



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-20054998

MACDADE TERRACE APARTMENTS LP
1400 MACDADE BOULEVARD
WOODLYN PA 19094

DOCUMENT
FOLDER

Macdade Terrace Apartments LP 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.

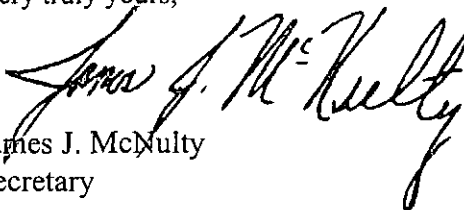
If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION 2ND FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, 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

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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Macdade Terrace Apartments LP

v.

PECO Energy Company

:
:
:
:
:

C-20054998

INITIAL DECISION

Before
Marlane R. Chestnut
Administrative Law Judge

**DOCUMENT
FOLDER**

HISTORY OF THE PROCEEDING

On July 21, 2005, Macdade Terrace Apartments, L.P. (Maddade or complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PEO Energy Company (PECO or respondent). The sole issue raised in the Complaint is a request for a payment arrangement on its arrearage. The Complaint was apparently not signed by an attorney, but by an individual who did not indicate his position with complainant.

The Complaint was served on respondent PECO on August 23, 2005. On September 14, 2005, respondent filed its Answer (Answer), denying the material averments of the Complaint, and explaining that the current balance on the account is \$53,970. On that same date, PECO separately filed a Motion to Dismiss Complaint (Motion) which asserted that complainant is a nonresidential/commercial customer of PECO and therefore is not entitled to a payment arrangement. PECO requested that the Complaint be dismissed as being insufficient as to substance pursuant to 52 Pa.Code §5.101(a)(3).

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On September 30, 2005, Administrative Law Judge Wayne L. Weismandel issued an Interim Order directing the parties to hold a resolution conference no later than October 14, 2005. Pursuant to that Order, PECO, by letter dated November 14, 2005, informed the mediator that "Following several calls to the complainant's representative in this matter, the parties have not reached a resolution. Therefore, we respectfully request that this case be scheduled for hearing."

By Hearing Notice dated November 30, 2005, an initial hearing was scheduled for February 2, 2006. On December 6, 2005, I issued a Prehearing order 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.

Pursuant to the Commission's regulations at 52 Pa. Code §5.101(d) and §1.56(b), a response to the Motion was due on or before September 27, 2005.¹ PECO's Notice to Plead informed complainant that a response to the Motion was due within 10 days of service, pursuant to 52 Pa. Code §5.102.

The Commission's records do not show that an answer was filed; therefore the Motion is ready to be decided.

Although it can reasonably be concluded from complainant's failure to respond to the Motion that it does not object to dismissal of the Complaint, in an excess of caution I will address the merits of the Motion. As explained in more detail, the Motion will be granted, and the Complaint dismissed.

¹ The settlement attempt should not be considered as tolling the response period. If this settlement period is deemed to have tolled the response period, however, then a response to the Motion should have been filed on or before November 28, 2005, based on the date of the November 14, 2005 letter. As no response was filed, as of the date of this Initial Decision, it is irrelevant what starting date is used to calculate the response period.

FINDINGS OF FACT

1. On June 29, 2005, Macdade Terrace Apartments, L.P. filed a formal Complaint with the Commission requesting a payment arrangement. The amount of the arrearage was not contested.
2. On September 14, 2005, respondent PECO filed a Motion to Dismiss the Complaint.
3. Complainant did not file a response to the Motion to Dismiss.
4. Macdade Terrace Apartments, L.P. is a limited partnership. Macdade Terrace Manager, Inc. is the general partner, according to the records maintained by the Pennsylvania Department of State, Corporation Bureau.
5. The instant Complaint was filed on behalf of a corporation by a non-attorney whose relationship with the corporation is unknown and therefore, the Complaint is insufficient as to form.

DISCUSSION

The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary motions. 52 Pa. Code §§5.101-5.103. Commission preliminary motion practice is similar to Pennsylvania civil practice regarding the filing of preliminary objections. Equitable Small Transportation Interveners v. Equitable Gas Company, Docket No. C-00935435, 1994 Pa. PUC LEXIS 69.

