



Exelon Business Services Company
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March 7, 2013

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

**RE: Sporty Smith and Betty Ricks v. PECO Energy Company
PUC Docket No.: C-2012-2321440**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are the following documents in the matter referenced above.

—	Answer
—	Answer & New Matter
<u>X</u>	Motion Objecting to Continuance
—	Motion for Judgment on the Pleadings
—	Preliminary Objection
—	Exceptions
—	Reply Exceptions
—	Main Brief
—	Reply Petition

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Thank you for your time and attention on this matter.

Very truly yours,

Shawane Lee
Counsel for PECO Energy Company
SL/lo

cc: Sporty Smith and Betty Ricks (via email and regular mail)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SPORTY SMITH	:	
BETTY RICKS	:	
v.	:	DOCKET NO. C-2012-2321440
	:	
PECO ENERGY COMPANY	:	

**MOTION OF PECO ENERGY COMPANY OBJECTING TO
COMPLAINANTS, SPORTY SMITH AND BETTY RICKS' REQUEST FOR
CONTINUANCE OF HEARING DATE – MARCH 12, 2013 AND REQUESTING
DISMISSAL OF FAULTY METER AND INCORRECT BILLING CLAIMS**

PECO Energy Company ("PECO Energy"), pursuant to 52 Pa. Code § 1.15, hereby objects to the continuance of the March 12, 2013 hearing date scheduled in this matter and states the following:

1. An in person hearing in this matter is currently scheduled for a hearing on Tuesday, March 12, 2013 at 10:00 a.m.
2. The Complainants, Sporty Smith and Betty Ricks, requested a continuance by email dated, March 4, 2013. See Email Correspondence, attached hereto as Exhibit "1".
3. In their email correspondence, the Complainants state their reason for a two week continuance request is "in light of the new order to have time to properly prepare." See Exhibit "1".
4. By way of background, on August 31, 2012, PECO Energy filed Preliminary Objections to the Complainants' formal complaint, stating that the Complainants' claims were *res judicata*.
5. Administrative Law Judge Susan Colwell ("ALJ Colwell") issued a October 15, 2012, Order which granted PECO Energy's Preliminary Objections and dismissed all of the

Complainants' claims as *res judicata* with the exception of one issue – whether the Complainants should be enrolled in PECO Energy's Customer Assistance Program ("CAP").

6. The sole issue of whether the Complainant should be enrolled in CAP was remanded for the parties to set a resolution conference by Order dated, October 22, 2012.

7. The parties were unable to set a resolution conference based on the Complainants' refusal to set a time and date for a telephone conference. See Email Correspondence, attached hereto as Exhibit "2".

8. PECO Energy requested that the matter be scheduled for a hearing and the case was assigned to ALJ Vero to adjudicate this matter.

9. On February 23, 2013, Administrative Law Judge Eranda Vero ("ALJ Vero") issued an Order overturning the Order and Opinion of Administrative Law Judge Susan Colwell, dated October 15, 2012.¹

10. ALJ Vero's February 23, 2013 Order, reinstated the Complainant's claims of faulty meter and incorrect billing.

11. ALJ Vero's February 23, 2013 Order, requested that the Complainants advise her by March 5, 2013 of the scope and period of time the Complainants' allege the faulty meter and incorrect billing.

12. In violation of ALJ Vero's March 5, 2013, Order, the Complainants failed to respond by March 5, 2013, to advise of the scope and period of time alleged.

13. Additionally, as a follow up to ALJ Vero's Order, PECO Energy sent email correspondence to the Complainants dated, March 5, 2013, offering a field investigation on four

¹ ALJ Vero's Order did not cite any case precedent, statute, regulation, or rule of procedure as a procedural basis for overturning ALJ Colwell's October 15, 2012, Opinion.

separate dates to investigate the Complainants' faulty meter allegations. See Email Correspondence, attached hereto as Exhibit "3".

14. To date, the Complainants have failed to respond to PECO Energy's request to schedule a field investigation.

15. PECO Energy has been severely prejudiced by the reinstatement of the faulty meter and incorrect billing claims previously dismissed by ALJ Colwell.

16. Consistent with ALJ Colwell's October 15, 2012, Order and Opinion, the Complainants' faulty meter claims and claims of incorrect billing have been previously litigated under two previous formal complaints at docket numbers F-2008-2059928 and F-2008-2060646.

17. The Complainants' present formal complaint at docket number C-2012-2321440 states that they have repeatedly complained that their billing is incorrect and they have asked PECO Energy to come and check the meter; however, the company has refused to do so.

18. PECO Energy will be severely prejudiced moving forward with this litigation as the company does not know for what period of time the company needs to prepare a defense - (2007, 2008, 2009, 2010, 2011, 2012 or 2013).

19. In addition to this prejudice, the company will be prejudiced by any continued delays in bringing this matter to hearing.

20. This matter was previously scheduled for an in person hearing on January 24, 2013 at 9:30 a.m..

21. On December 13, 2012, the Complainants requested a continuance of the hearing, stating their reasons as Complainant Sporty Smith has "various medical appointments" and that Complainant, Betty Ricks' physician directed her "not (sic) be out in cold weather."

