

FAX (610) 527-7516

(610) 446-7257 ANS. MACHINE

DAVID HATCHIGIAN
2414 Township Line Road
Havertown, PA 19083-5236
david3091@outlook.com

C-2020-3022199
Complainant Exhibits

March 16, 2020

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

RECEIVED

MAR 16 2020

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RE: David Hatchigian vs. PECO Energy Company and Municipal Inspection Corporation

Dear Ms. Chiavetta:

Please find completed Formal Complaint in the above per Pennsylvania Superior Court ruling from the Honorable Judge Strassburger , Order to Remand to PUC, dated August 6, 2019 and confirmed by Supreme Court Order Denning Appeal on February 19, 2020.

Any questions please call or e/m.

Thank you.

Sincerely yours,

David Hatchigian

David Hatchigian

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JUL 16 2020

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Enclosures Formal Complaint,
Superior Court Order August 6, 2019
Supreme Court Order February 19, 2020
Plaintiffs' Proposed Class Action Complaint march 16, 2020 with exhibits
1-26

Forward USPS 3817 and Fax

Cc: Lynn R. Zack Esquire, PECO
Winett C. Heather Esquire MIC

JUL 16 2020

Formal Complaint

PA PUBLIC UTILITY COMMISSION SECRETARY'S BUREAU

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 DAVID HATCHIGIAN

Street/P.O. Box 2414 TOWNSHIP LINE ROAD Apt #

City HAVERTOWN State PA. Zip 19083

County

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

(610- 446-7257) (home) () 610-527 7516

FAX (mobile)

E-mail Address (optional): DAVID3091@OUTLOOK.COM

Utility Account Number (from your bill)

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 7512 BRENTWOOD ROAD

City PHILA. State PA. Zip 19151

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JUL 16 2020

PA PUBLIC UTILITY COMMISSION SECRETARY'S BUREAU

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

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.

SEE ENCLOSED COMPLAINT

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.

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.

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

DAVID HATCHIGIAN	:	IN THE SUPERIOR COURT
	:	OF PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
PECO/EXELON AND MUNICIPAL	:	
INSPECTION CORPORATION,	:	
	:	
Appellees	:	No. 142 EDA 2018



Appeal from the Order Entered December 18, 2017
in the Court of Common Pleas of Philadelphia County
Civil Division at No(s): August 2016 No. 16080065

BEFORE: SHOGAN, J., NICHOLS, J. and STRASSBURGER, J.*

MEMORANDUM BY STRASSBURGER, J.: **FILED AUGUST 06, 2019**

David Hatchigian appeals *pro se* from the order entered on December 18, 2017, which dismissed with prejudice the fourth amended complaint he filed against PECO Energy Company/Exelon¹ (PECO) and Municipal Inspection Corporation (MIC).² Upon review, we vacate the order and remand for proceedings consistent with this memorandum.

¹ "PECO [] is a jurisdictional public utility providing electric and gas service in the Commonwealth of Pennsylvania." Preliminary Objections, 10/30/2017, at ¶ 24. According to Hatchigian, PECO "is a subsidiary of the Exelon Corporation." Fourth Amended Complaint, 8/21/2017, at ¶ 22.

² According to Hatchigian, MIC "is a private third-party corporate entity, approved by PECO to perform electrical inspections and provider of [*sic*] certifications" and is located in Philadelphia. Fourth Amended Complaint, 8/21/2017, at ¶ 23.

* Retired Senior Judge assigned to the Superior Court.

This case arises from a dispute between Hatchigian and PECO. We summarize the facts as set forth by Hatchigian in his fourth amended complaint. Hatchigian lives in and owns rental property in the city of Philadelphia. He obtains his electricity from PECO. It is Hatchigian's position that PECO's "inadequate termination and reconnection procedures leave [him and others similarly situated] at the mercy of PECO when bargaining [for] their right to residential electricity."³ Fourth Amended Complaint, 8/21/2017, at ¶ 18. Specifically, Hatchigian claimed that PECO "refused a reconnection pursuant to a certification requirement within the Electric Service Tariff filed

³ Hatchigian initially filed this action on behalf of himself and commenced the action as a claim in the Philadelphia Municipal Court, where judgment was entered in favor of PECO. Hatchigian then appealed to the Court of Common Pleas, where Hatchigian began adding language in the nature of a class action. **See** Complaint, 12/1/2016, at ¶ 1 (stating that this action is on behalf of himself and "other customers, landlords, and tenants whose electrical utility services were terminated without warning, notice, or a hearing"). In his second amended complaint, Hatchigian added numerous named plaintiffs, including "John Does 1-20" and "all those similarly situated." Second Amended Complaint, 5/11/2017, at 1. He maintains the same language in his fourth amended complaint. **See** Fourth Amended Complaint, 8/21/2017, at 1. Confusing matters further, Hatchigian claims this class action is being pursued under the Federal Rules of Civil Procedure that govern class actions. **See** Fourth Amended Complaint, 8/21/2017, at ¶ 69 (citing Federal Rules of Civil Procedure 23(a), 23(b)(2), and 23(b)(3)). Class action lawsuits in Pennsylvania state courts are governed by Pa.R.C.P. 1701-1717. In any event, determining whether this case is or is not a class action is not necessary to our ultimate conclusion, and for ease of reference, we will refer to Hatchigian as the only plaintiff/appellant.

by PECO and on file with the Pennsylvania Public Utility Commission [(PUC)].”⁴
Id. at ¶ 50.

According to Hatchigian, “[o]n or about May 18, 2016[,] Hatchigian received several phone calls from two different tenants complaining that all electric[al service] was shut off [in their apartments.]” **Id.** at ¶ 51. Hatchigian then contacted PECO, and claimed he was told that “electrical [service] had been disconnected inadvertently but was in the process of being restored that same day, with no need for Hatchigian to file for [] exemptions to reintroduce service.” **Id.** at ¶ 52. Hatchigian contended that “service was not restored as promised” and PECO then “claimed that the apartment had been unoccupied for six months and therefore a certificate from their electrical underwriter firm was now required.” **Id.** at ¶ 53. Hatchigian claimed that he “ordered underwriter certification by [MIC]” and “paid a total of \$130 to MIC as a predicate for PECO’s reintroduction of service.” **Id.** at ¶ 54. Then, according to Hatchigian, PECO continued to refuse to reconnect electrical service until

⁴ The PUC is a statutory entity created and governed by the Public Utility Code. **See** 66 Pa.C.S. §§ 101-3316. Additionally,

A tariff is a set of operating rules imposed by the State that a public utility must follow if it wishes to provide services to customers. *It is a public document which sets forth the schedule of rates and services and rules, regulations and practices regarding those services.*

Sunrise Energy, LLC v. FirstEnergy Corp., 148 A.3d 894, 905 n.14 (Pa. Cmwlth. 2016) (quoting ***PPL Electric Utilities Corp. v. Pennsylvania Public Utility Commission***, 912 A.2d 386, 402 (Pa. Cmwlth. 2006) (emphasis added)).

Hatchigian arranged for a “re-inspection of all of the electric wiring at the [] apartment.” *Id.* at ¶ 57. Hatchigian contended he complied with all instructions, but due to the service interruption, he was then in violation of various Philadelphia municipal codes. Hatchigian averred that due to the units not having electrical service, despite having made all necessary payments to PECO, “new tenants were ultimately unable to move into the apartment on time.” *Id.* at ¶ 59. Hatchigian contended that

[b]y terminating [his] electrical service without warning despite payment for service, [PECO was] negligent, breached the services contract and an implied covenant of good faith and fair dealing therein, violated [his] rights under and tortiously interfered with [his] leases, violated the UTPCPL,⁵ deprived [him] of [his] property rights via an unconstitutional taking[,], and created a public nuisance.

Id. at ¶ 64. Hatchigian requested several forms of relief including \$100,000 from PECO. *Id.* at ¶ 131.

PECO filed preliminary objections to Hatchigian’s fourth amended complaint. It is PECO’s position that Hatchigian’s “underlying cause of action is the contention that [PECO’s] processes and procedures are insufficient and, by design, these policies and procedures cause damage to utility customers.” Preliminary Objections, 10/30/2017, at ¶ 23. According to PECO, it is the PUC that regulates the policies and procedures about which Hatchigian complains.

⁵ The UTPCPL is the Unfair Trade Practices and Consumer Protection Law. *See* 73 P.S. §§ 201-1 through 201-9.3. The purpose of the UTPCPL “is to protect the public from—and indeed to eradicate—unfair or deceptive business practices.” *Agliori v. Metro. Life Ins. Co.*, 879 A.2d 315, 318 (Pa. Super. 2005) (internal quotation marks omitted).

Thus, according to PECO, the PUC was “the appropriate forum for the adjudication of issues involving the reasonableness, adequacy and sufficiency of public utility services.” *Id.* at ¶ 33. Therefore, PECO claimed that the PUC has “primary and exclusive jurisdiction” over Hatchigian’s claims. *Id.* at ¶ 36.

On December 15, 2017, the trial court sustained PECO’s preliminary objections in part, concluding it lacked subject matter jurisdiction over this matter. Specifically, the trial court concluded that Hatchigian’s complaint “challenges the service termination procedure employed by PECO.” Trial Court Opinion, 8/27/2018, at 4. Although some of Hatchigian’s causes of action sound in tort and contract, “[t]he overall thrust of the [c]omplaint ... challenges [PECO’s] termination procedures.” *Id.* at 5. Accordingly, the trial court concluded that “the redress [Hatchigian] seeks is exclusively within the PUC’s jurisdiction.” *Id.* at 6. Therefore, the trial court sustained PECO’s preliminary objections on this basis and dismissed Hatchigian’s complaint.

Hatchigian timely filed a notice of appeal. The trial court did not order Hatchigian to file a statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925, but the trial court filed an opinion explaining its rationale for dismissing the complaint. On appeal, Hatchigian first claims the trial court erred in sustaining PECO’s preliminary objections and dismissing the fourth amended complaint for lack of subject matter jurisdiction. Hatchigian’s Brief at 14-52. We review this claim mindful of the following.

On an appeal from an [o]rder sustaining preliminary objections, we accept as true all well-pleaded material facts set

forth in the appellant's complaint and all reasonable inferences which may be drawn from those facts. Where, as here, upholding sustained preliminary objections would result in the dismissal of an action, we may do so only in cases that are clear and free from doubt. Any doubt should be resolved by a refusal to sustain the objections.

[I]t is well-settled that the question of subject matter jurisdiction may be raised at any time, by any party, or by the court *sua sponte*. Our standard of review is *de novo*, and our scope of review is plenary. Generally, subject matter jurisdiction has been defined as the court's power to hear cases of the class to which the case at issue belongs.

Jurisdiction is the capacity to pronounce a judgment of the law on an issue brought before the court through due process of law. It is the right to adjudicate concerning the subject matter in a given case.... Without such jurisdiction, there is no authority to give judgment and one so entered is without force or effect. The trial court has jurisdiction if it is competent to hear or determine controversies of the general nature of the matter involved *sub judice*. Jurisdiction lies if the court had power to enter upon the inquiry, not whether it might ultimately decide that it could not give relief in the particular case.

Estate of Gentry v. Diamond Rock Hill Realty, LLC, 111 A.3d 194, 198

(Pa. Super. 2015) (internal citations and quotation marks omitted).

We begin with analyzing the trial court's conclusion that the PUC has primary jurisdiction over the matters set forth in Hatchigian's fourth amended complaint.

It is well-settled law that initial jurisdiction over matters involving the reasonableness, adequacy or sufficiency of a public utility's service, facilities or rates is vested in the PUC and not in the courts. Matters relating to the tariff, the necessity of equipment, deposits and the use of various types of services are peculiarly within the expertise of the [PUC] and, as such, are outside the original jurisdiction of the courts. When a utility's failure to maintain reasonable and adequate service is alleged, regardless of the form of the pleading in which the allegations are

couched, it is for the PUC initially to determine whether the service provided by the utility has fallen short of the statutory standard required of it. It is equally clear that [t]he courts retain jurisdiction of a suit for damages based on negligence or breach of contract wherein a utility's performance of its legally imposed and contractually adopted obligations are examined and applied to a given set of facts. [O]nly where the available administrative remedies are adequate with respect to the alleged injury sustained and the relief requested should exhaustion of administrative remedies be required before seeking damages in court.

Morrow v. Bell Tel. Co. of Pa., 479 A.2d 548, 554-55 (Pa. Super. 1984)

(internal citations and quotation marks omitted).

Hatchigian contends that the matters set forth in the fourth amended complaint "are almost entirely questions of law and statutory construction which the [trial] court is well versed in adjudicating." Hatchigian's Brief at 18. Hatchigian further argues that even if the PUC has subject matter jurisdiction over some of the claims set forth, the trial court should have stayed the court proceeding, rather than dismissing it in its entirety. *Id.* at 21.

The Commonwealth Court considered similar issues in **Pettko v. Pa. Am. Water Co. (PAWC)**, 39 A.3d 473 (Pa. Cmwlth. 2012).⁶ In that case, Pettko, on behalf of himself and others similarly situated, filed a complaint in

⁶ We recognize that cases decided by the Commonwealth Court are not binding precedent on this Court. **See Kraus v. Taylor**, 710 A.2d 1142, 1144 (Pa. Super. 1998) ("Although we frequently turn to the wisdom of our colleagues on the Commonwealth Court for guidance, the decisions of that court are not binding on this Court."). **Pettko** was initially appealed to this Court, but this Court transferred it to the Commonwealth Court. In its opinion, the Commonwealth Court stated that there was "no basis" for it to assume jurisdiction over the appeal, but since no party objected to the transfer, it decided the case. **Pettko**, 39 A.3d at 476 n.2. Moreover, in its analysis, it relied upon Pennsylvania Supreme Court and Superior Court cases.

the Court of Common Pleas of Washington County against PAWC challenging its "billing practices, including practices relating to certain rate increases approved by the PUC, and PAWC's alleged practice of rounding up, rather than down, amounts for various components of its bills." *Id.* at 475-76. Notably, Pettko set forth claims for breach of contract, conversion, and violations of the UTPCPL.

PAWC filed preliminary objections averring, *inter alia*, that the PUC "has primary and exclusive jurisdiction over Pettko's complaint." *Id.* at 477. The trial court agreed, "dismissed Pettko's complaint, and transferred the matter to the PUC." *Id.* Pettko appealed.

On appeal, the Commonwealth Court analyzed first whether the PUC has primary jurisdiction. In doing so, it set forth the following.

