



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

IN REPLY PLEASE
REFER TO OUR FILE

ISSUED: December 20, 2005

C-20054895

ELAINE POSTELL BUNTING
1212 WEST LYCOMING STREET
PHILADELPHIA PA 19140

DOCUMENT
FOLDER

Elaine Postell-Bunting
v.
PECO Energy Company

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision Granting Motion to Dismiss of Chief Administrative Law Judge Veronica A. Smith. 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 Chief 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
SS

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

C-20054895 ELAINE POSTELL BUNTING v. PECO ENERGY COMPANY

ELAINE POSTELL BUNTING
1212 WEST LYCOMING STREET
PHILADELPHIA PA 19140
215-329-9910

LISA A LUTZ ESQUIRE
PECO ENERGY COMPANY
2301 MARKET STREET/S23-1
P O BOX 8699
PHILADELPHIA PA 19101-8699
215-841-6841

IP 20/10

NOV 23 2005

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Elaine Postell-Bunting

v.

PECO Energy Company

:
:
:
:
:

C-20054895

INITIAL DECISION GRANTING MOTION TO DISMISS

**DOCUMENT
FOLDER**

Before
Veronica A. Smith
Chief Administrative Law Judge

DOCKETED
DEC 21 2005

HISTORY OF THE PROCEEDING

On August 5, 2005, Elaine Postell-Bunting (Complainant) filed a Formal Complaint with the Commission against PECO Energy Company (Respondent or PECO) alleging an inability to pay her electric bills and requesting a lower payment arrangement.

On August 30, 2005, Respondent filed an Answer and New Matter and a Motion to Dismiss, addressing the allegations of the Complaint and moving to dismiss the Complaint on the basis that jurisdiction for a payment arrangement on Complainant's outstanding balance is not properly before the Commission.

The 10-day response period has passed, and Complainant did not file a response to the Motion to Dismiss. Complainant also failed to respond to the New Matter set forth by Respondent in its Answer; therefore, the relevant facts raised as new matter are deemed

admitted¹. The matter was assigned to me by Motion Judge Assignment Notice dated September 8, 2005. The Motion to Dismiss is ripe for ruling.

FINDINGS OF FACT

1. Complainant is Elaine Postell-Bunting, 1909 Manton Street, Philadelphia, Pennsylvania 19146. Complaint ¶ 1.
2. Respondent is PECO Energy Company. Complaint ¶ 2.
3. On August 5, 2005, Complainant filed a Formal Complaint with the Commission alleging an inability to pay her electric bills and requesting a lower payment arrangement. Complaint ¶ 5 and attachment.
4. Complainant participates in Respondent's CAP Rate Program and receives a 50% discount on the first 500 kilowatts of electric service used each month. New Matter ¶ 1.
5. Respondent moved for dismissal of the Complaint on the basis that jurisdiction for a payment arrangement on Complainant's outstanding balance is not properly before the Commission.
6. Complainant did not file a response to the Motion to Dismiss.

¹ The Commission's regulations state: "A reply to new matter shall be filed within 20 days of the date of service of the answer or other pleading raising new matter. Failure to file a timely reply to new matter shall be deemed in default, and relevant facts stated in the new matter may be deemed admitted." 52 Pa. Code §5.62(c).

DISCUSSION

Before the Commission is a Complaint and a Motion to Dismiss the Complaint on the basis that jurisdiction for a payment arrangement on Complainant's outstanding account balance is not properly before the Commission.

The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary motions, specifically a motion questioning the jurisdiction of the Commission. 52 Pa. Code §5.101(a)(1). When considering a motion to dismiss, the Commission must view the Complaint in a light most favorable to the Complainant, and the Complaint should be dismissed only when it appears that the Complainant would not be entitled to relief under any circumstances. Equitable Small Transportation Interveners, 1994 Pa. PUC LEXIS 69 (July 18, 1994); Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources, 406 A.2d 1020 (Pa. 1979). This is similar to Pennsylvania civil practice with respect to the filing of preliminary objections. Equitable Small Transportation Interveners, *supra*.

The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the motion, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. County of Allegheny v. Commw. of Pa., 490 A.2d 402 (Pa. 1985); Commw. of Pa. v. The Bell Telephone Co. of Pa., 551 A.2d 602 (Pa. Commw. 1988). The motion may be granted only if the moving party prevails as a matter of law. Roc v. Flaherty, 527 A.2d 211 (Pa. Commw. 1985). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. Dept. of Auditor General, et al. v. State Employees' Retirement System, et al., 836 A.2d 1053, 1064 (Pa. Commw. 2003) (citing, Boyd v. Ward, 802 A.2d 705 (Pa. Commw. 2002)).

