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MARCH 20, 2021

ROSEMARY CHIAVETTA, SECRETARY
PENNSYLVANIA PUBLIC UTILITY COMMISSION
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

RECEIVED

MAR 20 2021

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RE : ALMES & STEVE ATUAHENE v. PECO ENERGY CO.
PUC Docket No. C-2019-3012904

Dear Ms Chiavetta :

Enclosed herewith please find the
Complainants EXCEPTIONS TO INITIAL DECISION of
this Commission for filing as of today.

Further, we are attaching herein:

- a) Certificate of Mailing
- b) Service to all parties via Emailing
- c) Certificate of Mailing to all parties

If any questions arise we can be reached
by email and telephone as stated above

Sincerely
Almes Atuahene
ALMES ATUAHENE
STEVE *SA* ATUAHENE

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION
RECEIVED

AGNES AND STEVE ATUAHENE :
COMPLAINANTS

MAR 20 2021

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

DOCKET NO. C-2019-3012904

PECO ENERGY COMPANY
RESPONDENT

COMPLAINANTS
EXCEPTIONS TO INITIAL DECISION

Complainants Pw Se AGNES and STEVE ATUAHENE hereby file these Exceptions To Commissions Initial Decision in this matter and state as follows :

I. STATEMENT OF THE CASE

The statement of the case is stated with more particularity in the Complainants Main Brief and referenced herein as fully stated.

II. SUPPLEMENT TO STATEMENT OF THE CASE

ALJ issuance of its Initial Decision crystallizes the Exceptions into 2 main areas viz, the illegality of including Transfer Accounts to Service Account where PECO failed to provide required notices of its monthly billings in violation of 52 Pa Code 56.261 and constitutional due process and the illegality on threatening to terminate service relying on illegal Transfer Account. At the hearing complainants proved the existence of Transfer Accounts which they were not timely notice and the burden shifted to PECO after their prima facie proof but PECO failed to meet their burden citing irrelevant PUC codes.

LEGAL ARGUMENT

I. THE LEGAL BASIS FOR EXCEPTIONS

Complainants file these Exceptions pursuant to 66 Pa. C.S. §332(h). Specifically, complainants in their Complaint ~~they~~ stated 5 major issues of which two were substantively resolved pre-hearing. The main Exceptions are detailed below under the caption Specification of Error. The main legal basis for the Exceptions is PECO's Transfer of Balances of Alleged Other Properties which failed to comply with required monthly billing notices to Mrs. Atuahene and PECO's denial to her the opportunity to validate the accuracy and appropriateness of the alleged billings and further PECO's failure to terminate the services to said properties and allowing the Tenants to use the electricity despite notice of Termination given by Mrs. Atuahene in clear violation of PUC codes and Regulations and clear violation of Mrs. Atuahene property right under Section 14, Article I, Section 1 of Pennsylvania Constitution and Constitutional due process under the 14th Amendment to the United States Constitution.

II. SPECIFICATIONS OF ERROR

The complainants respectfully submit that the Administrative Law Judge's Initial Decision erred in its Order on Initial Decision as follows:

1. A. The Administrative Law Judge (ALJ) either misunderstood or misinterpreted Mrs. Atuahene's testimony in the findings of fact which was used to support its
- 2.

legal conclusions to erroneously reach the Initial Decision

B. ALJ erroneously misapplied the relevant PUC laws, specifically 52 Pa Code 52.16 but disregarded the the import of 52 Pa Code 56.261, Complainants Property Rights and Due Process of law under both Pennsylvania and United States Constitutions.

C. The PECO's Transfer of Alleged Balances of other Properties without timely notices of monthly billings related to the other Properties in clear violation of 52 Pa Code 56.261 of the Transferred Accounts and the opportunity to verify and/or validate the accuracy, correctness and appropriateness of such Accounts in clear violation of Complainants Property and Due Process Rights protected under both the Pennsylvania and the United States Constitutions.

D. PECO had No Grounds To Threaten with the Termination of Service to Complainants home because of some alleged and illegal Transfer Accounts which PECO failed to collect from Tenants residing at these Properties. As PECO's Alleged and illegal Transfer Accounts contumaciously disregarded the requisite PUC Code requiring monthly billing notices to the alleged Accounts owner and denied her the opportunity to interrogate such billings in clear violation of Complainants residential service under on reliance of ill fated case law and inapplicable PUC Code ~~sub~~ to deny Complainants Property and Due Process protected under both Pennsylvania and United States Constitution!

III ALJ'S INITIAL DECISION REGARDING TRANSFER OF BALANCES OF OTHER PROPERTIES TO CURRENT SERVICE ACCOUNT WHERE PECO FAILED TO PROVIDE MONTHLY BILLINGS FAILED TO COMPLY WITH DUE PROCESS AND P.U.C. CODE 52 PA 56.261 AND THEREFORE ALJ FAILED TO UNDERSTAND THE FACTS AND WRONGLY APPLIED WRONG LAW TO THE DETRIMENT OF COMPLAINANTS.

