



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

ISSUED: February 15, 2006

C-20054920

ANITA WILLEM
3131 KNIGHTS ROAD 5-33
BENSALEM PA 19020-2838

DOCUMENT
FOLDER

Anita Willem v. PECO Energy Company

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Marlane R. Chestnut. This decision is being issued and mailed to all parties on the above specified date.

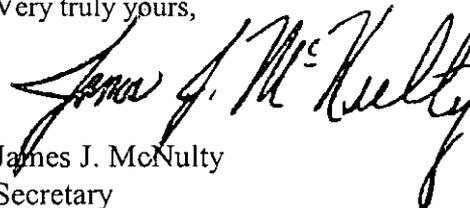
If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION 2ND FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265, within twenty (20) days** of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within **ten (10) days** of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

If no exceptions are received within **twenty (20) days**, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

Very truly yours,



James J. McNulty
Secretary

Encls.
Certified Mail
Receipt Requested
JS

ANITA WILLEM
43 LINCOLN AVENUE
ISLIP TERRACE NY 11752

LISA A LUTZ ESQUIRE
PECO ENERGY COMPANY
2301 MARKET STREET/S23-1
P O BOX 8699
PHILADELPHIA PA 19101-8699

C-20054920 ANITA WILLEM v. PECO ENERGY COMPANY

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2301 MARKET STREET/S23-1
P O BOX 8699
PHILADELPHIA PA 19101-8699
215-841-6841

IP 20/10

JAN 23 2006

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Anita Willem

v.

PECO Energy Company

:
:
:
:
:

C-20054920

DOCUMENT
FOLDER

INITIAL DECISION

Before
Marlane R. Chestnut
Administrative Law Judge

DOCKETED
FEB 21 2006

HISTORY OF THE PROCEEDING

On June 29, 2004, Anita Willem (Willem or complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO or respondent). The Complainant alleged that PECO overbilled her for her electric usage. Although not stated by Ms. Willem, the Complaint is an untimely appeal¹ from a decision of the Commission's Bureau of Consumer Services (BCS) at BCS #1850186, dated May 18, 2005. The BCS decision had found that complainant's bills were correct as rendered and that complainant is responsible for the balance. No payment arrangement was established, as Ms. Willem is enrolled in the Customer Assistance Program (CAP).

On August 12, 2005, respondent filed its Answer (Answer), denying the material averments of the Complaint, and explaining that a field visit was performed at complainant's property on March 8, 2005, that a reading verified the last billed reading to be correct, that a usage analysis demonstrated the potential for use as billed and that Ms. Willem declined a meter

¹ This finding is based on my determination that the Commission's computerized docket system does not show that a notice to appeal had been received.

test. The company further stated that the current outstanding balance is \$1,035.58, the average monthly bill is \$134.00, the calculated monthly budget payment is \$148.00, that complainant has had a poor payment history since the account was established in November 2004 and that complainant is enrolled in the Customer Assistance Program. The BCS decision was attached to the Answer.

On September 14, 2005, Chief Administrative Law Judge Veronica A. Smith issued an Interim Payment Order directing complainant to pay her monthly bills on or before the due date.

By Hearing Notice dated October 5, 2005, the parties were notified that an Initial Hearing in this case was scheduled for the morning of November 8, 2005. The Hearing Notice notified the parties that the hearing in this matter was one of several scheduled for that morning and that the parties should expect to be present in the hearing room until their case was called. The Hearing Notice specifically stated: "Attention: You must be available in the hearing room when your case is called by the presiding Administrative Law Judge. If you are not present and prepared to go forward with your case when it is called, your case will be dismissed by the Administrative Law Judge."

As is my customary practice, I issued a Prehearing Order dated October 11, 2005 stating the date, time and location of the scheduled hearing and directing the parties to comply with various procedural requirements. The Prehearing Order specifically explained how to request a continuance, warned both parties of the consequences if they failed to appear at the scheduled hearing and explained that the complainant bears the burden of proof.