When a trial court calls upon an administrative agency to exercise its primary jurisdiction and evaluate a particular pertinent issue, and the agency renders a determination, that adjudicatory action has a binding, collateral effect upon the trial court's proceedings, unless a party successfully challenges the determination through the appeal process. Such determinations by administrative agencies, therefore, serve more than a merely advisory function. As we stated in ***County of Erie v. Verizon North, Inc.***, 879 A.2d 357 (Pa. Cmwlth. 2005), under the doctrine of primary jurisdiction, a trial court may "refrain from hearing a case" over which it might otherwise have jurisdiction, "where protection of the integrity of [a] regulatory scheme dictates that the parties preliminarily resort to the agency that administers the scheme for the resolution of disputes." ***County of Erie***, 879 A.2d at 363. "Once the administrative tribunal has determined the issues within its jurisdiction, then the temporarily suspended civil litigation may continue, guided in scope and direction by the nature and outcome of the agency determination." ***Elkin v. Bell Telephone Co. of Pa.***, 420 A.2d 371, 377 (Pa. 1980)].

Our Supreme Court, however, admonished trial courts not to abdicate judicial responsibility, and summarized the circumstances in which the primary jurisdiction doctrine applies, as follows:

[W]here the subject matter is within an agency's jurisdiction and where it is a complex matter requiring special competence, with which the judge or jury would not or could not be familiar, the proper procedure is for the court to refer the matter to the appropriate agency. Also weighing in the consideration should be the need for uniformity and consistency in agency policy and the legislative intent. Where, on the other hand, the matter is not one peculiarly within the agency's area of expertise, but is one which the courts or jury are equally well-suited to determine, the court must not abdicate its responsibility. In such cases, it would be wasteful to employ the bifurcated procedure of referral, as no appreciable benefits would be forthcoming.

Id. (footnote omitted).

Additionally, in **County of Erie** this Court confirmed the notion that the nature of the claims a plaintiff brings is not necessarily determinative of the question of whether the doctrine of primary jurisdiction applies. In **County of Erie**, we quoted the Superior Court's decision in **Morrow**, [*supra*], as follows: "[W]hen a utility's failure to maintain reasonable and adequate service is alleged, regardless of the form of the pleading in which the allegations are couched, it is for the PUC, initially, to determine whether the service provided by the utility has fallen short of the statutory standard required of it." **County of Erie**, 879 A.2d at 364 (quoting **Morrow**, 479 A.2d at 550-51).

Pettko, 39 A.3d at 479-80 (some citations omitted).

On appeal, Pettko claimed that his "UTPCPL and common law claims do not implicate any regulatory matters within the PUC's subject matter competency." **Id.** at 480. He argued that PAWC's conduct was deceptive, and

adjudicating such a claim does “not require the exercise of the PUC’s expertise.” **Id.** PAWC countered that Pettko’s claims regarding PUC’s “power to regulate the rates a utility charges to a customer and the power to prescribe regulations and practices with which utilities must comply” implicates the primary jurisdiction of the PUC. **Id.** at 481. In addition, both Pettko and PAWC referenced provisions of the tariff in making their arguments.

The Commonwealth Court analyzed the arguments presented and concluded

that the question of whether a utility’s manner of billing is in compliance with a tariff is encompassed in the claims relating to billing practices that Pettko has raised in his complaint.... If the PUC reviews the tariff and PAWC’s billing methodology and concludes that the billing practices are compliant with the tariff, the civil matter will be concluded, subject of course to appellate review of the PUC’s decision.

Id. at 482-83.

Thus, the Commonwealth Court determined that the PUC had primary jurisdiction over the claim. The Commonwealth Court then went on to analyze whether the PUC also had exclusive jurisdiction over the claim. “[U]nder the doctrine of exhaustion of administrative remedies, an administrative agency does not have exclusive jurisdiction unless it has the power to award relief that will make a successful litigant whole.” **Id.** at 484. The Commonwealth Court concluded that although relief on some of Pettko’s claims could be provided by the PUC, it also concluded that relief on Pettko’s UTPCPL claim could not be granted by the PUC. The Commonwealth Court stated that, *inter*

alia, the Public Utility Code “does not authorize the PUC to remedy fraudulent conduct (unlike the UTPCPL).” **Id.** at 485. Thus, although the PUC had primary jurisdiction over some of the claims set forth by Pettko, it did not have exclusive jurisdiction over the UTPCPL claim “because the PUC has no power to award relief, if it is appropriate, for that claim.” **Id.** Accordingly, the Commonwealth Court affirmed the trial court’s order, concluding that the trial court acted appropriately by transferring the matter to the PUC.

Applying this framework, we now turn to the case *sub judice*. As set forth by the trial court, Hatchigian’s primary complaint is that PECO either failed to apply the provisions of its tariff to him and others similarly situated or that the provisions of the tariff itself were unreasonable. **See** Fourth Amended Complaint, ¶¶ 24-33 (alleging that “[s]ection 9.2 of PECO’s tariff” “gives inadequate notice” to customers; and that “PECO’s interpretation of this tariff includes an unreasonable certification requirement”); **id.** at ¶ 39 (alleging that “PECO’s exclusive reliance on computerized systems to execute its broadly[-]worded tariff makes the risk of erroneous deprivation [of electrical service] substantial”); **id.** at ¶ 41 (alleging that “PECO is able to collect customer funds pursuant to its tariff with impunity as if it were a public agency, without any of the constraints in the [P]ublic [U]tility [C]ode;” and **id.** at ¶ 46 (alleging that “PECO’s one sided interpretation of the tariff disregards the need to access channels for customer complaint in a meaningful time and in a meaningful manner”). As the trial court concluded, it is these

provisions that form the basis of Hatchigian's complaint. **See** Trial Court Opinion, 8/27/2018, at 5 ("The overall thrust of the [c]omplaint ... challenges [PECO's] termination procedures."). Hatchigian's additional causes of action all hinge on whether PECO either misinterpreted its tariff, applied the tariff to Hatchigian unreasonably, or that the tariff itself is insufficient to provide due process to PECO's customers.

It is well-settled that determinations regarding the adequacy and application of a public utility tariff fall within the expertise of the PUC. **See *Optimum Image, Inc. v. Philadelphia Elec. Co.***, 600 A.2d 553, 557 (Pa. Super. 1991) ("Matters relating to tariff ... are within the particular expertise of the PUC."); ***Morrow***, 479 A.2d at 550 (same). In his brief, Hatchigian acknowledges his complaint is two-fold: "(1) PECO and agents interfere[d] with lease arrangements entered into by the [l]andlord and [t]enant classes and (2) PECO fail[ed] its duty to maintain a reasonable standard of care when performing the disconnection and reconnection terms of the [s]ervice [a]greement." Hatchigian's Brief at 31.

Instantly, there can be no doubt that resolution of the standard-of-care issue will rely extensively upon whether the service agreement is in compliance with the tariff. Such a determination is within the particular expertise of the PUC. **See *State Farm Fire & Cas. Co. v. PECO***, 54 A.3d 921, 927 (Pa. Super. 2012) (internal quotation marks omitted) (pointing out that it is the "PUC's authority to determine the reasonableness of tariffs" and

that the PUC has the “power to assess whether such provisions are compatible with the [Public Utility Code] and policies of the commission and consistent with its regulatory scheme”). Moreover, to the extent that PECO is in compliance with the tariff, and the tariff is reasonable, PECO cannot be unreasonably interfering with a landlord-tenant relationship. Accordingly, we hold that the PUC has primary jurisdiction over Hatchigian’s complaint.

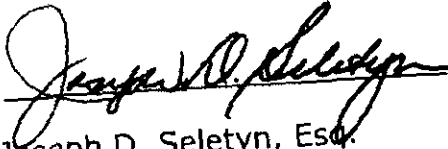
We now turn to consider whether the PUC has exclusive jurisdiction. As in ***Pettko***, Hatchigian raises a claim that PECO has violated the UTPCPL. Accordingly, we hold that Hatchigian’s UTPCPL claim does not fall within the exclusive jurisdiction of the PUC, and the trial court erred in dismissing Hatchigian’s fourth amended complaint with prejudice. ***See Pettko, supra.*** In addition to the UTPCPL claim, Hatchigian also raises other claims, such as an unconstitutional taking and public nuisance. To the extent that the PUC finds in favor of Hatchigian and provides Hatchigian relief on the claims over which it has jurisdiction, Appellant may then pursue his remaining claims in the Court of Common Pleas.

Based on the foregoing, we vacate the order of the trial court and remand for the entry of an order transferring the case to the PUC.

Order vacated. Case remanded. Jurisdiction relinquished.

J-A13031-19

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn". The signature is written in a cursive style with a large initial "J".

Joseph D. Seletyn, Esq.
Prothonotary

Date: 8/6/19



Supreme Court of Pennsylvania

Eastern District

John W. Person Jr., Esq.
Deputy Prothonotary
Patricia A. Johnson
Chief Clerk

468 City Hall
Philadelphia, PA 19107
(215) 560-6370
www.pacourts.us

March 9, 2020

Joseph D. Seletyn, Esq.
Prothonotary
530 Walnut Street
Suite 315
Philadelphia, PA 19106



RE: David Hatchigian, Petitioner

v.

PECO/Exelon and Municipal Inspection Corporation, Respondents
No. 442 EAL 2019

Trial Court Docket No: August 2016 No. 16080065

Superior Docket Number: 142 EDA 2018

Appeal Docket No:

Date Petition for Allowance of Appeal Filed: September 3, 2019

Disposition: Order Denying Petition for Allowance of Appeal

Disposition Date: February 19, 2020

Reargument/Reconsideration Disposition:

Reargument/Reconsideration Disposition Date:

/jd

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

DAVID HATCHIGIAN,

Petitioner

v.

PECO/EXELON AND MUNICIPAL
INSPECTION CORPORATION,

Respondents

: No. 442 EAL 2019

:
:
: Petition for Allowance of Appeal
: from the Order of the Superior Court

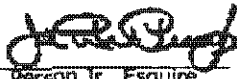



ORDER

PER CURIAM

AND NOW, this 19th day of February, 2020, the Petition for Allowance of Appeal
is DENIED.

A True Copy
As Of 02/19/2020

Attest: 
John W. Person Jr., Esquire
Deputy Prothonotary
Supreme Court of Pennsylvania

David Hatchigian, Joan Randazzo,)	PENNSYLVANIA PUBLIC UTILITY
Bridjette Cannady, Mario Rullo,)	
Jacyln Mahoney, Joseph J. Branconi,)	COMMISSION
Michele D. Mahoney, Tyrone Zachary,)	
Leticia S. Marks, John Gardener,)	400 NORTH STREET
Timmy Smith, Larry Velente,)	
Chris Grogan, Gabriel R. Saffioti,)	HARRISBURG, PENNSYLVANIA
Robert H. Levy, Carolyn Boxmeyer,)	
John J. Flannery, Oliver Young,)	17120
John Does 1-20,)	
Individually and All Those)	
Similarly Situated,)	
)	
Plaintiffs)	CLASS ACTION COMPLAINT
v.)	JURY TRIAL DEMAND
)	
)	
Peco / Exelon Energy Company,)	
Exelon Corporation, and)	
Municipal Inspection Corporation)	
)	No.:
and)	
)	
Defendants)	

PLAINTIFFS' FOURTH AMENDED CLASS ACTION COMPLAINT

Plaintiffs David Hatchigan, Joan Randazzo, Bridjette Cannady, Mario Rullo, Jacyln Mahoney, Joseph J. Branconi, Michele D. Mahoney, Tyrone Zachary, Leticia S. Marks, John Gardener, Timmy Smith, Larry Velente, Chris Groban, Gabriel R. Saffioti, Robert H. Levy, Caryolyn Boxmeyer, John J. Flannery, Oliver Young, and John Does 1-20 (collectively "Plaintiffs"), individually and on behalf of all others similarly situated, pursuant to the Pennsylvania Rule of Civil Procedure, 1701 et. seq., brings this action against Defendants Peco Energy Company ("Peco"), a subsidiary of the Exelon Corporation ("Exelon") and Municipal Inspection Corporation ("MIC") (herein collectively "Defendants") and wherein Plaintiff seeks certification of this matter as a class action, avers and alleges as follows:

NATURE OF THE CASE

1) The Class consists of all individuals, including namely customers, landlords, and tenants of Defendants, whom received electrical utility services from Defendants, but whose electrical utility services was terminated without due warning, notice, hearing and/or due process, causing abuse, harms, and economic costs and expenses to Plaintiffs.

2) Plaintiffs herein, seek a number of legal claims including but not limited to negligence, tortious interference with leases, violation of the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 et. seq.; unjust enrichment, intentional and/or negligent infliction of emotional distress, unconstitutional taking and/or conversion, breach of contract, breach of implied covenant of good faith and fair-dealing, declaratory relief, injunctive relief, and punitive damages.

THE PARTIES

3) Plaintiff David Hatchigian ("Hatchigian") is a property owner and landlord in the city of Philadelphia. He is a PECO customer.

4) Plaintiff Hatchigian has a current address of 2414 Township line Road, Havertown PA, 19083 owns and leases the premises located at 7512 Brentwood Road Phila Pa. 19151 (hereinafter "Brentwood"), a two story multi-family residence with two-units.

5) Plaintiff Joan Randazzo ("Randazzo") has a current address of 2414 Township line Road, Havertown PA, 19083 owns and leases the premises located at 7512 Brentwood Road Phila Pa. 19151 (hereinafter "Brentwood"), a two story multi-family residence with two units, is a property owner and landlord in the city of Philadelphia. she is a PECO customer

6) Plaintiff Bridjette Cannady ("Cannady") resides and is a tenant and PECO customer occupying the dwelling at 7512 Brentwood Road Phila. Pa. 19151 and is billed directly for her residential electricity and usage.

7) Plaintiff Jacyln Mahoney ("Mahoney") resides and is a tenant and PECO customer

occupying the dwelling at 7512 Brentwood Road Phila Pa. 19151 and is billed directly for her residential electricity and usage

8) Plaintiff Mario Rullo ("Rullo") is a resident at 510 Church Lane Yeadon Pa. 19050 and is a property owner at David Drive in Upper Darby Pa. 19083

9) Plaintiff Joseph J. Branconi ("Branconi") resides in Philadelphia, Pennsylvania 19151 and is a tenant and PECO customer occupying the dwelling at 7512 Brentwood Road and is billed directly for his residential electricity and usage

10) Plaintiff Michele D. Mahoney ("M ..Mahoney") resides in Philadelphia, Pennsylvania 19151 and is a tenant and PECO customer occupying the dwelling at 7512 Brentwood Road and is billed directly for her residential electricity and usage.

11) Plaintiff Tyrone Zachary ("Zachary"), resides in Philadelphia, Pennsylvania 19151 and is a tenant and PECO customer occupying the dwelling at 7512 Brentwood Road and is billed directly for his residential electricity and usage.

