

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

York Road Realty Company	:	
	:	
v.	:	Docket No. C-2010-2176164
	:	
PECO Energy Company	:	

**EXCEPTIONS OF
YORK ROAD REALTY COMPANY**

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Date: July 5, 2011

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I. Introduction

York Road Realty Company (“York”) submits these Exceptions to the Initial Decision (“Decision”), in York Road Realty Company v. PECO Energy Company, Docket No. C-2010-2176164, dated June 14, 2011.

II. Exceptions

A. Exception No. 1— Finding of Fact #13 should state that Complainant failed to file responsive pleadings in this matter because Complainant was not represented by counsel. (See page 3 of the Decision). The finding of fact that Complainant failed to file a response to PECO’s Motion for Judgment on the Pleadings, presents an incomplete statement of the facts on the record. While it is agreed that Complainant did not file a response to PECO’s Motion for Judgment on the Pleadings, Findings of Fact #13 should also state that Complaint’s failure to file this response and other pleadings in this matter was due to the fact that Complainant only recently retained counsel for these matters. This “without-counsel” status is noted at Paragraphs 2 and 3 on page 2 of the Decision. As such, Complainant was unable to file answers/pleadings/responses since Complainant was a commercial customer.

The additional facts are important as Complainant has raised worthy objections and complaints, and seeks a good and decent resolution of the issues in this case.

B. Exception No. 2—Conclusion of Law #2 states the standard for granting a motion for judgment on the pleadings, yet the motion should not be granted, here, where there are genuine issues of material fact in this matter as to whether Respondent should require a deposit from Complainant (Conclusion of Law #2, a page 9).

Complainant raised the issue that a deposit should not be required here and provided facts in support of this assertion. Since Respondent failed to provide evidence or proof to the contrary, these issues remain unresolved and still in dispute. Since there are genuine issues of material fact that have a bearing on the outcome of the case, a motion for judgment on the pleadings should be denied.

C. Exception Nos. 3 and 4—Conclusions of Law 3 and 4 state relevant statutory and case law, but fail to note that these statutes, regulations, and tariffs were written with permissive rather than mandatory language and so a public utility company can forego imposing a deposit and Respondent failed to provide sufficient facts or proof to justify imposing this requirement on Complainant.

Complainant takes exception with Conclusion of Law #3 and #4, at page 9 of the Decision.

First, as discussed in Conclusion of Law 3, at page 9 of the Decision, 66 Pa. C.S. Section 1305 and 52 Pa. Code Section 53.82 state that “Commission statutes and regulations permit a public utility company to require deposits to secure future payments of rates.” (See page 4 of the Decision). Similarly, Conclusion of Law 4, at page 9, notes that “public utility tariffs have the force and effect of law and are binding on the public utility and its customers.” This tariff as discussed on page 7 of the Decision “provides for the imposition of deposits to current customers....” Yet, this language, as contained in the statutes, regulations, and in the tariff, is permissive, rather than mandatory in nature. Respondent and the Decision cite no affirmative duty or strict obligation to require a deposit of any customer. Therefore, while Respondent is “permitted” to do so,

Respondent is not obligated to require a deposit and failed to prove the need for a deposit here.

Further, Respondent is requiring a “deposit to secure future payments of rates” (See 52 Pa. Code Section 53.82). Here, the Complainant paid its utility bills late at times, but still paid said bills and paid the late charges. The Complaint states the hardship it will suffer and the need to forego the deposit. These facts support NOT requiring a deposit, which the Decision fails to address. Just because you can do a thing, does not mean the thing should be done. Here, the Complainant is late because of timing issues due to the economy and the cyclical nature of its business. (See page 5 of the Decision, citing Paragraphs 4 and 5 of the Complaint). Also, one who pays late is different from one who does not pay at all; the “late payer” is trying to satisfy its obligations and is arguably acting in good faith.

All these factors support leaving as much capital in the hands of this business for its day-to-day operations so that Respondent can continue to pay its utility bills, rather than locking these funds in deposits that may never be called upon. As previously stated, there is no claim of default, here.

Therefore, Conclusions of Law #3 and #4 should be revised to reflect that Respondent is not obligated to require a deposit, here, and Complainant has a right to prove at a hearing or has provided sufficient proof in its Complaint to forego the requirement of a deposit, here.

