

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PLEASE DOCKET

Phillip Harris

v.

PECO Energy Company

DOCUMENT

Z-01537336

DOCKETED

JUL 14 2004

PREHEARING ORDER

On January 5, 2004, Phillip Harris (Harris, Complainant or Customer) filed this formal complaint against PECO Energy Company (PECO or Company).

On January 26, 2004, the Company filed a timely Answer denying the material allegations of the complaint.

On June 22, 2004, a hearing notice was issued scheduling an initial telephone hearing to be held on this case on Thursday, August 12, 2004 at 10:00 a.m. The case has been assigned to ALJ Turner for hearing and initial decision.

The purpose of this order is to bring to the attention of all parties certain procedural rules, observance of which will serve to "secure the just, speedy and inexpensive determination" of this proceeding. 1 Pa. Code §1.2(a). The parties are directed to comply with the following requirements:

1. Proceedings before the Commission are governed by, inter alia, 52 Pa. Code §1.15, which provides:

§1.15. Extensions of time.

....

(b) Except as otherwise provided by statute, requests for continuance of hearings or for extension of time in which to perform an act required or allowed to be done at or within a specified time by this title or by order of the Commission or the presiding officer, shall be by motion in writing, timely filed with the Commission, stating the facts on which the application rests, except that during the course of a proceeding, the requests may be made by oral motion in the hearing before the Commission or the presiding officer. Only for good cause shown, will requests for continuance be considered. The requests should be submitted at least 5 days prior to the hearing date. (Emphasis added.)

In accordance with the foregoing, absent a timely request for continuance for good cause (i.e., no later than 5 days before the scheduled hearing on August 12, 2004), all parties to this proceeding shall be prepared to participate in the scheduled hearing.

2. If for any reason any party cannot appear at this initial hearing as scheduled, that party should request a continuance. **If you do not appear at the hearing, and you have not obtained a continuance, the hearing may be held without you and you may lose this case.** Continuances are only granted if good cause is presented. Any request for a change of the scheduled date for the initial hearing **must** be sent to the Office of Administrative Law Judge Scheduling Staff, to the office of the presiding officer, and to the opposing party or parties. The mailing address for the Scheduling Staff is: PA PUC, P.O. Box 3265, Harrisburg, PA 17105-3265, and the phone number is (717) 787-1399. The scheduling officer for your case is Cherie Pyle. The mailing address for the Philadelphia Administrative Law Judges is: PA PUC, Room 1302 Philadelphia State Office Building, 1400 W. Spring Garden Street, Philadelphia, PA 19130. The phone number for this office is (215) 560-2105. The presiding officer on your case is Administrative Law Judge Allison K. Turner.

3. **COMPLAINANT:** Please be aware that you have the burden of proof in this proceeding, and must show by a preponderance of the evidence that respondent has violated the Public Utility Code or a regulation or order of the Commission, and that you are entitled to

the relief requested in the Complaint. If this burden is not satisfied, the Complaint must be denied as a matter of law. Pursuant to 52 Pa. Code §§1.21 and 1.22, if you are an individual, you may be represented by an attorney or you may represent yourself. **If this is an adversarial proceeding and you are a partnership, corporation, trust, association or governmental agency or subdivision, you must be represented by an attorney.**

4. TO ASSIST THE CUSTOMER TO PROVIDE THE INCOME AND EXPENSE INFORMATION REQUESTED BY THIS ORDER, THREE (3) COPIES OF A BUDGET INFORMATION SHEET ARE ENCLOSED WITH THIS ORDER. THE CUSTOMER SHOULD FILL OUT THIS BUDGET SHEET, AND KEEP ONE COPY OF THE BUDGET SHEET AND THE ORDER FOR YOUR USE DURING THE HEARING. PLEASE RETURN ONE COPY TO ME AND SEND ONE COPY TO COUNSEL FOR THE UTILITY AT LEAST ONE WEEK BEFORE THE HEARING.

5. At the hearing, the Customer must be prepared to testify about, or otherwise document, the total gross and the total net monthly income of the household. A household includes all individuals regularly residing there and receiving the benefit of the utility service. The "total net monthly income of the household" includes, but is not limited to, the following payments received by every person residing in the customer's home: (a) the "after taxes take-home pay" from salaries, wages, tips or other compensation; (b) pension, retirement or social security benefits; (c) Supplemental Security Income ("SSI"); (d) unemployment compensation benefits; (e) workers' compensation benefits; (f) alimony; (g) support; (h) public assistance; and (i) any other sources(s) of income.

6. If the Customer or any member of the Customer's household is receiving food stamps and/or medical assistance, the Customer must be prepared to testify or document the amount of food stamps or the nature of the medical assistance received.

7. At the hearing, the Customer must be prepared to testify about or document the total monthly expenses of the household, which shall include, but are not limited to, the following items: (a) rent or mortgage payments; (b) utility bills (including electric, gas,

telephone, water, sewer cable television, etc.); (c) food, in addition to any food stamp benefits; (d) clothing; (e) automobile (loan payments, gasoline, maintenance, etc.); (f) transportation (bus, taxicab, jitneys, etc.); (g) insurance premiums (homeowners' or renters' insurance, automobile insurance, life insurance, medical insurance, etc.); (h) medical bills (doctors, dentists, hospitals, prescriptions, etc.); (i) credit card and charge account payments; (j) loan payments; and (k) miscellaneous expenses. When testifying to these expenses, the customer should be prepared to give balances due or missed payments for each item.

8. You must arrange to have those who intend to testify as witnesses on your behalf present with you at the time set for the hearing.

9. If you wish to offer into evidence at the hearing material in the form of documents (letters, bills, cancelled checks and the like), you must send the required number of copies (an original and two copies for the Commission, one copy for every other party in the case, and a copy for yourself) by first class mail. 52 Pa. Code §5.409. These must be received one week before the hearing.

10. PLEASE BE AWARE THAT ALTHOUGH THIS HEARING IS BEING CONDUCTED TELEPHONICALLY FOR THE CONVENIENCE OF THE PARTIES, IT IS A FORMAL HEARING AND WILL BE CONDUCTED IN ACCORDANCE WITH THE COMMISSION'S RULES OF PRACTICE AND PROCEDURE.

11. Please be aware that there often is a delay in my receiving documents filed in Harrisburg. Therefore, serve me directly with any documents you file in this proceeding.


12. If the parties intend to conduct discovery, please note that 52 Pa. Code §5.331(b) provides, inter alia, that "[p]articipants shall endeavor to initiate discovery as early in the proceedings as reasonably possible," and 52 Pa. Code §5.322 which encourages participants to exchange information on an informal basis. I urge all parties to cooperate in discovery. Such cooperation is preferable to numerous or protracted discovery disagreements which require the

presiding officer's participation for resolution. Please be aware that there are limitations on discovery and sanctions for abuse of the discovery process. 52 Pa. Code §§5.361, 5.371-3.572.

13. Commission policy is to encourage settlements. 52 Pa. Code §5.231(a). Therefore, the parties are urged to **discuss informally between themselves the possible settlement of this case at least one week before the hearing, and to notify the ALJ and or the Scheduling Office by August 5, 2004 if an agreement is reached, and the hearing is not necessary.** If you are unable to completely settle this case, you may still resolve as many questions or issues as possible during your informal discussion.

ORDER

The parties shall comply with procedural rules and regulations discussed herein.