12) Plaintiff Leiticia S. Marks ("Marks"), resides in Philadelphia, Pennsylvania 19151 and is a tenant and PECO customer occupying the dwelling at 7512 Brentwood Road and is billed directly for her residential electricity and usage

13) Plaintiff John Gardener ("Gardener") is a property owner and landlord in the city of Philadelphia and a PECO with a current address of: 4165 Apalogen Road Philadelphia Pa. 19129 owns and leases the premises.

14) Timmy Smith ("Smith") is a property owner and landlord in the city of Philadelphia, a PECO Customer with a current address of 246 E. Durham Street, Philadelphia, PA 19119.

15) Larry Valente ("Valente") a property owner and landlord in the city of Philadelphia, a PECO Customer with a current address of 2410 Township Line Road, Upper Darby,

Pennsylvania 19083

16) Chris Grogan ("Grogan") is a property owner and landlord in the city of Philadelphia, a PECO Customer with a current address of: 5030 Greene Street, Philadelphia, PA 19144.

17) Gabriel R. Saffioti ("Saffioti") is a property owner and landlord in the city of Philadelphia, a PECO Customer with a current address of: 25 N. Paxon Street Philadelphia, PA.,

19) Robert H. Levy (Levy) is a property owner and landlord with a current address of 1242 Greylock Street, Philadelphia PA. 19143.

18) Carolyn Boxmeyer ("Boxmeyer"), is a property and landlord in the city of Philadelphia, a PECO Customer with a current address of 3471 Friendship Street Philadelphia Pa. 19149

19) John J. Flannery ("Flannery"), is a property and landlord in the city of Philadelphia. a PECO Customer with a current address of 11915 Barlow Street Philadelphia Pa. 19116 .

20) Oliver Young, is a property and landlord in the city of Philadelphia, a PECO Customer with a current address of 734 North 42nd Street Philadelphia Pa. 19104

21) Plaintiffs John Doe 1-20 are property owners, landlords, lessors, and/or lessees of property in Philadelphia and is billed directly for electrical services and usage by its tenants.

22) Defendant Peco Energy Company ("PECO") is a subsidiary of the Exelon corporation ("EXELON") and provider of electric and natural gas. Defendant is Pennsylvania's largest electric and natural gas utility, headquartered in Philadelphia, serving more than 1.6 million electric and 506,000 natural gas customers in southeastern Pennsylvania, communicating to the public online leadership in charitable giving to improve community conditions and further environmental initiatives as "an advocate for policy change in the region, state and

across the industry."¹

23) Defendant Municipal Inspection Corporation ("MIC"), upon information and belief, is a private third-party corporate entity, approved by PECO to perform electrical inspections and provider of certifications, with offices at: 248 Geiger Road, Suite 103, Philadelphia, PA 19116

STATEMENT OF JURISDICTION AND VENUE

24) This is a class action that exceeds One-Hundred Thousand Dollars (\$100,000) exclusive of costs, interest, attorney's fees, and as such, subject matter jurisdiction is properly exercised over this action.

25) This Court has jurisdiction over this action pursuant to 15 Pa.C.S. § 1793, whereas all Defendants have sufficient minimum contacts with Pennsylvania and have purposefully availed themselves to doing business in Philadelphia, and possess such a significant and continuous presence in Pennsylvania such as to be considered at home for the purposes of establishing personal jurisdiction. The injuries alleged in this action arise from Defendants' business of providing utility services in Pennsylvania, and result from Defendants' tortious conduct in violation of state law within Pennsylvania and directing their conduct to having intended effects within Pennsylvania.

a. Defendants are, and was at all relevant times, duly authorized to conduct business in the Commonwealth of Pennsylvania, and possesses offices and operations within the Commonwealth;

b. At all times relevant hereto, Defendants regularly conducted and solicited business within the Commonwealth of Pennsylvania, and specifically Philadelphia County, and continues to do so.

c. Defendants, either directly or through its agents, servants, and employees, does

¹ See <https://www.peco.com/SafetyCommunity/Community/Pages/CharitableGiving.aspx>, <https://www.peco.com/SafetyCommunity/Environment/Pages/OurInitiatives.aspx>

business in the Commonwealth of Pennsylvania, including in Philadelphia County, and at all relevant times advertised, marketed, sold, distributed, and otherwise provided, business financial services and products, to Plaintiffs, including but not limited to loan products, cash advances, purchase and sale of future receivables, and/or business loan related funding.

d. Defendants derive substantial revenue from goods and/or services used or consumed in the Commonwealth of Pennsylvania, including Philadelphia County.

e. Defendants reasonably expected, or should have reasonably expected, that its actions could or would have consequences within the Commonwealth of Pennsylvania, including Philadelphia County.

f. It is believed and therefore averred that Defendants have advertised, marketed, and otherwise solicited business in Philadelphia and/or located within Philadelphia County.

g. It is believed and therefore averred that Defendants, both in the past and presently, takes advantage of the entire Commonwealth of Pennsylvania, including Philadelphia County, infrastructure including, without limitation, roads, highways and airports.

h. It is believed and therefore averred that Defendants advertise or otherwise promotes its business in the Commonwealth of Pennsylvania, including in Philadelphia County.

i. It is believed and therefore averred that Defendants extensively uses the Pennsylvania and, more specifically, the Philadelphia County business community and its businesses to purchase, distribute and/or promote the use of Defendants' products and services to businesses in the Commonwealth of Pennsylvania and in Philadelphia County.

j. It is believed and therefore averred that Defendants enters into contracts with Pennsylvania businesses and companies, to purchase a variety of financial goods and perform a variety of services.

26) This Court also has general personal jurisdiction over all Defendants pursuant to the PRCP and constitutional due process and specific personal jurisdiction over all Defendants

pursuant to the PRCP and the Fourteenth Amendment of the federal Constitution.

27) Venue is proper in this District pursuant to Pa. R.C.P. Rule 1006.

28) This action is brought by Plaintiff as a Class Action on its behalf and on behalf of all other persons similarly situated, under the provisions of the Pennsylvania Rules of Civil Procedure, 1701 et seq., seeking legal claims on behalf of individuals, customers, landlords, and tenants of Defendants whose electrical utility services was terminated without due warning, notice, hearing and/or due process.

29) At all times relevant to this Complaint, the Defendants operated, conducted, engaged in, or carried on business in Pennsylvania or had offices or agents in Pennsylvania, and Defendants were involved in the advertising, marketing, selling, distributing of various financial products and services, and otherwise provided, business financial services and products to Plaintiff, including but not limited to loan products, cash advances, purchase and sale of future receivables, and/or business loan related funding, throughout the Commonwealth of Pennsylvania, including Philadelphia County. Therefore, personal jurisdiction and venue is properly exercised over each of the Defendants to this action pursuant to 42 Pa.C.S. §5322 and §5301.

CLASS ALLEGATIONS

15) Plaintiffs bring this action on behalf of themselves and other customers, landlords and tenants whose electrical utility services were terminated without warning, notice or a hearing.

16) Each year, paying utility customers, all Philadelphia residents, are arbitrarily deprived of power by Defendant PECO's implementation of regulations ostensibly enacted to supply revenue to the company while preserving consumer health and safety.

17) Paying tenants and landlords are frequently members of the middle class,

unrepresented by legal counsel and living paycheck to paycheck. These non-delinquent, responsible PECO customers are typically ill-equipped to assert their legal rights against counsel for a private corporate entity like the Defendant, particularly when PECO enforces its tariffs without being subject to any of the constraints placed upon public agencies. That Plaintiffs must contend with often vague tariff language and regularly proceed without counsel to defend against PECO's broadly-applied fees creates an imbalance of power in complaints brought before the Commission.

18) Defendant's inadequate termination and reconnection procedures leave Plaintiffs at the mercy PECO when bargaining with their right to residential electricity and have systematically caused private economic losses to Plaintiffs in contravention of state law.

19) Philadelphia's rising shut off and vacancy rates are in no way due to customer delinquency, yet PECO's nonstandard implementation violates the rights of tenants and landlords who are already-overtaxed and facing falling property values.

20) This action is a class action proceeding on behalf of Plaintiffs David Hatchigian, Bridjette Cannady, and Jacyln Mahoney, among others, and John Does Plaintiffs X-3 and X-4 (collectively "Plaintiffs") and others similarly situated for losses due to PECO's unlawful actions and for purposes of demanding a full refund of the erroneous and illegal penalties and charges collected by Defendant during the period from November 2015, to November, 2016 (plus prejudgment interest accruing at 7%), for money illegally charged against customers after switching off their electrical utility service, which illegal amounts were unlawfully collected from customers such as named Plaintiffs Hatchigian, and others similarly situated.

21) EXELON is a Pennsylvania incorporated corporation with primary business location and headquarters in Chicago, IL, and does business in 48 states with operating revenues

of \$27.4 billion in 2014, and assets of 80 billion, with approximately 29,000 employees. It provides utility service to a population of 3.8 million people in Southeastern Pennsylvania where their primary place of business is.

22) PECO is the largest electric and gas utility company in Pennsylvania, with approximately 2300 employees serving 1.6 million electric and 485,000 natural gas customers.

PECO Fails Key Constitutional Requirements But Persists in Disregarding Notice

(The Failed Process of Service Shut Offs and Reactivations)

23) The foregoing summarizes the fail termination procedure employed by PECO.

24) A major responsibility of the PUC is regulating the rates, rules and the termination of services by public utilities. Due process requires notice which provides customers with the information they need to quickly and intelligently take available steps to prevent the threatened termination of service.

25) PECO's notice rules, in cases where they are enforced, are not uniformly applied.

26) PECO has established no specific hearing standard.

27) The termination procedure employed by Defendant is grossly inadequate to give reasonable notice of termination to customers and is neither structured nor intended to prevent arbitrary shut-offs.

28) PECO's service reconnection procedure is inadequate to landlords disputing the existence of a hazardous electrical condition.

29) Pursuant to Section 9.2 of PECO's tariff: The Company reserves the right to refuse the introduction of service unless a written certificate of approval, satisfactory to the Company, has been received from a competent inspection agency authorized to perform this service in the specific locality in which service is to be provided. Even where a finding of "no

hazardous condition" has been made owners are subject to the six (6)-month discontinuity criteria and fees.

30) As formulated Sec. 9.2 gives inadequate notice to the Class Members of PECO's application of the three-part criteria for underwriter certification.

31) PECO's interpretation of this tariff includes an unreasonable certification requirement which places a heavy burden on nondelinquent customers in Pennsylvania.

32) The language of PECO's tariff does not absolve it from liability for the negligent failure to implement reconnection policies to protect customers in the event of PECO's unwarranted shutoffs which have occurred in the absence of any account delinquency.

33) Neither sec. 9.2 nor the Commission's approval of the tariff absolves PECO from all liability for violating the property rights of paying landlords and tenants via unconstitutional taking.

PECO's Poor Notification Record

34) PECO terminates electrical utility service without an adequate notification process

35) By terminating Plaintiffs' electrical service without warning despite payment for service, Defendant endangers the health and safety of tenants in contravention of P.U.C.'s mandate to protect utility customer health and safety.

36) PECO's experiences with application of its tariff now include prior complaints filed with the Commission by customers challenging the termination procedure provided for in its tariff, including Plaintiff Hatchigian.

37) In connection with providing credit-extension for financially burdened customers at risk during cold weather shut offs, Defendant PECO has testified that PUC rules are stricter

after rather than before a shut-off has occurred (T157).

38) PECO also admits that winter use should be subsidized and that terminations of service put households at risk (T89)

39) While PECO is aware that utility service is so essential that its deprivation for even a short duration can threaten the health and safety of residents, PECO's exclusive reliance on computerized systems to execute its broadly worded tariff makes the risk of erroneous deprivation substantial.

40) The procedures currently in place for the Commission's redress of grievances is incapable of addressing the within violations of law by PECO and the constitutional infirmities of PECO's shut-off procedures.

41) PECO is able to collect customer funds pursuant to its tariff with impunity as if it were a public agency, without any of the constraints in the public utility code and or responsible designated employee or neutral arbiter prior to termination.

42) PECO thus does not afford reasonable assurance against erroneous or arbitrary withholding of essential services.

43) PECO does not set hearing requirements similar to those mandated in earlier utility-entitlement decisions.

44) PECO fails its light burden to provide an informal hearing procedure. Whether or not a hearing procedure may be available to other PECO customers, PECO has not provided any hearing opportunity to the plaintiffs. The burden on the utility customer and owner-landlords is a comparatively heavy burden, and PECO at no point provides express notice of the available procedures.

45) The claim to continued utility service is a property interest protected by the due

process clause. The interest in continued utility service may be sufficient to support a pre-termination hearing requirement even in the absence of state action.

46) PECO's one sided interpretation of the tariff disregards the need to access channels for customer complaint at a meaningful time and in a meaningful manner while the deprivation/forfeiture may still be prevented.

47) The notice provided by the utility has been deem adequate by PUC in the past, however because the property interest is so vital and essential to health and safety of residents of various ages, resources, levels of education and experience, a meaningful notice requirement must be established for the protection of customers.

48) PECO's inadequate notice procedure systematically provides inadequate warning to customers whose utility service is about to be terminated. Amounts charged where there is a test meter already onsite at the property are excessive irrespective of whether the customer is a tenant or an owner- landlord,

49) PECO's inaction in regulating terminations for customers like Plaintiffs and the Proposed Class Members has permitted the financial and legal costs of reconnection for non-delinquent, non-indigent PECO customers in Pennsylvania to rise.

50) In Plaintiff Hatchigian's case, PECO refused reconnection pursuant to a certification requirement contained within the Electric Service Tariff filed by PECO and on file with the Pennsylvania Public Utility Commission (hereinafter "PUC"; "Commission") ("Tariff"; "Sec. 9.2"). *See* § 9.2 of PECO Tariff provision. PUC's approval of Sec. 9.2's requirement of an underwriter's certificate if the service is off for six months or longer in the absence of an electrical hazard as reasonable per se is insufficient basis to imply an exemption from state consumer protection statutes or PECO's liability for negligence, breach of contract, breach of the

covenant of good faith and fair dealing, tortious interference with existing leases, public nuisance, or unjust enrichment. Customer Hatchigian's experience with PECO's interpretation of the reasonable per se tariff is emblematic of the experience of landlords and tenants whose direct billing accounts are terminated on this arbitrary basis.

51) On or about May 18, 2016 Hatchigian received several phone calls from two different tenants complaining that all electric service was shut off at 7512 Brentwood Road Phila Pa. 19151.

52) Owner-Landlord Hatchigian contacted PECO and was informed by PECO employee "Jasmine" that the electrical had been disconnected inadvertently but was in the process of being restored the same day, with no need for Hatchigian to file for medical or other exemptions in order to reintroduce service.