Both the Hearing Notice and Prehearing Order had been sent to the address clearly indicated in the Complaint (3137 Knights Road, Bldg. 5, Apt. 33, Bensalem PA 19020-22838) and had been returned with the notation "Not deliverable as addressed." The Prehearing Order also was sent to several other variations of the address listed on the Complaint; one was returned (with the same notation) and the other was not.

On the day of the hearing, complainant Willem failed to appear. Respondent PECO was present. Upon discussion with PECO's counsel and witness, I learned that the actual service address was 3131 Knights Road, 5-33, Bensalem PA 19020-22838 and that PECO's mail to Ms. Willem had been returned with a forwarding address of 43 Lincoln Avenue, Islip Terrace, NY 11752.

I therefore directed that the hearing be rescheduled, and that the hearing notice be sent to both of the addresses provided by PECO at the hearing.

By Hearing Notice dated December 14, 2005, a further hearing was scheduled for January 19, 2006. This Hearing Notice was sent to both of the additional addresses.

A Prehearing Order, revised to reflect the January 19, 2006 hearing date, was sent to both of the addresses. Each was returned, with the notation "not deliverable – unable to forward."

When I became aware that both copies of the December 14, 2005 Hearing Notice had been returned, I called the telephone number listed on the Complaint (although it was not clear that it was Ms. Willem's telephone number) and left a message asking to be contacted. I received no response.

Counsel for PECO informed me that the company also has been unable to contact complainant. Letters sent to both the addresses were returned as undeliverable, and telephone messages were not returned.

Because it was clear that Ms. Willem had not received notice of the scheduled hearing, nor was there any way to contact her, the hearing scheduled for January 19, 2006 was cancelled. In accordance with Hackman v. Denver & Ephrata Telegraph & Telephone Company, Docket No. C-20042411, Commission Opinion and Order entered August 9, 2004, the instant Complaint should be dismissed without prejudice as discussed in more detail below.

FINDINGS OF FACT

1. On June 29, 2005, Anita Willem filed a formal Complaint with the Commission alleging overbilling.
2. By Hearing Notice and Prehearing Order, complainant was notified that an Initial Hearing on her Complaint was scheduled for November 8, 2005. Both of these documents were mailed to complainant at the address provided on the Complaint and both were returned to the Commission, with the notation "Not deliverable as addressed." The Prehearing Order also was sent to several other variations of the address listed on the Complaint; one was returned (with the same notation) and the other was not.
3. Complainant failed to appear for the hearing.
4. Complainant did not settle or withdraw her Complaint prior to the scheduled hearing on November 8, 2005 or obtain a continuance.
5. Because of the possibility that complainant had not received either the Hearing Notice or the Prehearing Order, a further hearing was scheduled for January 19, 2006 by Hearing Notice dated December 14, 2005.
6. Both the December 14, 2005 Hearing Notice and a Prehearing Order dated December 15, 2005 (which clearly referenced the location, date and time of the further hearing) were sent to the two additional addresses provided by PECO.
7. Both copies of the December 15, 2005 Prehearing Order were returned as undeliverable and unforwardable.
8. Both copies of the December 14, 2005 Hearing Notice were returned as undeliverable.

9. Correspondence sent by PECO to both addresses was returned as undeliverable.
10. Messages left at the telephone number listed on the Complaint were not returned.
11. Complainant has failed to provide to the Commission the means of contacting her.

DISCUSSION

Administrative agencies, such as the Public Utility Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. Schneider v. Pa. PUC, 479 A.2d 10 (Pa. Cmwlth. 1984). Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. Meierdierck v. Miller, 394 Pa. 484, 147 A.2d 406 (1959); Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review, 645 A.2d 944 (Pa. Cmwlth 1994).

