).

12. In the present case all four elements of res judicata are met. Clearly, the parties are identical in both Complaints. The thing sued upon is identical in both Complaints. Both the current formal complaint and the 2016 Complaint relate to the same issues: incorrect billing.

13. The cause of action is identical. Finally, the quality and capacity of the parties is identical in both Complaints. The Complainant is the electric customer in both Complaints, and PECO is the public utility providing service to the Complainant.

14. Because the present complaint asserts the same factual and legal basis for relief as the dismissed 2016 Complaint, the Complainant is estopped from attempting to re-assert his incorrect billing claims here.

15. Accordingly, the Complainant's incorrect billing allegations should be dismissed pursuant to the doctrine of res judicata.

16. By way of further response, the Complainant has an \$8,655.63 balance, which continues to grow as the Complainant continues to use the PUC administrative process to avoid paying his electric service.

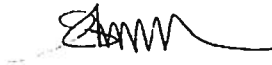
17. PUC Commissioner Pamela A. Witmer recently warned PECO about this very issue in the Daniel Vermeychuk v. PECO matter at Docket No. C-2013-2388323 (November 5, 2015). Commissioner Witmer stated that “the Complainant was not only ignoring his obligation to pay his bills but was actively employing various strategies to avoid paying in a timely manner.” Commissioner Witmer pointed out:

...It is critically important to the customers, who are ultimately left footing the bills for such abuses, that our utilities act vigilantly to prevent them, continue to take steps to identify them, and mitigate their effects as quickly as possible. I remind PECO and all of our regulated utilities of this responsibility.

18. This is clearly what is happening in the present case with the filing of informal and formal complaints. The Complainant is strategically filing informal and formal complaints, including the present formal complaint, in an effort to avoid paying his electric bill. While PECO is able to identify this abuse, the company is unable to mitigate this issue while the Complainant uses the PUC complaint process to prevent paying his bill.

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

Respectfully Submitted,



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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**JAMES SENESIE**

**Complainant**

v.

**PECO ENERGY COMPANY**

**Respondent**

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**DOCKET NO. F-2018-3000619**

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**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: April 3, 2018

\_\_\_\_\_  
Shawane L. Lee



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>JAMES SENESIE</b>	:	
<b>Complainant</b>	:	
	:	
v.	:	<b>DOCKET NO. F-2018-3000619</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

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**CERTIFICATE OF SERVICE**

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

James Senesie  
2659 South 69<sup>th</sup> Street  
Philadelphia, PA 19142

Dated at Philadelphia, Pennsylvania, April 3, 2018.



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

# **EXHIBIT “1”**

Account Information \*\*\*

Account Number: 04501-00000  
Account Details: Active  
Requestor: PHILADELPHIA  
Requestor: PHILADELPHIA  
1150NAT-0007 - Extraneous

Mail To: PHILADELPHIA  
Requestor: PHILADELPHIA  
Requestor: PHILADELPHIA  
Requestor: PHILADELPHIA

Account Bill: PHILADELPHIA  
Billing Period: PHILADELPHIA  
Billing Date: PHILADELPHIA  
Billing Amount: PHILADELPHIA

Current Account Status \*\*\*

Current Amount: 00.00  
Current Balance: 00.00  
Current Due Date: 00/00

Current Bill: PHILADELPHIA  
Current Bill Amount: PHILADELPHIA  
Current Bill Due Date: PHILADELPHIA

DATE CHARGE TYPE BILLING PERIOD BILLED MONTH % CHARGE AMOUNT CREDIT AMOUNT TOTAL BALANCE FORWARD DATE DUE

06/15/16 BUDGET BILLING 06/15/16 06/20 100% 2756.00 2756.00 0171.45 4347.95 05/09 1.44

06/15/16 Regular Bill Budget Bill Detail 06/15/16 07/15/16 300.00 2756.00 0171.45 4347.95 05/09 1.44

06/15/16 Regular Bill Budget Bill Detail 06/15/16 07/15/16 300.00 2756.00 0171.45 4347.95 05/09 1.44