A. ALJ EITHER MISUNDERSTOOD OR MISINTERPRETED MRS ATUAHENE TESTIMONY AS EVIDENCED IN THE FINDINGS OF FACT TO SUPPORT ALJ'S ERRONEOUS LEGAL CONCLUSIONS TO ADVERSELY AFFECT THE OUTCOME OF THE CASE AND COMPLAINANTS RIGHT.

ALJ'S statements at paragraphs 16, 21, 22, 27, 28, 29, 30, 31, 32, 37 and 38 of the Findings of Fact are erroneous statement of facts, completely misunderstanding and misinterpretation of Mrs. Atuahene testimony at the hearing. Mrs. Atuahene did not state those facts and the ALJ's completely misunderstood her and subsequently misinterpreted her testimony. Subject Properties were rental properties and Mrs. Atuahene's practice was "when tenant moved out, I'd get it for a couple of months. They moved in ~~out~~ and then you apply." Transcript pg. 92 line 10-12; pg 94 line 12-18, pg 95 line 2-21. Any interpretation that Mrs. Atuahene was responsible for electric service for the rental properties is completely erroneous and misunderstood. The fact is Mrs. Atuahene would get the service a month before a tenant move in to check all systems work and to do some work for showing and after rental the Tenants are given 30 days to change it or Mrs. Atuahene will call PECO for termination. More importantly, assuming arguments that the properties were not rented, there was no need for electricity for any purpose. Thus, the ALJ's conclusion at page 22 of the Initial Decision that "Mrs. Atuahene's practice was to place vacant properties electric service in her name until the tenant contacted the Respondent"

or within approximately 30 days, whichever occurred first is not completely true because Mrs. Atuahene was not responsible to property when tenant moved out without paying for its outstanding bills. For, the practice was to ~~not~~ get electric for 30 days for preparation for rental and another 30 ~~to~~ days to allow tenant to apply or call for termination. So Mrs. Atuahene did not need electricity for more than 3 months and so for electric to be on for about one year without notice to Mrs. Atuahene is really unthinkable.

Further, the ADJ's statement at page 20 of Initial Decision that "There is no dispute that Mrs. Atuahene owned all the above listed six properties prior to June 2019. Tr. 90-94, 109-10, PECO Exhibit 9. There is no dispute that Mrs. Atuahene has been the ratepayer of record for the service address from 2014 to the present. Tr. 48-50, 89" is not completely true. With respect to service address ~~that~~ she had been ratepayer from July 2014. It is completely false that Mrs. Atuahene owned all the six properties. She owned only 5 not all 6. Further, these properties all are rental homes and as alluded to the practice was to rent it after assuming electricity for about 3 months, so to say she is the ratepayer of record demonstrates that despite her informing PECO to terminate accounts it failed to do so. This undermines the conclusion that she is responsible for the transfer accounts in its entirety. That will be an over-reach and violation of her property right and due process.

In conclusion, Mrs. Atuahene did not own all the 6 listed properties prior to June 2019. She was also not the ratepayer of record from January 2014 to July 2014. The rental properties were only in her name for electricity for about three months of the tenancy of the tenant-occupants and after PECO was notified of termination she had no further obligation. More importantly, PECO, failing to render monthly billings of Transfer Account-PECO could not have transferred such accounts to her service account. Mrs. Atuahene was entitled to monthly billing notices and since PECO failed to demonstrate compliance she was not and would not hold Mrs. Atuahene responsible without offending her property rights.

D. ALJ ERRONEOUSLY MISAPPLIED THE RELEVANT AND CONTROLLING LAWS INCLUDING BUT NOT LIMITED TO, THE PUC, DUE PROCESS AND CONSTITUTIONAL MANDATE AND IN FACT DISREGARDED THE IMPACT OF SAID ~~MANDATE~~ MANDATES OF THE LAWS.

In its erroneous findings of fact which informed ALJ its legal conclusions of law ALJ cited and relied on Section 56.16(a)(b) of Title 52 of the Pennsylvania Code. Unfortunately, ALJ failed to understand the import of due process as envisaged in these sections of the Code. In relevant material part the 52 Pa. Section 56.16(a) states:

"A customer who is to vacate premises supplied with public utility service^(D) shall give at least 7 days notice to the public utility and noncustomer occupant. In the absence of a notice, the customer shall be responsible for services rendered."

Emphasis added.

It is obvious that where notice provision in section 56.16(a) is complied to section 56.16(b) is not and cannot be operative.

