



An Exelon Company

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April 5, 2016

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

RE: Raymond R. Glanzmann v. PECO Energy Company
PUC Docket No.: F-2016-2537406

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *Preliminary Objection of Respondent, 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 horizontal flourish extending to the right.

Shawane Lee
Counsel for PECO Energy Company

SL/ab

cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RAYMOND R. GLANZMANN	:	
Complainants	:	
v.	:	DOCKET NO. F-2016-2537406
	:	
PECO ENERGY COMPANY	:	
Respondent	:	
	:	

NOTICE TO PLEAD

Pursuant to 52 Pa. Code §§ 5.101 and 5.62(c), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Preliminary Objections of PECO Energy Company within 20 days from service of this notice, a decision may be rendered against you. All pleadings, such as a Reply to Preliminary Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Shawane L. Lee, and where applicable, the Administrative Law Judge presiding over the issue.

File with:
Rosemarie Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

With a copy to:
Shawane L. Lee, Esq.
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103

Dated at Philadelphia, PA, April 5, 2016.



Shawane L. Lee
Counsel for PECO Energy Company
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**PRELIMINARY OBJECTION OF RESPONDENT,
PECO ENERGY COMPANY**

Respondent, PECO Energy Company (“PECO”), pursuant to 52 Pa. Code § 5.101(a)(4) respectfully petitions this Honorable Commission to dismiss the instant Complaint as legally insufficient.

1. On March 31, 2016, PECO was served with a formal complaint filed by Raymond Glanzmann (hereafter “Complainant”). A copy of the Complaint is attached hereto as Exhibit “1”.

2. In his Complaint, the Complainant ticks the box “Incorrect charges are on my bill” and states:

The bill increased greatly during the winter of 2015. I expect a higher bill but not this. My Feb 2015 bill was \$310.01 - Never that high – because of Gateway price gouging!

See Exhibit “1”.

3. In his request for relief, the Complainant states:

I would like all of these past charges waived. Their defense is always the same. "We sent a letter to the customer." And of course – they have the letter to show. I never received any letter – they are simply looking for a way to get more money from people's pocket when they slowly raise the CCF cost. I believe it went from 56 cents to 81 cents. I'm referring to Gateway but PECO wouldn't back me up. They probably get a kickback. Gateway tries to "woo" the customer with a \$50.00 gift care and it was even difficult to get that. I'm not only thinking of myself – but of elderly people who are afraid to fight back! These companies are thieves!!

See Exhibit "1".

4. In essence, the Complainant is disputing the rate he paid to his supplier, Gateway Energy for electric service.

5. PECO therefore files the instant Preliminary Objection.

6. Pursuant to 52 Pa. Code § 5.101, preliminary objections may be filed against a complaint and dismissed for legal insufficiency. 52 Pa. Code § 5.101(a)(4).

7. Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil procedure. Equitable Small Transportation Intervenors. v. Equitable Gas Co., 1994 Pa.PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

8. In deciding preliminary objections, the Public Utility Commission must determine, based on the factual pleadings of the petitioner, if relief or recovery is possible. Roc v. Flaherty, 527 A.2d 211 (Pa. Cmwlth 1985).

9. A complaint must be able to recover under the law to survive a preliminary objection. Milliner v. Enck, 709 A.2d 417, 418 (Pa. Super. Ct. 1998) ("preliminary objection should be sustained only where it appears with certainty that, upon the facts averred, the law will not allow the plaintiff to recover").

10. All of the non-moving party's averments must be taken as true for the sake of deciding the preliminary objection. County of Allegheny v. Commw. of Pa., 490 A.2d 402 (Pa. 1985).

11. The court does not, however, need to accept, "unwarranted inferences from facts, argumentative allegations, or expressions of opinions." Feingold v. McNulty, 2009 Phila. Ct. Com. Pl LEXIS 167, *3.

12. Section 703 of the Public Utility Code, 66 Pa. C.S.A. § 703(b) provides that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary to the public interest.

13. A hearing is required only when there is a disputed question of fact, and is not required to resolve questions of law. Dee-Dee Cab, Inc. v. Pa.Pub. Util. Comm'n, 817 A.2nd 593 (Pa.Commw. Ct. 2003), petition for allowance of appeal denied, 836 A.2d 123 (Pa. 2003).

14. Here, there are no genuine issues of fact and PECO Energy is entitled to judgment as a matter of law with respect to all of the allegations in the Complaint.

I. Legal Insufficiency – Under both the Commission's regulations and the contract between Gateway Energy and the Complainant, PECO is not a party to the electric generation transaction.

15. The Complainant disputes the rate he received from his supplier Gateway Energy for electric service at his property.

16. By way of background, on December 3, 1996, the Pennsylvania Legislature passed the Electricity Generation Customer Choice and Competition Act ("Competition Act") under 66 Pa.C.S. § 2807.

17. The Competition Act required electric distribution companies, such as PECO to unbundle transmission, distribution and generation rates for retail customers. The Competition Act deregulated electricity generation and provided all customers in Pennsylvania the opportunity to choose their electric generation supplier (“EGS”). 66 Pa.C.S. § 2807.

18. Section 2806(a) explicitly states:

All customers of electric distribution companies in this Commonwealth shall have the opportunity to purchase electricity from their choice of electric generation suppliers. The ultimate choice of the electric generation supplier is to rest with the consumer.

66 Pa.C.S. § 2806(a).

19. The Pennsylvania Public Utility Commission (“Commission”) issued regulations under 52 Pa. Code § 54.1 et. seq. to enable customers to make informed choices regarding the purchase of electricity services. 52 Pa. Code § 54.1(a).

20. The Commission approved Section 23 in PECO’s Electric Tariff to set forth the requirements for customers to switch to EGSs.