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06/15/16 Regular Bill Budget Bill Detail 06/15/16 07/15/16 300.00 2756.00 0171.45 4347.95 05/09 1.44



## **EXHIBIT “2”**

April 3, 2018

## Case Details Report

BCS Case #: 003472519 BCS Bill Account #: 8888888888  
Customer Name: JOSEPH THOMAS  
Service Address: 712 E WESTMORELAND STREET

PHILADELPHIA, PA 19134

**Mailing Address:**

Home Phone: () -  
Business Phone: () -  
Business name: SAME  
Alternate contact:

Date Case Opened: 2016-08-30 Date Cut Out: 9999-12-31  
PAR Case: Y  
Investigator Name: BCS CASE POOL  
Investigator Phone: (717) 787-0000 Universal Service: N  
Service class: R Contact Type: TELEPHONE  
Previous case #: Amount in Arrears: \$2000.00

# Adults: 0  
# Children: 0  
Children Ages:  
Gross Income: \$0.00  
Miscellaneous Info:

**Complaint Reason:**  
APPLICANT/DEPOSITS - SERVICE IS ON (# 28)

**Customer Problem Description:**  
MR. THOMAS IS BEING DENIED SERVICE. STATES HE HASN'T LIVED AT THE E. WESTMORELAND STREET IN APPROX. 12 YEARS STATES HE HAS BEEN RENTING THE PROPERTY OUT. STATES HE HAS RENTED THE PROPERTY OUT SINCE HE MOVED OUT. STATES THE CO IS REQUIRE HE PAYS THE CURRENT TENANTES SHANTE MCFARLAND'S ACCOUNT BALANCE. STATES HE CURRENTLY RESIDES AT 5602 S 56TH STREET. STATES HE IS TRYING TO TRANSITION BACK INTO HIS HOME AND JUST NEEDS THE SERVICE. THE CELL PHONE NUMBER (267) 202 - 2208 HAS BEEN ALLOWED TO BE SHARED. THE EMAIL ADDRESS JOEYXYZ3@GMAIL.COM HAS BEEN ALLOWED TO BE SHARED.

April 3, 2018

**Company Position:**

08/30/2016 CO STATES MR. THOMAS HAS BEEN LIVING AT THE PROPERTY ALL ALONG AND HE IS RESPONSIBLE FOR THE PAST DUE ON THE ACCOUNT.

# **EXHIBIT “3”**





April 3, 2018

**BCS Decision Report**

BCS Case #: 003472519 Open Date: 2016-08-30  
Customer Name: JOSEPH THOMAS  
Service Address: 712 E WESTMORELAND STREET

PHILADELPHIA, PA 19134  
BCS Bill Account #: 8888888888 Previous Case #:  
Violation Type: NO Chapter Type:  
Decision Type: O Section / Rule:  
Investigator Name: ADAM KRICHMAR

Decision Issued Date:  
Case Closed Date: 2016-09-15

Letter Description:  
NO LETTER REQUIRED

Total Balance:	\$0.00	Balance Date:	2016-09-09
Amount to Restore Service:	\$0.00	Amount to Continue Service:	\$0.00
Date Payment Due:		Regular Budget Amount:	\$0.00
Special Budget Payment:	\$0.00	Final Bill Monthly Payment:	\$0.00
Plus Arrears Payment:	\$0.00	End of Month Payment:	\$0.00
Current Monthly Payment:	\$0.00		

Payment Terms:

PAR Description:

Resolution Description:  
VERBAL CLOSE - THE APPLICANT SAID HE CAN AND WILL LOCATE TAX AND UTILITY DOCUMENTS TO PROVE TO PECO THAT HE RESIDED ELSEWHERE DURING THE PERIOD IN WHICH THIS BALANCE WAS ACCRUED - APPLICANT DID STATE THAT HE HAS SIGNED LEASES AND RECORDS FOR THE TENANTS WHO RESIDE THERE AND CAN USE THOSE TO ESTABLISH RESIDENCE AND RESPONSIBILITY FOR THE BALANCE - I ADVISED ALL DOCUMENTS MUST BE PROVIDED TO PECO DIRECTLY - NO FURTHER QUESTIONS OR ISSUES -