ALLISON K. TURNER
Administrative Law Judge

Date: July 1, 2004

MONTHLY BUDGET INFORMATION

Customer's Name: Phillip Harris Date: July 1, 2004

Name of Utility: PECO Energy Company

P.U.C. Docket No.: Z-01537336

Hearing Date: August 12, 2004

Administrative Law Judge: Allison K. Turner

<u>Monthly Household Income</u> <i>(Include gross income from all persons living in your home.)</i>	<u>Amount</u>
Salaries, wages & tips	\$ _____
Public Assistance	_____
Social Security or SSI	_____
Alimony	_____
Child support	_____
Pension	_____
Retirement benefits	_____
Unemployment compensation	_____
Worker's compensation	_____
Food stamps	_____
Other income (List source and amount):	_____
_____	_____
_____	_____
_____	_____
Total:	\$ _____

<u>Monthly Household Expenses</u>	<u>Amount</u>
Rent/mortgage	\$ _____
Electric	_____
Gas	_____
Telephone	_____
Water	_____
Sewage	_____
Trash pickup	_____
Food (other than food stamps)	_____
Total:	\$ _____

ORIGINAL

ExelonSM

Legal Department

Telephone 215.841.5544
www.exeloncorp.com

Business Services
Company

Exelon Business Services Company
2301 Market Street
PO Box 8699
Philadelphia, PA 19101

Direct Dial: 215.841.5974
Fax: 215.568.3389
July 14, 2004

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

RECEIVED

JUL 14 2004

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Phillip Harris v. PECO Energy Company
Docket No. Z-01537336

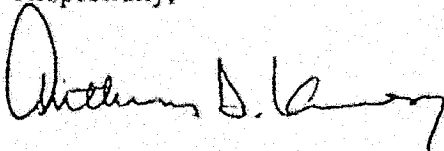
Dear Mr. McNulty:

Enclosed for filing in the above-referenced proceeding pursuant to 52 Pa. Code § 5.103 is an original and three (3) copies of the Motion to Dismiss of Respondent, PECO Energy Company

Also enclosed is an extra copy of this letter, which I request that you date stamp and return to me in the envelope provided as proof of filing. I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties.

Please direct any question with regard to this matter to the undersigned.

Respectfully,



Anthony D. Kanagy
Counsel for PECO Energy Company
Enclosures

cc: Administrative Law Judge Allison K. Turner
Phillip Harris

**DOCUMENT
FOLDER**

RJP

41

RECEIVED

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JUL 14 2004

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

PHILLIP HARRIS

v.

PECO ENERGY COMPANY

DOCKET NO. Z-01537336

NOTICE TO PLEAD

Pursuant to 52 Pa. Code §§ 5.103, you are hereby notified that, if you do not file a written response denying or correcting the enclosed Motion to Dismiss of PECO Energy Company, within 10 days from service of this notice, the facts set forth by PECO Energy Company's Motion to Dismiss may be deemed to be true, thereby requiring no other proof. All pleadings, such as a Reply to Motion to Dismiss, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Anthony D. Kanagy, and where applicable, the Administrative Law Judge presiding over the issue.

File with:

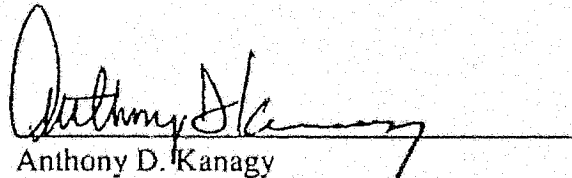
James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

With a copy to:

Anthony D. Kanagy, Esq.
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103

Administrative Law Judge Allison K. Turner
1302 Philadelphia State Office Building
1400 West Spring Garden Street
Philadelphia, PA 19130

Dated at Philadelphia, PA, July 14, 2004.



Anthony D. Kanagy
Counsel for PECO Energy Company
2301 Market Street S-23
Philadelphia, PA 19101-8699
215-841-5974
anthony.kanagy@exeloncorp.com

RECEIVED

JUL 14 2004

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

PHILLIP HARRIS

v.

PECO ENERGY COMPANY

:
:
:
:
:

DOCKET NO. Z-01537336

PECO ENERGY COMPANY'S MOTION TO DISMISS COMPLAINT

TO ADMINISTRATIVE LAW JUDGE ALLISON K. TURNER:

Respondent, PECO Energy Company ("PECO"), pursuant to 52 Pa. Code § 5.103, respectfully petitions this Honorable Commission to dismiss the instant Complaint. Mr. Harris is barred by the doctrine of res judicata from bringing this action before the Pennsylvania Public Utility Commission ("Commission") because PECO has obtained a judgment from the Court of Common Pleas of Philadelphia County against Mr. Harris for the charges that he is disputing. In fact, Mr. Harris agreed to the judgment and agreed to pay the charges he is disputing. Because PECO has obtained a judgment against Mr. Harris, he is barred from bringing this action, and the Commission does not have jurisdiction to hear it. In support of this Motion to Dismiss, PECO states as follows:

BACKGROUND

1. On or about October 15, 2003, PECO filed a civil action in the Court of Common Pleas of Philadelphia County at Docket No. 1528 against Phillip J. Harris for breach of contract alleging that Mr. Harris failed to pay for utility service in the amount of \$22,489.85 ("October 15, Complaint"). In the Complaint, PECO also requested interest and costs. A copy of the October 15 Complaint is attached hereto as Exhibit A.

DOCUMENT
FOLDER

DOCKETED
JUL 15 2004

2. PECO attempted to serve Mr. Harris a copy of the October 15 Complaint in accordance with Pa.R.C.P. 402. However, the private server contracted by PECO was unable to serve Mr. Harris after six attempts.

3. On or about January 4, 2004, Mr. Harris filed the above-captioned Complaint with the Commission. In his Complaint, Mr. Harris disputes the same charges that were at issue in PECO's October 15 Complaint before the Court of Common Pleas.

4. On or about February 27, 2004, PECO filed a Petition for Alternative Service with the Court of Common Pleas pursuant to Pa.R.C.P. 430.1. In the Petition, PECO requested that it be permitted to serve Mr. Harris by posting his property and by mail due to PECO's numerous, unsuccessful attempts to serve Mr. Harris pursuant to Pa.R.C.P. 402.

5. On March 3, 2004, the Court of Common Pleas granted PECO's Petition for Alternative Service.

6. Mr. Harris was served pursuant to PECO's Petition for Alternative Service by posting a copy of the Complaint on his residence at 6369 Germantown Avenue and by mailing a copy of the Complaint to him.

7. On or about May 4, 2004, Mr. Harris and PECO agreed to a Stipulation, Judgment and Order in the proceeding before the Court of Common Pleas, whereby judgment would be entered for PECO against Phillip Harris in an amount of \$22,505.79, together with interest at the legal rate. Under the agreement, PECO agreed not to execute on the judgment, or to exercise any other legal remedies to collect the debt, provided that beginning on June 1, 2004 and continuing until the debt is paid in full, Mr. Harris pays his current monthly bill, plus \$100.00 per month. A copy of this Stipulation, Judgment and Order is attached hereto as Exhibit B.

8. On June 2, 2004, the Court of Common Pleas entered this judgment. A copy of the docket sheet including the docket entry showing entry of judgment is attached hereto as Exhibit C.

ARGUMENT

9. The four conditions necessary for *res judicata* to apply are: (1) identity of issues, (2) identity of causes of action, (3) identity of persons and parties to the action, and (4) identity of the quality or capacity of the persons suing or sued. Stevenson v. Silverman, 417 Pa. 187, 190, 208 A.2d 786, 787-88 (1965). Once the four conditions are satisfied, *res judicata* bars both the relitigation of issues raised and also litigation of arguments that might have been raised but were not. Noetzel v. Glasgow, Inc., 338 Pa. Super. 458, 467, 487 A.2d 1372, 1376 (1985).