The Public Utility Code clearly provides that the Commission shall be a forum for bringing complaints against any public utility in violation or claimed violation of any law which the Commission has jurisdiction to administer or of any regulation or order of the Commission. 66 Pa. C.S. § 701. The Commission's regulations were formulated and adopted in order to facilitate that duty. The Commission's rules of administrative practice and procedure contain a requirement that any participant keep the Commission apprised of changes to the participant's current address. This requirement is meant to enable the Commission to contact the participants regarding any pending proceedings. 52 Pa. Code § 1.53(c).

In the present case, Ms. Willem filed a formal complaint but failed to provide to the Commission any method to contact her. Numerous Hearing Notices and Prehearing Orders were sent to every possible address; in addition I also attempted to obtain a different address for

Ms. Willem through public sources such as the telephone directory and on-line but was unsuccessful. Several messages, by both me and PECO, left at the telephone number listed in the Complaint were not returned. Without the ability to contact a complainant, the Commission cannot provide the appropriate forum for prosecuting a Complaint, since a complainant cannot sustain the burden of proving his or her complaint without knowledge of the proceedings. 66 Pa. C.S. § 332.

It must be remembered that it is Ms. Willem's responsibility to provide an address at which she could have been served. No calls or other communication was received from her, so there is no choice but to dismiss this Complaint without prejudice to her ability to refile.

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). To have a hearing under these circumstances would be a waste of both the Commission and PECO's resources, as it is clear that Ms. Willem will not attend. Therefore, the hearing scheduled for January 19, 2006 was properly cancelled.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding.
2. The complainant bears the burden of proof. 66 Pa. C.S. §332(a).
3. Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. It is a party's obligation, once it has filed a formal complaint, to ensure that the Commission has a valid mailing address to which service can be made.
4. The Commission's rules of practice and procedure require that a participant keep the Commission apprised of changes to the participant's current address. 52 Pa. Code §1.53(d).

5. The due process rights of complainant have been fully protected in this proceeding.

6. The Commission may dismiss a complaint without a hearing if a hearing is not necessary in the public interest.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Anita Willem against PEO Energy Company at C-20054920 is dismissed without prejudice; and

2. That the record at Docket Number C-20054920 be marked closed.

Date: January 19, 2005



Marlane R. Chestnut
Administrative Law Judge

2. Article Number



7160 3901 9843 1136 0460

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) Yes

Article Addressed to:

LISA A LUTZ ESQUIRE
PECO ENERGY COMPANY
2301 MARKET STREET/S23-1
P O BOX 8699
PHILADELPHIA PA 19101-8699

C-20054920 1D
PS Form 3811, March 2003

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

C. Signature

X *M Branch*

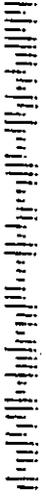
Agent
 Addressee

D. Is delivery address different from item 1?
If YES, enter delivery address below:

Yes
 No

Domestic Return Receipt

FORM NO. 38 (REV. 9-85)



PENNSYLVANIA PUBLIC UTILITY COMMISSION

P.O. BOX 3265, HARRISBURG, PA 17105-3265

RETURN POSTAGE GUARANTEED

CERTIFIED MAIL
R AT TOP OF ENVELOPE TO THE ORIGINAL ADDRESSEE. - FOLD AT DOTTED LINE



7160 3901 1136 0484

Return Receipt Requested

MOVED, LEFT NO ADDRESS

MOVED, LEFT NO ADDRESS

ANITA WILLEM
3131 KINGHITS ROAD 5-32

2. Article Number



7160 3901 1136 0484

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) Yes

1. Article Addressed to:

MOVED, LEFT NO ADDRESS
ANITA WILLEM
3131 KINGHITS ROAD
BENSALEM, PA 17029-2838
- C-20054920 1D

LINE 1

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery **2/22/66**

C. Signature

Agent Addressee

D. Is delivery address different from item 1? Yes NO

If YES, enter delivery address below:

Moved

Domestic Return Receipt

DUPLICATE CLASS