53) After service was not restored as promised and upon owner Hatchigian's further inquiry, PECO claimed that the apartment had been unoccupied for six months and therefore a certificate from their electrical underwriter firm was now required.

54) Owner Hatchigian did his best to act within days, and later took further pains to verify the ordered underwriter certification by Municipal Inspection ("MIC") @ 215-673-4434, speaking with both Tina (1-800-494-4000) and Jaclyn Mahoney (267-449-2549). He paid a total of \$130 to MIC as a predicate for PECO's reintroduction of service. See receipt (P-5) and check #3351 (P-6) dated May 19, 2016. (According to PECO staff's testimony during the underlying Commission proceeding (P-17), the Brentwood apartment had not been empty for six of the preceding months, the electric certificate had been duly applied for by landlord Hatchigian and fully paid for in November of 2015, see ex. P-4 ck. no. 3228 for seventy-five (\$75) dollars.) See Municipal Court N.T. July 25 2016 and PUC OPINION December 8, 2016 Ex. P-18

55) PECO's employee admitted that there was no indication of any wiring irregularities or electrical issues.

56) PECO next claimed it had never received the physical certificate. At the same time, MIC refused to provide proof of any of three inspection orders for the apartments at Brentwood or the valid certification.

57) To customer Hatchigian's amazement, PECO next demanded that he personally re-contact MIC to arrange for and schedule for a re-inspection of all of the electric wiring at the Brentwood apartment. (Without electrical service to his tenants' residences Hatchigian was also placed in violation of certain Philadelphia Codes and local fire insurance provisions. See ex. P-9, P-10. Owner-landlord Hatchigian duly complied with all of PECO's instructions (see ex. P-5,6) motivated to do so in part because, among other requirements Philadelphia landlords must, according to rules promulgated by the City of Philadelphia Department of Licenses and Inspections, to have and maintain 120-volt smoke and carbon monoxide detection at the property.) The conditions at Brentwood and how they impacted her ability to care for her children caused tenant's (4) intense anguish. The tenants residing at 7512 Brentwood Road including minor tenants were without air conditioning during the summer months and forced to purchase quantities of bulk dry ice.

58) Owner Hatchigian relayed the conditions to PECO over the phone and encountered major difficulties in restoring electrical service at the leased property. *See* DAVID HATCHIGIAN VS PECO and MUNICIPAL INSPECTION CORPORATION P.M.C. No. SC-16-05-19-4777 (2016), inter alia alleging plaintiff and younger tenants residing in the building were deprived of electric service after being disconnected without due process.

59) Although all payments to PECO were timely and were not in arrears at the time of

the shut off, new tenants were ultimately unable to move into the apartment on time because PECO would not reintroduce power before PECO's underwriter's certificate was submitted (Tr. 13).

60) PECO's tariff afforded no possibility of exemption, waiver or adjustment, no notice of its termination of service, and the Plaintiffs (none of whose accounts were delinquent upon termination) found their compliance attempts thwarted by PECO's chosen underwriter.

61) Although a century of case law has firmly established that the General Assembly's intent in enacting the Code and its predecessor statute was to provide for the uniform, statewide regulation of public utilities and public utility facilities, a private utility like PECO expects deference to its internal rules.

62) In Hatchigian's case, the court applied deference despite proof of past electrical service to adjoining apartments with comparable or identical electrical wiring, which was demonstrably safe despite being inactive for months and proof that maintenance measures had been taken to assure that all electrical wiring at the property service was in a safe condition over the preceding six (6) month period (Tr. 13). Customer Hatchigian argued that reasonable enforcement of the reasonable per se tariff was extremely difficult due to the lack of exemption or waiver provision. In addition to being forced to postpone tenant move-in dates, he incurred additional pocket costs to locate and meet with the third-party underwriter referred by PECO, and ended up returning \$300.00 in rents paid. (Ex. 4 and Ex. 6, attachments to March 27, 2015 letter). Based on his experience, PECO's referral procedure and underwriter certification requirement was applied regardless of the goal of enhanced tenant safety. The Brentwood tenants, who had young children, incurred additional interruption damages to avoid temporarily relocating and were forced to purchase dry ice after PECO's unnoticed, unwarranted shut off in

order to prevent children in the apartment from overheating.

63) PECO's certification requirement was applied and the reintroduction of power delayed or denied regardless of the reason for initial termination or whether the property owner could show the absence of any hazardous condition at the property.

64) By terminating Plaintiffs' electrical service without warning despite payment for service, Defendant were negligent, breached the services contract and an implied covenant of good faith and fair dealing therein, violated Plaintiff's rights under and tortiously interfered with Plaintiffs' leases, violated the UTPCPL, deprived Plaintiffs of their property rights via an unconstitutional taking and created a public nuisance. Injunctive relief will prevent prospective abuses of the private utility's limitless mandate to protect consumer health and safety and future violations of law.

PECO's Interference with the Property Rights of Electricity Customers and Culture of Complacency

65) Plaintiffs' ownership in and use and enjoyment of their property are interests protected by procedural due process. Without the possibility of exemption, waiver or adjustment, the reactivation procedure requires the owner to contract with a third party electrical inspection agency, pay a separate fee to confirm there is no violation of the electrical code and then additionally verify the absence of a hazard for the company's employees.

66) PECO's policy overrides the fact that having a test meter in place will indicate full functioning of the wiring, i.e., an Inspector's finding of "no hazardous condition" should have rendered PECO's discontinuity criteria and the certification rule irrelevant. PECO's universal (no exceptions) de-linking of the three-part reactivation criteria using "or" phrasing is highly misleading to customers, consumers, landlords and tenants and effectively passes the stranded costs of compliance on to these parties in instances where there is no electrically hazardous

posed.

67) In the context of public action, PECO's customer's private interest in continuity of service during paid periods is overridden. There is a risk of an erroneous deprivation of such property interest through the procedures used by PECO, and alternate procedural safeguards along with advance procedural protections can be tailored in light of the unavailability of the usual remedies such as pre-termination injunction after hearing, post-termination suit for service interruption damages and/or post-payment refund claims. Compliance costs, which are onerous, are all absorbed by the PECO's customers, thus regardless of whether state action is found, termination shifts the cost of inadvertent shutoffs to tenants and landlords.

68) Unlike municipally owned PUC-regulated PECO does not send written notice at least ten days prior to the proposed shut off date to remain effective for 60 days, does not make any attempt to contact the customer or occupant at least three days before the proposed shut-off date in person or by telephone, and does not make efforts at in person contact with the customer or a responsible adult at the time service is terminated. Compare Responsible Utility Customer Protection Act (Act 155, 2014) Consistent with such company policy, sec. 9.2 is construed by PECO so as to shift all reconnection of service costs to the tenant or owner-landlord while disregarding foreseeable risks of shutoffs posed to both groups

69) Plaintiffs and the Class Members are all past and present customers of PECO who bring this action for declaratory judgment, injunctive relief and damages pursuant to the provisions of the Pennsylvania Rules of Civil Procedure, Pennsylvania jurisprudence, Rules 23(a), 23(b)(2), and 23(b)(3) of the Federal Rules of Civil Procedure, on behalf of themselves and the following proposed Classes:

70) Tenant Electrical Utility Customer Class: All private lessees of real property in

the city of Philadelphia who from 2015 to the present (the “Class Period”) were non-delinquent in payment for electrical service when their electrical service was shut off by PECO, resulting in damages.

71) Owner-Landlord Electrical Utility Customer Class: All landlords or lessors of property owned in the city of Philadelphia who from 2015 to the present (the “Class Period”) were non-delinquent in payment for electrical service when their electrical service was shut off by PECO, resulting in damages or whose attempts to comply with PECO’s Sec. 9.2 has resulted in penalties, fees or charges despite proof of no physical hazard in the electric wiring at their premises.

72) These Classes satisfy the Pennsylvania Rules of Civil Procedure, Pennsylvania jurisprudence and the FED. R. CIV. P. 23 numerosity, commonality, typicality, adequacy, predominance, superiority and ascertainability requirements. Plaintiffs do not know the exact size or identities of the members of the proposed Class, since such information is in the exclusive control of Defendant. Defendant PECO represents to provide electrical power and utility services to residential customers residing in Pennsylvania. Accordingly, based upon Defendant’s representations regarding its market share, Plaintiffs reasonably believe that the Classes encompass thousands of consumers.

73) Excluded from the Classes are Defendant and its parent(s), subsidiary(ies), officers, directors, employees, partners and co-venturers.

74) Also excluded are all employees, officers and directors of the debt collectors retained by Defendant. Also excluded are any federal, state, or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action.

75) Plaintiffs and all members of the Classes have been harmed by the unlawful acts of Defendant, including out-of-pocket expenses, consequential damages, emotional distress, lost rents, medical expenses and loss in property values, and fees and costs.

76) The joinder of all members of the Classes is impracticable due to the size and relatively modest value of each individual claim.

77) Disposition of these claims in a class action will provide substantial benefit to the parties and the Court in avoiding a multiplicity of identical suits.

78) The identities of the Class members can be readily ascertained from Defendant's customer records.

CLASS DEFINITIONS

79) This action is brought pursuant to Pa.R.C.P. 1701 et. seq. by Plaintiffs Hatchigian, Randazzo, Cannady, Rullo, Mahoney, Branconi, M.Mahoney, Zachary, Marks, Gardener, Saffioti, Levy, among others, and John Does 1-20 (collectively "Plaintiffs") on behalf of themselves individually and others similarly situated, as members of the proposed class, defined as follows:

a) Tenant Electrical Utility Customer Class: All private lessees of real property in the city of Philadelphia who from 2015 to the present (the "Class Period") were non-delinquent in payment for electrical service when their electrical service was shut off by PECO, resulting in damages.

b) Owner-Landlord Electrical Utility Customer Class: All landlords or lessors of property owned in the city of Philadelphia who from 2015 to the present (the "Class Period") were non-delinquent in payment for electrical service when their electrical service was shut off by PECO, resulting in damages or whose attempts to comply with PECO's Sec. 9.2 has resulted in penalties, fees or charges despite proof of no physical hazard in the electric wiring at their premises.

NUMEROSITY

80) The members of the Class are so numerous that joinder of all members is impracticable.

17) The exact numbers of class members is unknown as such information is in the exclusive control of Defendants. However, due to the nature of the trade and commerce involved, Plaintiff believes the class consists of thousands of plaintiffs throughout the Commonwealth of Pennsylvania, making joinder of class members impracticable.

COMMON QUESTIONS OF LAW AND FACT

18) Common questions of law and fact affect the right of each Class member and a common relief by way of damages is sought for the plaintiff Class members.

19) Common questions of law and fact that affect the class members include but are not limited to:

- a. Whether Defendants engaged in negligent conduct in the management, processing, administration, and effectuation of their electrical utility services, with respect to Plaintiffs, including termination without due warning, notice, hearing, and/or due process.
- b. Whether Defendants engaged in tortious interference of leases in the management, processing, administration, and effectuation of their electrical utility services, with respect to Plaintiffs, including termination without due warning, notice, hearing, and/or due process.
- c. Whether Defendants engaged in violations of the Unfair Trade Practices and Consumer Protection Laws, 73 P.S. § 201-1 et. seq., in the management, processing, administration, and effectuation of their electrical utility services, with respect to Plaintiffs, including termination without due warning, notice, hearing, and/or due process.
- d. Whether Defendants engaged in unjust enrichment in the management, processing, administration, and effectuation of their electrical utility services, with respect to Plaintiffs, including termination without due warning, notice, hearing, and/or due process.
- e. Whether Defendants engaged in the intentional and/or negligent infliction

of emotional distress, in the management, processing, administration, and effectuation of their electrical utility services, with respect to Plaintiffs, including termination without due warning, notice, hearing, and/or due process.

f. Whether Defendants engaged in an unconstitutional taking and/or unlawful conversion in the management, processing, administration, and effectuation of their electrical utility services, with respect to Plaintiffs, including termination without due warning, notice, hearing, and/or due process.

g. Whether Defendants engaged in a breach of contract in the management, processing, administration, and effectuation of their electrical utility services, with respect to Plaintiffs, including termination without due warning, notice, hearing, and/or due process.

h. Whether Defendants engaged in a breach of implied covenant of good faith and fair dealing in the management, processing, administration, and effectuation of their electrical utility services, with respect to Plaintiffs, including with respect to termination without due warning, notice, hearing, and/or due process.

i. Whether Plaintiffs to declaratory and/or injunctive relief as a result of Defendants' management, processing, administration, and effectuation of their electrical utility services, with respect to Plaintiffs, including termination without due warning, notice, hearing, and/or due process.

j. Additional questions of law and fact affecting all parties and raised in this action concerning the Classes' claims include the following:

(1) Whether PECO's termination of the Class's electrical service was warranted;

(2) Whether PECO's termination procedures can be ascertained by the average Pennsylvania customer;

(3) Whether PECO's reconnection procedures are lawful and adequate to protect non-delinquent PECO customers;

(4) Whether PECO's charges to Plaintiff Hatchigian's accounts were pursuant to a reasonable construction of PECO reasonable per se tariff (Sec. 9.2);

(5) Whether the amounts collected from the Class in connection noncompliance with PECO's tariff were charged on behalf of PECO in good faith;

(6) Whether Defendant's shutoff and reactivation of customer Hatchigian's tenants' electrical power interfered with the leasehold and violated constitutional rights as well as P.U.C.'s mandate issued to protect consumer health and safety; and

(7) Whether Defendant's conduct was intentional, knowing or willful; and

(8) Whether Plaintiffs and the Classes are entitled to damages, declaratory relief and/or injunctive relief as a result of Defendants' torts and/or bad faith acts;

TYPICALITY

20) Plaintiffs Hatchigian, Randazzo, Cannady, Rullo, Mahoney, Branconi, M.Mahoney, Zachary, Marks, Gardener, Saffioti, Levy, among others, and John Does 1-20 (collectively "Plaintiffs") (collectively "Plaintiffs"), as the representative Plaintiffs are typical of the claims and defenses of the class.

ADEQUACY OF REPRESENTATION

21) Plaintiffs Hatchigian, Randazzo, Cannady, Rullo, Mahoney, Branconi, M.Mahoney, Zachary, Marks, Gardener, Saffioti, Levy, among others, and John Does 1-20 (collectively "Plaintiffs") as the representative Plaintiffs, will fairly and adequately assert and protect the interests of the class:

a. Plaintiffs Hatchigian, Randazzo, Cannady, Rullo, Mahoney, Branconi, M.Mahoney, Zachary, Marks, Gardener, Saffioti, Levy, among others, and John Does 1-20 (collectively "Plaintiffs") to the extent the class is certified, has or will retain attorneys who are experienced in prosecuting complex commercial civil litigation and

class action claims and will adequately represent the interests of the class; and

b. Plaintiffs Hatchigian, Randazzo, Cannady, Rullo, Mahoney, Branconi, M.Mahoney, Zachary, Marks, Gardener, Saffioti, Levy, among others, and John Does 1-20 (collectively "Plaintiffs") , have no conflict of interest that will interfere with the maintenance of this class action.