For the reasons set forth below, the Complaint must be dismissed.

The Responsible Utility Customer Protection Act, 66 Pa. C.S. §1401, *et seq.*, became effective December 14, 2004, and applies to this proceeding. This new law provides

strict guidelines that the Commission must follow in handling customer complaints. Section 1405(c) of the Public Utility Code reads as follows:

(C) Customer Assistance Programs. – Customer assistance program rates shall be timely paid and shall not be the subject of payment agreements negotiated or approved by the commission.

66 Pa. C.S. § 1405(c).

The General Assembly has made it clear that the Commission lacks the authority to establish payment arrangements for customers participating in CAP programs offered by public utilities.

Section 1403 of the Public Utility Code defines a CAP program as follows:

A plan or program sponsored by a public utility for the purpose of providing universal service and energy conservation, as defined by Section 2202 (relating to definitions) or Section 2803 (relating to definitions), in which customers make monthly payments based on household income and household size and under which customers must comply with certain responsibilities and restrictions in order to remain eligible for the program.

66 Pa. C.S. § 1403 (Definition of “Customer Assistance Program”).

Complainant participates in PECO’s CAP rate program and receives a 50% discount on the first 500 kilowatt hours of electric service. The discount received by a customer enrolled in PECO’s CAP program is based upon the household income and size in relation to the federal poverty guidelines. PECO’s CAP program, meets the requirements of 66 Pa. C.S. §1403 and therefore, the Commission lacks the authority to establish a payment arrangement for Complainant and his Complaint must be dismissed.

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). A hearing is necessary only to resolve disputed questions of fact, and is not required to resolve questions of law, policy or discretion. Dee-Dee Cab, Inc. v. Pa. Public Utility Comm., 817 A.2d

593, petition for allowance of appeal denied, 836 A.2d 123 (Pa. 2003); Lehigh Valley Power Committee v. Pa. Public Utility Comm., 563 A.2d 548 (Pa. Commw. 1989); Edan Transportation Corp. v. Pa. Public Utility Comm., 623 A.2d 6 (Pa. Commw. 1993). This case does not involve disputed questions of fact. The questions presented by Respondent's Motion are questions of law only. A hearing in this case is not necessary or in the public interest and would be a fruitless exercise.

CONCLUSIONS OF LAW

1. Commission regulations provide for the filing of preliminary motions, including a motion questioning the jurisdiction of the Commission. 52 Pa. Code §5.101.

2. The Responsible Utility Customer Protection Act, 66 Pa. C.S. §1401, *et seq.*, applies to this proceeding.

3. The Commission lacks the authority to establish payment arrangements for customers participating in CAP programs offered by public utilities, pursuant to 66 Pa. C.S. §1405(c).

4. PECO's CAP program meets the requirements of 66 Pa. C.S. §1403.

5. The Commission may 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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That PECO Energy Company's Motion to Dismiss the Complaint filed by Elaine Postell-Bunting, at Docket No. C-20054895 is granted.

2. That the Complaint filed by Elaine Postell-Bunting, against PECO Energy Company, at Docket No. C-20054895 is dismissed.

Dated: November 22, 2005

Veronica A. Smith / SDP
Veronica A. Smith
Chief Administrative Law Judge

2. Article Number



7160 3901 9843 0829 3542

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) Yes

1. Article Addressed to:

C-20054895 TD
 Lisa Lucy Esq.

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery
 12/27/05

C. Signature
 X *Zulma Rodriguez* Agent
 Addressee

D. Is delivery address different from item 1?
 If YES, enter delivery address below: Yes
 No

PS Form 3811, March 2005

Domestic Return Receipt

2. Article Number



7160 3901 9843 0829 3566

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) Yes

1. Article Addressed to:

C-20054895 TD
 Elaine Postell Bentley

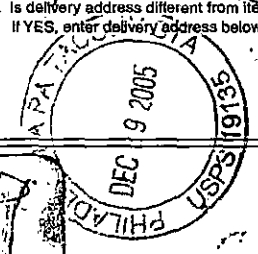
COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

C. Signature
 X *[Signature]* Agent
 Addressee

D. Is delivery address different from item 1?
 If YES, enter delivery address below: Yes
 No



PS Form 3811, March 2005

Domestic Return Receipt