A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources, 406 A.2d 1020 (Pa. 1979); Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc., 595 A.2d 172 (Pa. Super. 1991). The

Commission has adopted this standard. Montague v. Philadelphia Electric Company, 66 Pa. PUC 24 (1988).

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 (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)).

There is no question that the Motion should be granted and the Complaint dismissed. First, there is the fact that complainant did not file an answer to the Motion. It reasonably can be concluded that complainant intentionally failed to respond to the Motion and therefore does not disagree with dismissal of the Complaint prior to hearing.

As it is not required that an answer be filed to a preliminary motion filed pursuant to 52 Pa. Code §5.101, however, I am not granting the Motion as the result of complainant's failure to respond, but rather for the substantive basis that pursuant to 52 Pa. Code §5.101(a) (3), the Complaint should be dismissed because it fails to state a claim upon which relief can be granted, thereby rendering the Complaint insufficient as to substance as a matter of law. Commercial and industrial customers are not entitled to payment arrangements or other protections applicable to residential accounts under Chapter 56 of the Public Utility Code. See, Heart & Soul Foods, Inc. v. The Peoples Natural Gas Company, t/a Dominion Peoples, Docket No. C-20043795, Commission Final Order entered September 23, 2005; Stammel v. PG Energy, Docket No. C-20027994, Commission Opinion and Order entered May 21, 2003; Bio/Data Corp. v. PECO Energy Co., Docket No. C-20026698, Commission Opinion and Order entered July 30, 2002;²

² At p. 2, the Commission explained: "The genesis of this proceeding was a Formal Complaint filed by Bio/Data. Specifically, the corporation requested that the Commission order PECO to enter into a payment

Lebanon Valley Enterprises, Inc. v. Metropolitan Edison Co., Docket No. C-00015522, Commission Opinion and Order entered October 15, 2001; Kayla's Place Inc. v. Duquesne Light Co., Docket No. C-00981711, Commission Opinion and Order entered May 24, 1999; Matt Kenney d/b/a/ Flower & Flag Depot v. Duquesne Light Company, C-00967789, 1996 Pa. PUC LEXIS 202, *3; 9; Yesteryear Corporation d/b/a Angelo's Restaurant v. Philadelphia Electric Company, F-9245681, 1992 Pa. PUC LEXIS 106, *11-12; see also, 52 Pa. Code §§55.2(a), 56.1. However, utilities, as a matter of management discretion, may enter into payment arrangements with commercial and industrial customers.

Finally, the Complaint also should be stricken as being insufficient as to form pursuant to 52 Pa. Code §5.101(a)(2), because it was not filed by an attorney in good standing to practice before a court of record of the Commonwealth of Pennsylvania.³ There is no question that complainant is a corporate entity, and therefore required to be represented by counsel in this proceeding. See, 52 Pa. Code §1.21-22; In Re: Checker Cab, 49 PaPUC 159, 160 (1975) (Pleadings must be filed by an attorney in good standing to practice before a Court of record of the Commonwealth of Pennsylvania. Letter from manager filed as response to order to show cause rejected.); Moore v. I. Berman and Cross, Inc., 49 PaPUC 427, 428 (1975) (Officer cannot appear on behalf of corporation). See also, Shortz v. Farrell, 327 Pa. 81, 193 A.2d 193 (1937); Blair v. Motor Carriers Service Bureau, Inc., 40 D&C 413 (1939); Smaha v. Landy, 638 A.2d 392 (Pa. Cmwlth. 1994); Pub. Serv. Water Co. v. Pa.P.U.C., 645 A.2d 423 (Pa. Cmwlth. 1994); Walacavage v. Excfell 2000, Inc. 331 Pa.Super. 137, 480 A.2d 281 (1984); LeStat Corp. v. Pennsylvania Power & Light Co., Docket No. C-00946284 (Commission Opinion and Order entered August 30, 1995).

arrangement to allow the corporation to pay off its arrearages. However, as a commercial customer, *Bio/Data* is not entitled to a payment arrangement or other protections applicable to residential accounts under Chapter 56 of the Public Utility Code.”

³ In fact, the relationship between the individual (whose last name is illegible) who signed the Complaint and the corporation is unknown. Nowhere on the face of the Complaint is the signer's relationship to the business articulated. He obviously is not an attorney representing the complainant, however, as the section of the Complaint which requires a complainant to provide “your lawyer's name, address and telephone number” was left blank.