10. In this case, the issues and cause of action are the same as those raised in PECO's October 15 Complaint, namely payment by Mr. Harris to PECO for his unpaid utility service. In addition, the identity of the parties and the capacity of the parties are the same. As such, Mr. Harris is barred by the doctrine of *res judicata* from bringing the above-captioned Complaint.¹

11. In Petition of Metropolitan Edison Co. for Waiver of Medical Certification Procedures..., Docket No. P-880287, 70 Pa. PUC 133 (July 24, 1989), Metropolitan Edison Company ("Met-Ed") attempted to include in a customer's overdue balance amounts that Met-Ed had previously obtained default judgments for from the Court of Common Pleas of York County. (A copy of this decision is attached hereto as Exhibit D.) The Commission did not allow Met-Ed

¹ In addition, it is inequitable for Mr. Harris to bring this Complaint before the Commission because Mr. Harris has agreed to terms with PECO to avoid late charges and termination of his electric service for his past due balance. Mr. Harris willingly agreed to the Stipulation for its benefits and now seeks to challenge the amount before the Commission. Mr. Harris had a full and fair opportunity to litigate this matter before the Court of Common Pleas, and he agreed to a judgment against him. The Commission should not allow him to collaterally attack this judgment.

to include these amounts in the customer's overdue balance, stating as follows:

Met-Ed, by instituting suit against Mr. Hartman for moneys alleged to be due and owing, requested the exercise of subject matter jurisdiction by the Court of Common Pleas, York County. We recognize that the jurisdiction over a proceeding by a public utility to recover its charges is rightfully in the Court of Common Pleas. Bell Telephone Company of Pennsylvania v. Philadelphia Warwick Company, 355 Pa. 637, 50 A.2d 684 (1947). Consequently, the default judgments awarded by the Court of Common Pleas, York County, against Mr. Hartman, effectively removed the sum... from the purview of this Commission.

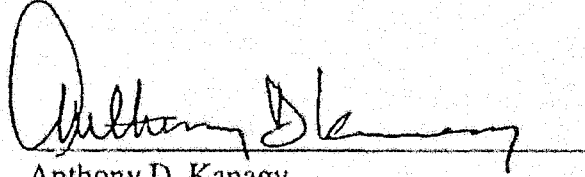
12. As provided in Met-Ed, above, the Court of Common Pleas rightfully possesses jurisdiction over a proceeding by a public utility to recover its past due charges. See also, Donald Ashman v. National Fuel Gas Distribution Corp., 1993 Pa. PUC LEXIS 1, (Order entered January 21, 1993). (A copy of this decision is attached hereto as Exhibit E.) Moreover, once judgment is entered, the Commission no longer has jurisdiction over the matter. Met-Ed, *8.

13. PECO has lawfully obtained a judgment against Mr. Harris for the charges that Mr. Harris is disputing in the above-captioned Complaint. Therefore, Mr. Harris is barred by the doctrine of *res judicata* from bringing the above-captioned Complaint.

14. Moreover, because the Court of Common Pleas of Philadelphia County has entered a judgment regarding this matter, the Commission does not have jurisdiction to hear it.

WHEREFORE, PECO Energy Company respectfully requests that the Pennsylvania Public Utility Commission dismiss the above-captioned Complaint.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Anthony D. Kanagy", is written over a horizontal line. The signature is cursive and somewhat stylized.

Anthony D. Kanagy
Counsel for PECO Energy Company
2301 Market Street, S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699
(215) 841-5974
anthony.kanagy@exeloncorp.com

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PHILLIP HARRIS

v.

PECO ENERGY COMPANY

DOCKET NO. Z-01537336

VERIFICATION

I, Anthony D. Kanagy, 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: July 14, 2004

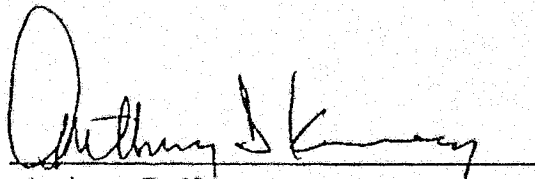

Anthony D. Kanagy

EXHIBIT A

Trial Division
Civil Cover Sheet

OCTOBER 2003

PLAINTIFF'S NAME

PECO Energy Company

DEFENDANT'S NAME

Phillip J. Harris

001523

PLAINTIFF'S ADDRESS

2301 Market Street, S23-1
Philadelphia, PA 19103

DEFENDANT'S ADDRESS

6369 Germantown Avenue
Philadelphia, PA 19144

PLAINTIFF'S NAME

DEFENDANT'S NAME

PLAINTIFF'S ADDRESS

DEFENDANT'S ADDRESS

PLAINTIFF'S NAME

DEFENDANT'S NAME

PLAINTIFF'S ADDRESS

DEFENDANT'S ADDRESS

TOTAL NUMBER OF PLAINTIFFS

1

TOTAL NO OF DEFENDANT'S

1

COMMENCEMENT OF ACTION

- Complaint
- Writ of Summons
- Petition Action
- Transfer From Other Jurisdiction
- Notice of Appeal

AMOUNT IN CONTROVERSY

- \$50,000 or less
- More than \$50,000

COURT PROGRAMS

- Arbitration
- Jury
- Non-jury
- Other

- Mass Tort
- Savings Action
- Petition

- Commerce
- Minor Court Appeal
- Statutory Appeals

- Settlement
- Minors
- W/D/Survival

CASE TYPE AND CODE (SEE INSTRUCTIONS)

IC - Contract

STATUTE OR BASIS FOR CAUSE OF ACTION (SEE INSTRUCTIONS)

RELATED PENDING CASES (LIST BY CASE CAPTION AND DOCKET NUMBER)

IS CASE SUBJECT TO COORDINATION ORDER?

- | Yes | No |
|--------------------------|-------------------------------------|
| <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| <input type="checkbox"/> | <input type="checkbox"/> |
| <input type="checkbox"/> | <input type="checkbox"/> |

TO THE PROTHONOTARY

Kindly enter my appearance on behalf of Plaintiff/Petitioner/Appellant.

Papers may be served at the address set forth below.

NAME OF PLAINTIFF'S/PETITIONER'S/APPELLANT'S ATTORNEY

Lynn R. Steen

ADDRESS (SEE INSTRUCTIONS)

PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19103

PHONE NUMBER

(215) 841-6816

FAX NUMBER

(215) 841-4474

SUPREME COURT IDENTIFICATION NO.

83968

E-MAIL ADDRESS

lynn.steen@exeloncorp.com

SIGNATURE

DATE

10/14/03

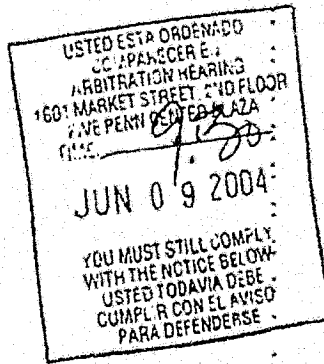
LYNN R. STEEN
Attorney I.D. NO. 83968
2301 Market Street, S23-1
Philadelphia, PA 19103
Telephone No. (215) 841-6816

ATTEST
ATTORNEY FOR PLAINTIFF
PECO ENERGY COMPANY
JUN 15 2003
L PAONE
PRO. PROTHY

PECO ENERGY COMPANY
2301 Market Street, S23-1
Philadelphia, PA 19103
Plaintiff

v.

PHILLIP J. HARRIS
6369 Germantown Avenue
Philadelphia, PA 19144
Defendant



COURT OF COMMON PLEAS
OF PHILADELPHIA COUNTY

OCTOBER TERM, 2003

NO.

001523

CIVIL ACTION THIS MATTER WILL BE HEARD BY A BOARD OF ARBITRATORS AT THE TIME, DATE AND PLACE SPECIFIED BUT YOU OR MORE PARTIES IN YOUR PRESENT AT THE HEARING YOU MAY BE HELD LIABLE FOR THE CLAIM AND NOTICE ARE TO BE FILED WITH THE COURT AND DATE BEFORE THE PARTIES. THE COURT WILL MAKE A DECISION FROM WHICH YOU APPEAL TO A JUDGE.

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint is served, by entering a written appearance personally or by attorney and filing in court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Philadelphia Bar Association
Lawyer Referral and Information Service
1101 Market Street, 11th Floor
Philadelphia, PA 19107
(215) 238-6333

ATTEST
DEC 15 2003
K. J. ...

AVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademias, la corte puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO IMMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO. VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

Asociacion De Licenciados De Filadelfia
Servicio De Referencia E Informacion Legal
1101 Market Street, 11th Floor
Filadelfia, PA 19107
(215) 238-6333

LYNN R. STEEN
Attorney I.D. NO. 83968
2301 Market Street, S23-1
Philadelphia, PA 19103
Telephone No. (215) 841-6816

ATTORNEY FOR PLAINTIFF
PECO ENERGY COMPANY

PECO ENERGY COMPANY
2301 Market Street, S23-1
Philadelphia, PA 19103
Plaintiff

v.

