



An Exelon Company

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January 5, 2017

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

**RE: Mindy Jaye Zied and Binnie Zied v. PECO Energy Company
PUC Docket No. F-2015-2500342**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is the *Response of Respondent, PECO Energy Company to Complainants, Mindy Zied and Binnie Zied's Renewed Motion for a Disability Accommodation Request* 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/alb
Enclosure

cc: Honorable Angela T. Jones, ALJ
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**MINDY JAYE ZIED and
BINNIE ZIED
Complainants**

v.

**PECO ENERGY COMPANY
Respondent**

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DOCKET NO. F-2015-2500342

**RESPONSE OF RESPONDENT,
PECO ENERGY COMPANY TO COMPLAINANTS,
MINDY ZIED AND BINNIE ZIED'S
RENEWED MOTION FOR A DISABILITY ACCOMMODATION REQUEST**

PECO Energy Company ("PECO") hereby responds to Complainants' Motion as follows:

On December 27, 2016, PECO was served with the above-named Motion in the docket listed above. As set forth below, PECO believes that Complainants have not demonstrated that they are entitled to a "disability accommodation;" that if the right to such a disability accommodation has been proved, then the accommodations offered by Your Honor (telephone participation and written testimony) constitutes reasonable accommodations.

Your Honor offered the Complainants the opportunity to participate via telephone and through submission of written testimony. Complainant, Mindy Zied claims that because of a psychological disorder she is unable to participate via telephone and requests that her formal complaint be adjudicated solely on written testimony. Complainant, Binnie Zied claims that she has a hearing condition that prohibits her from participating via telephone and requests that this matter be adjudicated solely on written testimony.

PECO's Answer is divided into three sections:

1. **Complainants have not demonstrated that they have a disability within the meaning of the Americans with Disabilities Act;**
2. **Assuming *arguendo* that Complainants could demonstrate that they have a disability within the meaning of the Americans with Disabilities Act and the accommodations offered by the Commission (participation by telephone and written testimony) are reasonable accommodations.**

ARGUMENT

A. Complainants have not demonstrated that they have a disability within the meaning of the Americans with Disabilities Act.

The Complainants Motion and Memorandum of Law (p. 9) states that “disability” is defined in the Americans with Disabilities Act as an individual with “(A) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (B) a record of such an impairment or (C) being regarded as having such an impairment.” Complainants general claim (p. 2) is that Binnie Zied “has two hearing aids and cannot communicate effectively telephonically” and Mindy Zied has “bipolar disorder, communication problems associated with that order, and paranoid disorder.” The Complainants stated (p. 16) that they have presented fourteen exhibits “which clearly support the disability accommodation request.” None of the exhibits prove the Complainants’ claims.

The term “qualified individual with a disability” means an individual with a disability who, with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the

participation in programs or activities provided by a public entity. 42 U.S.C.S. § 12131(2); 28 CFR § 35.104. Disabled individuals include those for whom a physical or mental impairment substantially limits one or more major life activities. 42 U.S.C.S. § 12102(1)(A). “The determination of whether an individual has a disability is not necessarily based on the name or diagnosis of the person’s impairment, but rather on the effect of that impairment on the life of the individual.” *Owen v. Computer Sciences Corp.*, No. 97-6272, 1999 U.S. Dist. LEXIS 12635m *14-*15 (D.N.J. 1999).

In this case, Complainants are not “disabled” within the meaning of the statute. Complainants present no exhibits (other than a self-serving affidavit that Binnie Zied is hearing impaired to support their contention they are disabled). Complainants present a medical note from Dr. Michael Segal (p. 72) on behalf of Binnie Zied for the purpose of preventing service termination. However, the note does not mention any disability or provide medical verification that Binnie Zied is hearing impaired or unable to participate in a telephonic hearing.

Complainants presented several exhibits (pp 61-70) to demonstrate that Mindy Zied has a mental disability. The first document from Dr. Camellia P. Clark dated June 2, 1999, states that Mindy Zied has Schizoaffective Disorder, Bipolar Type and Paranoid Disorder, but does not state anywhere in her note that Ms. Zied is unable to participate in a hearing by telephone or submit written testimony. The remaining medical note (p. 70) written in 1973 merely discusses treatment Ms. Zied received after tragic events that occurred in 1972. These notes do not prove that Ms. Zied is unable to participate in a hearing or has an ongoing mental disability. Indeed, Ms. Zied’s actions during this matter prove the converse and demonstrate that she has the mental ability to participate in a telephonic hearing.

