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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Haleema B. Alkhatib	:	
	:	
V.	:	C-2011-2242125
	:	
PECO Energy Company	:	

EXCEPTIONS OF HALEEMA B. ALKHATIB

I, Haleema B. Alkhatib, hereby file exceptions and supporting reasons, incorporating by reference and citation, the relevant portions of the record and passages of the Administrative Law Judge initial decision pursuant to 52 Pa. Code §5.533 in the above captioned matter.

HISTORY OF THE PROCEEDINGS

On May 11, 2011, Haleema Alkhatib (Complainant) filed a complaint against PECO Energy Company (Respondent or PECO) with the Pennsylvania Public Utility Commission (Commission) at Docket No. C-2011-2242125. Complainant checked the box on the Formal Complaint Form stating, "I received a notice that my utility service is being terminated." Under subsection B, "State the facts of your complaint," Complainant averred the following:

On 2/15/11, PECO sent me a termination notice for a bill that I accepted for the assessed value and returned for settlement discharge & closure, via my exemption, with the enclosed documents on the following dates; [sic] 6/4/10, 7/27/10, 11/20/10, 2/28/11, 3/24/11, and 4/27/11. My acceptance to offset the account via my exemption was in accord-and-satisfaction with Public Law/Public Policy and principles of interpretations for settlement of all agreements in commercial/consumer-transaction-law and regulation. I've tendered my credit to settle the bill in the accordance thereof. The transaction was reported to the United States Treasury/Internal Revenue Service via an original issue discount (1099-OID, copy A), voucher (1040-V), and the bill as evidence. My credit was timely issued to zero-out the account, but they didn't adjust the account and demanded payment with interest. They're withholding credit, or taxing me a second time, and in breach of fiduciary duty.

Under the complaint form subsection "Relief," Complainant requested as follows:

Settle current account and apply credit to future bills. This is theft of public funds and a violation of the bankruptcy/reorganization-of-the-United States. I have discharged debts and settled accounts via my exemption with Public and Private Corporations, Institutions & Agencies in this manner and received confirmation back therefrom.

On June 8, 2011, PECO filed an Answer & New Matter with a Notice to Plead attached thereto. PECO also filed Preliminary Objections with a Notice to Plead attached thereto. On June 17, 2011, Complainant filed a response to the Notice to Plead (Response). The Response provides as follows:

The United States government and it's people have been in bankruptcy since the year 1933. My remedy in commerce is the bankruptcy. As the Secured Party/Beneficiary of the Treasury Trust Account via my exemption number on the account, I have given PECO Energy my Letter Rogatory to submit their presentment/bill, 1040-V (Voucher), 1099-OID to credit and zero-out the accounting. I requested confirmation to be sent to me.

In a letter PECO Energy Company sent to me on dated May 24, 2011, PECO Energy stated they only accept cash (it has no monetary value), certified checks, money orders and valid bank checks payment of utility service provided. PECO Energy will not apply as credit to your account any non-negotiable documents, sight drafts, Acceptance for Value, UCC Certified Tender of payments, or other UCC documents.

The above form of payments that PECO Energy states they will only [sic] accept as payment are all negotiable instruments.

The Constitution of the United States declared only gold or silver coins as lawful money.

That lawful money was taken in 1933.

A Motion Judge Assignment Notice was mailed to Complainant and Respondent ("the Parties") on June 22, 2011, to inform the Parties that Administrative Law Judge Mark A. Hoyer was assigned as the Presiding Officer in this matter; and he will be responsible to resolve any issues during the preliminary phase of the proceedings.

On September 26, 2011, Administrative Law Judge Hoyer ruled upon the Preliminary Objection of the Respondent. The Respondents Preliminary Objection was sustained and the complaint was dismissed pursuant to 52 Pa. Code §5.101 (a)(1),(2) and (4). According to Chapter 5, Section 5.101 of the Commission's Rules of Administrative Practice and Procedure, those grounds are:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (4) Legal insufficiency of a pleading.

My first Exception is to ALJ Hoyer's initial decision that the Commission lacks subject matter jurisdiction pursuant to 52 Pa. Code §5.101(a)(1). According to ALJ Hoyer:

The Commission's regulations provide that payment for services may be made in "any reasonable manner." As a result the decision as to the "reasonableness" of Complainant's method of payment is within the Commission's authority. However, in order to determine if Complainant's tender is a reasonable manner of payment, the Commission would be required to determine the negotiability of the instruments, which is a question of law governed by application of the Uniform Commercial Code (UCC), and in particular 13 Pa. C.S.A. §3104. Whether an instrument is negotiable is a legal conclusion. I have conclude that the Commission lacks subject matter jurisdiction to entertain the Complaint.

Initial Decision, p. 6.

The Pennsylvania Public Utility Commission is an independent, quasi-judicial agency created by the legislature in 1937, under the Executive branch of state government, and is responsible for administering the laws of the Commonwealth. Pa.Const. Art. IX; 71 P.S.; and, 66 Pa. C.S.A. As a creature of legislation, the Commission possesses the authority the state legislature has granted to it over all commercial transmitting utilities. Its jurisdiction arises from the express language of pertinent enabling legislation or by strong and necessary implication there from. Id. The Uniform Commercial Code (UCC) is an enabling legislation that encompass all laws to simplify, clarify and modernize the law(s) governing commercial transactions. 13 Pa. C.S.A. §1101 and 1103(a)(1). Wherefore, the Commission had subject matter jurisdiction to entertain the Complaint before its forum.

