



An Exelon Company

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April 30, 2015

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

RE: Gregory Kennedy v. PECO Energy Company
PUC Docket No.: C-2015-2471718

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *PECO Energy Company's Reply Exceptions* 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

cc: Certificate of Service
Gregory Kennedy

SL/ab

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

GREGORY KENNEDY	:	
Complainant	:	
v.	:	DOCKET NO. C-2015-2471718
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

REPLY EXCEPTIONS OF PECO ENERGY COMPANY

**Shawane L. Lee, Esquire
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Shawane.Lee@exeloncorp.com
Counsel for PECO Energy Company**

DATE: April 30, 2015

REPLY EXCEPTIONS

PECO Energy Company (“PECO”) hereby replies to the Exceptions filed by Gregory Kennedy (“Complainant”) in the above-referenced matter on April 27, 2015. The Complainant served PECO with the Exceptions via email on April 27, 2015.

On February 23, 2015, Complainant filed a formal complaint against PECO. In his formal complaint, Complainant alleged that PECO would not accept any other forms of payment except, cash, checks or credit cards. The Complainant stated that he attempted to pay his PECO bill and discharge his debt with the company by using a promissory note; however, PECO would not accept his promissory note; and therefore, violated UCC 3-603 Tender of Payment Law and 31 USC 5118 The Gold Clause and Consent to Sue. Respondent, PECO filed an Answer to the Complainant’s formal complaint on March 20, 2015. In the company’s answer, PECO responded that the company properly refused to accept the Complainant’s 1099A, 1099C, Bill of Exchange and Promissory notes for payment of electric charges, and that the company accepts, cash, personal checks, credits cards and money orders only. On March 20, 2015, PECO filed a Preliminary Objection to the Complainant’s formal complaint, arguing that this issue has already been decided in the case James Coppedge v. PECO Energy, F-2014-2406180 (Opinion and Order entered Jul. 29, 2014), wherein the PUC determined:

Neither Section 1501 of the Code nor our Regulations requires that in order to provide reasonable and reliable service PECO must accept on account any and all legitimate or self-proclaimed forms of payment.

James Coppedge v. PECO Energy, F-2014-2406180 (Opinion and Order entered Jul. 29, 2014).

The Complainant filed a Response to PECO’s Preliminary Objection on March 30, 2015, stating that PECO’s tariff does not exclude Promissory Notes. On April 9, 2015, Administrative

Law Judge Susan D. Colwell (“ALJ Colwell”) issued an Initial Decision granting PECO’s Preliminary Objections. In a well-reasoned decision with ample support, ALJ Colwell ruled:

The public interest does not require a hearing in this case. The Commission does not have the requisite jurisdiction to determine the negotiability of Complainant’s alleged tender of payments. A hearing in this case would be a fruitless exercise and therefore is not necessary or in the public interest.

Gregory Kennedy v. PECO Energy, C-2015-2471718 (Opinion and Order entered Apr. 9, 2015).

In his Exceptions, Complainant argues that in ALJ Colwell’s Initial Decision, she stated that she did not receive an Answer from Complainant to PECO’s Preliminary Objections. The Complainant argues that this is “materially incorrect” and that the Commission should amend its findings to reflect the Answer that was timely filed by the Complainant. Regardless of the fact the Complainant filed an Answer to PECO’s Preliminary Objection on March 30, 2015, the Answer is not material to ALJ Colwell’s decision that the Commission has no jurisdiction to determine the negotiability of the Complainant’s promissory note. The Complainant’s Answer states that PECO’s tariff does not exclude promissory notes. However, this is of no import because PECO’s tariff does not *include* promissory notes. Further, the fact that Complainant’s Answer has not been included in ALJ Colwell’s Initial Decision does not change any material issue of law or fact in this case.

In his Exceptions, Complainant has provided no legal justification to support that PECO should accept additional forms of payment to include promissory notes. Complainant’s Exceptions do not present any grounds for overturning the Initial Decision. Complainant did not provide any argument regarding why the Initial Decision was incorrect or improper on the facts and the law. The only thing the Complainant raises is that his Answer to PECO’s Preliminary Objection was not noted in the decision. Even if ALJ Colwell had noted his Answer in the Initial

Decision, it still would not change the fact that the Commission has no jurisdiction to review different forms of negotiable instruments and that PECO's unwillingness to accept a promissory note does not constitute unreasonable service. The Exceptions provide no grounds for overturning the Initial Decision whatsoever. Nothing in the Complainant's Exceptions warrants a reversal of the ALJ's decision.

The Commission's Rules of Administrative Practice and Procedure permit the filing of Preliminary Objections. 52 Pa. Code §5.101. Pursuant to 52 Pa. Code §5.101(a)(4), a formal complaint may be dismissed without a hearing for legal insufficiency. The Complainant was served with a copy of PECO's Preliminary Objections and he was given the opportunity to respond. Where a question presented to the Commission is one of law, there is no necessity to hold a hearing. White Oak Borough Authority v. Pennsylvania Public Utility Commission, 183 A.2d 502, 175 Pa.Super. 114. The Commission is granted discretion to dismiss a complaint without a hearing if a hearing is not necessary in the public interest. 66 Pa. C.S. § 703(b); 52 Pa. Code § 5.21(d). A hearing is necessary only to resolve disputed questions of fact, and is not required to resolve questions of law, policy or discretion. Dee-Dee Cab, Inc. v. Pa. Public Utility Comm., 817 A.2d 593, petition for allowance of appeal denied, 836 A.2d 123 (Pa. Commw. 2003); Lehigh Valley Power Committee v. Pa. Public Utility Comm., 563 A.2d 548 (Pa. Commw. 1989); Edan Transportation Corp. v. Pa. Public Utility Comm., 623 A.2d 6 (Pa. Commw. 1993).

Here, as noted by ALJ Colwell in the Initial Decision, it is clear from the pleadings that "PECO's action in refusing to accept Complainant's promissory note as payment for his bill does not violate a statute, regulation, or order of the Commission necessary for the adjudication of this matter." Consistent with Alkhatib v. PECO Energy Company, PUC Docket No. C-2011-

2242125 (Opinion and Order entered, Jan. 12, 2012); James Coppedge v. PECO Energy Company, PUC Docket No F-2009-2135893 (Opinion and Order entered, Aug. 3, 2010) and James Coppedge v. PECO Energy Company, PUC Docket No. F-2014-2406180 (Order entered, Jul. 29, 2014), ALJ Colwell determined “since the Commission lacks jurisdiction to grant the remedy sought, and because there is no issue of material fact, Respondent’s POs are granted.”

ALJ Colwell’s Initial Decision correctly applied the standard for resolving preliminary objections and assumed for decisional purposes that the factual allegations of the Complaint are true. None of the facts asserted in Complainant’s formal complaint states a case against PECO as a matter of law. PECO’s refusal to accept a promissory note as a form of payment does not violate the Public Utility Code, tariff or regulation or Commission order. As such, it was proper and appropriate to dismiss the Complaint based on PECO’s preliminary objections without holding a hearing. Accordingly, ALJ Colwell’s Initial Decision 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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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: April 30, 2015

Shawane L. Lee

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CERTIFICATE OF SERVICE

I, Shawane L. Lee, hereby certify that I have this day served a true copy of the foregoing Reply Exceptions upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**Gregory Kennedy
28 North Saint Bernard Street
Philadelphia, PA 19139**

Dated at Philadelphia, Pennsylvania, April 30, 2015.



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