



An Exelon Company

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December 17, 2015

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

RE: Brenda Smith v. PECO Energy Company
PUC Docket No.: C-2015-2493947

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *Reply Exceptions of PECO Energy Company* 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/ab

REPLY EXCEPTIONS

PECO Energy Company (“PECO”) hereby replies to the Exceptions filed by Brenda Smith (“Complainant”) in the above-referenced matter on December 7, 2015. On or about July 10, 2015, Complainant filed a formal complaint against PECO. In her formal complaint, Complainant requests a payment agreement. Respondent, PECO filed an Answer with New Matter on August 4, 2015, stating that the Complainant is presently enrolled in PECO’s Customer Assistance Program (CAP) and her entire balance is comprised of CAP arrears. The Complainant did not file a response to PECO’s Answer or New Matter. On August 26, 2015, PECO filed a Motion for Judgment on the Pleadings requesting dismissal of the formal complaint pursuant to 66 Pa.C.S. § 1405(c). The Complainant did not file a response to PECO’s Motion. A hearing for this matter was scheduled to take place on October 13, 2015.

On September 16, 2015, Administrative Law Darlene D. Heep (“ALJ Heep”) issued an Initial Decision, which granted PECO’s Motion for Judgment on the Pleadings and dismissed the Complainant’s formal complaint. In the Initial Decision, ALJ Heep ruled:

Complainant’s balance was accumulated entirely under the CAP program. Section 1405(c) prohibits the Commission from ordering a payment arrangement for CAP arrearages. *Id.* Given that, the Commission cannot grant a payment arrangement to Ms. Smith.

See Brenda Smith v. PECO Energy, Docket C-2015-2493947 (Order entered, September 16, 2015).

In her Exceptions, Complainant states that she was hospitalized on the date of the October 13, 2015, hearing and she advised the Office of Administrative Law Judge that she could not attend the hearing.

ALJ Heep’s Initial Decision addresses the Complainant’s request for a payment agreement and whether this request should be dismissed on PECO’s Motion for Judgment on the

Pleadings. ALJ Heep determined that Complainant's current balance is comprised entirely of CAP arrears; therefore, pursuant to 66 Pa.C.S. § 1405(c), she cannot give Complainant the relief she requested – a payment agreement. Complainant's exception raises the fact that she was unavailable for the October 13, 2015, hearing date because she was hospitalized. It is of no import that Complainant was available to show up to the hearing because ALJ Heep determined on the pleadings that Complainant could not obtain the relief she requested and cancelled the hearing. Accordingly, the Complainant's exception is not a basis to overturn ALJ Heep's Initial Decision.

The Commission's Rules of Administrative Practice and Procedure permit the filing of a Motion for Judgment on the Pleadings. 52 Pa. Code Section 5.102. Pursuant to 52 Pa. Code §5.102(d)(1), a formal complaint may be dismissed without a hearing if there is no genuine issue of a material fact and a party is entitled to judgment as a matter of law. The Complainant was served with a copy of PECO's Motion for Judgment on the Pleadings with a Notice to Plead and was given an 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 Heep in the Initial Decision, it is clear from the pleadings that the Complainant is not entitled to a payment agreement on her balance. ALJ Heep correctly stated in her Initial Decision that 66 Pa. Code § 1405(c) prohibits bills incurred while on CAP to be the subject of payment agreements negotiated or approved by the Commission. 66 Pa. C.S. § 1405(c). The Complainant's balance is comprised entirely of CAP arrears. 66 Pa.C.S. § 1405(c) provides that, "(c)ustomer assistance program rates shall be timely paid and shall not be the subject of payment agreements negotiated or approved by the commission." Consequently, pursuant to 66 Pa.C.S. § 1405(c), the PUC has no jurisdiction to give the Complainant a payment agreement on her balance, which is entirely comprised of CAP arrears.

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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