My next Exception is to ALJ Hoyer's initial decision that the complaint is legally insufficient pursuant to 52 Pa Code §5.101(a)(4). According to ALJ Hoyer:

The complaint does not set forth an "act or thing done or omitted to be done or about to be done or omitted to be done by the respondent in violation, or claimed violation, of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission." (emphasis added). PECO is correct. The relief requested by Complainant here cannot be granted as a matter of law. The Commission lacks subject matter jurisdiction to determine whether Complainant's purported tender is a negotiable instrument. The analysis with respect to the above preliminary objection based on lack of subject matter jurisdiction is applicable here as well. The complaint is legally insufficient. The relief requested cannot be granted because the Commission lacks subject matter jurisdiction.

Initial decision, p. 6-7.

I disagree. The complaint does set forth an act or thing done or omitted to be done or about to be done or omitted to be done by the Respondent in violation, or claimed violation, of statute(s) which the Commission has jurisdiction to administer, or of a regulation or order of the Commission. See Formal Complaint Form, 4A and B. The analysis with respect to the basis of the above Exception is applicable here as well. The ALJ's analysis and conclusion that the Commission lack subject matter jurisdiction, and that the complaint is legally insufficient, is a manifest error. Wherefore, the Respondent's preliminary objection that the complaint is legally insufficient should not have been sustained.

My final Exception is to ALJ Hoyer's initial decision that the complaint contains scandalous and impertinent matter pursuant to 52 Pa. Code §5.101(a)(2). According to ALJ Hoyer:

The undersigned ALJ find that the following allegation in the complaint under the subheading "Relief" is scandalous and must be stricken: "[t]his is theft of public funds."

The undersigned finds there is no need to strike the vague references to federal law and other rules contained in complainant's pleadings because, as the Commission concluded in the Coppedge Opinion and Order, "this case is about subject matter jurisdiction." As discussed above, the Commission does not have the requi-

site subject matter jurisdiction to determine the negotiability of Complainant's alleged tender of payments.

Section 703 of the Public Utility Code, 66 Pa. C.S. §703(b), provide that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the Public interest. See also, 52 Pa. Code §5.21(d). The public interest does not require a hearing in this case. The Commission does not have the requisite subject matter jurisdiction to determine the negotiability of Complainant's alleged tender of payments. A hearing in this case would be a fruitless exercise and therefore is not necessary or in the public interest.

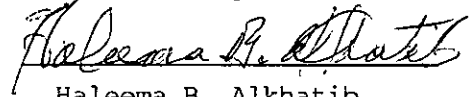
Initial Decision, p. 7-8.

I disagree. The allegation inside of the complaint, "theft of public funds," is not an inclusion of scandalous or impertinent in this matter. The Respondent's action and/or omission constitutes a breach of fiduciary duty and a violation of their corporate responsibilities as nominee recipients with respect to the instruments. 13 Pa. C.S.A. §3307; 34 Am. Jur.2d ¶ 6011b. They cannot require a particular form of payment as evidenced by Public laws/ Public Policy and Pamphlet Laws. 73d Congress. Sess. I. Ch. 1. March 9, 1933.; 73d Congress. Sess. I. Ch. 48. June 5, 1933.; 13 Pa. C.S.A. §1201(24) and the pertinent Official Comment. Since 1933, the only money in circulation is money of account (bookkeeping entries) that is created on demand or at the time it is needed to satisfy an immediate needs. All the required bookkeeping entries for an accrual bookkeeping system can be made based on the offer for value and the acceptance for value. Acceptance is required to keep accounts balanced in bookkeeping systems. All accounts must be closed by a specified business date because an unbalanced account necessitates entries into the accounts payable & accounts receivable ledgers. Id. See also, Uniform System of Accounts, 66 Pa. C.S.A., 52 Pa. Code and other enabling legislations or regulations therefrom. The Respondent violated all of the above subscribed principles of law(s), amongst others, when they didn't settle the accounting and demanded payment with interest. The analysis with respect to the basis of the above Exceptions are also applicable here as well. The ALJ's analysis and conclusion that the Commission lacks subject matter jurisdiction, and that the complaint contains scandalous and impertinent matter, is also a manifest error. The Commission have other bureaus and offices capable of determining the negotiability of my tender of payments. 66 Pa. C.S.A. §308.2.(a). Therefore, the ALJ should not

have been sustained

WHEREFORE, for all of the reasons stated herein, Complainant respectfully requests for review of the Exceptions and remand for affirmative relief.

Respectfully submitted,



Haleema B. Alkhatib

VERIFICATION

I, Haleema B. Alkhatib, hereby state that the facts set forth above are true and correct to best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S.A. §4904, relating to unsworn falsification to authorities.

CERTIFICATE OF SERVICE

I hereby certify that I have, on this day, served true copies of the foregoing Exceptions upon the parties listed below in accordance with the requirements of 52 Pa. Code §5.533, §1.54 and §1.56(a), relating to service by party and date of service.

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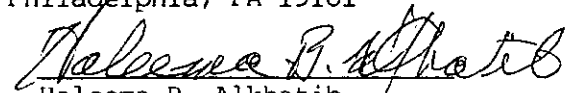
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