The Commission in numerous decisions has stricken complaints as well as other pleadings in these circumstances. See, e.g., Lloyd-Silber Orthopedics v. United Tel. Co. of Pa., 75 PaPUC 536 (1991) (Complaint stricken); Application of H.E. Rohrer, Inc. t/d/b/a Rohrer Bus Service for Approval of Abandonment or Discontinuance of Service, Docket No A-00097618F0002, Commission Order entered July 17, 2003 (Application stricken);⁴ Application of Eazy Cabs, Inc., Docket No. A-00120112, Commission Order entered February 19, 2004; Application of Lady Liberty Transportation Co., Inc., Docket No. A-00107959F0001, Commission Final Order entered December 24, 2002 (Application stricken).

In fact, the Commission specifically recognized that complaints filed on behalf of corporate entities must be filed by counsel, and that such pleadings are properly stricken if they are not. In Tick Tock Restaurant, Inc. (Tammy R. Hurst) v. The Peoples Natural Gas Company d/b/a Dominion Peoples, Docket Number C-20030921, Opinion and Order at 5, entered September 2, 2004, the Commission stated:

This [Complaint] was not filed by an attorney as required by Section 1.21(b) of the Commission's Regulations, 52 Pa. Code, Section 1.21(b), 52 Pa. Code 1.21(b). The Respondent should object to any pleading that does not conform to this requirement as a matter of course. A Motion to Dismiss should have been filed (and granted by the ALJ). Such course of action would have conserved the resources of both the Commission and the utility. (footnote omitted).

The same result should occur here.

Section 703 of the Public Utility Code, 66 Pa.C.S. §703(b), provides 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. 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.

⁴ In a statement, Commissioner Thomas stated: "The fact that the Commission is an administrative agency does not excuse the unauthorized practice of law, as the courts have indicated that Commission proceedings involve the Supreme Court-regulated practice of law. See Pa. Pub. Util. Comm'n Bar Ass'n v. Thornburgh, 434 A.2d 1327 (Pa. Cmwlth. 1981), *aff'd per curiam*, 450 A.2d 613 (Pa. 1982)."

Public Utility Comm., 817 A.2d 593, petition for allowance of appeal denied, 836 A.2d 123 (Pa. Commw. 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). The Complaint is insufficient as to both form and substance and a hearing would be a fruitless exercise and a waste of Commission resources. Accordingly, the hearing scheduled for February 2, 2006 is cancelled.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding.
2. A commercial customer is not entitled to a Commission-established payment arrangement for amortization of a utility bill arrearage unless the utility agrees to accept such a payment arrangement.
3. A formal complaint filed on behalf of a corporation must be signed by an attorney or a bona fide corporate officer. 52 Pa. Code § 1.21(c).
4. The Complaint filed by Macdade Terrace Apartments, L.P. against PECO Energy Company at Docket No. C-20054998 is insufficient as to substance and form. Dismissal of the Complaint is clearly warranted and free from doubt.

ORDER

THEREFORE,

IT IS ORDERED:


1. That the Motion of PEO Energy Company to dismiss the Complaint of Macdade Terrace Apartments, L.P. at C-20054998 is granted;

2. That the Complaint of Macdade Terrace Apartments, L.P against PECO Energy Company at C-20054998 is dismissed;

3. That the initial hearing scheduled for February 2, 2006 be cancelled; and

4. That the record at Docket Number C-20054998 be marked closed.

Date: January 25, 2006



Marlane R. Chestnut
Administrative Law Judge

C-20054998 MACDADE TERRACE APARTMENTS LP v. PECO ENERGY COMPANY


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1/10 20/10

FEB 0.2 2006

2. Article Number



7160 3901 9843 1136 0385

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) Yes

1. Article Addressed to:


MACDADE TERRACE APARTMENTS
 1400 MACDADE BOULEVARD
 WOODLYN PA 19094

C-20054998 ID

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)


B. Date of Delivery
2-17-06

C. Signature

 Agent
 Addressee

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

Domestic Return Receipt

2. Article Number



7160 3901 9843 1136 0392

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) Yes

1. Article Addressed to:


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

C-20054998 ID

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly)

B. Date of Delivery

C. Signature

 Agent
 Addressee

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

Domestic Return Receipt