



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

June 19, 2014

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

RE: Vincent Diodad v. PECO Energy Company
PUC Docket No.: C-2014-2416521

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *PECO Energy Company's Motion to Dismiss for Failure to Prosecute* with regard to the matter referenced above.

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,

A handwritten signature in black ink, appearing to read "Shawane Lee", with a stylized flourish at the end.

Shawane Lee
Counsel for PECO Energy Company

sl/LO

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

VINCENT DIODAD	:	
	:	
v.	:	DOCKET NO. C-2014-2416521
	:	
PECO ENERGY COMPANY	:	

**PECO ENERGY COMPANY’S MOTION TO DISMISS
FOR FAILURE TO PROSECUTE**

PECO Energy Company ("PECO Energy") hereby motions to dismiss the Complainant, Vincent Diodad’s formal complaint pursuant to 52 Pa. Code § 5.245(a)(1) and (c) for failure to prosecute and for disorderly hearing conduct and states the following:

1. A telephonic hearing for the above-referenced matter was scheduled to take place on June 19, 2014, before Administrative Law Judge Ember S. Jandebour (“ALJ Jandebour”).
2. The hearing convened with PECO Energy’s counsel and two proposed witnesses.
3. The Complainant, Vincent Diodad (“Mr. Diodad”) was also present on the telephone for the hearing.
4. Mr. Diodad stated that he did not want to proceed with the hearing because he was driving a Federal Express truck and needed to have his deliveries made before 10:30 a.m. He stated that he felt it was unsafe to participate in the hearing while driving the truck.
5. ALJ Jandebour reminded Mr. Diodad that the hearing had been scheduled and he would need to participate, or in the alternative take a vacation day to participate in the hearing.
6. Mr. Diodad became verbally abusive to ALJ Jandebour and objected to having to take a vacation day to handle the hearing. He began screaming and shouting and using profanity and refused to participate in the hearing.

7. Mr. Diodad abruptly disconnected his telephone call and participation in the hearing.

8. PECO Energy made a verbal motion on the record to dismiss Mr. Diodad's formal complaint for failure to prosecute.

9. 52 Pa. Code § 5.245(a)(1) states: (a) after being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will: (1) Be deemed to have waived the opportunity to participate in the conference or hearing.

10. By refusing to participate in the scheduled hearing, Mr. Diodad waived his opportunity to participate; and therefore, his formal complaint should be dismissed with prejudice for failure to prosecute.

11. Further, 52 Pa. Code § 5.245(c) states: If the Commission or the presiding officer finds, after notice and opportunity for hearing, that the actions of a party, ..., in a proceeding obstruct the orderly conduct of the proceeding and are inimical to the public interest, the Commission or the presiding officer may take appropriate action, including dismissal of the complaint.

12. During the hearing, Mr. Diodad became verbally abusive to ALJ Jandebour, started screaming and shouting, and used profane language.

13. Mr. Diodad's actions obstructed the orderly conduct of the proceeding; and therefore, his formal complaint should be dismissed for this reason.

14. A similar event occurred in the matter David Nippes v. PECO Energy, C-2013-2363324 (Order entered, Aug. 315, 2013). A copy of the Initial Decision is enclosed at Exhibit "1".

15. In that case, David Nippes appeared for a telephonic hearing before Administrative Law Judge Susan D. Colwell.

16. At the beginning of the hearing, Mr. Nippes questioned the ability of ALJ Colwell to handle the case and became verbally abusive. ALJ Colwell warned Mr. Nippes that she would dismiss the case if his behavior continued. Mr. Nippes abruptly ended the hearing by stating: “Guess what b#\$%*, it’s over.” See David Nippes v. PECO Energy, p. 5, supra.

17. ALJ Colwell dismissed Mr. Nippes’ complaint pursuant to 52 Pa. Code § 5.245(a)(1) and (c) for failure to prosecute and for disorderly hearing conduct. See David Nippes v. PECO Energy, pp. 6-8, supra

18. The Commission adopted ALJ Colwell’s Initial Decision through a Final Order dated September 30, 2013.

19. In this case, Mr. Diodad’s disorderly behavior and profanity disrupted the orderly conduct of the hearing. Further, Mr. Diodad refused to participate in the hearing. Accordingly, as in David Nippes, supra, Mr. Diodad’s formal complaint should be dismissed.

