



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
OFFICE OF ADMINISTRATIVE LAW JUDGE
801 MARKET STREET, SUITE 4063
PHILADELPHIA, PA 19107
(215) 560-2105

IN REPLY PLEASE
REFER TO OUR FILE

January 7, 2013

Sporty Smith
Betty Ricks
1206 Mt. Vernon
Philadelphia, PA 19123

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

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PA PUC BUREAU
SECRETARY'S BUREAU

Dear Mr. Smith and Ms. Ricks,

During our telephone conversation on January 4, 2013, I understood that you intend to subpoena witnesses for the hearing. I also understood that, although Commission staff has attempted to provide you information regarding the application for subpoena, you still have questions concerning this procedure.

For this reason, I am providing you with a copy of Title 52 of the Pennsylvania Code; Section 5.421, which governs the issuance of subpoenas by the Commission.

You should review the procedures established in 52 Pa. Code § 5.421. You must submit your written application to me sufficiently in advance of the hearing date so that the other parties will have the required ten (10) days' notice to answer or object, and so you will have enough time to receive the subpoena and serve it.

I would also like to note that the statute at 66 Pa. C.S. §311 provides the authority for 52 Pa. Code §5.421(e), stating that witnesses who are summoned before the Commission shall be paid the same fees and mileage as are paid to witnesses in the courts of common pleas. Since the Commission does not have a statute that sets forth the amount of witness fees to be

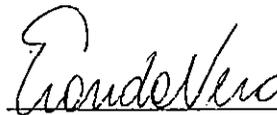
paid, the statute at 42 Pa. C.S. §5903 applies and sets forth the amounts to be paid to subpoenaed witnesses. Workmen's Compensation Appeal Bd. v. Bethlehem Mines Corp., 353 A.2d 79 (Pa. Cmwlth. 1976) The statute at 42 Pa. C.S. §§5903(b) and (c) requires that a witness be paid \$5.00 per day and \$.07 per mile round trip between the residence of the witness and the place named in the subpoena.

As set forth above, 52.Pa. Code §5.421(e) requires that the party subpoenaing a witness shall pay the witness the same fees that the witness would receive in a proceeding in the court of common pleas, regardless of the method the party uses to serve the subpoena. Alternatively, the Commission may, before issuing the subpoena, require a deposit in an amount adequate to cover the witness fees involved or require reasonable surety for that amount. The Commission's regulation differs from Rule 234.2(c) of the Pennsylvania Rules of Civil Procedure, which states that the fee for attendance is to be tendered to the witness only upon demand by the witness when the witness is served personally, and requires that the fee for attendance is to be enclosed with the subpoena if the subpoena is served by mail.

Because the fee is paid directly to the witness (as opposed to a court, a prothonotary, a public officer or employee), it cannot be waived through a petition to proceed *in forma pauperis*.

Sincerely,

Date: January 7, 2013



Eranda Vero

Administrative Law Judge

Cc: Shawane L. Lee, Esq.
w/o Enc.

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