In the instance case, the record including the Transcript demonstrably indicates that "Mrs Atukhere stated she would wait at least 30 days before contacting the Respondent to discontinue service at a rental property in her name once she obtained a new tenant for a previously vacant property. Tr. 94-95" according to ALJ's own statement. In fact Mrs Atukhere's testimony established that it is her practice to obtain service to prepare for rental and give the tenant a month or so to apply and then inform PECO. Therefore ~~she~~ PECO was informed and instructed to discontinue service and

6. (D) "or who wishes to have service discontinued."

such notice was at least 30 days. So after the 30 day she could not be held liable for say 5 to 11 months as indicated on Complainants EXHIBIT I which is a derivation of PECO EXHIBIT 1 and 9. Hence, 52 Pa. Code § 56.16(b) is not applicable to the extent the ALJ relied on:

Further, 52 Pa. § 56.261 which governs Billing Frequency in relevant part states that "(a) A public utility shall render a bill once every billing period to every residential customer in accordance with approved rate schedules." Complainants were complaining of violation of due process. PECO was able to introduce about 9 Exhibits, all accepted into evidence and none evidenced that there were monthly billings as customary done by PECO to Mrs Atuahere in these 6 properties. Complainants Complaint admitted into evidence established prima facie case and the burden shifts to PECO to establish that ~~it~~ it indeed sent Mrs Atuahere monthly billing. The only evidence of PECO is the Transfers of the Accounts to Complainants service Accounts. Here Complainants were entitled to monthly notices of the billings and their opportunity to interrogate the accuracy and validity of said Accounts and the usage as was done in the service accounts which ALJ found a high billing.

7. Constitutional Due Process has two facets mainly procedural due process which deals with notice and opportunity to interrogate and defend one self and substantive due process deals with the arbitrariness of the process. Here PECO denial of monthly billings notices violated procedural due process and the fact that PECO arbitrary decided not to terminate or discontinue the service after notice to discontinue constitute violation of ~~substantive~~ substantive due process. Hence, Complainants may ^{burden of} ~~may~~ ^{proof of the claim}

C. THE BILLING ACCOUNT OF 7500 NORTH 21ST STREET, PHILADELPHIA PROPERTY CONTAINS FRAUDULENT TRANSFER SERVICE ACCOUNTS AS LISTED ON PECOS EXHIBIT 9 WHICH ARE UNRELATED TO SERVICE ADDRESS OF SUBJECT PROPERTY, WHICH TRANSFERS WERE DONE WITHOUT NOTICE AND AN OPPORTUNITY TO VALIDATE THEM IN VIOLATION OF DUE PROCESS AND COMPLAINANTS' PROPERTY RIGHTS, AND PREJUDICIAL TO COMPLAINANTS' ACTION

In their complaint at paragraph 4 complainants among other averments in relevant part stated: "Thirdly, bills contain alleged Transfer Services from various properties which have nothing to do with subject property and violative of due process." At the hearing Steve Atuahene in his testimony alluded to complainants aforementioned averment and deferred to Agnes Atuahene, the co-complainant to flesh it out. Agnes Atuahene, at examination by ALJ; Honorable Angela T. Jones, testified that she had ~~some~~ temporary accounts for a month or two for certain properties and called PECO to close these accounts but PEW never informed her of the status thereafter until recently and said billings in the Transfer Services do not reflect the usage for a month or two.

After Agnes Atuahene's testimony, PEW started their defense with Ms Elsa Leung who testified ~~that~~ to PECO's Exhibit 9 that 6 accounts were transferred to subject property, that a total amount of \$1253.59 ~~was~~ therefore constitutes the Transfer Service Accounts. PECO did not ~~rebut~~ complainants claim that they were denied notice and opportunity to challenge the validity of said Transfer Service Accounts. PEW's Transfer Service Accounts raises two issues, namely, a) the validity of these accounts and b) ~~that~~ PEW has legal right to transfer accounts to complainants ~~or~~ current residential accounts to deprive them of their current services without due process notice.

1. PECO's Transfer Service Accounts Are Not Valid
Due To Lack of Notice and Opportunity To Validate them.

In the PECO's Transfer Service Accounts case complainant in the complaint averred that "bills contain alleged Transfer Services from various properties which have nothing to do with subject property, and violative of due process". In Vichosky court the Pennsylvania Supreme Court opined in Vichosky v. Boucher, 60 A.2d 381(1948) "thus in itself, the lack of notice to the defendants, was denial of due process which invalidates the judgment. Here, in their rental business complainants requested temporary service of one or two months to check that all utilities are operational before a property is rented. Thereafter, PECO is called to cancel the account. The properties in question were rentals and the tenants were responsible for all utilities. Tenants were given leases to obtain all required utilities. The Transfer Service Accounts demonstrated that PECO allowed Tenants to use service without collecting their monies from them. For example the first account on PECO Exhibit 9 with Account #74880-69180 for service at 2124 North 11th Street, Philadelphia PA 19122 effective 7/29/2014 to 12/2014 and another Account #74880-69180 for service at 2124 N. 11th Street, Phila. PA 19122 effective 7/01/2016 to 5/2017, here almost a year demonstrates that PECO ^{failed in their} responsibility to collect their ^{Transfer} service rents from the Tenants and cannot ^{now} shift their responsibility to Landlord for almost a year after.

Further, as stated by Vichosky court PECO's failure to apprise complainants of service usage and its resultant non-payment by Tenants and the denial of such notice and opportunity to terminate lease or to challenge the validity of such service Accounts is violative of due process which invalidates said claims.

