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January 29, 2014

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

RE: 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
—	Motion Objecting to Continuance Request
—	Motion for Judgment on the Pleadings
—	Motion to Admit Exhibits
—	Motion to Consolidate
—	Preliminary Objection
—	Exceptions
<u>X</u>	<u>Reply Exceptions</u>
—	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: Betty Ricks (via First Class Mail)

REPLY EXCEPTIONS

PECO Energy Company (“PECO Energy”) hereby replies to the Exceptions filed by Betty Ricks (“Complainant”) in the above-referenced matter on December 3, 2013. To date, the Complainant’s Exceptions have not been served upon PECO Energy by the Complainant or the Commission. On August 15, 2012, Complainant and her son, Sporty Smith, filed a formal complaint against PECO Energy. In the formal complaint, Complainant and Mr. Smith alleged they had repeatedly requested that PECO Energy come to their address at 1206 Mount Vernon Street, Philadelphia to check their meter. The Complainant and Mr. Smith additionally alleged there was master metering at the property that had been ongoing since 2011 and the Complainant should be allowed to enroll in PECO Energy’s Customer Assistance Program (“CAP”). PECO Energy filed an Answer on August 31, 2012, denying the allegations. PECO Energy also filed a Preliminary Objection to the formal complaint on August 31, 2012, arguing that with the exception of whether Complainant should be enrolled in CAP, the remaining issues raised in Complainant’s formal complaint were res judicata and had already been litigated at docket numbers F-2008-2059928 and F-2008-2060646.

On October 15, 2012, Administrative Law Judge Susan Colwell (“ALJ Colwell”) issued an 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 Complainant should be enrolled in PECO Energy’s Customer Assistance Program (“CAP”). 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. The parties were unable to set a resolution conference based on the Complainants’ refusal to set a time and date for a telephone conference. PECO Energy requested that the matter be scheduled for a hearing and the case was

assigned to ALJ Vero to adjudicate this matter. 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 ALJ Vero’s February 23, 2013 Order, reinstated the Complainant’s claims of faulty meter and incorrect billing.

After the Complainant’s several requests for continuances, and further hearings, a hearing was held before ALJ Vero on July 29, 2013. During the hearing, the Complainant refused to testify on her own behalf and turned her back to ALJ Vero during the entire hearing. The Complainant’s son, Sporty Smith, purported to act as his mother’s attorney under the guise that he had “power of attorney” and attempted to cross-examine PECO Energy’s witnesses. Mr. Smith offered no testimony at the hearing but rather attempted to act as counsel for the Complainant. PECO Energy objected to Mr. Smith acting as an attorney as he is not a licensed attorney admitted to practice law in any State. Further, PECO Energy argued that Mr. Smith had no standing to participate as a Complainant because he did not live at the service address at issue.

Throughout the various hearings held before ALJ Vero in this matter, Mr. Smith was verbally abusive to ALJ Vero, necessitating the ALJ to stop the proceedings and bring in a security officer. Further, the Complainant, Betty Ricks, refused to answer any questions or offer any testimony to support her case. As Mr. Smith is not licensed attorney and had no authority to act at Ms. Ricks’ attorney; Mr. Smith had no standing to prosecute the case; and Ms. Ricks refused to offer any testimony to support her case, ALJ Vero properly dismissed the formal complaint.

The Commission should sustain the initial decision of ALJ Vero. The Complainant’s exceptions are procedurally improper and should be dismissed under that basis alone. Pursuant

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.

to 52 Pa. Code 5.533(b), “[e]ach exception must . . . identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision,” and “[s]upporting reasons for the exceptions shall follow each specific exception.” Complainant’s attempt to further litigation in this matter without identifying any specific error of law or abuse of discretion fails to satisfy the requirements is procedurally improper and should be dismissed summarily.

Preliminarily, Mr. Smith (who is not the Complainant, customer of record or a licensed attorney) is writing the Exceptions. In the Exceptions, Mr. Smith makes inappropriate and bizarre allegations against ALJ Vero that do not warrant a response. For instance, Mr. Smith states “the problem is I am more educated and versed in Law than you wish and instead of respecting me you are putting me through the ringer.” Mr. Smith states “You had no right to call my mother as a witness”. He states that evidence was put on of a “trumped up stupid report.” He states “my feelings are you should not be an ALJ” and that ALJ Vero “dropped the ball way too many times” and “lied”. Similar to the inflammatory Exceptions now before the Commission, the hearing proceeded in the same manner with Mr. Smith verbally abusing ALJ Vero and not permitting her to conduct the proceedings in a civil manner.

Mr. Smith has no standing to bring the formal complaint or file these present Exceptions before the Commission. He is not a residential customer residing at the service address 1206 Mount Vernon Street, Philadelphia, PA. To have standing a person or entity must have a direct, immediate and substantial interest in the subject matter of the proceeding. William Penn Parking Garage, Inc. v. City of Pittsburgh, 464 Pa. 168, 346 A.2d 269 (1975); Landlord Service Bureau, Inc. v. Equitable Gas Co., 79 Pa. P.U.C. 342 (1993); Re Equitable Gas Co., 76 Pa. P.U.C. 23 (1992); The ALJ found that, in order to bring a complaint before the Commission, the Complainants must first demonstrate that they have standing to bring the action. Nye v. Erie

Insurance Exchange, 470 A.2d 98 (Pa. 1983). I.D. at 9-10. Mr. Smith did not reside at 1206 Mount Vernon Street during the 2011 billing period at issue; he is not the customer of record; and does not own the property. During the hearing he presented no compelling evidence that he resided at the address. Accordingly, he has no standing to bring this action against the company or file the instant Exceptions. Consequently, ALJ Vero properly dismissed the formal complaint when Ms. Ricks (the only proper Complainant) refused to testify or offer any evidence to prosecute her case.

At the hearing, Mr. Smith presented a “Power of Attorney”. Mr. Smith refused to offer any testimony; but rather, sought to act as Ms. Ricks’ counsel by cross-examining PECO Energy’s witnesses. Mr. Smith is not a licensed attorney and could not act as his mother’s attorney by cross-examining PECO Energy’s witnesses. The Power of Attorney did not give Mr. Smith the right to act as counsel in this matter and does not give him the authority to file the instant Exceptions. 52 Pa. Code §§ 1.21, 1.22 and 1.23 address representation before the Commission. Section 1.23 clearly states:

Other representation prohibited at hearings;
(a) Persons may not be represented at a hearing before the Commission or a presiding officer except as stated in § 1.21 or § 1.22 (relating to appearance; and appearance by attorney or certified legal intern).

§ 1.23. Sections 1.21 and 1.22 provide that a person may represent themselves before the Commission or may be represented by an attorney or certified legal intern.

In this case, the Complainant and customer of record (Betty Ricks) refused to offer any testimony or evidence to support her case. Mr. Sporty Smith who had a Power of Attorney but is not an attorney or certified legal intern was not authorized to represent the Complainant, Betty Ricks at the hearing. Accordingly, ALJ Vero properly dismissed the formal complaint for failure to prosecute the complaint.

ALJ Vero correctly concluded, that the Complainant has not met her burden of proof in this matter pursuant to 66 Pa. C.S. § 332(a). Accordingly, ALJ Vero's decision to dismiss the Complainant's case against PECO Energy should be upheld.

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,



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BETTY RICKS

COMPLAINANT

v.

PECO ENERGY COMPANY,

RESPONDENT

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Docket Nos. 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.

Date: January 29, 2014



Shawane L. Lee

