

ORIGINAL

RECEIVED

2011 JUN 20 AM 10:34 BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

| | | |
|----------------------|---|---------------------------|
| LINDA BERKERY, | : | |
| SECRETARY'S BUREAU | : | |
| v. | : | DOCKET NO. C-2010-2170223 |
| | : | |
| PECO ENERGY COMPANY, | : | |
| Respondent | : | |
| | : | |

EXCEPTIONS OF THE COMPLAINANT, LINDA BERKERY, TO THE INITIAL DECISION OF THE OFFICE OF ADMINISTRATIVE LAW JUDGE, per HON. KY VAN NGUYEN, of MAY 25, 2011

The Complainant, Linda Berkery, hereby makes the following exceptions to the Initial Decision of the Administrative Law Judge (ALJ), Ky Van Nguyen, of May 25, 2011, received by the Complainant on May 28, 2011, and in support of same, avers as follows:

1. The Statement by the ALJ at page one of his Decision, that "because she is a CAP (Customer Assistance Program) rate customer, she is not responsible for any late charges" is false. Complainant said that once a CAP payment is approved and in place, late charges based on former amounts owing are not supposed to continue. Further, and even more important, the ALJ totally ignored PECO's practice of computing late charges by basing their late-charge percentage on not only their own bill, but bills of other suppliers.

2. It is undisputed that not only did any alleged agreement between the Complainant and ACN Energy (later Commerce Energy "Commerce") for electric and gas service encompass a period beginning in 2003 and ending in 2008 (between 8 and 3 years ago), but neither company could produce any executed contract between the Complainant and ACN/Commerce. Instead, Commerce merely supplied a blank contract which was of no

legal significance whatsoever.

The citation used by the ALJ (p. 3) to accept this explanation is unavailing. 52 Pa. Code §56.202 provides as follows:

§ 56.202. Record maintenance.

A utility shall preserve for a minimum of 4 years written or recorded disputes and complaints, shall keep the records within this Commonwealth at an office located in the territory served by it, and shall make the records available for examination by the Commission or its staff. Information to be maintained shall include the following: (1) The payment performance of each of its ratepayers. (2) The number of settlement agreements made by the utility company and a synopsis of the terms, conditions and standards upon which agreements were made. (3) The number of service terminations and reconnections. (4) Communications to or from individual ratepayers regarding interruptions, discontinuances, terminations and reconnections of service, including the name and address of the ratepayer, the date and character of the dispute or complaint and the adjustment or disposal made of the matter.

What Complainant asked Commerce to produce was the original signed contract between ACN/Commerce and the Complainant. It did not involve “written or recorded disputes or complaints; the payment performance of each of its ratepayers; the number of settlement agreements made by the utility company and a synopsis of the terms, conditions, and standards upon which the agreements were made; the number of service terminations and reconnections; or communications to or from individual ratepayers regarding interruptions, discontinuances, terminations and reconnections of service, including the name and address of the ratepayer, the date and character of the dispute or complaint and the adjustment or disposal made of the matter.”

52 Pa. §56.202 does not provide for the keeping of the contract requested, which was the gravamen of the terms and provisions of any service to the Complainant by the provider. It is ironic that Commerce seeks to hide behind a “minimum of four years” inapplicable statute and can’t provide the service contract but that it can and does provide alleged billing records going back eight years..

It is Complainant’s contention that the validity of any alleged bills for service

submitted by Commerce and/or PECO on Commerce's behalf, stand or fall on the executed service contract at the inception of service, which they either cannot or will not produce.

COMPLAINANT'S EXCEPTIONS TO THE ALJ'S FINDINGS OF FACT (FF)

3. The ALJ needed to include dates wherein the Respondent, PECO, began to provide "gas and electric services" since as stated above, there was also another provider before PECO (FF 1)(p. 4).

4. There is no proof in the form of a service contract proving that "The Complainant signed up her electricity with ACN between September 18, 2003 and November 17, 2004" (FF 2)(p. 4), or that "The Complainant signed up for her gas with ACN Energy between September 18, 2003 and November 17, 2004 (FF 3)(p. 4).

5. The ALJ at FF 5 took no account that the reason for the spotty payment history was that Complainant was fighting every month to get a correct or at least understandable bill from PECO and wanted her payments applied to her monthly charges, and not some trumped-up late charges computed on an unverified amount to the former supplier for alleged charges going back years, and also to so-called "Budget Billing" charges when Complainant has not been on a budget for years. While this matter is sub-judice, Complainant was assured the monthly charges would be applied and has made every payment on time since bringing this action. (p. 4-5)

6. At FF 9, Complainant take exception to the ALJ's finding that "Complainant owed the Respondent \$17,119.00". This amount not only included an alleged balance to Commerce of \$5503.30, which Complainant vigorously disputes for the reasons stated above, but the PECO balance is computed including exorbitant, falsely computed, and

usurious late charges, some of which are based on alleged electric supply charges from ACN and/or Commerce which were later dropped by PECO. These charges also are based on so-called “Budget Billing” charges from PECO when Complainant was not on a budget. PECO still continues to assess such charges on current bills.