PHILLIP J. HARRIS
6369 Germantown Avenue
Philadelphia, PA 19144
Defendant

COURT OF COMMON PLEAS
OF PHILADELPHIA COUNTY

OCTOBER TERM, 2003

NO.

CIVIL ACTION

COMPLAINT

PECO Energy Company ("PECO Energy"), through its undersigned attorney, states as follows:

BACKGROUND

1. Plaintiff PECO Energy is a public utility company organized and existing under the laws of the Commonwealth of Pennsylvania, with its principal place of business at 2301 Market Street, Philadelphia, Pennsylvania.

2. Upon information and belief, Defendant Phillip J. Harris ("Defendant") is an adult individual who resides at 6369 Germantown Avenue, Philadelphia, PA 19144 (the "Property").

COUNT I - BREACH OF CONTRACT

PECO ENERGY v. PHILLIP HARRIS

3. Plaintiff PECO Energy incorporates by reference paragraphs 1 and 2 above as though fully set forth herein at length.

4. At the request of Defendant, PECO Energy has provided Utility Service to the Property in accordance with the terms of the Pennsylvania Public Utility Code, the rules and regulations of the Pennsylvania Public Utility Commission ("PUC") thereunder, and PECO Energy's tariffs as filed with the PUC.

5. PECO Energy has no specific written contract with Defendant regarding Utility Service other than its tariffs.

6. Attached hereto as Exhibit "A" and incorporated herein by reference are account statements showing account numbers, service locations, recent billings, and payments for Utility Service provided to the Property.


7. As of September 26, 2003, Defendant owes PECO Energy the amount of \$22,489.85.

8. PECO Energy has fully performed its obligations with respect to the provision of Utility Service to or on behalf of Defendant and is entitled to payment therefor.

9. Despite demand of PECO Energy, Defendant has not paid for Utility Service provided on his behalf.

WHEREFORE, PECO Energy Company demands that judgment be entered in its favor and against Defendant Phillip J. Harris in the amount of \$22,489.85, plus interest and costs.

Dated: 10/14/03



LYNN R. STEEN

Attorney for Plaintiff
PECO Energy Company

HILLIP HARRIS

26-17-18-175217

10/14 PENDING AGMT
OTHER-CR LIT

/RMK

5369 GERMANTOWN AV

PHILADELPHIA PA 19144

TEL-215-438-1961 MRI ZZ

***** FINA ***** NEXT FORMAT FIN2

DATE	ITEM DESCRIPTION	AMOUNT	BALANCE
12-30-02	BALANCE BROUGHT FORWARD		20856.65
01-07-03	PAYMENT	-79.61	20777.04
01-29-03	LATE CHARGE	160.23	20937.27
01-29-03	ELECTRIC BILLING	39.61	20976.88
02-26-03	LATE CHARGE	160.73	21137.61
02-26-03	ELECTRIC BILLING	36.08	21173.69
03-10-03	PAYMENT	-79.61	21094.08
03-27-03	LATE CHARGE	161.18	21255.26
03-27-03	ELECTRIC BILLING	34.27	21289.53
04-28-03	LATE CHARGE	161.61	21451.14
04-28-03	ELECTRIC BILLING	35.82	21486.96
05-28-03	LATE CHARGE	162.05	21649.01
05-28-03	ELECTRIC BILLING	33.89	21682.90
06-27-03	LATE CHARGE	162.48	21845.38
06-27-03	ELECTRIC BILLING	35.43	21880.81
07-29-03	LATE CHARGE	162.92	22043.73
07-29-03	ELECTRIC BILLING	40.96	22084.69
08-27-03	LATE CHARGE	163.43	22248.12
08-27-03	ELECTRIC BILLING	37.88	22286.00
09-26-03	LATE CHARGE	163.91	22449.91
09-26-03	ELECTRIC BILLING	39.94	22489.85

PECO ENERGY
EXHIBIT 17

HILLIP HARRIS

26-17-18-175217

10/14 PENDING AGMT
OTHER-CR LIT

/RMK

369 GERMANTOWN AV

PHILADELPHIA PA 19144

TEL-215-438-1961 MRI ZZ

***** FIN2 ***** NEXT FORMAT FIN3

DATE	ITEM DESCRIPTION	AMOUNT	BALANCE
04-29-02	BALANCE BROUGHT FORWARD		19211.72
04-29-02	ELECTRIC BILLING	40.72	19252.44
05-29-02	LATE CHARGE	155.95	19408.39
05-29-02	ELECTRIC BILLING	35.57	19443.96
06-27-02	LATE CHARGE	156.40	19600.36
07-08-02	ELECTRIC BILLING	61.58	19661.94
07-29-02	LATE CHARGE	156.40	19818.34
07-29-02	ELECTRIC BILLING	85.13	19903.47
08-07-02	REVENUE AND USE CANCELLATION	-85.13	19818.34
08-07-02	ELECTRIC BILLING	46.09	19864.43
08-28-02	LATE CHARGE	157.17	20021.60
08-28-02	ELECTRIC BILLING	37.11	20058.71
09-26-02	LATE CHARGE	158.21	20216.92
09-26-02	ELECTRIC BILLING	45.92	20262.84
10-28-02	LATE CHARGE	158.78	20421.62
10-28-02	ELECTRIC BILLING	41.80	20463.42
11-26-02	LATE CHARGE	159.30	20622.72
11-26-02	ELECTRIC BILLING	34.58	20657.30
12-30-02	LATE CHARGE	159.74	20817.04
12-30-02	ELECTRIC BILLING	39.61	20856.65
12-30-02	BALANCE FORWARDED (SEE FINA)	.00	20856.65

HILLIP HARRIS

26-17-18-175217

10/14 PENDING AGMT
OTHER-CR LIT

/RMK

369 GERMANTOWN AV

PHILADELPHIA PA 19144

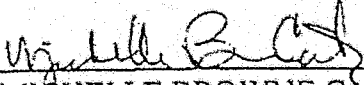
TEL-215-438-1961 MRI ZZ

***** FIN3 ***** NEXT FORMAT FINA

DATE	ITEM DESCRIPTION	AMOUNT	BALANCE
1-28-01	BALANCE		18054.02
1-28-01	LATE CHARGE	152.52	18206.54
1-28-01	ELECTRIC BILLING	49.19	18255.73
2-28-01	LATE CHARGE	153.14	18408.87
2-28-01	ELECTRIC BILLING	46.21	18455.08
1-29-02	LATE CHARGE	153.72	18608.80
1-29-02	ELECTRIC BILLING	50.11	18658.91
2-26-02	LATE CHARGE	154.34	18813.25
2-26-02	ELECTRIC BILLING	42.53	18855.78
3-28-02	LATE CHARGE	154.87	19010.65
3-28-02	ELECTRIC BILLING	45.62	19056.27
4-29-02	LATE CHARGE	155.45	19211.72
4-29-02	BALANCE FORWARDED (SEE FIN2)	.00	19211.72

VERIFICATION

I, Michelle Browne Cathey, hereby declare that I am a Revenue Recovery Representative of 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.



MICHELLE BROWNE CATHEY

Dated: 10-14-17

EXHIBIT B

LYNN R. STEEN
Attorney I.D. NO. 83968
2301 Market Street, S23-1
Philadelphia, PA 19103
Telephone No. (215) 841-6816

ATTORNEY FOR PLAINTIFF
PECO ENERGY COMPANY

PECO ENERGY COMPANY
2301 Market Street, S23-1
Philadelphia, PA 19103
Plaintiff

COURT OF COMMON PLEAS
OF PHILADELPHIA COUNTY

OCTOBER TERM, 2003

v.