21. According to the Commission-approved tariff, customers were permitted to switch to EGSs and PECO Energy would “accommodate requests to switch in accordance with [Rule 23] and any applicable Commission Orders.” See PECO’s Electric Service Tariff, Section 23.

22. The Legislature and the Commission authorized customers to choose alternative electric suppliers consistent with the Electricity Generation Customer Choice and Competition Act, the regulations promulgated under 52 Pa. Code § 54.1; and PECO’s Commission-approved Electric Service Tariff.

23. The Complainant entered into a contract with Gateway Energy for the rates he is receiving.

24. PECO is not the same company as Gateway Energy and the rates at issue are not PECO's rates.

25. Indeed, pursuant to 52 Pa. Code § 54.5(c), EGSs (such as Gateway Energy) selected by the customer have to provide a written disclosure statement, stating the contract's terms of service, including the generation charges and variable pricing statement, as well as the EGS's address, telephone number, Commission license number and Internet address, if available. 52 Pa. Code § 54.5(c)(11).

26. Additionally, pursuant to 52 Pa. Code § 54.4(b)(10), the billing statements that go out to customers who choose to receive electric supply from an EGS must include the following statements:

(i) Generation prices and charges are set by the electric generation supplier you have chosen.

27. The Complainant was placed on notice through his billing statement that his electric supplier sets the rates he is charged – not PECO.¹

28. Further, PECO is not a party to the contract between the Complainant and Gateway Energy.

¹ PECO's billing statement specifically instructs customers to obtain information about switching to an EGS at www.papowerswitch.com. Once there, it states: "*Electric generation suppliers are responsible for posted prices. Please consult the...electric generation supplier for prices, including introductory prices, renewable energy add on options, cancellation policies and any other discounts that may be available to you.*" There is also a consumer alert that states: "**Customers with variable contracts, or those with fixed contracts that have expired and were moved to a variable rate, may see their prices increase.**"

29. PECO's Electric Supplier Tariff specifically states at Section 5.4.1:

EGSs shall be solely responsible for having appropriate contractual or other arrangements with their Customers necessary to implement Direct Access consistent with all applicable laws, PAPUC requirements, and this Tariff. The Company shall not be responsible for monitoring, reviewing or enforcing such contracts or arrangements.

See PECO's Electric Supplier Tariff, Section 5.4.1.

30. In this case, PECO is not a party to the contract between the Complainant and Gateway Energy. PECO has no knowledge of the contract and rate agreement the Complainant entered into with Gateway Energy and has no visibility into that agreement.

31. The Complainant has not alleged that PECO incorrectly read the meter, which resulted in the incorrect rates.

32. The Complainant has not alleged that PECO incorrectly billed him.

33. The Complainant does not dispute the PECO charges on his bill.

34. Rather, the only dispute the Complainant alleges is with Gateway Energy supplier charges, over which PECO has no control.

35. The Complainant's Complaint, objecting to Gateway Energy's rates does not allege a violation of any order, law or tariff that can be the basis of any finding against PECO.

36. Administrative Law Judge David Salapa ("ALJ Salapa") reached a similar conclusion in the matter Donald Mulzet v. PPL Electric Utilities Corporation, Docket No. C-2013-2367132 (Order entered July 22, 2013). In that case, the Complainant filed a formal complaint against PPL Electric alleging there were incorrect charges on his bill because various electric suppliers, including Sarko Energy, were charging him higher rates than other suppliers. Id.

37. PPL Electric filed a Preliminary Objection, requesting the matter to be dismissed for legal insufficiency because the allegations in the complaint did not pertain to PPL Electric and only contested the rates charged by the suppliers. Id.

38. ALJ Salapa sustained PPL Electric's Preliminary Objection and dismissed the complaint as follows:

The Complainant has entered into agreements with various EGSs for electric supply and those EGSs have billed him at rates higher than the rates set forth in the agreements. Accepting the facts alleged in the complaint as true for purposes of disposing of its preliminary objections, the Respondent contends that the complaint fails to allege that the Respondent has violated the Public Utility Code, Commission regulations or orders. The Respondent concludes that the complaint is legally insufficient. I agree.

In order to be legally sufficient, a complaint must set forth "an act or thing done or omitted to be done or about to be done or omitted to be done by the respondent in violation, or claimed violation, of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission." 52 Pa. Code §5.22(a)(4). Here, the complaint does not allege any facts that could be construed as a violation by the Respondent of any statute, regulation or order which the Commission has jurisdiction to administer. The complaint is therefore legally insufficient. Id.

39. As stated above, the Complainant has not disputed the meter reading, billing or PECO charges and has only disputed the Gateway Energy supplier rate.

40. Accordingly, the Complainant's formal complaint should be dismissed as it fails to set forth a violation by PECO of either the Public Utility Code, the regulations of the PUC or PECO's Electric Service Tariff as required by 52 Pa. Code §5.22(a)(4).

REQUEST FOR RELIEF

WHEREFORE, for the reasons set forth above, PECO Energy Company respectfully requests that your Honorable Commission summarily dismiss the Complainant's formal complaint, and all issues which were raised in the Complaint.

Respectfully submitted,



Shawane L. Lee
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PECO ENERGY COMPANY

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DOCKET NO. F-2016-2537406

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 5, 2016

Shawane L. Lee

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CERTIFICATE OF SERVICE

I, Shawane L. Lee, hereby certify that I have this day served a copy of PECO Energy Company's Preliminary Objection in the above matter upon all interested parties by mailing a copy, properly addressed and postage prepaid to:

Raymond R. Glanzmann
534 Mockingbird Way
Warrington, PA 18976

Dated at Philadelphia, Pennsylvania, April 5, 2016.



Shawane L. Lee
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