WHEREFORE, PECO Energy respectfully requests that this Honorable Commission dismiss Mr. Diodad’s formal complaint for failure to prosecute and for disorderly conduct during the hearing.

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**

VINCENT DIODAD

v.

PECO ENERGY COMPANY

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DOCKET NO. C-2014-2416521

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: June 19, 2014

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

VINCENT DIODAD :
 :
 v. : DOCKET NO. C-2014-2416521
 :
 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 to Dismiss in the above matter upon all interested parties by mailing and emailing a copy, properly addressed and postage prepaid to:

Ember S. Jandebour, Adm. Law Judge
Scranton State Office Building
100 Lackawanna Avenue, Room 317
Scranton, PA 18503

Vincent Diodad
4908 Buckboard Lane
Pipersville, PA 18947



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, June 19, 2014.

EXHIBIT “1”



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

August 20, 2013

C-2013-2363324

DAVID NIPPES
V.
PECO ENERGY COMPANY

TO ALL PARTIES:

Enclosed is a copy of the Initial Decision of the Office of Administrative Law Judge.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Your signed Exceptions to the decision, if any, must be: 1) filed with the Secretary of the Commission, and 2) mailed or hand-delivered to each party of record, within twenty (20) days of the date of this letter.

To file Exceptions with the Secretary of the Commission, you must mail or hand-deliver them as follows:

If using U.S. Postal Service:

Secretary
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

If using Overnight or Hand Delivery Service:

Secretary
Pa. Public Utility Commission
400 North Street
Commonwealth Keystone Building, 2nd Floor
Harrisburg, PA 17120

Or, instead of mailing or hand-delivering your Exceptions, you may electronically file them with the Secretary of the Commission. To do so, you need to establish an account on the Commission's eFiling system, which may be accessed at <http://www.puc.state.pa.us/efiling/default.aspx>. Please note that Exceptions sent to the Commission by fax or e-mail will not be accepted for filing.

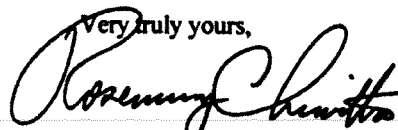
In addition to filing your Exceptions with the Secretary of the Commission, a courtesy copy of your Exceptions should be e-mailed to the Commission's Office of Special Assistants (OSA) at ra-OSA@pa.gov. If the document is too large to e-mail, please mail or hand-deliver a copy on CD-ROM or DVD (or other data storage media), in Microsoft Word 2010 format or other compatible format to either address noted above.

Replies to Exceptions, if any, must be filed with the Secretary of the Commission and served on each party of record and the Commission's OSA, in the manner described above. They are due within ten (10) days of the date when Exceptions are due.

It is your responsibility to serve all the parties with your Exceptions and Replies to Exceptions. Failure to do so may render your filing unacceptable. A certificate of service (see format in 52 Pa. Code §1.58) shall be attached to the filed Exceptions or Replies to Exceptions.

Exceptions and Replies to Exceptions shall follow 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.)". Any reference to specific sections of the Administrative Law Judge's Initial Decision shall include the page number(s) of the cited section of the decision.

If no Exceptions are received, 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,

Rosemary Chiavetta
Secretary

Enclosures
Certified Mail
Receipt Requested

PECO ENERGY
EXHIBIT 1

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

David Nippes

v.

PECO Energy Company

:
:
:
:
:

C-2013-2363324

INITIAL DECISION

Before
Susan D. Colwell
Administrative Law Judge

HISTORY OF THE PROCEEDING

On April 26, 2013, David Nippes (Complainant) filed a formal Complaint against PECO Energy Company (PECO or Respondent) alleging that PECO had charged him the wrong rate for three days in December 2012. PECO filed an Answer which acknowledged that the Complainant's account had been billed on a 35-day billing cycle, from October 31, 2012 through December 5, 2012, and that the gas rate billed during that time period had been approved by the Commission at \$0.49381. The Answer acknowledged that the default natural gas rate can be changed on March 1, June 1, September 1, and December 1. PECO had opened a company inquiry and closed it by letter dated February 14, 2013, which indicated that PECO believed that there was no error on the Complainant's bill.

On June 20, 2013, a Telephonic Hearing Notice was issued which set the evidentiary hearing for August 12, 2013, and assigned the matter to me. I issued a prehearing order on June 24, 2013, which set forth some of the requirements for participating in a formal proceeding before the Commission.