**EXHIBIT “4”**

April 3, 2018

## Case Details Report

BCS Case #: 003553415 BCS Bill Account #: 0042669027  
Customer Name: JOSEPH THOMAS  
Service Address: 712 E WESTMORELAND ST

PHILADELPHIA, PA 19134

**Mailing Address:**

Home Phone: ( ) -

Business Phone: ( ) -

Business name:

Alternate contact:

Date Case Opened: 2017-08-14 Date Cut Out: 9999-12-31  
PAR Case: N  
Investigator Name: BCS CASE POOL  
Investigator Phone: (717) 787-5468 Universal Service: N  
Service class: R Contact Type: TELEPHONE  
Previous case #: 3542391 Amount in Arrears: \$0.00

# Adults: 0

# Children: 0

Children Ages:

Gross Income: \$0.00

Miscellaneous Info:

**Complaint Reason:**

BILLING DISPUTES (# 18)

**Customer Problem Description:**

CU WANTS TO ISSUE A DISPUTE AGAINST THE UTILITY CO. CU SAID THAT HE RECEIVED A LETTER SAYING HIS BALANCE WENT INTO COLLECTIONS. THE CU CALLED THE CO AND ASKED IF IT IS IN COLLECTIONS NOW, AND NOT WITH THE CO, THEN CAN THE CO GIVE HIM A BETTER RATE OR ARRANGEMENT. THE CO IS CLAIMING THEY NEVER PUT IT IN COLLECTIONS AND ALSO THEY WOULDN'T BE ABLE TO DO THAT ANYWAY. THEY TOLD HIM TO CALL COLLECTIONS ABOUT IT. THE CU CALLED THE COLLECTION AGENCY AND THEY TOLD HIM THEY HAVE IT BUT HE NEEDS TO TALK TO PECO ABOUT IT. THE CU WANTS IT TO STAY IN COLLECTIONS TO BE PAID OFF OVER TIME AND GET A BETTER RATE FROM THE



**April 3, 2018**

CO. THE CU WOULD LIKE THE PUC TO INVESTIGATE THIS ISSUE. THE CELL PHONE NUMBER (267) 202 - 2208 HAS BEEN ALLOWED TO BE SHARED.

**Company Position:**

08/14/2017 CO SAID THEY DIDN'T PUT IT IN COLLECTIONS BUT TO CALL THE COLLECTION AGENCY.

# **EXHIBIT “5”**

April 3, 2018

## BCS Decision Report

BCS Case #: 003553415                      Open Date: 2017-08-14  
Customer Name: JOSEPH THOMAS  
Service Address: 712 E WESTMORELAND ST

PHILADELPHIA, PA 19134  
BCS Bill Account #: 0042669027                      Previous Case #: 3542391  
Violation Type: NO                      Chapter Type:  
Decision Type: W                      Section / Rule:  
Investigator Name: AARON SIDES

Decision Issued Date: 2018-02-14  
Case Closed Date: 2018-02-12

### Letter Description:

Total Balance:	\$3711.90	Balance Date:	2018-01-09
Amount to Restore Service:	\$0.00	Amount to Continue Service:	\$0.00
Date Payment Due:		Regular Budget Amount:	\$169.00
Special Budget Payment:	\$0.00	Final Bill Monthly Payment:	\$0.00
Plus Arrears Payment:	\$0.00	End of Month Payment:	\$0.00
Current Monthly Payment:	\$0.00		
Payment Terms:			

### PAR Description:

#### Resolution Description:

DECISION ISSUED - CUSTOMER AGREED TO ASSUME RESPONSIBILITY OF SHANTEA MACFARLAND'S ACCOUNT BALANCE ON JULY 12 2017. THE CUSTOMER'S PRIOR UNPAID ACCOUNT BALANCE WAS NOT TRANSFERRED TO HIS CURRENT SERVICE ACCOUNT. THE CUSTOMER'S CURRENT ACCOUNT BALANCE CONTAINS CAP INPA ARREARS. CASE DISMISSED PER 1405C.