D. Exception No. 5--Conclusion of Law #5 states that a formal complaint must set forth “the act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any law which the commission has jurisdiction to

administer or any regulation or order of the commission'. [66 Pa. C.S. Section 701]", but fails to conclude that the Complaint essentially sets forth a violation of the application of the regulations and statutes governing deposits, as Respondent failed to prove it was proper a use of its statutory power or in the public interest to require a deposit here, from Complainant.

Complainant takes exception with Conclusion of Law No. 5, at page 9 of the Decision. In the Complaint, Complainant was not represented by counsel, but nonetheless effectively and clearly stated that the requirement of the deposit by Respondent would create hardship and hinder, rather than facilitate, the payment of the utility bills. The statements, as set forth in the Complaint at Paragraphs 4 and 5, and restated at page 5 of the Decision, raise the issue that Respondent is violating applicable regulations and statutes.

Complainant filed a formal complaint, which one is permitted to file pursuant to 52 Pa. C.S. Section 5.21, when "...a person complaining of an act done or omitted to be done by a person subject to jurisdiction of the Commission, in violation or claimed violation of a statute..., or a regulation or order of the Commission." Here, Complainant is "complaining" of the imposition of a deposit.

Further, Complainant statements lead to a conclusion that the public utility is not acting in good faith and in the interest of this customer, the public, nor the public utility as the deposits will reduce the amount of money that this customer has to run its business; this result is both unnecessary and unduly harsh. Since this customer did not default and is unlikely to default in the future, those deposits are likely to simply sit for the most part—hurting the customer while providing no true benefit to the public utility.

Accordingly, Conclusion of Law #5 fails to state that Complainant effectively showed a violation of the applicable statutory and case law.

E. Exception No. 6—The Commission may, but should not dismiss this Complaint without a hearing, as such a dismissal is not necessary or in the public interest.

Complainant takes exception to Conclusion of Law #6 at page 9 of the Decision. For the reasons discussed in Exceptions 1-5, above, this Complaint should not be dismissed without a hearing. Clearly, the intent of the legislature was not to strictly impose a deposit on each and every customer with a difficult payment history, but instead to make this decision on a case-by-case basis. Here, this Complainant presents a case where a deposit should not be imposed.

In this difficult financial climate, this small business may have paid its bills late, but York has not defaulted and has not refused to pay late fees when so imposed. The history of York is a record of payment, though late, not of abandonment of its financial obligations. Therefore, the Decision incorrectly concludes that the Complaint should be dismissed without a hearing.

To the contrary, Complainant clearly states in the Complaint that the imposition of a deposit will be substantially harmful to the business—and a revised payment plan is needed. Complainant provided evidence by stating the seasonal nature and type of business. This is all evidence of the source of the hardship if a deposit is required. In fact, a hearing of the entire record is needed here. Accordingly, this Complaint should not be dismissed without a hearing.

F. Exception No. 7— To the extent Orders ##1, 2 and 3, pages 9-10 of Decision are based on Conclusions of Law 2-6, Complainant takes this additional exception to these Conclusions of Law. (See pages 9-10 of the Decision). Despite the Conclusions of Law that form the basis for Orders ##1, 2, and 3, the Motion for Judgment of the Pleadings should be denied, the Complaint should not be dismissed, and the cancelled hearing of May 18, 2011 should be rescheduled rather than cancelled.

Complainant has raised and continues to raise concerns that the requirement of a deposit will substantially harm its business operations. While PECO's Tariff specifically provides for the imposition of deposits (See Page 7 of the Decision), the rules and regulations regarding the imposition of deposits do not **specifically and strictly require** said deposits in all cases for all customers who have paid their utility bills in an untimely manner.

See 52 Pa. C.S. Section 53.82 "Deposits", which states:

"Public utilities **...may require deposits** to secure further payments of rates....";

and

Section 1305 of the Pennsylvania Public Utility Code, which states:

"No public utility shall require ... deposits to secure future payments of rates,

except as the commission, by regulation, or order, may permit...."

(Emphasis added.)

Clearly, the intent of the legislature was not to strictly impose a deposit on each and every customer with a difficult payment history, but instead to make this decision on a "permissive" or "flexible" basis.

Here, no good is served by requiring a deposit based on the facts of this case. It is the appropriate case to withhold the requirement of a deposit and so the Complainant requests same, here.

G. Exception No. 8—To the extent that Order #4, page 10 of Decision, is based on the Conclusions of Law ##2-6, Complainant takes an additional exception to these Conclusions of Law and an Exception to Order #4. Based on the discussion set forth in Exception #8, above, the record at Docket No. C-2010-2176164 should not be marked closed. There are critical issues in this matter, which should be heard at a hearing, before a tribunal.