SUPERIORITY

22) A class action provides a fair and efficient method for the adjudication of controversy for the following reasons:

a. The common questions of law and fact set forth in Paragraph 19 predominate over any questions affecting only individual class members;

b. The class is so numerous as to make joinder impracticable. However, the class is not so numerous as to create manageability problems. There are no unusual legal or factual issues which would create manageability problems;

c. Prosecution of a separate action by individual members of the class would create a risk of inconsistent and varying adjudications against Defendants when confronted with incompatible standards of conduct;

d. Adjudications with respect to individual members of the class could, as a practical matter, be dispositive of any interest of other members not parties to such adjudications, or substantially impair their ability to protect their interests;

e. Plaintiffs are unaware of any other litigation in Pennsylvania challenging Defendants;

f. The claims of the individual class members are small in relation to the expenses of litigation, making a class action the only procedure in which class members can, as a practical matter, recover. However, the claims of individual class members are large enough to justify the expense and effort in maintaining a class action.

COUNT I
NEGLIGENCE

- 23) Plaintiffs and the Proposed Class Members incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.
- 24) Commission endorsement of the tariff in complaints brought before it does not absolve PECO from all liability for unlawful service interruptions or unreasonably protracted termination and reactivation procedures.
- 25) Defendants have negligently failed to utilize available procedures to provide the Plaintiff and the Class with continuity of electric service, resulting in damage to Plaintiff and the Class.
- 26) Defendants owed Plaintiff and the Class Members a legal duty to refrain from terminating their residential electrical service without warning despite timely payment, a duty which was in effect regardless of the reasons for termination.
- 27) Defendants breached their legal duties to Plaintiffs and the Class Members by instituting shut off procedures in the absence of any advance notice or neutral hearing.
- 28) In addition, Defendants owed Plaintiffs and the Class Members a legal duty to reconnection within a reasonable period, which was breached when PECO refused to restore power and prolonged the discontinuity in service through its inadequate reconnection policies.
- 29) PECO's unexplained failure to utilize available alternative means of providing advance notice of termination and post-termination reintroduction of utility service to non-delinquent customers in the event of service interruptions is not excused because the commission finds the tariff "reasonable per se" for its stated purpose.
- 30) Specifically, Pennsylvania's approval of a tariff filed by a private utility are

insufficient basis for implying an automatic exemption from the company's liability for the negligent failure to give notice and a hearing prior to terminating service and the failure to enforce reasonable predicates for having power reintroduced to Plaintiffs' residences. Neither Sec. 9.2 or its enabling legislation absolve PECO of all liability for the failure to reconnect service upon the landlord's or tenant's compliance with the "no hazardous condition" six (6)-month discontinuity criteria.

31) The breach of these duties constitutes negligence on the part of PECO and Exelon.

32) The measures taken by Plaintiffs were a probable outcome known to PECO and Exelon when it enacted Sec. 9.2.

33) Defendants knew or should have known that Plaintiffs and the Class Members would reasonably believe that testing and verifying household wiring as being sound using standard methods recognized in the electrical contracting industry was sufficient to comply with Tariff 9.2 and reintroduce electrical power after their power was wrongfully terminated.

34) Defendants had a duty to exercise reasonable care in all procedures relating to the termination of electrical power to prevent foreseeable harm, including harm to Plaintiffs and the Class Members that might arise as the consequence of sudden shut offs.

35) Defendants' violation of state law as set forth in this count is a proximate cause of Plaintiffs' injuries as set forth herein.

36) WHEREFORE, Plaintiffs and the Class Members demand judgment in their

favor, against Defendant PECO and Defendant Exelon for damages within the jurisdiction of this Court, and reserve on moving for attorney's fees and/or costs, and any other relief that this Court deems just and proper.

COUNT 2
TORTIOUS INTERFERENCE WITH LEASE

- 37) Plaintiffs and the Proposed Class Members incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.
- 38) The Landlord Plaintiffs and their tenants had written residential leases for the property. See Exhibit Signed and Notarized Affidavit July 21, 2016, see also attached Lease Agreements.
- 39) Each lease warranted that the landlord would maintain and repair the premises. (See Exhibit Signed and Notarized Affidavit August 20, 2016, P-18)
- 40) PECO caused Plaintiff Hatchigian and the other landlords similarly situated to breach their duty to maintain and repair their residential property.
- 41) Implied in each lease in Pennsylvania is a warranty of habitability.
- 42) PECO's conduct caused Plaintiffs to be breach of the covenant of quiet enjoyment and caused the emotional distress and mental suffering of tenants resulting from PECO's substantially interfering with their anticipated use of the premises.
- 43) That such noneconomic damages could be suffered by Class Members was a particularly likely and foreseeable consequence of the breach induced by PECO's conduct.
- 44) Plaintiffs were placed in breach of the warranty of habitability, and thus the lease, because their apartments were unfit for human habitation during shutoff periods.
- 45) In cases where the Lease provided that electrical utilities were included, by failing

to provide electrical services as warranted, the landlord was placed in material breach of leases duly negotiated with tenants.

46) PECO's intent to interfere with the landlord tenant relation was incentivized by the potential for greater tariff-related revenues and thus higher profits.

47) PECO had this economic interest in the tenancies failing and employed improper means to trigger the breach of existing leases with tenants.

48) By its inadequately noticed terminations and unreasonable delay in reenergizing the leased premises (in some instances causing occupants to abandon their tenancies) PECO tortiously interfered with the landlords' contractual relations.

49) While the properties belonging to the Landlord Class sat empty and property values fell due to vacancies, PECO collected revenues by way of fees for both termination and reactivation.

50) In Hatchigian's and other Plaintiffs' cases, PECO tortiously interfered with Hatchigian's lease when PECO blocked his ability to satisfy the warranties of habitability and warranties to repair and maintain the properties contained in the lease, placing him in breach and giving his tenants a potential legal claim against him for shut off damages.

51) Defendants were aware that in Pennsylvania leases are deemed contracts for housing services, an implied warranty of habitability is read into every residential lease, and courts in this state have responded to the unequal bargaining power between tenant and landlord by implying the warranty as a contractual covenant to protect tenants whose rental units are all or partially uninhabitable. Defendants knew that this covenant applies at the beginning or for the duration of the lease contract and that tenants may raise the warranty of habitability as a claim against the landlord or as a defense to a claim for rent.

52) At a minimum, PECO violated the PUC's rules and regulations by charging extra fees to Plaintiffs to pay for the results of PECO's bad practices, but, in addition, credible evidence to be presented at trial that PECO and Exelon specifically intended to interfere with the Class Members' Leases as it was reasonably foreseeable that indefinite termination and reconnection procedures would directly serve to increase the amount in shut off-related fees collected by PECO. PECO sought to cause breaches of the lease agreements that would result in broken tenancies and extra reconnection fees and had everything to gain by triggering frequent un-noticed shutoffs, with little or no risk to itself.

53) PECO's acts were solely to benefit PECO's commercial interests to the detriment of the Plaintiffs and the Proposed Class Members, whose accounts were not delinquent and whose payment for service was current and up to date.

54) The Leases between the plaintiff Landlords and their tenants were interfered with both in instances where PECO billed the landlord and or the tenant directly; under either billing arrangement, Defendant PECO engaged in purposeful action that was specifically intended to harm the existing contractual relation between landlord and tenant.

55) PECO's conduct was malicious, wanton, willful, reckless, and oppressive.

56) PECO's acts in interfering with the Leases were willful, proximate to the parties performance under the Leases and motivated by sheer profit.

57) PECO's conduct was not protected by privilege or justified under the circumstances, and caused actual damages to be suffered by Plaintiffs and the Landlord Class.

COUNT 3
VIOLATION OF UTPCPL (P.S. 73 § 201-1, ET SEQ.)

58) Plaintiffs and the Proposed Class Members incorporate by reference each

preceding and succeeding paragraph as though fully set forth herein.

59) The course of conduct engaged in by PECO represents a violation of the Unfair Trade Practices and Consumer Protection Law (UTPCPL) which protects consumers against "unfair or deceptive acts or practices" in connection with the sale or advertisement of any merchandise. 73 PS. § 201-1 et. seq.

60) The statute prohibits "[p]assing off goods or services as those of another," "[r]epresenting that goods or services have . . . characteristics, . . . uses, [and] benefits . . . that they do not have," "[r]epresenting that goods or services have "approval [or] status . . . that they do not have," and "[e]ngaging in . . . fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding." 73 P.S. § 201-2(4).

61) The UTPCPL applies to private utilities that provide information for pecuniary gain.

62) PECO violated the above provisions by, among other things:

- a. falsely implying that the termination would be with notice;
- b. demanding and collecting fees for termination and reconnection but failing to restore electrical service;
- c. telling Mr. Hatchigian and Plaintiffs that PECO would reintroduce power at said properties despite no intention to do so; and
- d. continually and systematically causing the Landlord Class to breach the warrant of habitability.

63) Plaintiffs reasonably relied on the implied and actual representations of PECO and its agents.

64) As a result of the misrepresentations and deceptive conduct of PECO, Plaintiffs

suffered ascertainable loss, including unpaid rent

65) Defendant PECO engaged in unfair, unlawful, and deceptive acts in trade and commerce which have the capacity and tendency to deceive and did deceive Plaintiffs and the Proposed Class members and damaged Plaintiff and the Proposed Class members.

66) Defendant PECO promised that it would terminate with notice and restore power to the Plaintiffs' properties within a reasonable period.

67) In fact, PECO's actual termination and reconnection of power bore no reasonable relationship to PECO's promise.

68) Defendants provided this information to Plaintiffs for pecuniary gain and committed an unlawful, deceptive, and unconscionable trade practice by inducing its customers to remain with PECO while collecting exorbitant fees for termination and reconnection.

69) PECO wrongfully concealed, suppressed, and omitted to disclose that its termination and reconnection rates were higher than its competitors and that the main goal of the termination and reconnection procedures was to reap undue profit from shut offs at customers' expense.

70) Its misrepresentations and omissions had the capacity to mislead Plaintiffs and the members of the class into believing that PECO's termination procedures would provide for notice and a hearing, that reconnection fees would be significantly lower than the amounts PECO actually charged, and that these fees would be substantially equivalent to or less than the fees charged by local public utilities. Plaintiff and the Class Members were injured as a result.

71) Defendants' practices are not standard in the power industry.

- 72) Because of PECO's unlawful, deceptive, unfair, and unconscionable trade practice and scheme, Plaintiff and other members of the class have suffered injury and damages in an amount to be determined at trial.
- 73) Even if the PUC has primary jurisdiction over the general question of whether PECO'S practices comport with Sec. 9.2, the PUC has no power to award relief, if it is appropriate, for this Court.
- 74) In addition, the economic loss rule does not apply to this count.
- 75) Under the UTPCPL, this court has the power to enjoin the Defendant's conduct.
- 76) Unless enjoined by this court, Defendant will continue their unlawful practice of charging excessive fees to Defendants' Pennsylvania customers.
- 77) The services agreement between PECO and the Plaintiffs and the UTPCPL are separate sources for Plaintiffs' claims and are not mutually exclusive.
- 78) Because of Defendant's unlawful, deceptive, unfair, and unconscionable trade practice, Plaintiffs and the Proposed Class Members have suffered injuries and damages in an amount to be determined at trial.
- 79) The statute provides for damages including actual damages, attorneys' fees and costs of suit. The statute allows consumers to seek actual and treble damages if they have been subject to unfair or deceptive practices in trade or commerce. 73 Pa.Cons. St. § 201.1-3. A trial court may, in its discretion, award up to three times the amount of damages.
- 80) Wherefore, Plaintiffs and the Class Members demand judgment in their favor against PECO and Exelon, including trebled damages, reasonable attorneys fees, and other such relief as the Court deems appropriate.

COUNT 4
UNJUST ENRICHMENT

81) Plaintiffs and the Proposed Class Members incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

82) Should the Court determine that a valid, enforceable, and binding contractual relationship did not exist between the parties at any time or covering any aspect of their relationship, Plaintiffs bring this Court for unjust enrichment in the alternative.

83) As a result of the foregoing conduct by Defendants, Plaintiffs and the Proposed Class Members have suffered money damages in an amount to be calculated at trial. Due to the wrongful acts pled, including the charging of exorbitant and unwarranted fees necessitated by Defendant's intentional conduct, Defendants have received money belonging to the Plaintiff and the Class.

84) By collecting exorbitant and unreasonable fees from PECO customers, Defendants have benefited from its tortious conduct, and under principles of equity and good conscience, should not be permitted to retain the monies collected from Plaintiffs and the Class Members.

85) PECO and Exelon have reaped illegal profits and unjustly enriched themselves at the expense of Plaintiff and Class members. By charging non-delinquent customers in the absence of electrical hazards, Defendant has benefited from its unlawful termination and reconnection procedures and under principles of equity and good conscience, Defendant should not be permitted to retain these fees.

86) Defendant has unjustly enriched itself at the expense of Plaintiffs and the Class.

87) As a result of the implementation of PECO's tariff, the defective shutoff procedure and imposition of excessive and unreasonable fees associated with termination, Defendants must account to Plaintiff and the Proposed Class Members for unjust

enrichment and disgorge their improperly obtained profits as restitution to Plaintiff and the Class.

88) *Plaintiffs seek to obtain a pecuniary benefit for the Proposed Class Members in the form of full reimbursement, restitution and disgorgement from Defendants.*

89) *Additionally, Plaintiffs' counsel are entitled to recover their reasonable attorneys' fees and expenses due to the conferring of a pecuniary benefit on behalf of the Class, and will seek an award of such fees and expenses at the appropriate time.*

90) *Neither Pennsylvania's approval of the tariff filed by Defendants nor Defendants' right of way onto the property owned or occupied by the Class Members is a sufficient basis for implying an exemption from liability for unjust enrichment. Pennsylvania's approval of the tariff filed by Defendant is an insufficient basis for implying an exemption from the company's liability. Neither sec. 9.2 nor its enabling legislation absolves PECO of liability for the conduct pled in this action.*

91) *Pennsylvania's approval of the tariff filed by Defendant is an insufficient basis for implying an exemption from all liability for unjust enrichment.*

COUNT 5
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

92) *Plaintiffs and the Proposed Class Members incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.*

93) *The filing of the PUC proceedings and this lawsuit caused Mr. Hatchigian emotional distress and anguish.*

94) *The filing of the PUC proceedings and this lawsuit caused Mr. Hatchigian to incur limited economic damages.*

the Supreme Court held that termination of utility service without adequate notice "deprive[s the customer] of an interest in property without due process of law." *Memphis Light*, 436 U.S. at 22. The process due is an informal hearing before a designated utility official at which an aggrieved customer, in the case of a disputed bill, might present his complaint before his utility service could be discontinued, plus notification by the utility of the availability of the required procedure. *Memphis Light*, 436 U.S. 1. (1978).

