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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MAY 4 2011

MARK MAZZA

PA. PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

v.

DOCKET NO. C-2010-2171324

PECO ENERGY COMPANY

PRELIMINARY OBJECTION OF RESPONDENT,
PECO ENERGY COMPANY

Respondent, PECO Energy Company ("PECO"), pursuant to 52 Pa. Code §5.101(6), respectfully petitions this Honorable Commission to dismiss the instant complaint as there are presently three other actions open regarding the same issues.

1. Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil procedure.¹
2. In deciding preliminary objections, the Public Utility Commission must determine, based on the factual pleadings of the petitioner, if relief or recovery is possible.²
3. A complaint must be able to recover under the law to survive a preliminary objection.³
4. On July 10, 2009, PECO was served with a formal complaint filed by Complainant at docket number C-2009-2118230. Complainant alleged improper termination notice and requested a payment agreement. A copy of the Complaint is attached as Exhibit 1.
5. On July 22, 2009, PECO received a second formal complaint at docket number C-2009-212041. Complainant raised the same allegations in this complaint. Complainant alleged

¹ *Equitable Small Transportation Interveners v. Equitable Gas Co.*, 1994 Pa.PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994)

² 2006 Pa. PUC Lexis 111, *7.

³ *Milliner v. Enck*, 709 A.2d 417, 418 (Pa. Super. Ct. 1998) ("preliminary objection should be sustained only where it appears with certainty that, upon the facts averred, the law will not allow the plaintiff to recover").

improper termination notice and requested a payment agreement. A copy of the Complaint is attached as Exhibit 2.

6. On July 30, 2009, PECO filed an Answer and Motion to consolidate the two matters. On September 16, 2009, the Motion to Consolidate was granted. By hearing notice dated March 15, 2010, the hearing was scheduled for April 13, 2010. The initial hearing convened as scheduled and a further hearing was held on June 15, 2010.

7. On August 17, 2010, the presiding officer issued a decision dismissing the complaint as it relates to the termination allegations, and granting Complainant a twenty-four month payment agreement to satisfy his balance. A copy of the initial decision is attached as Exhibit 3.

8. On September 29, 2010, Complainant filed exceptions claiming that his constitutional rights were violated and the agreement was improper.

9. By Order dated December 6, 2010, the Commission upheld the initial decision of the Administrative Law Judge. A copy of the Order is attached as Exhibit 4.

10. Complainant filed an appeal to the Commonwealth Court which is currently pending.

11. On April 21, 2010, PECO was served with a third complaint at docket number C-2010-2171324 filed by Mr. Mazza. Complainant again alleged improper termination notice and requests a payment agreement. Complainant also requests that PECO be ordered to reduce his account balance given his inability to pay. A copy of the Complaint is attached as Exhibit 5.

12. PECO Energy filed an Answer and Preliminary Objection for pendency of a prior proceeding on May 11, 2010. This complaint is also open and PECO has not received a ruling on the preliminary objection. A motion judge was assigned on April 15, 2011.

13. Complainant, a former attorney, has instigated four actions against PECO Energy regarding the same issues: his alleged inability to pay for services consumed, and PECO's

termination practices. All three other actions are open, including an open docket with the Commission.

14. PECO request that the instant complaint be dismissed for pendency of a prior proceeding to save the time, resources and the expense of the parties and the Commission of having multiple hearings on the same issues.

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

Respectfully Submitted,



Tishkia Williams
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
(215) 841-6841
Fax: 215.568.3389

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MARK MAZZA	:	
Complainant	:	
v.	:	DOCKET NO. C-2011-2235775
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

VERIFICATION

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

Date: May 4, 2011



Tishekia Williams

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MARK MAZZA	:	
Complainant	:	
v.	:	DOCKET NO. C-2011-2235775
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

CERTIFICATE OF SERVICE

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

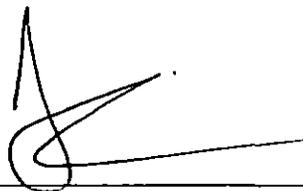
Mark Mazza
1271 Farm Road
Berwyn, PA 19312

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Dated at Philadelphia, Pennsylvania, May 4, 2011.

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU



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Counsel for PECO Energy Company
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PECO ENERGY COMPANY	:	
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NOTICE TO PLEAD

Pursuant to 52 Pa. Code §§ 5.102 and 5.62(c), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Preliminary Objection of PECO Energy Company, within 10 days from service of this notice, your case may be dismissed. All pleadings, such as a Reply to Motions must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Tishekia Williams, and where applicable, the Administrative Law Judge presiding over the issue.

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

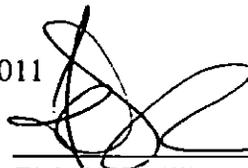
With a copy to:
Tishekia Williams, Esq.
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103

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SECRETARY'S BUREAU

Dated at Philadelphia, PA, May 4, 2011



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