H. Exception No. 9—To the extent that Order #5, page 10 of Decision, is based on the Conclusions of Law##2-6, Complainant takes exception to Order #5 and takes an additional exception to these Conclusions of Law. The Order #5 states:

“That York Road Realty Company shall be precluded from filing further complaints against PECO Energy Company, whether of a formal or informal nature, requesting a waiver of security deposits resulting from missed or late payments. (“Order #5”)”

This Order #5 violates the most basic due process rights and violates in fact as well as in spirit critical statutes and regulations, governing this public utility company.

The Legislature specifically granted the right that: “a person complaining of an act done or omitted to be done by a person subject to the jurisdiction of the Commission, in violation of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission, may file a formal complaint with the Commission”. 52 Pa. C.S. Section 5.21(a). The Legislature also defined the content and

commencement of the complaints at 52 Pa. C.S. Sections 5.22 and 30.52, as well as remedies at 52 Pa. C.S. Section 63.144. If Order #5 is allowed to stand, these provisions governing how and if one may file a formal complaint are rendered void without following any of the mandates of the Legislature as codified and set forth in the applicable statutes governing such complaints. Therefore, Order #5 provides a result that is in violation of the principals and requirements of the statutes governing the right to file a formal (as well as informal) complaint.

The legislative intent that the user shall have a right to dispute a bill or payment problem as discussed above is underscored by 52 Pa. C.S. Section 56.81 through 56.100, which governs "Termination of Service" by a public utility. 52 Pa. C.S. Sections 56.92 and 56.97 specifically state:

" 56.92. Notice when dispute pending.

A utility may not mail or deliver a notice of termination if a notice of dispute has been filed and is unresolved and if the subject matter of the dispute forms the grounds for the proposed termination. A notice mailed or delivered in contravention of this section is void."; and

§ 56.97. Procedures upon ratepayer or occupant contact prior to termination.

(a) If, after the issuance of the initial termination notice and prior to the actual termination of service, a ratepayer or occupant contacts the utility concerning a proposed termination, an authorized utility employe shall fully explain:

(1) The reasons for the proposed termination.

(2) All available methods for avoiding a termination, including the following:

(i) Tendering payment in full or otherwise eliminating the grounds for termination.

(ii) Entering a settlement or payment agreement.

(3) The medical emergency procedures.

(b) The utility, through its employes, 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. **If a settlement or payment agreement is not established, the company shall further explain the following:**

(1) The right of the ratepayer to file a dispute with the utility and, thereafter, an informal complaint with the Commission.

(2) The procedures for resolving disputes and informal complaints, including the address and telephone number of the Commission: Public Utility Commission, Box 3265, Harrisburg, Pennsylvania, 17105-3265, (800) 692-7380.

(3) The duty of the ratepayer to pay any portion of a bill which the ratepayer does not honestly dispute.
(Emphasis added.)

The Legislature clearly intended to provide users with a right to contest or protest utility bills and for those challenges to be heard before termination of service. There is no caveat in any of these sections of the above legislation that an administrative law judge may forever foreclose a user's right to contest, appeal, or file a formal or informal complaint regarding a payment or billing problem. We cannot predict what issues may confront the public utility and this or any user in the future, but we do know with certainty that that the Legislature preserved the right to protest a problem or issue between these parties.

To permanently preclude a customer from filing ANY complaint as related to late or missed bills goes against the spirit and letter of the laws, statutes, and regulations governing this public utility. Therefore, it is overbroad and an error to order that the Complainant may never file a formal or informal complaint in the future regarding a late or missed bill. This result goes against the spirit, intent, and express language of the applicable legislation, including the provisions of Chapters 52 and 66, as discussed

herein. Accordingly, Complainant takes exception to Order #5 and to any conclusions of law ##2-6 that may have formed the basis for issuance of this Order #5.¹

III. Conclusion:

York Road Realty Company respectfully requests that the Commission:

1. Reject Findings of Fact No. 13 and revise the same consistent with Exception No. 1.
2. Reject Conclusions of Law Nos. 2, 3, 4, 5, and 6 and revise the same consistent with Exception Nos. 2, 3, 4, 5, and 6.
3. Reject Order Nos. 1, 2, 3, 4, and 5 and revise consistent with Exceptions 7, 8, and 9.

Respectfully submitted,



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¹ It should be noted that the Respondent can always rely on principals of res judicata if a final decision is made on a specific set of bills for a specific period.