103) By terminating Plaintiffs' electrical service without warning despite full payment for service and interpreting its tariff to require unreasonable and exorbitant penalties for noncompliance, Defendant deprived Plaintiffs of their property interest in continuity of utility service and/or other rights secured by the Constitution and laws of the United States.

COUNT 7
BREACH OF CONTRACT

104) Plaintiffs and the Proposed Class Members incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

105) Defendant PECO entered valid, enforceable agreements with Plaintiff and the Proposed Class Members, which included terms relating to termination of electricity sold by Defendant as discussed herein. ((See, Terms and Conditions attached hereto as "Exhibit A") (hereinafter "Services Agreement").

106) By terminating Plaintiffs' electrical service without warning despite payment for service, Defendant breached the Services Agreement. The breach of the duty to maintain continuous electrical service caused damages to the Class including, but not limited to, moneys paid to Defendant that were not owed, utilities paid for services that were not provided, emotional distress and humiliation as a consequence of PECO's breach. lost

rents, diminution in property value, moneys paid in attempts to remedy the condition of habitability, reasonable attorneys fees, costs, and other such relief as the Court deems appropriate. Plaintiffs and the Class have performed all material obligations imposed on them in the contract. Defendants have not performed the obligations imposed on them in the contract.

107) In addition, every contractual arrangement inherently carries with it a covenant of good faith and fair dealing. Under this covenant, we are not to suppose that one party is put at the mercy of the other but will read in any necessary conditions to ensure a mutuality of obligation under fair terms.

108) Defendant PECO has failed to satisfy its obligation to provide continuity of electrical service to customers whose accounts are current and up to date.

109) Instead of implementing shutoff and reactivations procedures consistent with the retail market, Defendant has unilaterally imposed exorbitant mandatory compliance burdens on its customers, including Plaintiffs and the Members of the Class.

110) While Defendant represents that service to customers with accounts in good standing will not be terminated without notice, in reality, on average, Defendant provides no notice and has no hearing procedure in place prior to service termination.

111) Defendant PECO created in Plaintiffs and the Proposed Class Members the reasonable expectation that Defendant would implement reasonable reconnection procedures that would not create protracted periods without power in the leased properties. Instead, PECO's reconnection procedures require redundant third party underwriter certification at the property owner's expense and place greater burdens on owners than the reconnection policies of competitors.

112) Even if PECO had the authority to generate additional compliance costs for the Plaintiffs and the Proposed Class Members, PECO created in Plaintiffs and the Proposed Class Members the reasonable expectation that Defendant would implement reasonable notice and hearing procedures prior to terminating their utility service.

113) In a competitive retail market for electricity, Defendant PECO was entrusted by Plaintiff and the Proposed Class Members to provide continuity of service to paying customers whose accounts were current and up to date and entrusted by Plaintiff and the Proposed Class Members to construe and implement tariffs filed by PECO reasonably and in a way that would not deprive Plaintiffs and the Proposed Class Members of their constitutional rights. The act of imposing unreasonable and exorbitant costs on Plaintiffs had no relation to tenant health and safety, violated the company's representations that services paid for would be continuous, and amounted to a breach of a valid contract, which caused Plaintiffs and class members to suffer actual, ascertainable losses.

COUNT 8
BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

114) Plaintiffs and the Proposed Class Members incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

115) Pursuant to the covenant of good faith and fair dealing, PECO should have provided reasonable pre-termination notice and reconnection procedures to nondelinquent customers like Plaintiffs, as promised, similar to those provided by local public utilities during the relevant periods.

116) Plaintiffs and the class have been damaged by PECO's breach of the covenant of good faith in an amount to be determined at the trial of this action.

117) Pennsylvania's approval of the tariff filed by Defendant PECO is an insufficient basis for implying an automatic exemption from all liability for contractual breach.

COUNT 9
DECLARATORY RELIEF

118) Plaintiffs and the Proposed Class Members incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

119) Defendant PECO has acted or refused to act on grounds that apply generally to the declaratory relief of Plaintiffs and the Proposed Class Members, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Proposed Class as a whole within the meaning of the Pennsylvania Rules of Civil procedure, Pennsylvania jurisprudence, and Fed.R.Civ.P. 23(b)(2)

120) Plaintiffs and the Proposed Class Members seek a declaration of Defendant PECO's obligations to them under the Services Agreement regarding the continuity of electricity.

COUNT 10
INJUNCTIVE RELIEF

121) Plaintiffs and the Proposed Class Members incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

122) Defendant PECO has acted or refused to act on grounds that apply generally to the declaratory relief of Plaintiff and the Proposed Class Members, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the Proposed Class as a

whole within the meaning within the Pennsylvania Rules of Civil Procedure, Pennsylvania jurisprudence, and Fed.R.Civ.P. 23(b)(2).

123) Plaintiffs and the Proposed Class Members seek a declaration of Defendant PECO's obligations to them under the Services Agreement regarding the continuity of electricity.

COUNT 11
PUBLIC NUISANCE

124) Plaintiffs and the Proposed Class Members incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

125) Plaintiffs' privacy was violated and their tenancies interfered with, constituting a nuisance.

126) PECO's actions amount to a public nuisance irrespective of whether they constitute a constitutional violation.

127) PECO was controlled by a municipally approved tariff and charged with protection of the interests, persons, and property of customers located and operating in the City of Philadelphia and violated Plaintiffs' rights, causing Plaintiffs' harm.

128) PECO had a duty to protect the interests, persons and property of Plaintiffs and the Proposed Class Members. By terminating Plaintiffs' electrical service without warning despite payment for service, Defendant breached its duty to protect the property of Plaintiffs and the Proposed Class Members.

129) In Mr. Hatchigian's and Plaintiffs' case, PECO's incoherent termination and reconnection procedures created a public nuisance by compelling him to deal with a third party underwriter referred by PECO that had no intention of actually performing the

inspections mandated by PECO to satisfy Sec. 9.2. and forcing his tenants to vacate their homes, relocate their children and purchase bulk dry ice, among other harms.

RELIEF REQUESTED

130) Plaintiffs and the Proposed Class Members incorporate by reference each preceding and succeeding paragraph as though fully set forth herein.

131) WHEREFORE, Plaintiffs, individually and on behalf of the Proposed Class of persons described herein, respectfully request that the Court grant them an Order:

a) Certifying one or more classes defined herein pursuant to the Pennsylvania Rules of Civil Procedure, Pennsylvania jurisprudence, Fed. R. Civ. P. 23, finding that this action satisfies the prerequisites for maintenance as a class action set forth in Fed. R. Civ. P. 23(a), (b)(2) and/or (b)(3), and designating Plaintiffs as representatives of the Class and his counsel as Class counsel;

b) Entering judgment in favor of Plaintiffs and the Class and against Defendants;

c) Declaring the Defendants liable for each Cause of Action as stated above and awarding:

i. Compensatory Damages, including for injuries to person and property as outlined herein;

ii. Consequential Damages:

iii. Punitive damages as appropriate;

iv. Any and all other damages as outlined above;

v. Reasonable attorneys' and experts' fees and litigation expenses related to this class action; and

- d) Awarding Plaintiff and Class Members their individual damages including interest thereon;
- e) Awarding treble damages pursuant to law;
- f) Directing Defendants to implement proper customer dispute procedures relating to service termination and reactivation and adequately staff, train and monitor all employees and agents in such procedures;
- g) Imposing a constructive trust, where appropriate, on amounts wrongfully collected from Plaintiffs and the Class Members pending resolution of their claims herein;
- h) Imposing any other such relief that the Commission deems just and equitable in this Matter, including but not limited to declaratory and injunctive relief setting forth the rights of Plaintiff and the Class Members and Defendants' violation of the consumer protection law, as specified in the foregoing Joint Complaint
- i) For a Sum Certain of One-Hundred Thousand Dollars (100k)
- j) For a Sum Certain of Twenty-Thousand (20k) for Defendant Municipal Inspection Corporation

Dated: March 16, 2020

Respectfully submitted,



DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury as to all issues and causes of action asserted herein.

Respectfully submitted,

Dated: March 16, 2020

David Hatchigan

CERTIFICATION OF SERVICE

I, DAVID HATCHIGIAN, CERTFY THAT I HAVE SERVED
DEFENDANTS WITH MY PUC FORMAL COMPLAINT WITH
EXHIBITS PER SUPERIOR COURT ORDER DATED AUGUST 6, 2019,
AND CONFIRMED BY SUPREME COURT DENIAL OF APPEAL ON
FEBRUARY 20, 2020 . BY U.S.P.S. 3817 AND FAX. ON MARCH 16,
2020.

RESPECTFULLY,

David Hatchigian

DAVID HATCHIGIAN

CC: MS. LYNN R. ZACK ESQUIRE
PECO ENERGY CO.
2301 MARKET STREET S23-1
PHILADELPHIA PA. 19103
215-841-6816 / FAX 215-841-4474

MS. WINETT C. HEATHER ESQUIRE
1515 MARKET STREET SUITE 1200
PHILADELPHIA PA. 19102-1932
215-837-1932 / FAX 215-592-0792

If you have questions or need more information, please call us today at (888) 480-1533. After you talk with us, if you are not satisfied, you may file a complaint with the Public Utility Commission (PUC). The PUC may delay the shut off if you file the complaint before the shut off date. To contact them, call (800) 692-7380 or write to: Pennsylvania Public Utility Commission, PO BOX 3265, Harrisburg, PA 17105-3265.

WINTER SHUT-OFF PROVISIONS (between December 1-March 31)

If your income is below 250% of the federal poverty guideline, we must first ask the PUC for permission to shut off your service. Add together the monthly income of the adults in your household. If that number is the same or less than the amount listed in chart below for your household size, call us immediately at 1-888-480-1533. You will be required to provide us with proof of your income.

Monthly Income at 250% of Federal Poverty Level:				
Household Size	1	2	3	4
Monthly Income	\$2,475	\$3,338	\$4,200	\$5,063

Add \$867 for each additional household member.

If we shut off your service during the winter months (between Dec. 1 – March 31) we will restore your service within 24 hours of your meeting all requirements/conditions to have service reconnected. Where street digging is required, it may take up to 7 days.

IMPORTANT TO KNOW – ABOUT YOUR UTILITY SERVICE

- If you currently have a valid Protection From Abuse order from a court, there are some additional protections available to you. Call us immediately at 1-888-480-1533 (you will be required to provide us with a copy of the order).
- You may be eligible for a payment agreement or special assistance programs. Call 1-888-480-1533 right away to provide us with household income and occupant information. Documentation of your income will be required, such as pay stubs or tax documents.
- If your landlord pays your utility bill: You have certain legal protections. Call us at 1-800-484-4000.
- If you have trouble understanding or speaking English, please call us at 1-888-480-1533.
- If you have a disability or need help understanding this notice, please call us at 1-800-484-4000.
- Termination of service may result in extensive property damage. You are responsible for taking all steps necessary to protect the property and occupants. You may want to turn off the water so the pipes do not freeze. If you do not own the property, you are responsible for notifying your landlord that the service is off.
- Use only equipment that is made for home heating. Use all types of heaters carefully. Following all directions for safe use. NEVER use your oven, grill, or clothes dryer to heat your home. This could cause a fire or dangerous carbon monoxide gas.
- If your service is shut off, you may have to pay more than the amount on the front of this notice to have your service turned back on. You may have to pay any additional bills that have become past due.
- All adult occupants of the premise whose name are on the mortgage, deed or lease are considered the 'customer' and are responsible for payment of this bill.
- If service is shut off, ANY adult occupant who has been living at the premise may have to pay all or portions of this bill to have service restored.
- If your service is shut off, you must contact us after your payment has been made to be sure you've met all conditions to have the service turned back on and to arrange access to your premises.
- If we shut off your service during the NON-winter months (between Apr. 1 – Nov. 30) we will restore your service within 3 days of your meeting all requirements/conditions to have service reconnected. Where street digging is required it may take up to 7 days.

Atencion! Este es un mensaje muy importante. Si usted no lo entiende, favor de llamar a 1-888-480-1533.

PECO's business hours are Monday through Friday, from 8:30 a.m. to 5 p.m. Our business office is located at: 2301 Market Street, Philadelphia, PA 19103.

To pay by credit card or check by phone, call 1-877-432-8384.

Payment Options: For your convenience, we offer the following payment options. Call us for more information about them. Do not mail cash. Bring entire form with you when paying in person.

- Automatic Bank Payment Plan
- Budget Payment Plan
- Pay-by-Mail: PO BOX 13437 Philadelphia, PA 19101
- Pay-in Person
- Pay-by-Phone
- Pay at Authorized Payment Locations

Pay ONLY where you see a PECO Authorized payment Sign.

P-2

**MUNICIPAL INSPECTION
CORPORATION**

Bob Palko

**Electrical Inspector-UCC Cert
Residential and Commercial**

**248 Geiger Rd Ste. 103
Philadelphia, PA 19115
215.673.4434 Off
215.435.4473 Cell
215.677.9360 Fax**



P.B. 215-841-4141

TINA 1-800-494-4000

JACLYN MAHONEY 267-449-

2549 P.B. SAID EVERYTHING

IS O.K. 11-30-2018

21-800-494-4000

Nov. 19 - Jarvis
2015

p-3



Wells Fargo Online®

View Check Copy

Check Number	Date Posted	Check Amount	Account Number
3228	11/20/15	875.00	CROWN CLASSIC BANKING XXXXXXXXXXXXX

DAVID HATCHERSON
2014 TOWNSHIP LINE ROAD
HARRISTOWN, PA 17033

11-19-15

MUNICIPAL 111320000 \$75

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www.wellsfargo.com

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3228

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PHILADELPHIA, PA 19116

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REPRODUCE THE CHECK FOR YOU

Equal Housing Lender
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p-4

GIANT

Quality. Selection. Savings. Every Day.