Additionally, at page 21 of the Initial Decision ALS stated

"There is no violation of PUC regulations for the Respondent to transfer the outstanding balance from the six above mentioned rental properties to the service account at the service address if the service at the rental properties was in the name of Agnes Atuahene at the time the balance was transferred."

ALS stated conclusion was probably based on a) 52 Pa Code §56.16(b) and PEW's ~~reliance on~~ fatally erroneous reliance on 66 Pa. C.S.A. §1529(b). 52 Pa Code §56.16(a)'s statement "In the absence of a notice, the customer shall be responsible for services rendered." This statement in §56.16(a) implicates procedural due process notice and therefore it is prerequisite to the invocation to §56.16(b). In effect, where as here ~~pre-~~ pre-discontinuance 30 day notice was given §56.16(b) is inapplicable.

Further ALS's claim that "There is no violation of PUC regulations for the Respondent to transfer the outstanding balance from the six rental properties" is clearly erroneous and constitute manifest abuse of discretion for the following reasons:

- 1) Under 52 Pa §56.26(a), "A public utility shall render a bill once every billing period to every residential customer in accordance with approved rate schedules". In the case of PEW it is customary to provide monthly statements but in this case PEW failed to do so because the figures introduced either do not exist or constitute high billings and PEW did not want complaints to interrogate them.
2. The Account of Limestone Pike 4 months was \$497.88 that is suspicious. Review of the Transfer Account is clearly suspect. EXHIBIT I
3. The citation of 66 Pa C.S.A. §1529(b) is not applicable as PEW was given notice of discontinuance. Hence, PEW's Transfer Accounts are not valid due to lack of Notice and Opportunity to validate the alleged Transfer Account.

2. PEW's Failure To Subject The Transfer Service Account Properties To Pre and Post-Functionality Equipment Tests For The Accuracy of Meter Readings of The Transfer Service Account Properties violated Complaints Procedural and Substantive Due Process and ~~was~~ Invalidated Said Transfer Service Accounts.

There are few legal precepts that underpin complainants' claims:

"I have always looked upon the processes for getting justice, and the machinery for getting it, as a series of sieves." Lord Harman, House of Lords, July 11, 1984.

"Where there is no property, there is no injustice is a proposition as certain as any demonstration in Euclid: for the idea of property, being a right to anything; and the idea to which the name injustice is given, being the invasion or violation of that right." John Locke: Essay Concerning Human Understanding, 1690, bk IV, ch. III, sec. 18.

Hence, where there is property there should be justice.

Primarily The Fifth and Fourteenth Amendments to the ~~the~~ United States Constitution provide the due process clause. This due process clause primarily provides procedural and substantive due process.

Procedural due process relates to notice and an opportunity to determine the accuracy of PEW's alleged Transfer Service Accounts, depending on the functionality of the equipment related to the determination of ~~PEW's~~ accuracy of the Accounts.

In fact, on the import of notice in a constitutional sense in *Angle v. Commonwealth*, 396 Pa 514, 518, 153 A. 2d 912, 913 (1969) Justice Musmanno opined:

"Notice in the law is the weather warning before the storm it is the bell bouy announcing the perilous rocks and reefs in the channel. It is the fire alarm before the conflagration reaches catastrophe."

Hence, without due process notice, PECO's allegations of the Transfer Service Accounts are just allegations and have no validity. Here, PECO failed to provide the needed notice and denied complainants the opportunity to check the correctness and validity of the figures of the Accounts

Secondly, substantive due process relates to the arbitrary or capricious conduct of PECO in this regard. The arbitrary and outrageous figures of the Accounts, for example the about \$125/month electric billings for the Limekiln Pike which was hidden from Mrs Atuahene to interrogate it is clearly beyond comprehension. In *Vichos v. Boucher*, 60 A. 2d 381 (1948) the court held that "the lack of notice to the Defendants was denial of due process which invalidate the judgment," or PECO Transfer Account

In *City of Philadelphia v. Mann*, 76 A. 3d 601, 606 (Pa Cmwlth 2013) the court in relevant part opined:

"Strict compliance with the service (notice) requirement protects the procedural due process rights of all interested parties to notice and opportunity to be heard and also guards against deprivation of property without substantive due process of law

First Union Nat'l Bank v. F.A. Realty Investors Corp, 812 A.2d 719, 726 (Pa Super. 2002). Blaylock 394 B.R. at 370. The collection of claims may not be implemented without due process of law guaranteed by the United States and Pennsylvania Constitutions. Tracy v. Cnty of Chester, Tax Claims Bureau, 507 Pa 288, 297, 489 A.2d 1334, 1339 (1985); Husak v. Fayette Cnty. Tax Claim Bureau, 61 A.3d 302, 312 (Pa Cmwlth. 2013)

In the instant case, complainants of paragraph 4 of the complaint stated:

"Thirdly, bills contain alleged Transfer Services from various properties which have nothing to do with subject property and violative of due process."