NO. 1528

PHILLIP J. HARRIS
6369 Germantown Avenue
Philadelphia, PA 19144
Defendant

CIVIL ACTION

PRESENTED FOR REVIEW
2004 JUN -2 PM 3:06
PRO PROTHY

STIPULATION, JUDGMENT AND ORDER

WHEREAS, this litigation was commenced by the filing by Plaintiff PECO Energy Company ("PECO Energy") of a Complaint to collect unpaid utility charges against Defendant Phillip J. Harris (the "Defendant");

WHEREAS, as of May 4, 2004, PECO Energy alleges that the Defendant owes PECO Energy the amount of \$22,505.79 for unpaid utility bills; and

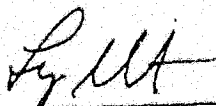
WHEREAS, PECO Energy and the Defendant desiring to amicably resolve the issues raised by the Complaint, AGREE as follows:

1. Judgment shall be entered for Plaintiff PECO Energy and against Defendant in the amount of \$22,505.79 (the "Debt"), together with interest at the legal rate from this date forward;
2. PECO Energy agrees not to execute on the judgment, or to exercise any other legal remedies to collect this Debt, provided that beginning on June 1, 2004, and continuing until the Debt is paid in full, Defendant pays the current monthly bill, plus \$100.00 per month toward the Debt, by the date set forth in the then-current monthly bill until the Debt is paid in full;


3. Provided all payments required under this Stipulation are received by the date set forth in the then-current monthly bill, no further late charges will accrue on the Debt; and

4. Payments must be mailed or hand-delivered to Michelle Browne-Cathey, 2301 Market Street, N3-1, Philadelphia, PA 19103.

INTENDING TO BE LEGALLY BOUND HEREBY.



LYNN R. STEEN
Attorney for Plaintiff
PECO Energy Company



PHILLIP J. HARRIS
Defendant

EXHIBIT C

Civil Docket Report

Case Description

Case ID: 031001528
Case Caption: PECO ENERGY CO VS HARRIS
Filing Date: Wednesday, October 15th, 2003
Court: AR - ARBITRATION
Location: AC - ARBITRATION CENTER
Jury: N - NON JURY
Case Type: 1C - CONTRACTS (GOODS), ENFORCE
Status: CLAHS - ARBITRATION HEARING SCHEDULED

Related Cases

No related cases were found.

Case Event Schedule

Event	Date/Time	Room	Location	Judge
ARBITRATION HEARING	09-JUN-2004 09:30 AM	ARBITRATION CENTER	1601 Market Street, 2nd Floor	unassigned

Case Parties

Seq #	Assoc	Expn Date	Type	ID	Name
1			ATTORNEY FOR PLAINTIFF	A83968	STEEN, LYNN R
Address:	2301 MARKET ST S23-1 PHILADELPHIA PA 19103 (215)841-6816		Aliases:	none	
2	1		PLAINTIFF	I5796	PECO
Address:	2301 MARKET ST PHILADELPHIA PA 19103		Aliases:	none	
3			DEFENDANT	@4808260	HARRIS, PHILLIP J

Address: 6369 GERMANTOWN AVE PHILADELPHIA PA 19144	Aliases: none
--	----------------------

Docket Entries

Filing Date/Time	Docket Type	Filing Party	Disposition Amount
15-OCT-2003 03:46 PM	ACTIV - ACTIVE CASE		
Docket Entry:	none.		
15-OCT-2003 03:50 PM	CIVIL - COMMENCEMENT OF CIVIL ACTION	STEEN, LYNN R	
Docket Entry:	none.		
15-OCT-2003 03:50 PM	CMPLT - COMPLAINT FILED NOTICE GIVEN	STEEN, LYNN R	\$22,489.85
Docket Entry:	COMPLAINT WITH NOTICE TO DEFEND WITHIN TWENTY (20) DAYS AFTER SERVICE IN ACCORDANCE WITH RULE 1018.1 FILED		
15-OCT-2003 03:50 PM	SSCG1 - SHERIFF'S SURCHARGE 1 DEFT	STEEN, LYNN R	
Docket Entry:	none.		
16-OCT-2003 11:10 AM	CLAHS - ARBITRATION HEARING SCHEDULED		
Docket Entry:	none.		
26-NOV-2003 12:18 PM	ATSNF - ATTEMPTED SERVICE - NOT FOUND		
Docket Entry:	NOT FOUND AS TO DFT PHILIP J. HARRIS ON 11/12/03		

10-DEC-2003 10:36 AM	RSCVA - REINSTATE/REISSUE CIVIL ACTION		
Docket Entry:	COMPLAINT WITH NOTICE TO DEFEND WITHIN TWENTY (20) DAYS AFTER SERVICE IN ACCORDANCE WITH RULE 1018.1 REINSTATED.		
08-JAN-2004 11:14 AM	RSCVA - REINSTATE/REISSUE CIVIL ACTION		
Docket Entry:	COMPLAINT WITH NOTICE TO DEFEND WITHIN TWENTY (20) DAYS AFTER SERVICE IN ACCORDANCE WITH RULE 1018.1 REINSTATED.		
08-JAN-2004 11:48 AM	ATSNF - ATTEMPTED SERVICE - NOT FOUND		
Docket Entry:	NOT FOUND AS TO DFT PHILLIP J. HARRIS ON 1/5/04		
12-FEB-2004 12:32 PM	ATSNF - ATTEMPTED SERVICE - NOT FOUND		
Docket Entry:	NOT FOUND AS TO DEFT PHILLIP J. HARRIS ON 3-FEB-04.		
27-FEB-2004 04:21 PM	PTSVR - PETITION - ALTERNATIVE SERVICE	PECO,	
Docket Entry:	30-04022130 PETITION FOR ALTERNATIVE SERVICE FILED.		
27-FEB-2004 04:22 PM	MTASN - MOTION ASSIGNED		
Docket Entry:	30-04022130 PETITION FOR ALTERNATIVE SERVICE ASSIGNED TO JUDGE CARRAFIELLO ON 03-01-04.		
03-MAR-2004 04:36 PM	ORDER - ORDER ENTERED/236 NOTICE GIVEN	CARRAFIELLO, MATTHEW D	
	30-04022130 AND NOW THIS 1ST DAY OF MARCH, 2004, UPON CONSIDERATION OF THE PLAINTIFF'S PETITION FOR ALTERNATIVE SERVICE PURSUANT TO P.A.R.CIV.P. 430.1 AND IT APPEARING TO THE COURT THAT THE PLAINTIFF HAS MADE A GOOD FAITH EFFORT TO SERVE DEFENDANT PHILLIP J. HARRIS ("DEFENDANT") IN THE REGULAR COURSE, IT IS HEREBY ORDERED THAT SAID PETITION IS GRANTED.		

**Docket
Entry:**

PLAINTIFF SHALL HAVE THE RIGHT TO SERVE THE DEFENDANT WITH THE COMPLAINT IN THIS ACTION IN THE FOLLOWING MANNER: (1) BY POSTING A COPY OF THE COMPLAINT ON THE MOST PUBLIC PART OF THE PREMISES LOCATED AT 6369 GERMANTOWN AVENUE, PHILA. PA 19144 (THE "PROPERTY") AND (2) BY MAILING A COPY OF THE COMPLAINT TO DEFENDANT AT THE PROPERTY BY ORDINARY FIRST CLASS MAIL, POSTAGE PREPAID AND BY CERTIFIED MAIL, RRR. SERVICE OF THE MAILED COMPLAINT IS COMPLETE UPON MAILING. UPON COMPLETION OF SERVICE PLAINTIFF SHALL FILE A RETURN OF SERVICE IN ACCORDANCE WITH THE REQUIREMENTS OF PA.R.C.P. NO 405. BY THE COURT: CARRAFIELLO, J. 3-1-04

26-MAR-2004
03:17 PM

RSCVA - REINSTATE/REISSUE
CIVIL ACTION

**Docket
Entry:**

COMPLAINT WITH NOTICE TO DEFEND WITHIN TWENTY (20) DAYS AFTER SERVICE IN ACCORDANCE WITH RULE 1018.1 REINSTATED.

05-APR-2004
11:20 AM

AFDVT - AFFIDAVIT OF SERVICE
FILED

STEEN, LYNN R

**Docket
Entry:**

SERVED DEFT ON 4-1-04 VIA POSTING OF PREMISES FILED.

