

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Mary Ann Keller

v.

PECO Energy Company

C-20066251

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SECRETARY'S BUREAU

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ORDER GRANTING MOTION TO DISMISS IN PART  
AND DENYING IT IN PART

Before  
Veronica A. Smith  
Chief Administrative Law Judge

HISTORY OF THE PROCEEDING

On April 17, 2006, Mary Ann Keller ("Complainant") filed a Formal Complaint with the Commission against PECO Energy Company ("Respondent") alleging: (1) an inability to pay her utility bills and requesting a lower payment arrangement than that previously established by the Commission's Bureau of Consumer Services ("BCS"); (2) inappropriate and/or rude behavior on behalf of PECO personnel and (3) high bills.

On May 11, 2006, Respondent filed an Answer<sup>1</sup> with New Matter. Respondent also filed a Motion to Dismiss seeking to dismiss the Complaint on the basis that jurisdiction for a payment arrangement on Complainant's outstanding balance is not properly before the Commission.

<sup>1</sup> Respondent did not address Complainant's second and third allegations in its Answer and New Matter filed on May 16, 2006. Such an omission conflicts with 52 Pa. Code § 5.61(b) which required Respondent's answer to admit or deny specifically all material allegations of the pleading answered. Respondent is reminded of its duty to comply with this regulation and failure to do so may result in the unanswered allegations being deemed admitted pursuant to 52 Pa. Code § 5.61(c).

According to Commission records, as of June 7, 2006, Complainant did not file a response to the New Matter<sup>2</sup> portion of Respondent's Answer or its Motion to Dismiss<sup>3</sup>. Therefore, the factual allegations raised as New Matter are deemed admitted<sup>4</sup>. This matter was assigned to me by Motion Judge Assignment Notice dated May 19, 2006. The Motion to Dismiss is now ready for ruling.

FINDINGS OF FACT:

1. Complainant is Mary Ann Keller, 565 Timberlake Road, Upper Darby, PA, 19082.

2. Respondent is PECO Energy Company.

3. On May 17, 2006, Complainant filed a Formal Complaint with the Commission alleging (1) an inability to pay her utility bills and requesting a lower payment arrangement than that previously established by the Commission's Bureau of Consumer Services (BCS), (2) inappropriate and/or rude behavior on behalf of PECO personnel, and (3) a high bill complaint.

4. Complainant participates in Respondent's CAP Rate Program and receives a 25% discount on the first 500 kilowatt hours of electric service and approximately a 20% discount on gas service each month.

5. Respondent moved for dismissal of the Complaint on the basis that jurisdiction for a payment arrangement on Complainant's outstanding balance is not properly before the Commission.

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<sup>2</sup> Pursuant to 52 Pa. Code §5.62(c) Complainant's response to New Matter was due on or before June 6, 2006.

<sup>3</sup> Pursuant to 52 Pa. Code §5.101(d) a reply to the Motion to Dismiss was due on or before May 26, 2006.

<sup>4</sup> The Commission's regulations state: "A reply to new matter shall be filed within 20 days of the date of service of the answer or other pleading raising new matter. Failure to file a timely reply to new matter shall be deemed in default, and relevant facts stated in the new matter may be deemed admitted." 52 Pa. Code §5.62(c).

6. Complainant did not file a response to the New Matter portion of Respondent's Answer or its Motion to Dismiss.

#### DISCUSSION

Before the Commission is a Complaint and a Motion to Dismiss the Complaint on the basis that jurisdiction for a payment arrangement on Complainant's account is not properly before the Commission.

The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections. 52 Pa. Code §5.101. When considering a motion to dismiss, the Commission must view the Complaint in a light most favorable to the Complainant, and the Complaint should be dismissed only when it appears that the Complainant would not be entitled to relief under any circumstances. Equitable Small Transportation Interveners, 1994 Pa. PUC LEXIS 69 (July 18, 1994); Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources, 406 A.2d 1020 (Pa. 1979). This is similar to Pennsylvania civil practice with respect to the filing of preliminary objections. Equitable Small Transportation Interveners, *supra*.