At the Hearing, Steve Atuahene alluded to the above-quoted pleading in the complaint. Agnes Atuahene at examination and questioning by ALJ, Honorable Angela T. Jones, testified that she had temporary accounts for a month to two months with the Transfer Service Account Properties but cancelled them. However, PECD neither terminated the Accounts nor informed her the usage of said Accounts.

Further, PECD's witness testified that ~~the~~^{its} Transfer Service Accounts amounted to \$1253.59 and supported by PECD's Exhibit 9. However, PECD's witnesses never rebutted complainants claim and testimony that a) they were denied notice and

opportunity to challenge the accuracy of the Accounts of PELO failed to terminate the services after notice of change to Tenants. 1) PELO failed to collect the usage of their service by the Tenant even after complaints to PELO of ^{the} end of contract or need for the service. Further, after establishing a prima facie case related to the Transfer Service Accounts illegality, PELO failed to at least establish that the machinery and equipment to ensure accuracy of the meter readings were calibrated within the PUC mandate and that the billings were based on correct readings from well functioning meters. Such actions are clearly arbitrary and capricious and constitute violation of substantive due process of law.

Lastly, PELO's Transfer Service Accounts raised three major issues, namely, a) the accuracy of the billings for the Accounts since there was no evidence of properly and timely calibration of the ~~equipment~~ machinery and equipment to ensure correct billings; b) the validity of these Accounts since PELO failed to notify complainants and denied them the opportunity to timely test the metering and other equipments to ensure accuracy; and c) the legal basis to transfer said Accounts to 7500 North 21st Street property Accounts due to unconstitutional process enumerated above.

Hence, due to failure to subject the Transfer Service Account Properties to various tests under PUC rules to ensure accuracy of the billings and ^{compliance with} constitutional requirement of due process which was violated PELO alleged Transfer Service Accounts are invalid, void ab initio and a nullity.

3. PECO Does Not Have Any Legal Right To Transfer Accounts To Complainants Current Residential Accounts as A Pretext To Deprive Them of Their Current Service Due To Unconstitutional And Illegal Tactics and Manner of Action

First, as stated under #2 above PECO's process and manner of its action were clearly violative of both procedural and substantive due process which according to *Vichosky, supra*, invalidates the Transfer Service Account.

Secondly, complainants averred that there were some problem with the meter and equipment's functionality resulting in fatal and material changes. With respect to the Transfer Service Accounts PECO failed to provide details of said Accounts subject to challenges of any alleged high billings. In fact after establishing prima facie case by PECO's own admission of the Transfer Service Accounts it was incumbent on PECO to prove their accuracy by the evidence of meter calibration and testing. It's failure to do so proves the lack of truthfulness, transparency and correctness of these Accounts. Further, the issue of high billing was averred in complainants complaints and by its own evidence, by the way of Exhibits, PECO admittedly conceded the existence of high billing. That also support the contention that the high billings equally apply to the Transfer Service Accounts. Thus PECO's Transfer Service Accounts is clearly untenable.

Lastly, the Transfer Service Accounts inclusion in the current, 2500 North 21st Street residence is an extraordinary overreach when such action was taken in violation of constitutional due process as

~~not~~ detailed above. In effect, for PEO to be able to take this extraordinary action it has to comply with the constitutional mandate as the collection of any claim has to be within the ambit of the law. See Mann, supra. For, said Transfer Service Accounts' issue implicates deprivation of complainants' Property Rights to which strict compliance with notice is required and lack of such strict compliance of constitutional prerequisites will constitute deprivation of property without substantive due process of law.

Hence PEO does not have any legal right to transfer Service Accounts to complainants' residential Account as a pretext to deprive them of their current service.

D. COMPLAINANTS, PURSUANT TO § 332(A) HAVE MET THEIR BURDEN OF PROOF THAT PECO VIOLATED THEIR DUE PROCESS RIGHTS BY TRANSFERRING CHARGES OTHER PROPERTIES, WITHOUT CHARGES WERE INCURRED BY TENANTS WITHOUT COMPLAINANTS KNOWLEDGE, TO THE ACCOUNTS OF 7500 N. 21ST STREET ADDRESS WITHOUT NOTICES AND OPPORTUNITY TO INTERROGATE ACCURACY AND VALIDITY OF SAID TRANSFER ACCOUNTS.

PECO in its argument stated that "complainants have not met their burden of proof pursuant to § 332 (A), that PECO violated their due process rights by transferring charges from other properties to the Account relating to 7500 North 21st Street and cited some PUC codes and cases to support its contention. However, those cited PUC codes and the cases are completely distinguishable from the case sub judice. In fact, they of the different sphere.

First, the code cited, 52 Pa Code § 56.16 and Holmes v. PECO, No. C-2015-2478698, 2016 WL 3615208, at *6-7 (June 30, 2016) did not implicate violation of due process of the complainants rights as is established in this case. In the instant case, complainant Agnes Atuahene testified that she obtained service for Transfer Service Properties for tenants to move into these properties and after a month or so she would contact PECO to discontinue service." Tr In 21 of pg 94 - In. 25 of pg 95.