EXHIBIT D

Service: Get by LEXSEE®
Citation: 70 pa puc 133

1989 Pa. PUC LEXIS 121, *; 70 Pa. PUC 133

Petition of Metropolitan Edison Company for Waiver of the Medical Certification Procedures so as to Terminate Service to Premises of Robert Hartman

P-880287

PENNSYLVANIA PUBLIC UTILITY COMMISSION

1989 Pa. PUC LEXIS 121; 70 Pa. PUC 133

July 24, 1989

CORE TERMS: certification, account balance, budget plan, arrearage, electric, termination, regulations, terminate, owed, service rendered, certificate, ordering, energy, emergency, Administrative Law, payment schedule, outstanding, illness, default, invalid, budget, public utility, terminating, purview, Initial Decision of Administrative Law, burden of proving, failed to pay, psychiatrist, residential, thirty-day

PANEL: [*1]

Commissioners Present: Bill Shane, Chairman; William H. Smith, Vice Chairman; Joseph Rhodes, Jr.; Frank Fischl, dissenting

OPINION: OPINION AND ORDER

BY THE COMMISSION:

Before us for consideration are the Exceptions of Metropolitan Edison Company (hereinafter "Met-Ed") filed on March 16, 1989, to the Initial Decision of Administrative Law Judge ("ALJ") Louis G. Cocheres issued on March 1, 1989. Exceptions were, therefore, due to be filed on or before March 16, 1989. Reply Exceptions were due to be filed on or before March 27, 1989.

BRIEF HISTORY OF THE PROCEEDING

On February 2, 1989, Met-Ed filed a Petition for Waiver from the Medical Certification Procedures contained in 52 Pa. Code § 56.111 et seq. The purpose of the instant Petition is to permit Met-Ed to terminate the electric service of Robert Hartman, Sr. of Thomasville, PA.

The Petition alleged inter alia, (1) that as of December 16, 1987, Mr. Hartman, Sr. had accumulated a balance of \$ 8,380.41, (2) that Mr. Hartman, Sr. had refused to enter into any payments agreements, (3) that Mr. Hartman, Sr. has repeatedly provided medical certification to Met-Ed whenever termination of service for nonpayment was attempted, [*2] (4) that the medical certification is invalid and that Met-Ed should be permitted to terminate the electric service of Mr. Hartman, Sr. for willful and repeated failure to make payments.

On May 31, 1988, an evidentiary hearing was held in York, Pennsylvania before ALJ Cocheres. Mr. Hartman did not file an Answer to Met-Ed's Petition, but did appear at the hearing pro se. On September 21, 1988, Met-Ed filed its Brief including copies of Mr. Hartman's medical reports from Dr. Conant. No Reply Brief or response was filed by Mr. Hartman. The record was closed on September 30, 1988. On December 22, 1988, we granted ALJ Cocheres an additional 90 days within which to issue his Initial Decision.

DISCUSSION

The ALJ made the following Findings of Fact:

1. Metropolitan Edison Company Account Number 52-42-40-4351-7-1 was established for electric service rendered to the mobile home residence of Mr. Robert C. Hartman, Sr., the Respondent. Tr. 6.
2. The most recent payment made by Mr. Hartman, Sr. on his account was on December 15, 1982. Tr. 8. Met-Ed Exhibit No. 1.
3. Since 1982, Metropolitan Edison Company made several attempts each year to contact Mr. Hartman and to arrange [*3] for payments. Tr. 8-9, 49-50, 61-64, 100-012, 113.
4. In response to these contracts, Mr. Hartman, Sr. indicated that he was too poor to pay his bill and that there was nothing he could do about the situation. Tr. 9, 101-102.
5. In response to notices of termination, Mr. Hartman, Sr. would produce a medical certificate pursuant to Chapter 56 of this Commission's regulations. For the most recent two-year period precedent to the hearing, Mr. Hartman, Sr. produced six medical certifications dated May 9, 1986, June 18, 1986, August 19, 1986, February 10, 1987, October 21, 1987, and January 5, 1988. Tr. 10-11. Met-Ed Exhibit Nos. 2-7.
6. The medical certification forms were provided by Metropolitan Edison Company to Mr. Hartman at the time the notice of termination was presented to Mr. Hartman or supplied later upon Mr. Hartman's request. Tr. 12.
7. Each of the medical certification forms was signed by Dr. Azar, a psychiatrist. Tr. 12-18. Met-Ed Exhibit Nos. 2-7.
8. Metropolitan Edison Company had brought two complaints against Mr. Hartman [In the Court of Common Pleas] to reduce the arrearages. One judgment was procured for two time periods. The first was in the amount [*4] of \$ 5,369.93 for service rendered up to September 13, 1985. The second was in the amount of \$ 2,069.63 for service rendered during the time period September 13, 1985 through February 24, 1987. Tr. 21-23, 59-60.
9. Mr. and Mrs. Hartman live with their youngest son in a trailer which they rent for \$ 250 a month. Tr. 66, 94, 120.
10. Mrs. Hartman does not work outside the home. Tr. 66-67.
11. Dr. Azar, a psychiatrist, has been treating Mr. Hartman for the last seven years. In addition, he also treats Mrs. Hartman. Tr. 67-68, 89.
12. Mr. Hartman sees Dr. Azar approximately once a month. Tr. 81.
13. The most recent paycheck received by Mr. Hartman was in 1979 when he was employed as a truck driver. Tr. 78.
14. Mr. Hartman signed medical release forms to allow Metropolitan Edison to produce his medical records from Dr. Conant, Dr. Azar and the York Hospital. Tr. 91-93. Met-Ed Late-Filed Exhibit.
15. At the time of hearing, Mr. Hartman received \$ 365 a month from the Department of Public Welfare. Tr. 94.

16. At the time of hearing, Mr. Hartman also received food stamps in the amount of \$ 172 per month. That amount was insufficient for a month's groceries. Tr. [*5] 95.

17. Mr. Hartman did not dispute any of the bills listed on the summary of bills. As of the date of hearing, Mr. Hartman owed \$ 9,216.09. Tr. 125. Met-Ed Exhibit No. 1.

18. Metropolitan Edison Company's late-filed exhibit consisted of medical records procured from Dr. Conant.

19. Mr. Hartman has developed a pattern of submitting medical certification pursuant to Commission regulations and failing to arrange to make payment on all utility bills thereafter. Tr. 10-11. Met-Ed Exhibit Nos. 1-7.

I. D. pp. 16-18.

The ALJ based on his analysis and evaluation of the record, as developed in the instant proceeding, reached the following Conclusions of Law:

1. The Commission has jurisdiction over this proceeding. 66 Pa. C.S. §§ 501, 1301, 1501 and 1504.

2. Metropolitan Edison Company had the burden of proving that the medical certificates submitted by Mr. Hartman were invalid and that he had failed to pay all of his electric bills. 52 Pa. Codes §§ 56.111, 56.113 and 56.116.

3. Metropolitan Edison Company failed to carry its burden that the medical certificates submitted by Mr. Hartman were invalid.

4. Metropolitan Edison Company carried its burden of proving that Mr. [*6] Hartman had failed to pay his electric bills.

5. Mr. Hartman has failed to make equitable arrangements to pay all of his bills in violation of Commission regulations. 52 Pa. Code § 56.116.

I. D., pp. 22-23.

EXCEPTIONS OF MET-ED

Met-Ed's discussion of its Exceptions is not lengthy and, therefore, we shall quote it verbatim as follows:

1. The Administrative Law Judge erred as a matter of law and fact by finding Respondent Robert C. Hartman, Sr.'s residential account balance due to be \$ 1,776.53 and by ordering him to pay only said amount within thirty days, in ordering paragraph 2. Respondent's account balance with Met-Ed as of May 31, 1988 hearing was \$ 9,216.09. The Administrative Law Judge, however, reduced the actual account balance by the amounts previously reduced to judgment by two civil suits (\$ 5,369.93 and \$ 2,069.63). The amount actually owed Met-Ed should be reflected as the account balance.