The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the motion, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. County of Allegheny v. Commw. of Pa., 490 A.2d 402 (Pa. 1985); Commw. of Pa. v. The Bell Telephone Co. of Pa., 551 A.2d 602 (Pa. Commw. 1988). The motion may be granted only if the moving party prevails as a matter of law. Roc v. Flaherty, 527 A.2d 211 (Pa. Commw. 1985). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. Dept. of Auditor General, et al. v. State Employees' Retirement System, et al., 836 A.2d 1053, 1064 (Pa. Commw. 2003) (citing, Boyd v. Ward, 802 A.2d 705 (Pa. Commw. 2002)).

For the reasons set forth below, the Complaint allegation regarding Complainant's inability to pay her utility bills is dismissed. The remaining allegations regarding inappropriate and/or rude behavior on behalf of PECO Energy personnel and high bills will proceed to hearing.

The Responsible Utility Customer Protection Act, 66 Pa. C.S. §1401, *et seq.*, became effective December 14, 2004, and applies to this proceeding. This new law provides strict guidelines that the Commission must follow in handling customer complaints. Section 1405(c) of the Public Utility Code reads as follows:

(C) Customer Assistance Programs. – Customer assistance program rates shall be timely paid and shall not be the subject of payment agreements negotiated or approved by the commission.

66 Pa. C.S. § 1405(c).

The General Assembly has made it clear that the Commission lacks the authority to establish payment arrangements for customers participating in CAP programs offered by public utilities.

Section 1403 of the Public Utility Code defines a CAP program as follows:

A plan or program sponsored by a public utility for the purpose of providing universal service and energy conservation, as defined by Section 2202 (relating to definitions) or Section 2803 (relating to definitions), in which customers make monthly payments based on household income and household size and under which customers must comply with certain responsibilities and restrictions in order to remain eligible for the program.

66 Pa. C.S. § 1403 (Definition of "Customer Assistance Program").

Complainant participates in PECO's CAP rate program and receives a 25% discount on the first 500 kilowatt hours of electric service and approximately a 20% discount on gas service each month. The discount received by a customer enrolled in PECO's CAP program is based upon the household income and size in relation to the federal poverty guidelines. PECO's CAP program,

PECO's CAP program, meets the requirements of 66 Pa. C.S. §1403 and therefore, the Commission lacks the authority to establish a payment arrangement for Complainant and his Complaint must be dismissed.

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 (2003); Lehigh Valley Power Committee v. Pa. Public Utility Comm., 563 A.2d 548 (1989); Edan Transportation Corp. v. Pa. Public Utility Comm., 623 A.2d 6 (1993). Complainant's allegations of inappropriate and/or rude behavior on behalf of PECO personnel and high bills remain contested questions of fact and a hearing in the instant case is necessary and in the public interest.

Respondent's Motion to Dismiss will be granted with respect to Complainant's inability to pay allegation, but denied according to Complainant's allegation of inappropriate and/or rude behavior on behalf of PECO personnel and her high bill complaint.

Complainant is hereby advised that she bears the burden of proof at this hearing and must present substantial evidence to demonstrate that PECO Energy Company violated the Public Utility Code, or a regulation or order of the Commission.

#### CONCLUSIONS OF LAW

1. Commission regulations provide for the filing of preliminary motions, including a motion questioning the jurisdiction of the Commission. 52 Pa. Code § 5.101(a)(1).
2. The Responsible Utility Customer Protection Act, 66 Pa. C.S. §1401, *et seq.*, applies to this proceeding.

3. The Commission lacks the authority to establish payment arrangements for customers participating in CAP programs offered by public utilities, pursuant to 66 Pa. C.S. §1405(c).

4. PECO's CAP program meets the requirements of 66 Pa. C.S. §1403.

ORDER

THEREFORE,

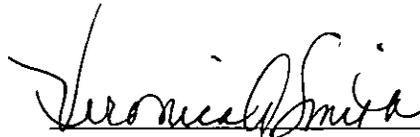
IT IS ORDERED:

1. That PECO Energy Company's Motion to Dismiss the Complaint filed by Mary Ann Keller, at Docket No. C-20066251 is granted in part and denied in part.

2. That the portion of the Complaint alleging Mary Ann Keller's inability to pay is dismissed.

3. That this case be set for hearing the remaining allegations in the Complaint regarding inappropriate and/or rude behavior on behalf of PECO personnel and high bills.

Dated: June 16, 2006

  
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Veronica A. Smith  
Chief Administrative Law Judge