Mrs Atuahene's testimony was incontroverted and not disputed or challenged. PECO also alleged some Accounts existed for some time and in some cases for about a year without any action to collect or terminate the Account and found it convenient to transfer such Account to Mrs Atuahene who had no idea of its existence years after without notice and opportunity

to verify or challenge the accuracy of the Accounts and their validity in clear violation of complainants substantive due process rights.

Further, to support PECO's factually unsupported legal conclusion PECO wrote:

"... Mrs Atwahene's testimony established 1) at least some of the transferred properties were rented out by Mrs Atwahene; 2) Mrs Atwahene did not always notify PECO that the service at the rental properties should be discontinued in Mrs Atwahene's name; and 3) PECO bills would occasionally remain in Mrs Atwahene's name when the rental properties were occupied if the tenant was delayed in contacting PECO. See Exhibit 1 at 92:7-14; 94:2-25; 95:110."

In fact PECO's above-quoted statement of facts are no borne by the actual facts of the case or as the hearing transcript provides. The indisputable facts of Mrs Atwahene's statement of testimony is as follows:

"JUDGE: Mrs Atwahene, when you say that you have a property in your name for a short time, is that based on you finding a tenant for that property and then having the tenant assume responsibility for the utility service at that property?"

MRS ATWAHENE: Yes

JUDGE: When you rent properties to tenants, do you call the utility to tell them to discontinue service in your name? Or do you assume the tenant will call to initiate service in their name?

MS ATUAHENE : I assume the tenant will, but if they don't, then I - I call PECO

JUDGE : So it's your practice to assume the tenant will call to initiate service?

MS ATUAHENE : Yes

JUDGE : How do you determine they don't?

MS ATUAHENE : In a month or so:

JUDGE : So you wait about a month - ?

MS ATUAHENE : A month, yeah, to give them a chance to apply.

JUDGE : And then you contact the utility?

MS ATUAHENE : Yes

JUDGE : Okay. I have no further questions for this witness. Mr. Fisher, do you have questions based on the questions that I've asked?

ATTORNEY FISHER : No, Your Honor.

JUDGE : Thank you Mrs. Atuahene.

See Hearing Transcript page 94 line 21-25 and page 95 ~~line 1~~ through to line 25.

The Hearing Transcript is a document that needs no interpretation. However, there are some observations to be made here. First, there is nothing in the Transcript to suggest that PECO's contention that: "2) Mrs. Atuahene did not always notify PECO that service at the rental properties should be discontinued in Mrs. Atuahene's name". On the contrary, the examination of At-J. Honorable Angela Jones of Mrs. Atuahene amply established that she always notified PECO that service at the rental properties should be discontinued in Mrs. Atuahene's name as this dialogue demonstrates:

JUDGE: So it's your practice to assume the tenant will call to initiate service?

MS. ATUAHENE: Yes

JUDGE: How do you determine they don't?

MS. ATUAHENE: In a month or so

JUDGE: So you wait about a month -?

MS. ATUAHENE: If month, yeah, to give them a chance to apply

JUDGE: And then you contact the utility?

MS. ATUAHENE: Yes

JUDGE: Okay " See Page 95: 8-19

PECO was given the chance for cross-examination however it passed up said chance and presumably it was okay with Ms. Atuahene's response and cannot now complain. Further, there was no evidence by PECO to assert or establish that it provided complainants due process notice of the existence of the Transfer Service Account and that they had opportunity to challenge them of their correctness or validity.

For that foregoing reason, complainants met the burden of proof that PECO violated their due process right in the Transfer Service Account complaint.

IV. PECO HAD NO MERITORIOUS GROUNDS TO THREATEN COMPLAINANTS WITH TERMINATION OF THEIR RESIDENTIAL SERVICE JUST BECAUSE OF PECO'S ILLEGAL TRANSFER ACCOUNTS AS ALLEGED ACCOUNTS FAILED TO COMPLY WITH NOTICE REQUIREMENT OF PUC CODE AND CONSTITUTIONAL DUE PROCESS OF LAW

In its analysis in support of its conclusion that the Respondent had a justifiable reason to issue a termination notice to the Complainants in compliance with the Commission regulations ALS, *inter alia*, stated:

"The service account of the Complainants was delinquent in that there were outstanding balances due on the rental properties... I found that the amounts were justly transferred to the service address accounts of Mrs Atwone. Thus, before any complaint was filed, there existed nonpayment of a delinquent account. Nonpayment of a delinquent account that is undisputed gives the Respondent reason to issue a termination notice pursuant to 52 Pa. Code § 56.81 (1). Consequently, I find that the Respondent had justifiable reason to issue a termination notice to the Complainants in compliance with the Commission's regulations."