PECO believes it is important to understand exactly what Ms. Zied has accomplished during the time that she has litigated this formal complaint claiming to have a mental disability. On or about August 2015, Ms. Zied drafted and filed a 115 page formal complaint and organized 27 exhibits to support her complaint. She drafted and filed an extensive Motion for Summary Judgment with supporting exhibits and filed a Second Motion for an Immediate Decision. On December 22, 2015, Ms. Zied drafted a 17 page Petition for Interlocutory Appeal with supporting exhibits. On May 5, 2016, Ms. Zied drafted a Response to the Commission's Order on the Petition for Interlocutory Appeal. On May 18, 2016, Ms. Zied drafted a Motion for Recusal of Administrative Law Judge Angela T. Jones. On June 16, 2016, Ms. Zied filed a Motion for Relief, alleging that PECO had failed to comply with an Order. Now, she has filed the current Motion Renewing her Petition for Accommodation under the Americans with Disabilities Act. Clearly, the level and number of concise pleadings filed, should, at a minimum raise questions about whether Ms. Zied can reasonably claim that she is not mentally competent to participate in a hearing. This in turn raises questions as to whether she actually has a disability and, if so, how much accommodation must be made to that disability. It is evident here that if Ms. Zied does have a current mental impairment, thus far, it is clearly not limiting her ability to participate in this formal complaint litigation.

- B. Assuming *arguendo* that Complainants could demonstrate that they have a disability within the meaning of the Americans with Disabilities Act, the accommodations offered by the Commission (participation by phone and written testimony) are reasonable accommodations.**

The next step in PECO's argument is to assume, for the sake of argument, that Complainants could demonstrate that they have a disability within the meaning of the Americans with Disabilities Act. On that *arguendo* assumption, PECO notes that the accommodations offered by the Commission – participation by telephone and written testimony – are reasonable accommodations under that Act.

Title II of the Americans with Disabilities Act requires public entities to operate each service, program or activity so that it is “readily accessible to and usable by individuals with disabilities,” unless doing so would result in a “fundamental alteration in the nature of a service, program or activity or in undue financial and administrative burdens. 28 C.F.R. § 35.150(a). The implementing regulations contemplate compliance by a number of possible means for providing accessibility:

A public entity may comply with the requirements of this section through such means as redesign or acquisition of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, *delivery of services at alternate accessible sites*, alteration of existing facilities and construction of new facilities, use of accessible rolling stock or other conveyances, or *any other methods that result in making its services, program or activities readily accessible to and usable by individuals with disabilities*...In choosing among available methods...a public entity shall give priority to these methods that offer services, programs, and activities to qualified individuals with disabilities in the most integrated setting appropriate.

28 C.F.R. § 35.150(b)(1) (emphasis added).

In this case, Administrative Law Judge Angela T. Jones scheduled a telephonic hearing to take place on Wednesday, January 11, 2017. Thus, the Commission has already accommodated Complainants by providing them the option of testifying telephonically. The Commission determined that Complainants could also submit pre-filed written testimony. *See Mindy Jaye Zied and Binnie A Zied, P-2015-2520474* (Opinion and Order entered April 21, 2016). The Commission's agreement to permit pre-filed written testimony in the case further accommodates Complainants since it may reduce the necessity for oral presentation during the telephonic hearing. A telephonic hearing and pre-filed written testimony accommodates Complainants by providing another "method" by which participation in these proceedings is "readily accessible to and usable" by Complainants. Complainants are allowed to participate in the hearing by telephone, which complies with Title II's requirement that they be given "meaningful access" or an "equally effective opportunity" to participate in their case. *See supra*. PECO respectfully submits that Complainants have not described anything in their Motion that would prevent them from participating telephonically; and therefore, their renewed Motion should be denied.

CONCLUSION

For the reasons set forth above, PECO does not believe that Complainants have demonstrated that they have a disability within the meaning of the Americans with Disabilities Act. Assuming arguendo that Complainants could demonstrate that they have a disability within the meaning of the Americans with Disabilities Act, the accommodations offered by the Commission (participation by telephone and pre-filed written testimony) are reasonable accommodations.

WHEREFORE, PECO Energy Company respectfully requests that your Honorable Commission dismiss the Complainant's Renewed Motion for a Disability Accomodation and this matter proceed to a telephonic hearing as scheduled.

Respectfully Submitted,



**Shawane L. Lee
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Fax: 215.568.3389**

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DOCKET NO. F-2015-2500342

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: January 5, 2017

Shawane L. Lee

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MINDY JAYE ZIED and BINNIE ZIED Complainants	:	
	:	
	:	
v.	:	DOCKET NO. F-2015-2500342
	:	
PECO ENERGY COMPANY Respondent	:	

CERTIFICATE OF SERVICE

I, Shawane L. Lee, hereby certify that I have this day served a copy of PECO Energy Company's Response to Complainants' Renewed Motion for a Disability Accomodation Request in the above matter upon all interested parties by mailing a copy, properly addressed to:

Mindy Zied and Binnie Zied
1948 Kentwood Street
Philadelphia, PA 19116

Angela T. Jones, Adm. Law Judge
Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
Philadelphia, PA 19107

Dated at Philadelphia, Pennsylvania, January 5, 2017.



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