On August 12, 2013, the hearing commenced as scheduled. Shawane Lee, Esq., appeared on behalf of PECO. She had mailed proposed exhibits and was prepared to present two witnesses. Complainant appeared on his own behalf.

After exhibiting inappropriate behavior, Complainant was warned that an additional outburst would result in the termination of the hearing. He quickly engaged in that behavior, the hearing was terminated, and the record closed.

A transcript was prepared. This matter is ripe for disposition.

FINDINGS OF FACT

1. Complainant is David Nippes, 137 W. Lancaster Avenue, Downingtown PA 19335.
2. Respondent is PECO Energy Company, a jurisdictional public utility providing residential and commercial gas and electric distribution service in the Commonwealth of Pennsylvania.
3. On April 26, 2013, Complainant filed a formal Complaint alleging that PECO had placed incorrect charges on his bill.
4. On June 3, 2013, PECO filed its Answer denying the material allegations of the Complaint and outlining the steps it had taken in response to Complainant's inquiries.
5. On August 12, 2013, the evidentiary hearing was convened by telephone as scheduled.
6. Complainant engaged in inappropriate and hostile behavior.

7. Complainant was warned that another outburst would result in termination of the hearing.
8. Complainant responded, "Guess what, b#*\$@, it's over."
9. Complainant's response was sufficient reason to end the hearing.

DISCUSSION

Complainant indicated that he believed that PECO had charged him the wrong rate for service provided during the billing cycle that included December 1, 2012. He stated that the rate changed on December 1, 2012, and that PECO did not change the rate for the affected days in the billing cycle, which he identified as three days.

The party seeking affirmative relief from the Commission bears the burden of proof. 66 Pa. C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the Complaint in order to prevail. *Patterson v. Bell Tel. Co. of PA*, 72 Pa PUC 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Publ. Util. Comm'n*, 578 A.2d 600 (1990), *alloc. denied*, 602 A.2d 863 (1992). A preponderance of evidence is that which is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (1950).

Additionally, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence, which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Mill v. Comm., Pa. Publ. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. Ct.1982); *Edan Transportation Corp. v. Pa. Publ. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. Ct.1993), 2 Pa. C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. V. Pa. Publ. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor*

Corp. v. Unemployment Com. Bd. Of Review, 166 A.2d 96 (Pa. Super. Ct.1960); *Murphy v. Comm., Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. Ct.1984).

Complainant did not provide any details to support his claim and instead began to question the ability of the presiding officer to hear this case as I was not appointed by the Commonwealth Court of Pennsylvania. When I indicated that he would need more information for his evidentiary record, he cut me off before I could ask questions to provide additional evidence. Complainant would not listen, and he would not permit me to run the hearing in the orderly fashion required by due process and Pennsylvania law.

The Commission is required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. Publ. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth.1984). Once notice of a hearing and the opportunity to be heard has been provided, it is the responsibility of the parties to appear and participate in the hearing. *Sentner v. Bell Tel. Co. of PA*, PUC Docket No. F-00161106 (Opinion and Order entered October 25, 2003).

It is axiomatic that parties appearing before the Commission must at least make a good faith effort to comply with its procedures. *Dushawn King v. Verizon Pennsylvania Inc.*, Docket No. C-20054799 (Order entered March 21, 2006), 2006 Pa. PUC LEXIS 26. This participation must be in a respectful and orderly fashion, and this Complainant's behavior fell far short of this standard.

Complainant was afforded an opportunity for a fair hearing and he failed to take advantage of it. In addition, he prevented the Respondent from participating in the hearing by causing its premature termination.

Commission regulations require that the presentation of evidence follow convention, with each having the right to present evidence, cross-examination, etc. See 52 Pa. Code §§ 5.242, 5.243. In addition:

If the Commission or the presiding officer finds, after notice and opportunity for hearing, that the actions of a party, including an intervenor, in a proceeding obstruct the orderly conduct of the proceeding and are inimical to the public interest, the Commission or the presiding officer may take appropriate action, including dismissal of the complaint, application, or petition, if the action is that of the complainant, applicant, or petitioner.