ALJ's analysis and legal conclusions, Complainants respectfully submit is completely misplaced and unmeritorious. First, the PECO's Transfer Accounts are not undisputed and can hardly be legal. As had been discussed, *supra*, these Accounts are extremely suspect and at best dubious. The case of Limekiln Pike Transfer Account is a case in point. In the Findings of Fact section of the Initial Decision ALS at paragraphs 12 through 14 recounted the adverse weather situation between November 17, 2017 through March 2018, and then recounted the background of

to the Limekiln Pike Transfer Account. Using the Transfer Account History for Agnes Atwater as evidenced on PECO Exhibit 9 and interposing PECO Exhibit 1 on ALS's summary outstanding balance EXHIBIT II Complainants obtain a clear picture of the Transfer Accounts. EXHIBIT I. As it clearly demonstrated in EXHIBIT I between 5/09/2018 to 8/2018, a period of four (4) months in the summer the average electric usage was \$124.47 and PECO did not provide any "justifiable" explanation. More importantly, PECO did not provide any monthly billings to the Court to provide insight into its claim. However, as cited, supra, 52 Pa Code 5.261 and PECO's own business practices demands monthly billing notices.

In its complaint in chief Complainants in relevant part averred the following:

"Thirdly Bills contain alleged Transfer Services from various properties which have nothing to do with subject property and violative of due process."

In its Brief PECO also restated Complainants pleading related to the Transfer Accounts in this words:

"3. Complainants 'due process' was violated when they received bills containing transfer services from other properties owned by Complainants."

And in the Initial Decision ALS in the History of the Proceeding stated, in relevant part,

"2. The amount billed as transfers for service at other properties violated Complainants' due process."

At the hearing PECO introduced Exhibits 1 and 9, which was admitted into evidence, evidencing the claim of Transfer Accounts and Complainants' averment, ~~that~~ in the words of ALJ that "the amount billed as transfers for service at other properties violated complainants' due process" established prima facie proof meeting the requirements of preponderance of the evidence. PECO's evidence to rebut the evidence of the Complainants and PECO was supposed to prove that no due process was violated. Complainants were cross-examined but no incontrovertible evidence was adduced at the hearing. In their Briefing, the Complainants exhaustively discussed said violation of due process. In relevant part Complainants' due process violation argument follows:

In *Angle's Court*, supra, Pennsylvania Supreme Court Justice MUSMANNO forcefully stated:

"Notice in the law is the weather warning before the storm, it is the bell bony announcing the perilous rocks and reefs in the channel. It is the fire alarm before the conflagration reaches catastrophe.

In *Mann*, supra, the Commonwealth Court opined:

"Strict compliance with the service (notice) requirement protects the procedural due process right of all interested parties to notice and opportunity to be heard and also guards against deprivation of property without substantive due process of law. Citation omitted.

23. Here, PECO did not rebutted Complainants' claim except that

in its Briefing PECO relied on irrelevant ~~§~~ PUC Code 52 Pa Code §56.16, *Homes v. PECO*, No. G-2015-247 8698, 2016 WL 3615208, at *6-7 June 30, 2016 and 66 Pa CSA §1529.1(b) as discussed earlier these citations are not relevant to this case. Further, the Vichosky court has held that "lack of notice to the Defendant, a denial of due process, invalidates the judgment". Here PECO's failure to comply with the notice requirement of 52 Pa Code §56.261 for these alleged Transfer Accounts has invalidated PECO's alleged Transfer Accounts.

In this case Complainants are entitled to the monthly notices of the billings. The record of this case is devoid of any such notices. PECO did not adduce any documentary evidence at the Hearing to rebut the claim of the Complainants with regard to violation of their due process of law of the so call Transfer Accounts. PECO cannot willy nilly come to this Commission to claim alleged Transfer Account when it failed to notify the existence of such Accounts. Even if such Accounts exist as demonstrated in *Limekiln Pike* and ALJ's ruling of over-billing in this case ~~PECO~~ PECO's credibility is an issue. In the Introduction section of its Brief page 1 PECO wrote: "As PECO will explain below, these accusations, Complainants Complaint, range from fruitless to frivolous" because they are Pro Se. PECO attitude in this case amply demonstrates that because Complainants are not represented by licensed attorney or member of the bar it can extort and bully them into paying for any non-existent bills. PECO's behavior should not be accepted under any circumstances

but should be condemned in no uncertain tone.

In its Initial Decision ALJ relied on 52 Pa. Code § 56.81(1) to conclude that "before any Complaint was filed there existed nonpayment of a delinquent account" and therefore "Respondent had a justifiable reason to issue a termination notice to the Complainants." ALJ's decision in this regard is clearly erroneous and manifestly abuse of discretion and should be reversed.

Further, as alluded to in the Initial Decision, the Complainants requested that the Commission:

- 1) Give Complainants sufficient time to investigate;
- 2) Investigate the functionality of PECO's meter and equipment for billing accuracy; and
- 3) Investigate the business practices of PECO."

Based on this Complainants in this adjudicated requested leave to pursue Discovery and it was denied. In the claim of Due Process Violation the Commission should grant Complainants request and find in their favor.

