

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Deborah Amaker

v.

PECO Energy Company

:
:
:
:

F-02231549

INITIAL DECISION

Before
Veronica A. Smith
Chief Administrative Law Judge

HISTORY OF THE PROCEEDING

On July 9, 2007, Deborah Amaker (Ms. Amaker or Complainant) filed a Formal Complaint with the Commission against PECO Energy Company (Respondent or PECO) alleging an inability to pay her natural gas and electric bill. Complainant states that PECO has been inflexible in allowing her to reduce her bill to less than \$200.00, which Complainant considers a reasonable amount at this time. As relief, Complainant requests that the Commission establish an affordable payment arrangement.

On August 27, 2007¹, Respondent filed an Answer with New Matter and a Preliminary Objection requesting dismissal of the Complaint on the basis that jurisdiction for a payment arrangement on Complainant's outstanding account balance is not properly before the Commission.

According to Commission records, as of August 6, 2008, Complainant did not file a response to either the Preliminary Objection² or the New Matter³ portion of Respondent's

¹ Respondent was served with a copy of the Complaint on August 6, 2007.

² Pursuant to 52 Pa. Code §5.101(f) a response to the Preliminary Objection was due on or before September 8, 2007.

³ Pursuant to 52 Pa. Code §5.63 Complainant's response to New Matter was due on or before September 18, 2007.

Answer. Therefore, the factual allegations raised as New Matter are deemed admitted⁴. This matter was assigned to me by Motion Judge Assignment Notice dated September 7, 2007. The Respondent's Preliminary Objection is ripe for ruling.

FINDINGS OF FACT

1. Complainant is Deborah Amaker, 651 Corson Street, Norristown, Pennsylvania 19401.
2. Respondent is PECO Energy Company.
3. On July 9, 2007, Deborah Amaker (Complainant) filed a Formal Complaint with the Commission against PECO Energy Company (Respondent or PECO) alleging an inability to pay her natural gas and electric bill. Complainant states that PECO has been inflexible in allowing her to reduce her bill to less than \$200.00, which Complainant considers a reasonable amount at this time. As relief, Complainant requests that the Commission establish an affordable payment arrangement.
4. Complainant was approved and enrolled in Respondent's Customer Assistance Program (CAP). The Complainant receives a 50% discount on the first 500 kilowatt hours of electric service each month and 25% discount on the first 500 cubic feet of natural gas service each month. Respondent's New Matter, ¶ 1.
5. On August 27, 2007, Respondent filed a Preliminary Objection requesting dismissal of the Complaint on the basis that CAP rates are not subject to payment agreements negotiated or approved by the Commission.
6. Complainant did not file a response to the Preliminary Objection.

⁴ The Commission's regulations state: "Failure to file a timely reply to new matter may be deemed in default, and relevant facts stated in the new matter may be deemed admitted." 52 Pa. Code §5.63(b).

DISCUSSION

Before the Commission is a Complaint and a Motion to Dismiss the Complaint on the basis that the CAP rates are not subject to payment agreements negotiated or approved by the Commission.

The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections. 52 Pa. Code §§5.101-5.103. Preliminary Objections practice before the Commission is similar to Pennsylvania civil practice regarding the filing of preliminary objections. Equitable Small Transportation Interveners v. Equitable Gas Company, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources, 406 A.2d 1020 (Pa. 1979); Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc., 595 A.2d 172 (Pa. Super. 1991). The Commission has adopted this standard. Montague v. Philadelphia Electric Company, 66 Pa. PUC 24 (1988):

The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the preliminary objection, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. County of Allegheny v. Commw. of Pa., 490 A.2d 402 (1985); Commw. of Pa. v. The Bell Telephone Co. of Pa., 551 A.2d 602 (Pa. Commw. 1988). The objection may be granted only if the moving party prevails as a matter of law. Roc v. Flaherty, 527 A.2d 211 (Pa. Commw. 1985). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. Dept. of Auditor General, et al. v. State Employees' Retirement System, et al., 836 A.2d 1053, 1064 (Pa. Commw. 2003) citing, Boyd v. Ward, 802 A.2d 705 (Pa. Commw. 2002).

The Responsible Utility Customer Protection Act ("Act"), 66 Pa. C.S. §1401, *et seq.*, applies to this proceeding and provides strict guidelines that the Commission must follow in handling customer complaints. Section 1405(c) of the Public Utility Code reads as follows:

(C) Customer Assistance Programs. – Customer assistance program rates shall be timely paid and shall not be the subject of payment agreements negotiated or approved by the commission.

66 Pa. C.S. §1405(c). The General Assembly has made it clear that the Commission lacks the authority to establish payment arrangements for customers participating in CAP programs offered by public utilities.

Section 1403 of the Public Utility Code defines a CAP program as follows:

A plan or program sponsored by a public utility for the purpose of providing universal service and energy conservation, as defined by Section 2202 (relating to definitions) or Section 2803 (relating to definitions), in which customers make monthly payments based on household income and household size and under which customers must comply with certain responsibilities and restrictions in order to remain eligible for the program.

66 Pa. C.S. §1403 (Definition of “Customer Assistance Program”).

Complainant participates in Respondent’s CAP rate program and receives discounted electric and natural gas service. Ms. Amaker receives a 50% discount on the first 500 kilowatt hours of electric service each month and 25% discount on the first 500 cubic feet of natural gas service each month. The discount received by a customer enrolled in Respondent’s CAP program is based upon household income and size in relation to the federal poverty guidelines. Respondent’s CAP program meets the requirements of 66 Pa. C.S. §1403. Therefore, consistent with the provisions of the Act, the Commission is without authority to issue a payment arrangement on Ms. Amaker’s account.

The Commission is granted discretion to dismiss a complaint without a hearing if a hearing is not necessary in the public interest. 66 Pa. C.S. §703(b); 52 Pa. Code §5.21(d). A hearing is necessary only to resolve disputed questions of fact and is not required to resolve questions of law, policy or discretion. Dee-Dee Cab, Inc. v. Pa. Public Utility Comm., 817 A.2d 593 (Pa. Commw. 2003), petition for allowance of appeal denied, 836 A.2d 123 (2003). This case does not involve disputed questions of fact. The questions presented by Respondent’s Preliminary Objection are questions of law only. A hearing in this case is not necessary or in the

public interest and would be a fruitless exercise. Therefore, Respondent's Preliminary Objection will be sustained and this Complaint will be dismissed.

CONCLUSIONS OF LAW

1. Commission regulations provide for the filing of Preliminary Objections. 52 Pa. Code §5.101.
2. The Responsible Utility Customer Protection Act, 66 Pa. C.S. §1401, *et seq.*, applies to this proceeding.
3. The Commission lacks the authority to establish payment arrangements for customers participating in CAP programs offered by public utilities, pursuant to 66 Pa. C.S. §1405(c).
4. Respondent's CAP program meets the requirements of 66 Pa. C.S. §1403.
5. The Commission may dismiss a complaint without a hearing if a hearing is not necessary or in the public interest.

ORDER

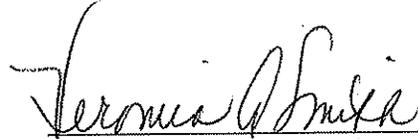
THEREFORE,

IT IS ORDERED:

1. That PECO Energy Company's Preliminary Objection seeking dismissal of the Complaint filed by Deborah Amaker at Docket No. F-02231549 is sustained.

2. That the Complaint filed by Deborah Amaker, against PECO Energy Company, at Docket No. F-02231549 is dismissed.

Dated: August 6, 2008



Veronica A. Smith
Chief Administrative Law Judge