2. The Administrative Law Judge erred in not ordering a fair monthly payment toward the arrearages on the total account balance along with payments under a budget plan. No payments have been made on this account since the hearing and the balance as of the bill due February [*7] 16, 1989 is \$ 10,455.49 per the attached schedule marked as Exhibit A and made a part hereof.

First, Met-Ed contends that the ALJ erred as a matter of fact and law in finding that Robert C. Hartman's outstanding residential account balance is only \$ 1,776.53. Met-Ed argues that the amount actually owed by Mr. Hartman, Sr. as of May 31, 1988 is \$ 9,216.09. Met-Ed contends that the ALJ erroneously reduced the actual balance by deducting the sums obtained by way of judgments in two civil suits against Mr. Hartman. n1 Met-Ed postulates that the amount actually owed by Mr. Hartman, including default judgments, should be reflected as the account balance.

n1 Met-Ed instituted two (2) civil suits against Robert C. Hartman, Sr. in the Court of Common Pleas, York County, and the Court awarded default judgments against Mr. Hartman in the amounts of \$ 5,369.93 and \$ 2,069.63.

We disagree. Met-Ed, by instituting suit against Mr. Hartman for moneys alleged to be due and owing, requested the exercise of subject matter jurisdiction by the Court of Common Pleas, York County. We recognize that the jurisdiction over a proceeding by a public utility to recover its charges is rightfully in [*8] the Court of Common Pleas. Bell Telephone Company of Pennsylvania v. Philadelphia Warwick Company, 355 Pa. 637, 50 A.2d 684 (1947). Consequently, the default judgments awarded by the Court of Common Pleas, York County, against Mr. Hartman, effectively removed the sum of \$ 7,439.56 (\$ 5,369.93 + \$ 2,069.63) from the purview of this Commission. Therefore, the ALJ was correct in his determination that the outstanding balance owed by Mr. Hartman, which is before this Commission, is \$ 1,776.53 (\$ 9,216.09 - \$ 7,439.56). Accordingly, we shall deny this Exception.

Second, Met-Ed contends that the ALJ erred in not ordering Mr. Hartman to make fair monthly payments towards the liquidation of the "total" account balance, along with current payments under a budget plan. For the reasons set forth supra, it was clearly not within the purview of the ALJ to make a payment schedule incorporating the sums already reduced to judgments against Mr. Hartman. n2 Therefore, we shall deny this Exception.

n2 This Commission does not have the authority either directly or indirectly to enforce the judgment obtained in the Court of Common Pleas.

However, we believe that it is appropriate [*9] that a payment plan be established to retire the outstanding arrearage totaling \$ 1,776.53. Considering the circumstances surrounding this matter, including the Complainant's income, expenses and illness as demonstrated in the record, we find that a payment arrangement of current budget bills plus \$ 5.00 toward the arrearage to be fair, equitable and reasonable.

It is well settled in the law that medical certification procedures of medical emergency provision, which prohibit a public utility from terminating utility service where the medical condition will be aggravated by such termination, applied not only to short-term illnesses, but also to chronic illnesses where there is no favorable prognosis. (Emphasis Added) Jackson v. Pennsylvania Public Utility Commission, 105 Pa. Cmwlth. Ct. 37, 522 A.2d 1187 (1987). We note from the record that Mr. Hartman's chief clinical problems are: obesity, hypertension, gout and a mild form of Tourette Syndrome or a habit spasm. However, we do not believe that should it become necessary to terminate Mr. Hartman's electric service consistent with this Opinion and Order, that such termination will exacerbate his physical condition.

We [*10] recommend that the Complainant seek and otherwise apply for financial assistance in order that he can meet his obligation to pay for service rendered. We further urge Met-Ed to offer its assistance to the Complainant to aid him in securing any available grants. Since the availability of energy assistance grants may enable the Complainant to pay

his utility bill, plus \$ 5.00 a month toward the arrearage, we direct Met-Ed to offer aid to the Complainant in locating any available energy assistance grants within fifteen (15) days of the entry date of this Opinion and Order. In the event that the Complainant receives any energy assistance grants, the Company is directed to adjust the Complainant's budget bill to reflect such assistance.

CONCLUSION

Having carefully reviewed Met-Ed's Exceptions and the record in detail, we conclude that the ALJ's Initial Decision is amply supported by substantial evidence in the record. However, because of the extenuating circumstances surrounding this matter, we deem it appropriate to modify the ALJ's Initial Decision consistent with this Opinion and Order; THEREFORE;

IT IS ORDERED:

1. That the Exceptions of Metropolitan Edison Company be, and [*11] hereby are, denied.
2. That the Initial Decision of Administrative Law Judge, Louis G. Cocheres be, and hereby is, adopted as modified by this Opinion and Order.
3. That the Petition of Metropolitan Edison Company for Waiver Of The Medical Certification Procedures So AS To Terminate Service To Premises of Robert Hartman be, and hereby is, granted consistent with this Opinion and Order.
4. That within thirty days of the date of entry of the Opinion and Order, the account for Robert C. Hartman, Sr. shall be allocated into a budget plan providing for the payment of current budget bills plus \$ 5.00 towards the outstanding arrearage.
5. That within fifteen (15) days of the entry date of this Opinion and Order, the Metropolitan Edison Company shall contact Robert Hartman and offer to aid Mr. Hartman in locating and applying for any available energy assistance grants.
6. That subsequent to the entry of this Opinion and Order, should a condition constituting a medical emergency arise, Mr. Hartman may submit a medical certificate to Metropolitan Edison Company only if his account has previously been paid in accordance with the budget plan as set forth in paragraph 4. The medical [*12] certification will excuse payment for a maximum thirty-day period. After thirty days, Mr. Hartman must pay any amount due on his budget plan. Only after Mr. Hartman is current on his budget plan will the Metropolitan Edison Company be obligated to accept another medical certification for another thirty-day period.
7. That the Metropolitan Edison Company is enjoined from terminating service except for valid safety or emergency reasons, as long as Robert Hartman complies with the payment schedule delineated in this Order.
8. That should Mr. Hartman fail to comply with the above payment terms, Metropolitan Edison company may terminate service in accordance with the abbreviated notice provisions contained in our regulations at 52 Pa. Code § 56.101.
9. That the Commission's regulations prohibiting termination of service during the wintertime shall not be applicable with respect to Mr. Hartman's account if he does not comply with the above-stated payment schedule.

Citation: 70 pa puc 133
View: Full
Date/Time: Thursday, May 13, 2004 - 6:42 PM EDT

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EXHIBIT E

Service: Get by LEXSEE®
Citation: 1993 pa puc lexis 1

1993 Pa. PUC LEXIS 1, *

Donald Ashman v. National Fuel Gas Distribution, Complaint Appellant

F-9031384

PENNSYLVANIA PUBLIC UTILITY COMMISSION

1993 Pa. PUC LEXIS 1

January 21, 1993

CORE TERMS: ratepayer, collection, informal, finalized, pursuing, supplied, barring, accepting, notified, initiated, Rules of Administrative Practice, legal action, arrearage, contacted, customer, vacated, pursuing, monthly, budget

PANEL: [*1]

Commissioners Present: William H. Smith, Chairman; Joseph Rhodes, Jr., Vice Chairman; Wendell F. Holland, Commissioner; David W. Rolka, Commissioner

OPINION: OPINION AND ORDER

BY THE COMMISSION:

Before us for consideration is the Initial Decision issued by Administrative Law Judge ("ALJ") John H. Corbett, Jr., on June 12, 1991, relative to the above-captioned proceeding.

History of the Proceeding

On July 9, 1990, National Fuel Gas Distribution Corporation ("NFG") filed a Complaint with the Commission in the nature of an appeal from the decision of the Commission's Bureau of Consumer Services ("BCS") dated June 7, 1990 at ICU NO. 31384. The appeal questioned the jurisdiction of the Commission, acting through the BCS, to establish a payment arrangement for a ratepayer, once a utility finalized an account of a ratepayer for collection purposes, but has not suspended or terminated gas service.