660 E. LANCASTER AVENUE
SAINT DAVIDS, PA 19087

Store Telephone: (610) 929-0781
Pharmacy Telephone: (610) 253-2016

Store 6607 05/18/16 05:34pm

FROZEN FOOD

5.42 lb @ 1.19 /lb	
WT PNGN DRY ICE 16Z	6.45 T
9.56 lb @ 1.19 /lb	
WT PNGN DRY ICE 16Z	11.38 T
9.15 lb @ 1.19 /lb	
WT PNGN DRY ICE 16Z	10.89 T
5.86 lb @ 1.19 /lb	
WT PNGN DRY ICE 16Z	6.62 T
9.01 lb @ 1.19 /lb	
WT PNGN DRY ICE 16Z	10.72 T
7.36 lb @ 1.19 /lb	
WT PNGN DRY ICE 16Z	8.76 T
TRX	3.29
*** BALANCE	58.11

Payment Type: AMER EXPRESS 00

Card: *****3004
Payment Amt: 58.11
BALANCE: \$
AUTH# 536386 05/18/16 05:36pm

AMER EXPRESS 58.11
CHANGE 0.00
Date of Birth = xx/xx/xx KEYED
05/18/16 05:37pm 6607 12 17 3502

Thank you for shopping at GIANT.
My goal is to ensure your satisfaction
every time you shop with us. If there
is anything more I can do to improve
your experience please call or write.
Dave Maravich, Store Manager

Visit us on the Internet
www.GiantFoodStores.com

Sign up at the Service Center for a
BonusCard and start saving.

I'm glad you shopped here today.
Your Cashier -- DENISE

P-3

P-8

GIANT.

Quality Selection. Savings. Every Day.

550 E. LANCASTER AVENUE
SAINT DAVIDS, PA 19087

Store Telephone: (610) 989-0781
Pharmacy Telephone: (610) 263-2016

Store 86507 05/22/16 01:06pm

FROZEN FOOD		
3.87 lb @ 1.19 /lb		
WT PNGN DRY ICE 16Z		4.61 T
5.72 lb @ 1.19 /lb		
WT PNGN DRY ICE 16Z		6.81 T
4.74 lb @ 1.19 /lb		
WT PNGN DRY ICE 16Z		5.64 T
3.48 lb @ 1.19 /lb		
WT PNGN DRY ICE 16Z		4.14 T
4.16 lb @ 1.19 /lb		
WT PNGN DRY ICE 16Z		4.95 T
4.82 lb @ 1.19 /lb		
WT PNGN DRY ICE 16Z		5.74 T
TAX		1.92
*** BALANCE		33.81

Payment Type: AMER EXPRESS 00

Card: *****3004
Payment Amt: 33.81
BALANCE: \$
AUTH# 564064 05/22/16 01:07pm

AMER EXPRESS	33.81
CHANGE	0.00

Date of Birth * xx/xx/xx KEYED
05/22/16 01:07pm 6507 13 73 172

Thank you for shopping at GIANT.
My goal is to ensure your satisfaction every time you shop with us. If there is anything more I can do to improve your experience please call or write.
Dave Margavich, Store Manager

Visit us on the Internet
www.GiantFoodStores.com

P-8



CITY OF PHILADELPHIA

DEPARTMENT OF LICENSES AND INSPECTIONS
Municipal Services Building - 11th Floor
Philadelphia, PA 19102-1687
(215) 686-2400

FRANCES EGAN
Commissioner

February, 1998

To Licensed Electrical Contractors:

This letter is being sent to you as an information service to advise you of regulations that became effective on September 15, 1997 with the new *Philadelphia Building Construction and Occupancy Code*. The letter is also intended to provide you with ample advance notice of options available to you as an electrical contractor.

By way of background, the *Philadelphia Fire Prevention Code* that became effective on January 1, 1995 required that all apartment owners install a fire alarm system in the common areas of their buildings, and single-station smoke detectors in the dwelling units, within two years (by December 31, 1996). A recent variance of general application issued by the Fire Commissioner extended that deadline until December 31, 1998.

There is no change in the code requirement that all electrical work involved in the installation, modification, repair, etc. performed on fire alarm systems, must be done under an electrical permit issued to a Licensed Electrical Contractor.

There has been, however, a change in the requirements for those who certify fire alarm systems.

As you are aware, the *Philadelphia Fire Prevention Code* has required the certification of fire alarm systems for some time. Section F-501.4 of the current *Philadelphia Fire Prevention Code* and the companion regulations require that all fire alarm systems be tested and certified upon installation, and existing fire alarm systems must be tested and certified on an annual basis by a licensed Fire Alarm Systems Inspector. Certification is not required for the single-station smoke detectors within the apartment units.

The purpose of certification is to provide an improved level of reliability that the fire alarm is properly maintained and will be operational at the time of a fire. The Department of Licenses and Inspections relies on the evaluation of the fire alarm systems by qualified persons in the private sector, who are familiar with the specific requirements of the codes and standards applicable to these very important life safety systems, for the protection of our citizens. The department is of course obligated to spot check a number of systems to verify that those who certify systems are fulfilling their obligations under their license.

P-9

In order to establish the specific qualifications of persons who perform the evaluation and testing of fire alarm systems, modified regulations were established effective September 15, 1997. These regulations require such persons to obtain a license as a Fire Alarm Systems Inspector by demonstrating their knowledge of the applicable codes, standards and technology through a phased-in schedule of testing described below.

- Between now and January 1, 2000, fire alarm systems must be certified by either a Licensed Electrical Contractor or a person who is not an electrical contractor, but has satisfied the requirements that will be effective after January 1, 2000. A Fire Alarm Systems Inspector license will not be issued as a separate document to Licensed Electrical Contractors between now and January 1, 2000, since they are all eligible to certify systems during this interim period.
- After January 1, 2000, a Fire Alarm Systems Inspector license will only be issued to persons who have obtained a NICET (National Institute for Certification in Engineering Technologies) certification at Level II or higher in the Fire Alarm subfield of Fire Protection Engineering Technology. Licensed Electrical Contractors may obtain this license through the same NICET certification process and will be eligible thereby to certify existing fire alarm systems, modified fire alarm systems, and new fire alarm systems, including their own work or the fire alarm work of other electrical contractors.
- After January 1, 2002, a Fire Alarm Systems Inspector license will only be issued or renewed to persons who have obtained a NICET certification at Level III or higher in the Fire Alarm subfield of Fire Protection Engineering Technology. Licensed Electrical Contractors may obtain this license by qualifying at the NICET Level III and thus be eligible to perform the same tasks as they were under Level II before January 1, 2002.

Those who are interested in pursuing the NICET certification process should write immediately to NICET and request the "*General Information Booklet — Engineering Technician and Technologist Certification Programs*" and the latest "*Program Detail Manual for Certification in the Field of Fire Protection Engineering Technology — Subfield of Fire Alarm Systems*." NICET's mailing address for these documents is:

National Institute for Certification in Engineering Technologies (NICET)
1420 King Street
Alexandria, VA 22314-2735
Phone: 703-684-2835

I have enclosed a copy of the pertinent regulations from the Fire Prevention Code.

Sincerely,



Frances Egan
Commissioner

encl: Regulations

ATTACHMENT TO LETTER OF FEBRUARY, 1998
TO LICENSED ELECTRICAL CONTRACTORS



Chapter 14 provisions related to low-income programs, Protection from Abuse Orders and medical certificate filings, and added some new regulations and reporting requirements. Chapter 14 rules apply to cash deposits; reconnection of service; termination of service; payment arrangements; and the filing of termination complaints by consumers for electric, gas and water. Under the law, a customer can only establish one payment arrangement with the PUC. The utility company has the discretion to offer more than one payment arrangement. The Public Utility Commission will work beginning in early 2015 to implement the new law with new and amended regulations, and continue to work with all parties to ensure compliance with the law, as well as protect the health and safety of Pennsylvanians. The Act protects responsible bill-paying customers from rate increases attributable to the uncollectible accounts of customers that can afford to pay their bills, but choose not to pay.

This fact sheet is designed to provide you with very important information regarding how the Act affects you and your utility service.

Your utility company can **SHUT OFF** your service if you **FAIL** to do the following:

- ✓ PAY YOUR BILL
- ✓ FOLLOW THROUGH ON PAYMENT ARRANGEMENTS
- ✓ PAY A DEPOSIT, IF REQUIRED
- ✓ ALLOW THE COMPANY ACCESS TO ITS EQUIPMENT

Before your service is shut off, your utility company will take the following steps:

- Send you a 10-Day Notice. Once you get the notice, the utility company has up to 60 days to shut off your service.
- Attempt to contact you three days prior to your shut-off date.
- During winter months (December 1 through March 31), if the utility company cannot reach you at the time of termination, they will leave a 48-hour notice at your residence.

Medical Certification

Your utility service will not be shut off if you or someone living in your home is certified as seriously ill by a licensed physician, physician's assistant or nurse practitioner. The utility company will require you to provide a letter from a licensed physician, physician's assistant or nurse practitioner, stating that shutting off your utility service will harm the ill person in the home.



The initial medical certification can be up to 30 days, with renewals possible.

You are still responsible to pay your bill even if there is a medical certificate for someone in your home.

The utility company can **SHUT OFF YOUR SERVICE WITHOUT GIVING YOU NOTICE** for the following reasons:

- ✓ STEALING UTILITY SERVICE
- ✓ GETTING SERVICE THROUGH FRAUD
- ✓ TAMPERING WITH YOUR METER
- ✓ UNSAFE SERVICE CONDITIONS
- ✓ GIVING THEM A BAD CHECK TO STOP TERMINATION

YOUR UTILITY SERVICE CAN BE SHUT OFF ANY WEEKDAY, EXCEPT FRIDAY.

If your service is shut off, the utility company will leave a notice telling you what you need to do to get your service restored.

Winter Termination

Your utility service can be shut off during the winter months (December 1 through March 31) without the PUC's prior approval if you fail to be a responsible utility customer, and provided that your household's income exceeds 250 percent of the federal poverty level (for customers of the Philadelphia Gas Works, the income exceeds 150 percent of the federal poverty level). The utility company will give you notice first and allow you the opportunity to contact them to make arrangements to avoid termination. If your income is low, you may qualify for special programs and termination protections. Please call your utility to see if you qualify.

P-12

Size of Household	150% of Poverty	250% of Poverty
1	\$1,030	\$1,545
2	\$1,375	\$2,080
3	\$1,720	\$2,615
4	\$2,065	\$3,150
For each additional person, add	\$335	\$525

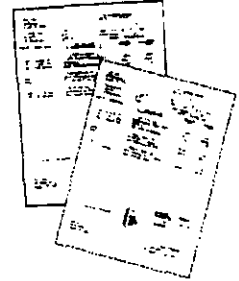
Note: Monthly Federal Poverty Income Guidelines are updated every February.
Source: Federal Register

If your service is shut off in the winter (December 1 through March 31), your utility service will be restored within 24 hours after you pay the bill and meet any other conditions of the utility company. Your service will be restored within three to seven days after you pay the bill and meet any other conditions of the utility company during the remaining months.

If your service is shut off, any adult who lived at the residence will be responsible to pay all or part of the overdue bill if that adult wants service restored in their name. Adult occupants include those over 18 years of age who lived with you during the time the outstanding balance accrued. If the utility company determines that an adult lived at the property by checking names on your mortgage, deed, lease or information from a credit reporting service, that adult will be responsible to pay all or part of the overdue bill. Payment to restore your service will depend on your household income and payment history.

In order to obtain new service or to reconnect service:

- You may be required to pay a deposit and a reconnect fee.
- If you have broken two or more prior payment arrangements, the utility company can require you to pay the full balance of your bill.
- Your utility company may require you to provide proof of income.



The utility company can require you to pay a deposit if:

- You do not have good credit or if you do have good credit, but have a bad payment history with the utility company.
- You are shut off for an overdue bill.
- If you miss or pay your bill late for two consecutive payments or three times in a 12-month period, you may have to pay a deposit.
- If you are eligible for a Customer Assistance Program (CAP), the utility should not require a deposit.

The amount of your deposit may be equal to two average monthly bills.

UNDER THE ACT, A CUSTOMER CAN ONLY ESTABLISH ONE PAYMENT ARRANGEMENT WITH THE PUC. THE UTILITY COMPANY, HOWEVER, COULD HAVE THE DISCRETION TO OFFER MORE THAN ONE PAYMENT ARRANGEMENT TO THE CUSTOMER.

- You must first contact your utility company to file a complaint or request payment arrangements. You have the right to decline the company's payment arrangement. While the PUC previously could use discretion in setting the terms of payment arrangements, under the Act, the PUC is provided with set payback periods based upon income level.
- If you break a payment arrangement you made with the company, the PUC may establish a payment arrangement using the pre-set payback amounts based upon income levels outlined in the Act. If you break a PUC payment arrangement, the PUC cannot help you unless your income level changed or you have a significant change in circumstances, such as:
 - Onset of chronic or acute illness that results in a significant loss of income.
 - Catastrophic damage to residence that resulted in significant cost to customer.
 - Loss of customer's residence.
 - Increase in the customer's number of dependents in the household.
- The utility company will work with you and explain programs that may help you depending on your income or hardship situation.
- If the outstanding balance that you owe includes unpaid charges from participation in a Customer Assistance Program (CAP), the law does not allow the PUC to establish a payment arrangement on your behalf. For those eligible to participate in a CAP, the CAP payment is usually the lowest monthly payment a utility company or the PUC can arrange for you. Your utility company determines your CAP payment by your household income and size.
- **Third Party Notification** - The third-party notification program provides additional protection against utility service shut-off. The program protects individuals who may either be away from their home for an extended time period or those who may not understand the utility company's guidelines. The program allows consumers to choose another person to receive copies of shut-off notices that are sent to them for non-payment of overdue utility bills. That person (family member or close friend) are made aware of situation before shut-off. The third party is not responsible for paying the bill. For more information about Third Party Notification contact your utility company.
- If you have a Protection from Abuse (PFA) order or a court order that provides clear evidence of domestic violence, you may receive special protections. If you need help, please contact your utility.

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FOR FURTHER INFORMATION, CONTACT THE PUBLIC UTILITY COMMISSION:

Write
PA Public Utility Commission
Bureau of Consumer Services
P.O. Box 3265
Harrisburg, PA 17105-3265

Visit our website
www.puc.pa.gov

Call
1-800-692-7380
TTY 1-877-710-7079
(for people with speech or hearing loss)

@PA_PUC

Facebook icon Pennsylvania Public Utility Commission

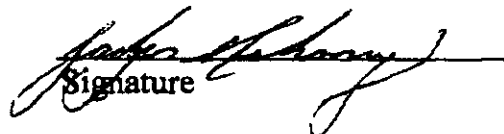


AFFIDAVIT

I Jaclyn Mahoney residing at 7512 Brentwood Road Philadelphia Pa. 19151 on May 18, 2016 and have never received ten (10) day shut of notice from PECO.

I further verify that statement made in this affidavit are true and correct to the best of my knowledge, information, and belief. I understand that false statements herein are made subject to the penalties of Pa. 18 C. S. §. 4909, relating to unsworn falsification to authorities.