# **EXHIBIT “6”**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

James Senesie

v.

PECO Energy Company

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:  
:  
:  
:

F-2016-2551332

**INITIAL DECISION**

Before  
Darlene Davis Heep  
Administrative Law Judge

**INTRODUCTION**

This decision finds that PECO did not commit a violation by sending Complainant shut off notices, and the evidence does not support Complainant's claim that his bills are high because his charges are incorrect. This decision also denies Complainant's request for a second Commission-issued payment arrangement.

**HISTORY OF THE PROCEEDINGS**

In a timely appeal of Bureau of Consumer Services ("BCS") decision number 3408298, James Senesie ("Complainant" or "Mr. Senesie") filed a Complaint against PECO Energy Company ("PECO") on June 10, 2016. In the Complaint, Mr. Senesie alleged that PECO is threatening to shut off his services and that there are incorrect charges on his PECO bills. He also requested a payment arrangement.

PECO filed an Answer on July 5, 2016. PECO denied all material allegations of fact in the Complaint. The company also contended that the company verified the accuracy of the bills issued to the Complainant and that Complainant defaulted on a Commission-issued



payment arrangement and therefore is not eligible for a new payment arrangement in accordance with 66 Pa.C.S. Section 1405(d).

A hearing was held on September 19, 2016. Mr. Senesie represented himself and presented no witnesses. PECO was represented by Shawane Lee, Esq., who presented the testimony of Michael Begley, PECO Regulatory Assessor, and Thomas Lerro, PECO Senior High Bill/Field Meter Services Foreman, and introduced nine exhibits.

During the hearing, the undersigned requested that PECO provide a more detailed accounting of Complainant's bills. PECO submitted that information on September 22, 2016 and it is marked as PECO Late-filed Exhibit 10 (PECO LF-10). PECO mailed a copy of PECO LF-10 to Mr. Senesie, who did not file a response or reply.

All exhibits were admitted into the record. The record closed on November 4, 2016 upon receipt of the transcript.

#### FINDINGS OF FACT

1. Complainant is James Senesie, a PECO electric residential customer at 2659 S. 69<sup>th</sup> Street, Philadelphia, Pennsylvania (service address), since November 7, 2014. (Tr. 36).

2. Respondent is PECO Energy Company, an electric utility under the jurisdiction of the Pennsylvania Public Utility Commission.

3. On November 2, 2015, Complainant filed an informal complaint with BCS, Case No. 003398488, seeking a payment arrangement. (PECO 4).

4. On November 6, 2015, in Case No. 003398488, BCS issued Complainant a Level 1 payment arrangement that required him to pay, each month, \$254.00 budget billing plus \$47.00 toward clearing up his arrears of \$2,774.05, or \$301 per month. (PECO 4).

5. Under the terms of the BCS-issued payment arrangement, Complainant was required to make the first payment by the December bill due date, December 4, 2015. (PECO 1, PECO 4).
6. On November 16, 2015, a PECO technician visited the service address to conduct a high bill investigation of complainant's residence as scheduled, but there was no answer and the technician was not able to get in to conduct the investigation. (PECO 5).
7. The Commission payment agreement in BCS Case No. 003398488 defaulted on December 9, 2015 because Complainant did not make the required payment by December 4, 2015. (PECO 1).
8. On December 14, 2015, a PECO technician visited Complainant's residence to perform a high bill investigation in response to Complainant's complaint of a high bill during the BCS Case No. 003398488 proceedings. (PECO 6).
9. Complainant has a two-level, three-bedroom home in which all appliances, except for an oil heater, are electric. (Tr. 6-8).
10. On January 5, 2016, Complainant filed the informal complaint that forms the basis for this appeal, BCS Case No. 3408298. (PECO 8).
11. In BCS Case No. 3408298, Complainant contended that he was not satisfied with the meter readings and bills sent by PECO and that he would like a payment arrangement on his balance, which by then was \$4,400.90. (PECO 9).
12. At the time that he filed BCS Case No. 3408298 in January of 2016, Complainant's gross monthly income was \$1,733.33. (PECO 8).
13. At the time of the hearing, Complainant had a regular monthly income of \$2,320.00. (Tr. 11, 23).
14. Complainant's balance at the time of the hearing was \$5,187.79. (Tr. 48, PECO 1).