For all the foregoing reasons, Complainants Pro Se respectfully pray the Commission to find in their favor and against PECO and reverse the ALJ's decision with respect to a) Transfer Accounts as they are void ab initio, a nullity and strike them and b) find that PECO's Termination Notice was also invalid and be stricken

RESPECTFULLY SUBMITTED
ALINES ATTAWHENE
STEVE ATTAWHENE

Account history for Agnes Atuahene

- Account 74880-69135 for service at 2124 N 11TH ST PHILADELPHIA PA 19122 effective 7/29/2014 to 12/2014 5 months = \$ 69.82
- Account 74880-69180 for service at 2124 N 11TH ST PHILADELPHIA PA 19122 effective 7/01/2016 to 5/2017 11 months = \$161.96
- Account 16403-92053 for service at 5728 N MARVINE ST PHILADELPHIA PA 19141 effective 8/18/2014 to 3/2015 7 months = \$135.02
- Account 25462-03081 for service at 5512 HADFIELD ST PHILADELPHIA PA 19143 effective 6/30/2015 to 9/2015 3 months = \$48.97
- Account 25462-03107 for service 5512 HADFIELD ST PHILADELPHIA PA 19143 effective 4/27/2018 to 8/2018 4 months = \$190.73
- Account 41251-03151 for service at 5528 CROWSON ST PHILADELPHIA PA 19144 effective 9/05/2015 to 11/2015 3 months = \$46.43
- Account 47491-15084 for service at 920 E PRICE ST PHILADELPHIA PA 19138 effective 11/03/2016 to 3/2017 5 months = \$102.78
- Account 01051-13086 for service 6203 LIMEKILN PIKE PHILADELPHIA PA 19141 effective 5/09/2018 to 8/2018 4 months = \$497.88

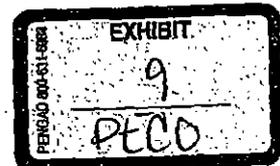
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PECO EX. 9



I find that the transfer of the following outstanding balances:

- | | | | |
|---|---|----|--------|
| 1. \$69.82 on January 9, 2015, from 2124 N. 11 th St.; | | 5 | MONTHS |
| 2. \$135.02 on April 10, 2015, from 5728 N. Marvine St.; | | 7 | " |
| 3. \$48.97 on October 5, 2015, from 5512 Hadfield St.; | | 3 | " |
| 4. \$46.43 on December 28, 2015, from 5520 Crowson St.; | | 3 | " |
| 5. \$102.78 on April 24, 2017, from 920 E. Price St.; | | 5 | " |
| 6. \$161.96 on June 6, 2017, from 2124 N. 11 th St.; | | 11 | " |
| 7. \$190.73 on September 18, 2018, from 5512 Hadfield St.; | | 4 | " |
| and | | | |
| 8. \$497.88 on September 24, 2018, from 6203 Limekiln Pike. | = | A | " |

for a grand total of \$1,253.59 are not in violation of Commission regulation. FOFs, 27, 28, 29, 30, 31, 37, 38 and 29. Mrs. Atuahene was the owner of the properties at the time the transfers occurred; Mrs. Atuahene is the current responsible ratepayer at the service address and the corresponding service account the balances were transferred to; and Mrs. Atuahene's practice was to place vacant properties electric service in her name until the tenant contacted the Respondent or within approximately 30 days, whichever occurred first. Based on the record evidence, I find that the above eight transfers comply with 52 Pa.Code § 56.16(b).

IV. Whether Respondent had Grounds to Threaten Termination of Service

Section 56.91(a) of the Code states, in pertinent part,

§ 56.91. General notice provisions and contents of termination notice.

- (a) Prior to terminating service for grounds authorized by § 56.81 (relating to authorized termination of service), a public utility shall provide written notice of the termination to the customer at least 10 days prior to the date of the proposed termination. The termination notice shall remain effective for 60 days.

52 Pa.Code § 56.91(a).

Section 56.81 of the Code states,

A public utility may notify a customer and terminate service provided to a customer after notice... for any of the following actions:

- (1) Nonpayment of an undisputed delinquent account.
- (2) Failure to complete payment of a deposit, provide a guarantee of payment or establish credit.

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

MAR 20 2021

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~~EXHIBIT II~~

CERTIFICATE OF SERVICE

I, STEVE ATUAHENE, hereby certify that a true and correct copy of the foregoing motion/petition and accompanying papers, was served on the below listed addresses by first-class United States mail, postage pre-paid on

MARCH 20, 2021 (date).

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Name: Honorable Angela T. Jones

Address: 801 Market Street

Address: Suite 4063

City, State, zip: Philadelphia, PA 19107

Name: Rose Chiavetta, Secretary

Address: Pa. Public Utility Commission

Address: Commonwealth Trust Tower Bldg
400 NORTH STREET, Second Floor

City, State, zip: HARRISBURG, PA 17120

Edward Fisher Esq
(GRIESING LAW LLC)
PECO ENERGY CO
1880 J F K BLVD, Suite 1800
PHILADELPHIA PA 19103

Dated: 3/20/21

By: SA

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PA PUC

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400 North Street, Second Floor
HARRISBURG, PA 17120

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