22. PECO Energy filed a Motion objecting to the Complainants' continuance request.

23. By Order dated, January 22, 2013, ALJ Vero cancelled the January 24, 2013.

24. In her Order, ALJ Vero requested that the Complainants provide in writing no later than January 28, 2013, whether they prefer the hearing proceed as a telephonic hearing and to provide a list of medical appointments scheduled in January and February 2013.

25. To date, PECO Energy has not received the Complainants' response to ALJ Vero's Order.

26. PECO Energy submits that the current Motion for a Continuance is another delay tactic to have the litigation in this matter delayed so that their account balance can remain out of collection.

27. The Complainants have a \$7,722.76 balance on their PECO Energy account.

28. PECO Energy is required to continue to hold collection activity on the Complainant's account because of the formal complaint process.

29. The Complainants have litigated the same claims since 2008 in an effort to avoid paying the \$7,722.76 balance.

30. Additionally, in the current request for a continuance, the Complainants have asserted vaguely their reason as "in light of the new order to have time to properly prepare".

31. The Complainants have not stated what it is they specifically need to prepare.

32. In light of the fact that the Complainants have not stated any specific reason for not being available on the scheduled hearing date or specific scheduling conflict, PECO Energy asserts that this does not constitute good cause.

33. As the Complainants have brought this matter before the PUC, (absent any specific scheduling conflict that has "good cause") they have an obligation to make themselves available for the scheduled hearing.

34. PECO Energy has been prejudiced by the procedural defects in this case; the Complainants' failure to comply with ALJ Vero's January 22, 2013 and February 23, 2013 Orders; and the continuance delays bringing this matter to hearing.

35. Accordingly, PECO Energy requests dismissal of the reinstated claims asserting faulty meter and incorrect billing that were previously dismissed under ALJ Colwell's October 15, 2012, Order as the Complainants have failed to comply with ALJ Vero's February 23, 2013 Order.

36. PECO Energy also requests that the Complainants' request for a continuance of the March 12, 2013 hearing be denied.

Respectfully Submitted,



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
Direct Dial: 215.841.6841
Fax: 215.568.3389
Shawane.Lee@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SPORTY SMITH
BETTY RICKS

v.

PECO ENERGY COMPANY

:
:
:
:
:

DOCKET NO. C-2012-2321440

VERIFICATION

I, Shawane L. Lee, hereby declare that I am counsel for PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. § 4904 pertaining to false statements to authorities.



Shawane L. Lee

Date: March 7, 2013

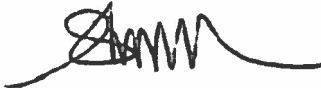
**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SPORTY SMITH	:	
BETTY RICKS	:	
v.	:	DOCKET NO. C-2012-2321440
	:	
PECO ENERGY COMPANY	:	

CERTIFICATE OF SERVICE

I, Shawane L. Lee, hereby certify that I have this day served a copy of PECO Energy Company's Motion in the above matter upon all interested parties by mailing and emailing a copy, properly addressed and postage prepaid to:

Sporty Smith
Betty Ricks
1206 Mount Vernon Street
Philadelphia, PA 19123



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
Direct Dial: 215.841.6841
Fax: 215.568.3389
Shawane.Lee@exeloncorp.com

Dated at Philadelphia, Pennsylvania, March 7, 2013.

EXHIBIT “1”

Lee, Shawane L.:(BSC)

From: be4realentertainment [be4realentertainment@gmail.com]

Sent: Monday, March 04, 2013 10:55 AM

To: Vero, Eranda

Cc: Lee, Shawane L.:(BSC)

Subject: Re: FW: Sporty Smith & Betty Ricks v. PECO Energy Company, Docket No. C-2012-2321440

Miss Lee I as well as my mother are respectfully requesting a continuance for about 2 weeks in light of the new order to have time to properly prepare.

On Tue, Feb 26, 2013 at 1:05 PM, Vero, Eranda <evero@pa.gov> wrote:

To the Parties,

Attached to the e-mail below please find an order that I have issued this morning in the above-captioned matter. This Order reinstates the Complainants' claims of incorrect billing and faulty meter which were dismissed pursuant to ALJ Colwell's October 15, 2012 Order on PECO's Preliminary Objections.

The new Order requires the Complainants to submit additional information regarding the timeframe of their incorrect billing and faulty meter allegations. This information must be submitted in writing to me and to PECO by no later than March 5, 2013.

If you have any questions, please do not hesitate to contact me.

Administrative Law Judge

Eranda Vero

Pennsylvania Public Utility Commission

801 Market Street

Philadelphia, PA 19107

From: Govan, Maureen

Sent: Tuesday, February 26, 2013 11:29 AM

To: Vero, Eranda

Subject:

EXHIBIT “2”

Lee, Shawane L.:(BSC)

From: be4realentertainment [be4realentertainment@gmail.com]
Sent: Monday, November 05, 2012 6:21 PM
To: Lee, Shawane L.:(BSC)
Cc: Zaketa, Anita D.:(BSC); Tarpley, Renee A.:(PECO); O'Neill, Leslie (BSC); hnurick@state.pa.us
Subject: Re: Sporty Smith & Betty Ricks v. PECO Energy Company C-2012-2321440
where does it say telephone only?