## DISCUSSION

A customer may file a complaint with the Commission alleging that any act or thing done or omitted to be done by any public utility was in violation of any law over which the Commission has jurisdiction to administer, or of any regulation or order of the commission. 66 Pa.C.S. § 701. The Commission may also issue payment arrangements in accordance with the Responsible Utility Customer Protection Act (Chapter 14). 66 Pa.C.S. § 1400, *et. seq.*

The Pennsylvania Public Utility Code requires as follows:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501.

The statutory definition of “service” is to be broadly construed. *Country Place Waste Treatment Co., Inc. v. Pa. Publ. Util. Comm’n*, 654 A.2d 72 (Pa. Cmwlth. 1995). “Service, used in its broadest and most inclusive sense, 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 by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them . . .” 66 Pa.C.S.A. § 102.

Where a party alleges that a utility has committed a violation, Section 332(a) of the Public Utility Code places the burden of proof on the party seeking relief from the Commission. 66 Pa.C.S. § 332(a). Therefore, in order to prevail, a complainant must show that

the utility is responsible or accountable for the problem described in the complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990). “Burden of proof” is a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950). The offense alleged and proven must be in violation of the Public Utility Code, the Commission’s regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701.

If a complainant establishes a *prima facie* case, the burden of presenting the evidence shifts to the utility. The complainant will prevail if a utility does not rebut the complainant’s evidence. Where a utility presents rebuttal evidence, the burden of going forward with the evidence shifts back to the complainant, who to prevail must rebut the utility’s evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof is always that of a complainant. *Milkie v. Pa. Pub. Util. Comm’n*, 768 A.2d 1217 (Pa. Cmwlth. 2001) (*Milkie*); *see also, Burleson v. Pa. Pub. Util. Comm’n*, 443 A.2d 1373 (Pa. Cmwlth 1982).

With respect to payment arrangements, the Responsible Utility Customer Protection Act (Chapter 14) authorizes the Commission to establish payment arrangements between a public utility, customers and applicants within the limits established. 66 Pa.C.S. § 1405(a). Chapter 14 also provides strict rules regarding whether a customer who defaults on a payment arrangement is eligible for another payment arrangement. Title 66 Pa.C.S. § 1405(d) states:

(d) *Number of payment arrangements.* -- Absent a change in income, the commission shall not establish or order a public utility to establish a second or subsequent payment arrangement if a customer has defaulted on a previous payment arrangement.

Change in income is defined as:

A decrease in household income of 20% or more if the customer’s household income level exceeds 200% of the federal poverty level or a decrease in household income of 10% or more if the

customer's household income level is 200% or less of the Federal poverty level.

66 Pa.C.S. § 1403.

#### THREATENED TO SHUT OFF SERVICE

On the Complaint form, Complainant checked the box for the claim that the utility was threatening to shut off his service. During the hearing, Complainant did not question the shut off notices issued by PECO or PECO shut off procedures. Mr. Senesie had service at the time of the hearing and he did not pursue the shut off claim or present any evidence in support when asked during the hearing to explain his Complaint. A *prima facie* case is not established and therefore Complainant cannot prevail on this claim.

#### INCORRECT CHARGES and HIGH BILLS

When asked to clarify his complaint, Mr. Senesie alleged that his bills are high because he is charged for more energy than he uses. As the Complainant, he has the burden of proving that the Respondent is responsible or accountable for the problem. *Patterson v. Bell Telephone Co. of Pennsylvania*, 72 Pa. P.U.C. 196 (1990), *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. P.U.C. 300 (1976). Where, as here, a Complainant alleges a high bill, the Complainant's burden of proof is governed by *Waldron v. Philadelphia Electric Co.*, 54 Pa. P.U.C. 98 (1980). In *Waldron*, the Commission concluded that a complainant may establish a *prima facie* high bill case by showing that: (1) the number of occupants of the household has not changed; (2) the potential for energy utilization is low; and (3) the prior billing history shows no previous abnormalities.