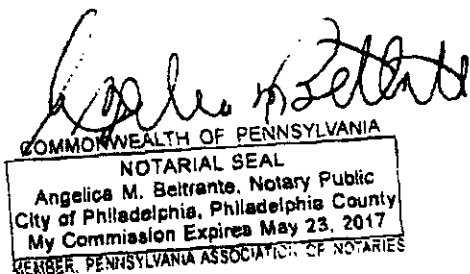
Date 7/21/16


Signature

Commonwealth of Pennsylvania Philadelphia County

BEFORE ME, the undersigned Notary Angelica M. Beltrante

On this day 21st July 2016, personally appeared Jaclyn Mahoney know to me to be a credible person and of lawful age, who being by me first duly sworn, on her oath deposes and says the above.



IN FILE JULY 29, 2016

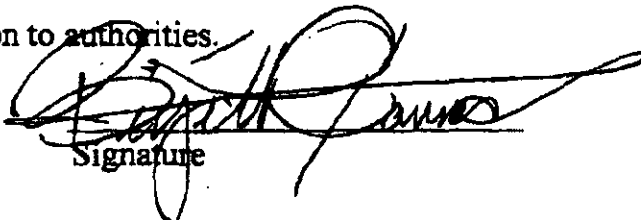
P-14

AFFIDAVIT

I Brijette Cannady residing at 7512 Brentwood Road Philadelphia Pa. 19151 on May 18, 2016 and have never received ten (10) day shut of notice from PECO.

I further verify that statement made in this affidavit are true and correct to the best of my knowledge, information , and belief. I understand that false statements herein are made subject to the penalties of Pa. 18 C. S. §. 4909, relating to unsworn falsification to authorities.

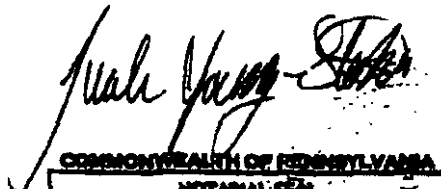
Date 8/20/16


Signature

Commonwealth of Pennsylvania Philadelphia County

BEFORE ME, the undersigned Notary Juele Young-Stokes

On this day 20 August 2016, personally appeared Brijette Cannady know to me to be a credible person and of lawful age, who being by me first duly sworn, on her oath deposes and says the above.


COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
JUELE YOUNG-STOKES, Notary Public
City of Philadelphia, Phila. County
My Commission Expires March 18, 2021.

IN FILE AUGUST 21, 2016 P-15

8-22-16 4:59



An Exelon Company

PECO
Customer Relations
2301 Market Street, N5-1
P.O. Box 8699
Philadelphia, PA 19101-8699

www.pECO.com

March 6, 2014

David Hatchigian
7512 Brentwood Rd
Philadelphia, PA 19151

Account Number: 84200-73247

Dear Mr. Hatchigian:

In response to the informal Complaint (BCS #03323044) that was filed with the Bureau of Consumer Services on 3/4/15.

I attempted to contact you at 610-446-7267 but there was no answer. I left a message requesting a call back.

The request for an Underwriters Certificate of Inspection for the above property was made based on a Company policy, not a law, statute or section of our tariff. The Company requires an Underwriter Certificate of Inspection to protect the safety of our customer's and their property before service is energized under the following conditions:

- Hazardous Condition
- Unsafe Condition
- Meter Removed
- Service is off 6 months or longer
- Judgment of the Company

Service for the above address was energized and a new service account was initiated for the tenant upon receipt of the Underwriters Certificate of Inspection.

If you have any additional questions or concerns, I can be reached at 215-841-4362.

This information will be provided to the Public Utility Commission. The Public Utility Commission will notify you of their decision.

Cordially,

Deborah Shinn
Business Analyst

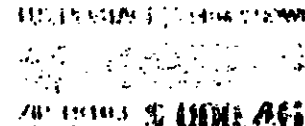
P-17
Case ID: 160800065
PLANTIFF EXI



PECO.

An Exelon Company

PECO
Customer Strategies & Support
2303 Market Street, N5-1
PO Box 8699
Philadelphia, PA 19101-8699



DS 45 MAILED AT 090 03-10-2015

**David Hatchigian
7512 Brentwood Rd
Philadelphia, PA 19151**

POSTNET 19151



P-18

Case ID: 160800065

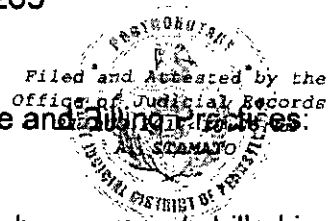
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7-5-2017 2:49



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE



The following definitions apply when considering Customer Service and Billing Practices:

Account Balance: The amount of current service which has been properly billed in addition to any accrued arrearages.

Delinquent Account: Charges for utility service that have not been paid in full by the due date stated on the bill or otherwise agreed upon; provided that the account may not be deemed delinquent if: prior to the due date, a payment or settlement agreement with the utility has been entered into by the ratepayer, a timely filed notice of dispute is pending before the utility, or, an informal or formal complaint is timely filed with and is pending before the Commission.

Discontinuance of Service: The cessation of service with the consent of the ratepayer.

Payment Agreement: A mutually satisfactory written agreement whereby a ratepayer or applicant who admits liability for billed service is permitted to amortize or pay the unpaid balance of the account in one or more payments over a reasonable period of time.

Reasonable Period of Time: The utility, through its employees, shall exercise good faith and fair judgment in attempting to enter a reasonable settlement or payment agreement or otherwise equitably to resolve the matter. Factors to be taken into account when attempting to enter into a reasonable settlement or payment agreement include the size of the unpaid balance, the ability of the ratepayer to pay, the payment history of the ratepayer and the length of time over which the bill accumulated.

Termination of Service: Cessation of service, whether temporary or permanent, without the consent of the ratepayer.

Unauthorized use of utility service: Unreasonable interference or diversion of service, including meter tampering (any act which affects the proper registration of service through a meter), by-passing (unmetered service that flows through a device connected between a service line and customer-owned facilities), and unauthorized service restoral.

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PENNSYLVANIA PUBLIC UTILITY COMMISSION
Bureau of Consumer Services / Chapter 56 Information Sheet

Standard Residential Service Termination Procedures
(52 PA Code §56.91-.99)

Chapter 56 of the Commission's regulations explains termination of service procedures for nonpayment of residential bills. The following is an outline of those procedures for standard residential service accounts:

1. **Ten (10) Days Prior to Service Termination**

Mail or deliver a written notice to the customer at least ten (10) days prior to the proposed date of termination (§56.91). (see Attachment A)

2. **Three (3) Days Prior to Service Termination**

Attempt to make personal contact, by telephone on two separate days at two different times of day or one time in person, at least three (3) days prior to the proposed termination date (§56.93). (see Attachment B)

3. **Day of Service Termination**

- a. Make personal contact on the date of termination with a responsible adult. If personal contact is made, the company may terminate service.
- b. If no personal contact is made, the company must leave another notice and wait forty-eight (48) hours before terminating service. After forty-eight (48) hours service termination is permitted (§56.94). (see Attachment C).
- c. When service is terminated, a post termination notice must be left at the affected dwelling (§56.95) (see Attachment D).

p-2d

Other issues to remember are:

1. Terminations are prohibited on Friday, Saturday, Sunday, a bank holiday, a Commission holiday, or any day preceding a holiday described above (§56.82).
2. Companies must comply with the medical emergency provisions (§56.111-.118).
3. If the customer contacts the company to dispute either the bill or the specific reason for termination, the company is to make a diligent attempt to settle the dispute. The company is to explain its position if they cannot reach a mutually satisfactory conclusion.
4. In all cases, the customer has ten (10) days to appeal the company's decision to the Commission. The company must inform the customer of this right. This is called an appeal period and the company cannot take any action to terminate until after the appeal period. Chapter 56.141 - .181 further outlines the requirements for handling disputes.

Please read Subchapter F of Chapter 56 for further details on the termination process.

The following four pages are samples of the termination notices to be used in this process. The Bureau suggests that companies use similar formats.

That pursuant to 52 Pa. Code §1.96, this informal opinion is provided solely as an aid to you. It is not binding upon the Commonwealth or the Commission. Informal opinions are subject to withdrawal or change at any time to conform to new or different interpretations the law.

Attachment A

Date, 2009

Date Notice Issued

10-DAY SHUT OFF NOTICE

Your bill for **\$XXX.xx** is overdue. Because your bill is overdue, we will shut off natural gas service to **Service address** on or after **Time a.m./p.m.** on **Date, 2009**.

To stop the shut off, you must do one (1) of the following at once:

1. Pay the total amount overdue.
2. Call **Company phone number** or visit **Company address** to make a payment, to let us know that you made a payment; or to dispute the overdue bill.
4. Call **Company phone number** if you or someone in your home has a serious illness or a medical condition. Read the Medical Emergency Notice shown below.

MEDICAL EMERGENCY NOTICE

If someone living in your home is seriously ill, we will turn your natural gas service back on during this illness if you do two (2) things:

1. Have a doctor certify by phone or in writing to the Company that the illness exists and that the person will be in danger if you do not have natural gas service.

AND

2. Make arrangements to pay your overdue and current bills by calling the **Company Name at Company phone number**.

If we shut off your natural gas service, you may have to pay the following charges to have your natural gas service turned back on.

Overdue Amount	\$XXX.xx
Turn-on Charge	\$ XX.xx
Security Deposit	\$ _____
Total Amount Due	<u>\$XXX.xx</u>

If you have questions or need more information, please call us. If you are not satisfied after you talk to us, you may file a complaint with the Public Utility Commission by calling (800)-692-7380 toll free, or by writing to P. O. Box 3265, Harrisburg, PA 17105-3265. The Public Utility Commission will delay the shut off if you file the complaint before the shut off date.

Attachment B

Date, 2009

Date Notice Issued

3-DAY SHUT OFF NOTICE

Your bill for **\$XXX.xx** is overdue. Because your bill is overdue, we will shut off natural gas service to **Service address** or after **Time a.m./p.m.** on **Date, 2009**.

To stop the shut off, you must do one (1) of the following at once:

1. Pay the total amount overdue.
2. Call **Company phone number** or visit **Company address** to make a payment, to let us know that you made a payment; or to dispute the overdue bill.
3. Call **Company phone number** if you or someone in your home has a serious illness or a medical condition. Read the Medical Emergency Notice shown below.

MEDICAL EMERGENCY NOTICE

If someone living in your home is seriously ill, we will turn your natural gas service back on during this illness if you do two (2) things:

1. Have a doctor certify by phone or in writing to the Company that the illness exists and that the person will be in danger if you do not have natural gas service.

AND

2. Make arrangements to pay your overdue and current bills by calling **Company name at Company phone number**.

If we shut off your natural gas service, you may have to pay the following charges to have your natural gas service turned back on.

Overdue Amount	\$XXX.xx
Turn-on Charge	\$ XX.xx
Security Deposit	\$ _____
Total Amount Due	<u>XXX.xx</u>

If you have questions or need more information, please call us. If you are not satisfied after you talk to us, you may file a complaint with the Public Utility Commission by calling (800)-692-7380 toll free, or by writing to P. O. Box 3265, Harrisburg, PA 17105-3265. The Public Utility Commission will delay the shut off if you file the complaint before the shut off date.

P-24

Case ID: 160800065

Attachment C

Date, 2009

Date Notice Issued

48-HOUR SHUT OFF NOTICE

Your bill for **\$XXX.xx** is overdue. Because your bill is overdue, we will shut off natural gas service to **Service address** on or after **Time a.m./p.m.** on **Date, 2009**

To stop the shut off, you must do one (1) of the following at once:

1. Pay the total amount overdue.
2. Call **Company phone number** or visit **Company address** to make a payment, to let us know that you made a payment; or to dispute the overdue bill.
3. Call **Company phone number** if you or someone in your home has a serious illness or a medical condition. Read the Medical Emergency Notice shown below.

MEDICAL EMERGENCY NOTICE

If someone living in your home is seriously ill, we will turn your natural gas service back on during this illness if you do two (2) things:

1. Have a doctor certify by phone or in writing to the Company that the illness exists and that the person will be in danger if you do not have natural gas service.

AND

2. Make arrangements to pay your overdue and current bills by calling **Company name at Company phone number.**

If we shut off your natural gas service, you may have to pay the following charges to have your natural gas service turned back on.

Overdue Amount	\$XXX.xx
Turn-on Charge	\$ XX.xx
Security Deposit	
Total Amount Due	<u>\$XXX.xx</u>

If you have questions or need more information, please call us. If you are not satisfied after you talk to us, you may file a complaint with the Public Utility Commission by calling (800)-692-7380 toll free, or by writing to P. O. Box 3265, Harrisburg, PA 17105-3265. The Public Utility Commission will delay the shut off if you file the complaint before the shut off date.

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Case ID: 160800065

Attachment D

NOTICE AFTER NATURAL GAS SERVICE IS SHUT OFF

Because you did not pay your overdue bill, we shut off natural gas service to **Service address** on **Date, 2009** at **Time** a.m./p.m.

To have your natural gas service turned on, you must do **all** of the following:

- 1) Call **Company phone number** or visit **Company address** to make arrangements to pay the unpaid balance of **\$XXX.xx**;
- 2) Pay a turn-on fee of **\$ XX.xx**;
- 3) Pay a security deposit (if required).

MEDICAL EMERGENCY NOTICE

If someone living in your home is seriously ill, we will turn your natural gas service back on during this illness if you do two (2) things:

1. Have a doctor certify by phone or in writing to the Company that the illness exists and that the person will be in danger if you do not have natural gas service.

AND

2. Make arrangements to pay your overdue and current bills by calling **Company name** at **Company phone number**.

P-25



Mr. David Hatchigian
 2414 W Township Line Rd
 Havertown, PA 19083



1006



17120

U.S. POSTAGE PAID
 PM 2-Day
 VILLANOVA, PA
 19085
 MAR 16, 20
 AMOUNT

\$7.50

R2304H109645-97

*Rosemary Chavetta, Secretary
 Pennsylvania Public Utility Commission
 Commonwealth Second Floor
 400 North Street Second Floor
 Harrisburg, Pa 17120*

EXPECTED DELIVERY DAY: 03/18/20

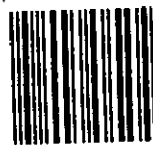
USPS TRACKING # NUMBER

9505 5141 4857 9100 7805 4607 93

DAVID HATCHIGIAN
2414 Township Line Road
Havertown, PA 19083-5236



PHILADELPHIA
PA 19101
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17120

U.S. POSTAGE PAID
FCM LETTER
VILLANOVA, PA
19085
JUL 03, 20
AMOUNT
\$0.70
R2305K143071-3

RECEIVED

JUL 16 2020

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

*Rosemary Chavetto, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, Pa 17120*