On Mon, Nov 5, 2012 at 7:48 AM, <Shawane.Lee@exeloncorp.com> wrote:

Mr. Smith,

This is not an in person hearing or mediation. The mediation is required by telephone only. Accordingly, we will contact you by telephone.

Kindly provide a date that we can call you and the telephone number where we can reach you for this mediation. If you do not provide this information, we will notify the PUC that we were unable to comply with the PUC Order.

If you have any questions regarding providing a telephone number and date we can contact you, feel free to contact my legal assistant, Leslie O'Neill at [\(215\) 841-6853](tel:2158416853).

Thank you.

Shawane L. Lee, Assistant General Counsel
Exelon Business Services Company, LLC
Legal Department
2301 Market Street, S23-1
Philadelphia, PA 19103
Tel: [\(215\) 841-6841](tel:2158416841)
Fax: [\(215\) 568-3389](tel:2155683389)

 Please consider the environment before printing this e-mail.

From: be4realentertainment [mailto:be4realentertainment@gmail.com]
Sent: Monday, November 05, 2012 7:12 AM
To: Zaketa, Anita D.:(BSC)
Cc: Lee, Shawane L.:(BSC); Tarpley, Renee A.:(PECO); O'Neill, Leslie:(BSC); hnurick@state.pa.us
Subject: Re: Sporty Smith & Betty Ricks v. PECO Energy ~~PECO ENERGY~~ C-2012-2321440

EXHIBIT 

There were no demands made they were request. Your lobby is located on the first floor , it has a window and has plenty of space to sit. You did not try to look into the request. Further the parking was a question. Do you have parking avail for us. You are a clerk not the attorney yet you are acting as if you call the shots. We want to have the meeting as the ALJ ordered. We can have you meet us at a location just as well. Need I remind you of the American With Disabilities Act. As both of us are disabled. When my Mother spoke to you on the phone she explains you were very rude towards her and hung up. This is my first time being contacted by you. There are two Plaintiffs to this matter and I am listed first. In closing we would like to have the meeting/conference. I am not avail if we dont meet tomorrow unti after the 21st day of Nov. I will be out of town. I left voicemail messages for you and Ms. Lee. I never received a return call. I was told Ms. Lee was in court this past Friday. I am more accessible via email.

Please Advise

On Thu, Nov 1, 2012 at 10:29 AM, <Anita.Zaketa@exeloncorp.com> wrote:

An Interim Order has been served in the above proceeding. Leslie O'Neill and I have left numerous telephone messages at 215-769-8233. I have gotten 2 telephone messages back from Ms. Ricks. Ms. Ricks is requesting an in-person meeting, parking accommodations and a room with a window. I left a message with Ms. Ricks, stating that PECO can not accommodate her demands. By way of this email, I am asking Mr. Mr. Nurick to have an in-person hearing scheduled.

Thank you for your help in this matter.

Anita D. Zaketa

Legal Administrative Assistant

to PECO Regulatory

215.841.5353



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EXHIBIT “3”

Lee, Shawane L.:(BSC)

From: Lee, Shawane L.:(BSC)
Sent: Tuesday, March 05, 2013 9:00 AM
To: 'be4realentertainment'
Cc: Vero, Eranda
Subject: RE: FW: Sporty Smith & Betty Ricks v. PECO Energy Company, Docket No. C-2012-2321440
Importance: High

Mr. Smith,

On February 26, 2013, Administrative Law Judge, Eranda Vero issued an Order reinstating your previously dismissed claims of incorrect billing and a faulty meter. The company has no record of you requesting an investigation of your meter. Accordingly, PECO is prepared to send a technician to your home to investigate your faulty meter concerns and submit the findings to the Pennsylvania Public Utility Commission.

PECO has the following dates available to come to your home:

- March 5th
- March 6th
- March 7th
- March 8th

At your soonest convenience, kindly contact me to confirm whether you would like PECO to investigate your meter and the date you would like the technician to come to your home.

Thank you in advance for your cooperation.

Very truly yours,

Shawane Lee

Shawane L. Lee, Assistant General Counsel
Exelon Business Services Company, LLC
Legal Department
2301 Market Street, S23-1
Philadelphia, PA 19103
Tel: (215) 841-6841
Fax: (215) 568-3389

 Please consider the environment before printing this e-mail.

From: Vero, Eranda [mailto:evero@pa.gov]
Sent: Monday, March 04, 2013 2:22 PM
To: 'be4realentertainment'
Cc: Lee, Shawane L.:(BSC)
Subject: RE: FW: Sporty Smith & Betty Ricks v. PECO Energy Company, Docket No. C-2012-2321440

Mr. Smith,

Your correction is duly noted. In view of our conversation today, would you rather file a proper motion

PECO ENERGY
EXHIBIT 3

3/7/2013