Also, in *Milkie v. Pa. Pub. Util. Com.*, 768 A. 2d 1217 (Pa. Cmwlth. 2001) (*Milkie*), the Commonwealth Court expanded the Commission's ruling in *Waldron*. The Commonwealth Court found that the Commission's requirement that the Complainant must establish certain specific elements in order to make out a *prima facie* case was too restrictive. It held that even where the utility has presented evidence that it has tested the customer's meter and

found it to be accurate; the customer may prove his or her case by circumstantial evidence that the metered usage exceeded actual usage. In making its determination, the Commission may consider the billing history of the account, any change in usage pattern or any other relevant facts or circumstances that come to light during the proceeding. *Bennett v Peoples Natural Gas Co.*, Docket No. C-2009-2122979 (Order entered October 13, 2010); *Thomas v PECO Energy Co.*, Docket No. C-2010-2187197 (Order entered November 15, 2011).

The flexibility in the standard of proof is given to Complainants because, generally, the utility company alone has technical information about and access to a meter. *Burleson v. Pa. Pub. Util. Comm'n*, 461 A. 2d 1234 (Pa. 1983). With the use of the *Milkie* analysis, a complaint is not routinely dismissed because a customer has no direct proof that the meter malfunctioned. The burden of proof remains with the complainant, however. See *Replogle v. Pennsylvania Electric Co.*, 54 Pa. P.U.C. 528 (1980). Complainant did not establish a *prima facie* case under *Waldron* or *Milkie*.

Mr. Senesie testified that his bills are high “all the time” and that they increase significantly in the winter and summer. He further stated that he has looked at the bills of his cousin and brother and they are not as high as his bills. (Tr. 5-7).

However, Mr. Senesie did not offer any testimony or evidence to demonstrate that the number of occupants of his household had changed in a way that would affect usage or that Complainant’s household’s potential for energy utilization is low. Also, the billing history does not indicate extraordinary charges or usage. See *Waldron*. Additionally, no circumstantial evidence was presented to establish that the bills as issued were incorrect or due to a problem with the meter or any other cause attributable to PECO. See *Milkie*.

Except for an oil heater, Complainant lives in an all-electric home. In addition to a refrigerator, stand-alone freezer, electric stove and electric water heater, Complainant has three window air conditioning units. Also, PECO Field Technician Mary McQuilkin visited the service address on November 15, 2015, was unable to gain entrance to the residence, but noted a

space heater in the yard. What Complainant is charged by PECO for electricity is related to his use of these appliances, not any violation by PECO.

PECO Regulatory Assessor Begley testified that Complainant's usage in the winter is significantly higher than the summer, spring or fall but not extraordinarily high. (Tr. 38-40, PECO 1). Mr. Begley also testified that he reviewed Complainant's Account Activity Statement and that the bills reflected the usual increase in winter heating costs. *Id.*

Supporting this conclusion, in December of 2015, PECO Field Technician Steve Murray visited the service address and conducted a complete field investigation. (PECO 6, Tr. 66). It was determined that, without heating and air conditioning usage included, Complainant had a potential energy usage of about 1600 kWhs per month. *Id.* PECO High Bill Field Foreman Lerro testified that the potential usage with the air conditioning units owned by Complainant is 3068 kWhs per month in the cooling season. (Tr. 64). Complainant's Account Activity Statement shows that his usage during spring, summer and fall ranged from 392 to 1294 kWhs per month. This is well under his potential for usage during those periods. (PECO 1)

The record also supports a finding that PECO charges during the heating season corresponds with the Complainant's energy usage. During winter heating season, Complainant used from 2500 to 3200 kilowatt hours per month. (PECO 1). That there was a higher bill in the winter simply reflects that there was more energy used for heating. Mr. Begley testified that the bills indicated use of electric heat in the winter months. (Tr. 44-45). PECO High Bill Field Foreman Lerro also testified that energy used to heat the residence explained the higher, but not unusual, winter bills.