7. Complainant takes exception to the ALJ’s FF 11 (p. 5) on its face and as stated.

8. Complainant takes exception to the ALJ’s conclusion at his “DISCUSSION” (pp. 6-7) that “the Complainant has to pay the CAP rates and is not entitled to an agreement negotiated or approved by the Commission.” Nowhere from the inception of these proceedings, did Complainant ever seek the Commission’s aid in not paying legitimate CAP charges, only that the huge false charges billed by PECO, such as Commerce charges without substantiation or supported by a written contract; late charges based on unsubstantiated Commerce charges and Commerce charges for electric which PECO abandoned; and charges based on non-existent “Budget Billing” charges, be declared void. The ALJ is therefore creating a red herring in this talk of “negotiating or approving an agreement when a complainant is participating in a utility’s Customer Assistance Program” and quoting for authority 66 Pa. C.S. §1405(c) (p. 7) which provides::

66 Pa. C.S. §1405(c) provides:

- (b) Customer assistance programs. – Customer assistance programs rates shall be timely paid and shall not be the subject of payment agreements negotiated or approved by the Commission.

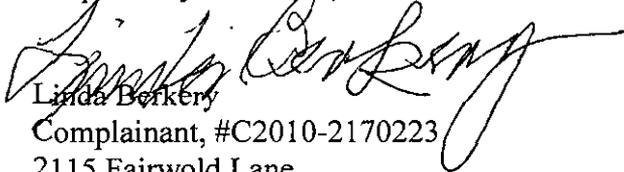
That provisions is a total non-sequitur to Complainant’s complaint and is solely used by the ALJ to lend some sort of legal authority to his avoidance of the real issues in this matter. To repeat, Complainant has no problem with the CAP program and appreciates its benefits. She has never sought any sort of PUC negotiation or payment

agreement in regard to the CAP Program (p. 8).

CONCLUSION

For the reasons stated above, Complainant moves the Commission to reverse the ruling of the ALJ in this matter and to adjudicate the real issues of PECO overbilling in the matter of Complainant's monthly bills over and above her true usage.

Respectfully submitted,



Linda Berkery
Complainant, #C2010-2170223
2115 Fairwold Lane
Fort Washington, PA 19034

DATED: June 12, 2011

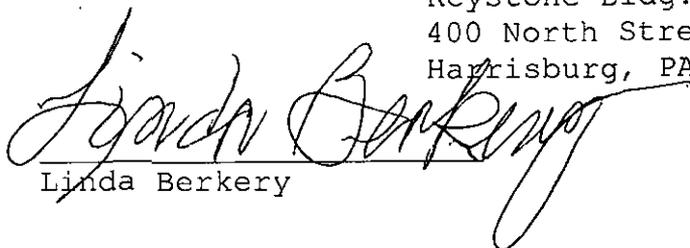
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of Complainant's Exceptions to the Initial Decision of the ALJ dated May 25, 2011, was served by me via first-class mail, prepaid, on this 13th day of June, 2011, upon the following:

Michael A. Gruin, Esq.
Stevens & Lee
17 N. 2nd St., 16th fl.
Harrisburg, PA 17101
(Counsel for Respondent PECO)

Lauren M. Lepkoski, Esq.
Buchanan, Ingersoll, & Rooney PC
17 N. 2nd St., 15th fl.
Harrisburg, PA 17101-1503
(Counsel for Commerce Energy Inc.)

Office of Special Assistants,
Keystone Bldg., 3rd fl.
400 North Street
Harrisburg, PA 17105-3265

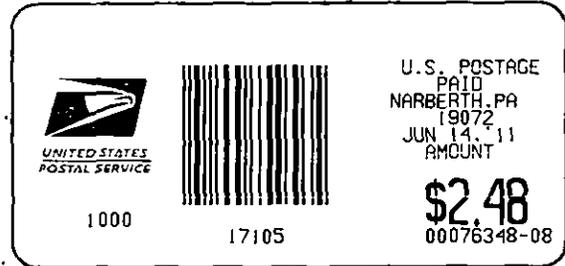


Linda Berkery

RECEIVED
2011 JUN 20 AM 10:34
PA P.U.C.
SECRETARY'S BUREAU

L. BERKERY
2115 FAIRWOLD LN.
FT. WASHINGTON, PA

19034



ROSEMARY CHIARETTA, Secty., PUC
KEYSTONE BLDG, 2ND FL.
400 NORTH ST.
HARRISBURG, PA 17105