



Exelon®

Exelon Business Services Company

Legal Department

2301 Market Street/S23-1
Philadelphia, PA 19103

215 568 3389 Fax
www.exeloncorp.com

Direct Dial: 215.841.6841

October 3, 2013

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

RE: Joan Smith v. PECO Energy Company
PUC Docket No.: C-2012-2331672

Dear Ms. Chiavetta:

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

- Answer
- Answer & New Matter
- Motion Objecting to Continuance Request
- Motion for Judgment on the Pleadings
- Motion to Admit Exhibits
- Preliminary Objection
- Exceptions
- X** **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: Joan Smith (via First Class Mail)

REPLY EXCEPTIONS

PECO Energy Company (“PECO Energy”) hereby replies to the Exceptions filed by Joan Smith (“Complainant”) in the above-referenced matter on September 30, 2013. On October 25, 2012, Complainant filed a formal complaint against PECO Energy. In her formal complaint, Complainant requested a payment arrangement after appealing a Bureau of Consumer Services (“BCS”) decision at case number 003006585 issued on August 20, 2012, wherein the BCS dismissed Complainant’s request for a payment agreement on her \$10,125.68 balance. The BCS dismissed the Complainant’s request for a payment agreement because she defaulted on a previous payment agreement issued on September 24, 2008, at case number 002372564 and had not experienced a change of income. Respondent, PECO Energy filed an Answer on November 8, 2012. An in person hearing was held before Administrative Law Judge Marta Guhl (“ALJ Guhl”) on February 11, 2013. An Initial Decision was issued on May 17, 2013, wherein ALJ Guhl held *inter alia*:

The Complainant has failed to make the payments ordered by the Commission at BCS Case Number 002372564. She has, therefore, defaulted on the payment agreement. According to 66 Pa.C.S. § 1405(d), the Complainant would be entitled to another payment agreement only if she had suffered a change of income.

The Complainant testified that she lives at the Service Address alone. The Complainant also testified that she received unemployment compensation in the gross amount of \$611.00 per week. With a household income of approximately \$31,772.00 for a one person household, the Complainant falls between 250% and 300% of the Federal poverty level, making her a Level 3 customer. 66 Pa C.S. § 1405(b)(3). At the time of the Commission-issued payment arrangement, the Complainant was a Level 2 customer since Complainant’s monthly income was \$2,123.00. As the Complainant is now a Level 3 customer, she has experienced an increase in her household income and is not entitled to another payment arrangement pursuant to 66 Pa. C.S. § 1405(d).

See Initial Decision, p. 7.

The Commission should sustain the Initial Decision of ALJ Guhl. Complainant excepts to the decision issued by ALJ Guhl on May 17, 2013, because she disagrees with the income basis upon which ALJ Guhl made her decision. Specifically in her exceptions, Complainant states:

The Initial Decision used a comparison of the Complainant's gross income at date of proceeding of \$611 per week (defined in Findings of Fact 16, page 4, as approximately \$2,647 per month) to a figure from 2008 that indicates a net income of \$2,123 per month (Findings of Fact 5, page 3, which does not note that this figure is net, not gross, income). Complainant hereby states that an accurate comparison of income would be the gross amount of income at time of filing, which was \$34,752.25 annually, or approximately \$2,896 per month.

Complainant's gross annual income at time of the Commission-issued payment agreement in 2008, \$34,752.25, was over 300% of the Federal poverty level (approximately 330% of defined poverty level of \$10,400). Complainant's approximate annual income at date of proceeding, \$31,772.00 was between 250% and 300% of Federal poverty level.

See Complainant's Exceptions, p.2.

A "Change of Income" is defined at 66 Pa. C.S. § 1403 as follows:

A decrease in household income of 20% or more if the customer's household income level exceeds 200% of the federal poverty level or a decrease in household income of 10% or more if the customer's household income level is 200% or less of the Federal poverty level.

See 66 Pa. C.S. § 1403

In this case, the record clearly demonstrates that, *at the time of the hearing*, the Complainant's \$31,772.00 household income fell between 250% and 300% of the Federal poverty level, making her a Level 3 customer. Indeed, the Complainant admits in her Exceptions that her gross annual income "at date of proceeding" was \$31,772.00. This is the basis under which ALJ Guhl made her determination. Thus, in order for the Complainant to have a "Change in Income" as described in 66 Pa. C.S. § 1403, she would have to have a decrease in household income of 20% or more as her \$31,772.00 "household income level exceeds 200% of the federal

poverty level” guidelines. Even if one accepts the Complainant’s argument that her 2008 income of \$34,752.25 should have been used and compared to the 2013 income of \$31,772.00, this is not a 20% decrease. Accepting the Complainant’s argument as true, she would have experienced only a 9% decrease, which is not sufficient to qualify as a “Change of Income” under section 1403. The facts show that at the time of the hearing the Complainant was a Level 3 income customer and she did not experience at least a 20% decrease in income from the time the BCS issued the payment agreement on September 24, 2008. Accordingly, ALJ Guhl properly dismissed the Complainant’s formal complaint, requesting another payment agreement.

The Complainant further argues that as of July 6, 2013, her income decreased again from \$611 to \$475 per week and then in September 26, 2013, her unemployment compensation was depleted. The hearing for this matter took place on February 11, 2013. The income decreases the Complainant argues occurred months after the hearing and indeed months after the Initial Decision was issued. ALJ Guhl can only consider evidence before her at the time of the hearing. The Complainant cannot now present new evidence of income changes for the Commission to adjudicate. ALJ Guhl correctly stated in her Initial Decision in footnote two:

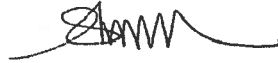
If in the future, the Complainant’s unemployment benefits are depleted, then the Complainant may wish to file again as her circumstances may have changed under the law.

See Initial Decision, p. 7, footnote 2.

The Complainant’s change in income in July 2013 and the exhaustion of her unemployment benefits in September 2013 is not an appropriate basis to challenge ALJ Guhl’s Initial Decision because these events had not occurred at the time of the hearing and were not in evidence before ALJ Guhl.

For the reasons set forth above, PECO respectfully requests that the Commission deny the Exceptions and issue an Order upholding the Initial Decision in its entirety.

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