Foreman Lerro described Complainant's bills as reflecting a "classic pattern" of winter usage, with monthly energy usage increasing as winter approaches and arrives and decreasing monthly as winter turns to spring. (Tr. 66-67). He also testified that the pattern indicates usage of some sort of temporary heating unit such as the space heater noted by PECO Technician McQuilken on her visit to the service address or the use of the electric stove for heating. (Tr. 68, Tr. 74). Foreman Lerro also stated that space heaters use a lot of energy that

can raise usage substantially. He further testified that using an electric stove for heat would function and use energy like a double-sized space heater. (Tr. 75).

There was also no evidence that there was a problem with the meter itself. During his investigation in December of 2015, Technician Murray conducted a passing load test, which showed that Complainant's meter was recording usage accurately. (Tr. 69-71). On August 29, 2016, PECO Field Technician Eric Reilly visited the property and conducted two meter tests. Each test showed the meters at least 100 percent accurate. (Exhibit 7, Tr. 72).

Nothing in the record supports a finding that Complainant's bills were extraordinarily high or that his PECO charges are incorrect. He cannot prevail on this claim.

#### PAYMENT ARRANGEMENT

Complainant is seeking a payment arrangement. PECO contends that the Complainant is not eligible for a payment arrangement because he defaulted on a previously-issued Commission payment arrangement.

The record shows that the Commission, through BCS, awarded Complainant a Level 1 payment arrangement on November 6, 2015. That payment arrangement required Complainant to pay \$254.00 Budget Billing plus \$47.00 toward arrears for a total of \$301.00 per month beginning with the December 2015 payment. (PECO 4). Complainant's December payment was due on December 4, 2015. Complainant did not make a payment and PECO entered a default on that Commission-issued payment arrangement on December 9, 2015.

Complainant defaulted on his Commission-issued payment arrangement and therefore, under 66 Pa.C.S. § 1405(d), he is not eligible for another Commission-issued payment arrangement absent a change in income. For purposes of this section, a "change in income" is a decrease in income. 66 Pa.C.S. § 1403.

Complainant had monthly income of \$1,733.33 at the time that he filed the informal complaint in January of 2016. At the time of the hearing, his income was \$2,320.00 per



month. (FOF 13). This is an increase in income and therefore, in accordance with § 1405(d), Complainant is not eligible for a second Commission-issued payment arrangement.<sup>1</sup>

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. Complainant did not establish a prima facie case of a violation with respect to PECO shut-off procedures. 66 Pa.C.S. § 332(a).
3. Complainant did not meet his burden of showing that his high bills were caused by PECO or a violation of the Code, regulations or a Commission Order. 66 Pa.C.S. § 701; *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217 (Pa. Cmwlth. 2001).
4. Complainant is not eligible for a second Commission-issued payment arrangement because he has not had a decrease in income of at least 10%. 66 Pa.C.S. § 1405(d), 66 Pa.C.S. § 1403.

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of James Senesie against PECO Energy Company at Docket No. F-2016-2551332 is dismissed.

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<sup>1</sup> A BCS document attached to PECO's Answer states that in November of 2015, at the time he was issued the payment arrangement under BCS Case No. 003398488, Complainant's monthly income was \$1863.33. The difference between that \$1863.33 monthly income in November 2015 and his \$1733.33 income in January of 2016 is \$130.00, or less than 10%. Therefore, even if that decrease is considered, Complainant would not be eligible for a second payment arrangement under § 1405(d) and § 1403, which require a decrease in income of at least 10%. The difference between \$1863.33 and his current income of \$2,320.00 is clearly an *increase*, also making him ineligible for a payment arrangement under § 1405(d) and § 1403.

