



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 28, 2014

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

**RE: Alliance of Youth Mission Ministries v. PECO Energy Company
PUC Docket No.: C-2014-2423794**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *PECO Energy Company's Motion to Dismiss* 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 long, sweeping underline.

Shawane Lee
Counsel for PECO Energy Company

cc: Certificate of Service

sl/LO

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ALLIANCE OF YOUTH MISSION
MINISTRIES

v.

PECO ENERGY COMPANY

:
:
:
:
:
:

DOCKET NO. C-2014-2423794

**PECO ENERGY COMPANY’S MOTION TO DISMISS
FOR FAILURE TO COMPLY WITH
A PRESIDING OFFICER’S PRE-HEARING ORDERS**

PECO Energy Company ("PECO Energy") hereby motions to dismiss the Complainant, Alliance of Youth Mission Ministries (“Alliance Youth’s”) formal complaint pursuant to 52 Pa. Code § 5.371(a) for failure to comply with Administrative Law Judge Darlene D. Heep’s (“ALJ Heep’s”) Prehearing Orders and states the following:

1. Complainant, Alliance Youth, through their attorney, Robert Simmons, Esquire, filed a formal complaint and amended complaint against PECO Energy, alleging incorrect billing, incorrect termination procedures and foreign wiring.
2. On August 1, 2014, ALJ Heep issued a Prehearing Order, scheduling this matter for hearing on September 12, 2014 at 10:00 a.m.
3. Complainant, Alliance Youth, requested a continuance of the September 12, 2014, hearing, which was granted.
4. On August 20, 2014, ALJ Heep issued a second Prehearing Order, scheduling this matter for hearing on November 5, 2014 and November 6, 2014.
5. The August 20, 2014, Prehearing Order, ordered the parties to submit a Pre-hearing Memorandum to ALJ Heep by October 15, 2014.

6. The August 1, 2014 and August 20, 2014, Prehearing Order, also ordered the parties to have a resolution conference prior to submitting the Prehearing Memorandum.

7. On September 11, 2014, ALJ Heep issued a fourth Prehearing Order, ordering the Complainant to submit copies of all exhibits to be presented in their case on or before October 21, 2014, and PECO Energy to submit their exhibits on or before October 23, 2014.

8. Consistent with the August 1, 2014, Prehearing Order, PECO Energy attempted to contact Complainant's counsel via telephone and email to schedule a prehearing resolution conference. Complainant's counsel did not respond to PECO Energy's requests.

9. On October 15, 2014, PECO Energy submitted the company's Prehearing Memorandum in compliance with ALJ Heep's Order and served a copy to the Complainant and ALJ Heep.

10. Neither Alliance Youth nor Attorney Simmons submitted a Prehearing Memorandum as ordered by ALJ Heep's Prehearing Order.

11. In compliance with ALJ Heep's September 11, 2014, Order, PECO Energy submitted a copy of the company's hearing exhibits marked 1-21 to the Complainant and ALJ Heep On October 21, 2014.

12. Alliance Youth and Attorney Simmons did not submit hearing exhibits in compliance with ALJ Heep's Prehearing Order.

13. On October 22, 2014, ALJ Heep sent counsel for the Complainant, Robert Simmons, Esquire and counsel for the Respondent, PECO Energy, Shawane L. Lee, Esquire e-mail correspondence, requesting to schedule a Prehearing telephone conference to take place on Friday, October 24, 2014 at 2:00 p.m.

14. Counsel for PECO Energy and ALJ Heep joined the call; however, Attorney Simmons and Alliance Youth did not respond to the call or contact ALJ Heep to state they were unavailable for the call.

15. An In Person hearing for the above-referenced matter is scheduled to take place on November 5, 2014 and November 6, 2014, before ALJ Heep.

16. PECO Energy avers that the Complainant's formal complaint should be dismissed and the hearing cancelled as a sanction for Complainant's failure to comply with ALJ Heep's Prehearing Orders.

17. The Commission regulations at 52 Pa. Code §§ 5.371 and 5.372 govern sanctions.

18. Section 5.371 reads as follows:

(a) The Commission or the presiding officer may, on motion, make an appropriate order if one of the following occurs:

(1) A party fails to appear, answer, file sufficient answers, file objections, make designation or otherwise respond to discovery requests, as required under this subchapter.

(2) ...A party refusesto obey an order of a presiding officer respecting discovery.

19. Pursuant to Section 5.372:

(a) The presiding officer, when acting under § 5.371 (relating to sanctions – general) may make one of the following:

(3) An order striking out pleadings or parts thereof, staying further proceedings until the order is obeyed, or entering a judgment against the disobedient party or individual advising the disobedience.

20. Failure to comply with an order issued by a presiding officer warrants dismissal of the complaint. New Fizon Catering, Inc. v. PECO Energy Co., Docket Nos. C-2008-2065498 and C-2008-2079076 (Order entered June 24, 2009); Snyderville Community Development

Corp. v. Philadelphia Gas Works, Docket No. C-20055032, 2006 Pa PUC LEXIS 64 (Opinion and Order entered July 31, 2006).

21. In Snyderville, supra, the Commission stated that “An ALJ’s Orders must be complied with, and such a lack of compliance presents a sufficient basis to dismiss the Complaint without a hearing.” Treffinger v. PPL Electric Utilities Corp., Docket No. C-20027978, 2003 Pa.PUC LEXIS 3 (Opinion and Order entered March 3, 2003).

22. In the instant case, Complainant failed to comply with ALJ Heep’s Prehearing Orders dated August 1, 2014, August 20, 2014, and September 11, 2014.

23. It is undisputed that Complainant failed to cooperate with the August 1, 2014, Order to participate in a resolution conference with PECO Energy and did not participate in the October 24, 2014 resolution call with ALJ Heep.

24. It is undisputed that Complainant failed to comply with the August 20, 2014 Prehearing Order by not submitting a Prehearing Memorandum.

25. It is undisputed that Complainant failed to comply with the September 11, 2014, Prehearing Order by not submitting hearing exhibits.

26. Complainant has provided no explanation why they have failed to respond and comply with ALJ Heep’s Orders.

27. Since the Complainant failed to respond to ALJ Heep’s request to submit a Prehearing Memorandum and hearing exhibits and refused to obey an order of a presiding officer, the hearing scheduled for November 5th and November 6th should be cancelled and the formal complaint dismissed in accordance with 52 Pa.Code §§ 5.371 and 5.372.

WHEREFORE, PECO Energy respectfully requests that this Honorable Commission dismiss Complainant, Alliance Youth's formal complaint for refusing to obey the Prehearing Orders of a presiding officer.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Shawane L. Lee', with a long horizontal flourish extending to the right.

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**

ALLIANCE OF YOUTH MISSION
MINISTRIES

v.

PECO ENERGY COMPANY

:
:
:
:
:
:

DOCKET NO. C-2014-2423794

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: October 28, 2014

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ALLIANCE OF YOUTH MISSION :
MINISTRIES :
 :
v. : DOCKET NO. C-2014-2423794
 :
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:

Robert Simmons, Esquire
3700 Gateway Drive, Suite 324
Philadelphia, PA 19145-5948

Ralph LaRue Smith
Alliance of Youth Mission Ministries
3040 North 22nd Street
Philadelphia, PA 19132

Administrative Law Judge Darlene Davis Heep
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
Philadelphia, PA 19107



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, October 28, 2014.