52 Pa. Code § 5.245(c).

The Commission has repeatedly and consistently found that striking complaints for the contemptuous failure to respond to discovery, rather than prohibiting the introduction of evidence at a hearing, is the appropriate sanction to be imposed. *Merchant v. The Bell Telephone Company of Pennsylvania*, Docket No. C-00935253, Commission Order entered June 20, 1994; *Application of Tyrone E. Hartley, v/d/b/a T's Automotive Service*, Docket No. A-00112575, (Commission Final Order entered August 6, 1996); *Application of Karen Lee Miller*, Docket No. A-00116067 (Commission Final Order entered March 27, 2000); *Application of Patrick M. Kelsey*, Docket No. A-00116366 (Commission Final Order entered May 18, 2000); *Application of Besteastern Limousine, Inc.*, Docket No. A-00118593 (Commission Final Order entered November 14, 2002). *See also, Samick et al. v. Pennsylvania Electric Company*, Docket Nos. C-20043921, C-20043923 and C-20043925 (Commission Final Order entered October 25, 2005). The reason is that failure to comply with the rules of discovery directly affects the due process rights of the promulgating party, thus preventing orderly and fair litigation. It is no less appropriate here, for the same reason. Complainant's inappropriate behavior prevents fair and orderly litigation, and prevents Respondent from receiving due process.

In conclusion, Complainant was warned that failure to abide by the rules in a hearing would result in the termination of his hearing. He chose to end the hearing by responding, "Guess what, b#\$%*, it's over." At that time, the hearing was terminated. His actions were sufficient to justify dismissal of the Complaint under 52 Pa. Code § 5.245(c), and in

addition, Complainant failed to provide sufficient evidence to support his claims, and his Complaint is dismissed.¹

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa. C.S. § 701.

2. As the party seeking affirmative relief from the Commission, Complainant bears the burden of proof. 66 Pa. C.S. § 332(a).

3. Due process is provided when the parties are afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. Publ. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

4. Complainant was provided due process.

5. It is axiomatic that parties appearing before the Commission must at least make a good faith effort to comply with its procedures. *Dushawn King v. Verizon Pennsylvania Inc.*, Docket No. C-20054799 (Order entered March 21, 2006), 2006 Pa. PUC LEXIS 26.

6. Commission regulations require that the presentation of evidence follow convention, with each having the right to present evidence, cross-examination, etc. See 52 Pa. Code §§ 5.242, 5.243.

7. If the Commission or the presiding officer finds, after notice and opportunity for hearing, that the actions of a party, including an intervenor, in a proceeding obstruct the orderly conduct of the proceeding and are inimical to the public interest, the

¹ I note that Complainant had two prior cases: he failed to prosecute his prior complaint against PECO at Docket No. C-20077811 (dismissed by Initial Decision of ALJ Jones on September 11, 2007, final without further action November 1, 2007); Complainant's case against Verizon Pennsylvania, Inc., was dismissed for failure to prosecute by ALJ Buckley when Complainant hung up during the evidentiary hearing, Docket No. F-2011-2230933 (Initial Decision dated October 14, 2011, final without further Commission action December 9, 2011).

Commission or the presiding officer may take appropriate action, including dismissal of the complaint, application, or petition, if the action is that of the complainant, applicant, or petitioner. 52 Pa. Code § 5.245(c).

8. Complainant was afforded notice and an opportunity to be heard.

9. Complainant's actions obstructed the orderly conduct of the proceeding and were inimical to the public interest and therefore, they justify the dismissal of the Complaint under 52 Pa. Code § 5.245.

10. The Commission has repeatedly and consistently found that striking complaints for the contemptuous failure to respond to discovery, rather than prohibiting the introduction of evidence at a hearing, is the appropriate sanction to be imposed. *Merchant v. The Bell Telephone Company of Pennsylvania*, Docket No. C-00935253 (Commission Order entered June 20, 1994); *Application of Tyrone E. Hartley, d/b/a T's Automotive Service*, Docket No. A-00112575 (Commission Final Order entered August 6, 1996); *Application of Karen Lee Miller*, Docket No. A-00116067 (Commission Final Order entered March 27, 2000); *Application of Patrick M. Kelsey*, Docket No. A-00116366 (Commission Final Order entered May 18, 2000); *Application of Besteastern Limousine, Inc.*, Docket No. A-00118593 (Commission Final Order entered November 14, 2002). *See also, Samick et al. v. Pennsylvania Electric Company*, Docket Nos. C-20043921, C-20043923 and C-20043925, Commission Final Order entered October 25, 2005.

11. Complainant failed to provide sufficient evidence to support his Complaint.