2. That the Secretary mark this docket closed.

Date: January 9, 2017

/s/  
Darlene Davis Heep  
Administrative Law Judge



**EXHIBIT “7”**

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265**

Public Meeting held April 6, 2017

Commissioners Present:

Gladys M. Brown, Chairman  
Andrew G. Place, Vice Chairman  
John F. Coleman, Jr.  
Robert F. Powelson  
David W. Sweet

James Senesie

v.

PECO Energy Company

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F-2016-2551332

**ORDER**

**BY THE COMMISSION:**

We adopt as our action the Initial Decision of Administrative Law Judge Darlene Davis Heep, dated January 9, 2017;

**THEREFORE,**


**IT IS ORDERED:**

1. That the Complaint of James Senesie against PECO Energy Company at Docket No. F-2016-2551332 is dismissed.

PECO  
Exhibit # 7

2. That the Secretary mark this docket closed.

BY THE COMMISSION



Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: April 6, 2017

ORDER ENTERED: April 6, 2017

# **EXHIBIT “8”**

April 3, 2018

## Case Details Report

BCS Case #: 003570201  
Customer Name: JAMES SENESIE  
Service Address: 2659 S 69TH STREET

BCS Bill Account #: 5960108020

Mailing Address: PHILADELPHIA, PA 19142

Home Phone: ( ) -  
Business Phone: ( ) -  
Business name: SM  
Alternate contact: NO EMAIL

Date Case Opened: 2017-10-13  
PAR Case: N  
Investigator Name: BCS CASE POOL  
Investigator Phone: (717) 787-5468  
Service class: R  
Previous case #:

Date Cut Out: 9999-12-31  
Universal Service: N  
Contact Type: TELEPHONE  
Amount in Arrears: \$0.00

# Adults: 0  
# Children: 0  
Children Ages:  
Gross Income: \$0.00  
Miscellaneous Info:  
NO EMAIL

Complaint Reason:  
BILLING DISPUTES (# 18)

Customer Problem Description:  
CUSTOMER COMPLAINT IS HIS BILL IS TO HIGH HE RECEIVED A BILL FOR \$7,000 WHICH IS HIS TOTAL BALANCE. HE HAS BEEN PAYING \$205 A MONTH HIS BILLS BEEN COMING IN OVER \$100. HE HAS BEEN PAYING MORE THEN HIS MONTHLY AMOUNT WOULD LIKE FOR THE PUC TO INVESTIGATE BILL HE WANTS THE CO TO MAKE SURE HE IS BEING BILLED ACCURATELY.NO EMAIL ADDRESS THE CELL PHONE NUMBER (267) 258 - 7760 HAS BEEN ALLOWED TO BE SHARED.

Company Position:



# **EXHIBIT “9”**

April 3, 2018

## BCS Decision Report

**BCS Case #:** 003570201 **Open Date:** 2017-10-13  
**Customer Name:** JAMES SENESIE  
**Service Address:** 2659 S 69TH STREET

PHILADELPHIA, PA 19142  
**BCS Bill Account #:** 5960108020 **Previous Case #:**  
**Violation Type:** NO **Chapter Type:**  
**Decision Type:** W **Section / Rule:**  
**Investigator Name:** JULIE CARLIN

**Decision Issued Date:** 2018-01-23  
**Case Closed Date:** 2018-01-19

### Letter Description:

<b>Total Balance:</b>	\$7730.56	<b>Balance Date:</b>	2018-01-19
<b>Amount to Restore Service:</b>	\$0.00	<b>Amount to Continue Service:</b>	\$0.00
<b>Date Payment Due:</b>		<b>Regular Budget Amount:</b>	\$0.00
<b>Special Budget Payment:</b>	\$0.00	<b>Final Bill Monthly Payment:</b>	\$0.00
<b>Plus Arrears Payment:</b>	\$0.00	<b>End of Month Payment:</b>	\$0.00
<b>Current Monthly Payment:</b>	\$0.00		
<b>Payment Terms:</b>			

### PAR Description:

#### Resolution Description:

DECISION ISSUED. BILLS ARE CORRECT AS RENDERED. COMPLAINT IS DISMISSED.