The appeal requests the issuance of an order prohibiting the BCS from accepting a ratepayer complaint, once a ratepayer has been notified that their account has been finalized for purposes of pursuing collection activity, but gas service will continue to be supplied. No answer or other responsive [*2] pleading to the Appeal was filed by Donald Ashman, ("Ratepayer") in the instant proceeding.

A telephonic hearing on this matter was held on November 13, 1990. Starr Ashman, wife of Donald Ashman, appeared on behalf of the Ratepayer. Gwen M. Ralph, Esquire, appeared on behalf of NFG. The record consists of a transcript of the notes of testimony taken during the hearing totalling 26 pages in length. Two exhibits were admitted into the record on behalf of NFG. NFG filed a brief in support of its position. ALJ Corbett issued his Initial Decision ("I.D.") on June 12, 1991.

Discussion

Subsequent to the close of the record, ALJ Corbett issued his Initial Decision wherein he

made the following Findings of Fact:

1. The National Fuel Gas Distribution Corporation provides residential gas service to the Ratepayer, Donald Ashman, at 330 Wilson Street, Sharon, Pennsylvania, 16146 (N.T. 22).
2. Because the Ratepayer was experiencing difficulty in keeping abreast with his account for service provided by NFG, the Ratepayer contacted NFG on November 15, 1988 and agreed to arrangements for paying the monthly budget amount and \$20 a month toward reduction of the arrearages (N.T. 8). [*3]
3. On July 24, 1989, the Ratepayer contacted NFG to make a payment arrangement of \$25 a month in addition to the monthly budget amount (N.T. 9).
4. The Ratepayer was unable to abide by the terms of either one of these payment arrangements with NFG (N.T. 9).
5. On May 16, 1990, NFG notified the Ratepayer of a default in the payment arrangements and as a result, the account had been finalized and referred to its collection department for further legal action. Payment in full was demanded by June 4, 1990. A final bill in the amount of \$2,147.29 was enclosed. The Ratepayer was also notified that a new account was opened and gas service would continue to be supplied (N.T. 19-20; NFG Exhibit A).
6. Thereafter, the Ratepayer filed an informal complaint with the Commission's Bureau of Consumer Services, which resulted in an informal decision issued on June 7, 1990 at ICU No. 31384 (N.T. 21-22; NFG Exhibit B).
7. Paragraph 3 of the informal decision reads as follows:
"That the Company may not pursue any legal or collection activity so long as the customer pays according to the terms of this decision."
(NFG Exhibit B).
8. In this proceeding, NFG is not asking the Commission [*4] to bar BCS from accepting informal complaints, once the utility's letter finalizing an account has been sent to a ratepayer (N.T. 16).
9. NFG does ask the Commission to prohibit BCS from barring that utility from pursuing civil remedies it may have available to it in this type of situation (N.T. 16).
10. In accordance with the informal decision of the BCS, the Ratepayer has made monthly payments from the date of the informal decision until the time of the hearing in the amount of \$20.00 a month, reducing the outstanding arrearage on this finalized account to \$1,997.29 (N.T. 12).

I.D., p. 2-4.

Based on his evaluation and analysis of the record, ALJ Corbett reached the following Conclusions of Law:

1. The Commission has jurisdiction over the subject matter and the parties to this action to the extent discussed in the foregoing section.
2. The Commission, acting through the BCS, lacks jurisdiction to prohibit NFG from pursuing its legal right to collect a debt from this Ratepayer in a court of law, when gas service will continue unaffected.

3. Paragraph 3 of the decision on informal complaint of the BCS Residential Termination Unit, dated June 7, 1990, at ICU No. 31384 must [*5] be vacated for lack of jurisdiction.

I.D., p. 9-10.

In its Complaint/Appeal NFG requests that we:

(1) Prohibit the Bureau of Consumer Services from accepting complaints from customers once the consumer is sent the form of letter attached as Exhibit "A" indicating that their account has been finalized for collection purposes, but gas service will continue to be supplied.

(2) Prohibit the Bureau of Consumer Services from barring the Company from pursuing legal or collection activity on an account which has been finalized for collection purposes, but gas service will continue to be supplied.

The BCS plays an important role between a ratepayer and a utility. The BCS has primary jurisdiction over ratepayer, application or occupant complaints arising under Chapter 56 of our Rules of Administrative Practice and Procedure, 52 Pa. Code § 56.211. In the instant proceeding, NFG is seeking to have the Commission prohibit BCS from barring NFG from pursuing legal or collection activities on an account, which has been finalized for collection purposes, but where the ratepayer continues to receive uninterrupted gas service.

NFG initiated the instant proceeding by means of an appeal from a [*6] specific decision of the BCS Residential Termination Unit. It is well settled that we have exclusive, original jurisdiction to adjudicate cases involving issues pertaining to the rates, services and facilities of public utilities. However, legal action for the collection of a civil debt, even if initiated by a utility against one of its ratepayers, is not within the jurisdiction of the Commission; only a Court of Common Pleas may award a judgement for a civil debt. Bell of Pa. v. Philadelphia Warwick Company, 355 Pa. 637, 50 A.2d 684 (1947).

We note, however, that our jurisdiction over billing disputes between ratepayers and utilities is not exclusive. The courts have jurisdiction over utilities' collection of civil debts. See Bell Telephone Co. v. Philadelphia Warwick Co., 355 Pa. 637, 50 A.2d 684 (1947). On the other hand, the courts have recognized that we have special expertise to consider public utility rates and service issues. See Feingold v. Pa. PUC, 477 Pa. 1, 383 A.2d 791 (1978). Consequently, while we may not restrict NFG from pursuing civil collection remedies, it is important to recognize that we still maintain the authority to enforce Chapter [*7] 56 of our Rules of Administrative Practice and Procedure, entitled Standards and Billing Practices for Residential Utility Service. We must emphasize that NFG's decision to pursue civil collection remedies does not preclude or otherwise excuse it from its Chapter 56 responsibilities; THEREFORE,

IT IS ORDERED:

1. That the Complaint filed by National Fuel Gas Distribution Corporation at Docket No. F-9031384, being an appeal from a decision on an informal complaint by the Bureau of Consumer Services, Residential Termination Unit, dated June 7, 1990, at ICU No. 31384 be, and hereby is, sustained.
2. That the Bureau of Consumer Services' decision barring National Fuel Gas Distribution Corporation from pursuing a legal remedy which it may have for the collection of a debt owed by Donald Ashman, be, and hereby is, vacated.
3. That the Initial Decision of Administrative Law Judge John H. Corbett, Jr., be, and hereby

is, adopted to the extent that it is consistent with this Opinion and Order.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PHILLIP HARRIS

v.

PECO ENERGY COMPANY

:
:
:
:
:

DOCKET NO. Z-01537336

CERTIFICATE OF SERVICE

I 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 a copy thereof by overnight delivery, properly addressed and postage prepaid to:

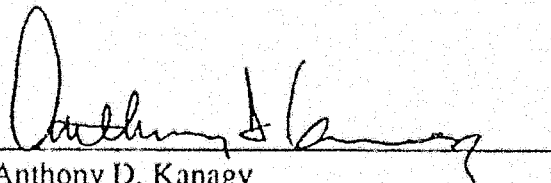
Phillip Harris
6369 Germantown Avenue
Philadelphia, PA 19144

Dated at Philadelphia, Pennsylvania, July 14, 2004.

RECEIVED

JUL 14 2004

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU



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COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
Office of Administrative Law Judge
P.O. BOX 3265, HARRISBURG, PA 17105-3265
July 26, 2004

IN REPLY PLEASE
REFER TO OUR FILE

In Re: Z-01537336

(SEE LETTER DATED 6/22/04)

Phillip Harris v. PECO Energy Company

Billing Issue

DOCUMENT
FOLDER

Cancellation Notice

This is to inform you of the following cancellation:

Type: Initial Telephone Hearing
Date: Tuesday, August 12, 2004
Time: 10:00 a.m.
Presiding: Administrative Law Judge Allison K. Turner

Please mark your records accordingly.

pc: Judge Turner
Cherie Pyle
Beth Plantz
Docket Section
Calendar File

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JUL 30 2004