

PLEASE DOCKET

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Colleen Cooper

v.

PECO Energy Company

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:  
:  
:

C-20066071

SECRETARY  
REAU

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ORDER GRANTING MOTION TO DISMISS AND  
DISMISSING COMPLAINT, IN PART

Before  
Veronica A. Smith  
Chief Administrative Law Judge

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FOLDER

HISTORY OF THE PROCEEDING

**DOCKETED**  
JAN 10 2007

On March 31, 2006, Colleen Cooper (Complainant) filed a Formal Complaint with the Commission against PECO Energy Company (Respondent or PECO) alleging that she was wrongfully removed from Respondent's budget billing program and wrongfully threatened with service termination. As relief, Complainant requests that she be reinstated in the budget billing program. Alternatively, Complainant requests that a payment arrangement be issued on her account. On April 25, 2006<sup>1</sup>, Respondent filed an Answer with New Matter and a Motion to Dismiss, addressing the allegations of the Complaint and moving to dismiss the Complaint on the basis that jurisdiction for a payment arrangement on Complainant's outstanding account balance is not properly before the Commission.

According to Commission records, as of May 24, 2006, Complainant did not file a response to either the Motion to Dismiss<sup>2</sup> or the New Matter<sup>3</sup> portion of Respondent's Answer.

<sup>1</sup> Respondent was served with a copy of the Complaint on April 4, 2006.

<sup>2</sup> Pursuant to 52 Pa. Code §5.101(d) a response to the Motion was due on or before May 5, 2006.

<sup>3</sup> Pursuant to 52 Pa. Code §5.62(c) Complainant's response to New Matter was due on or before May 20, 2006.

BA

Therefore, the factual allegations raised as New Matter are deemed admitted<sup>4</sup>. This matter was assigned to me by Motion Judge Assignment Notice dated March 28, 2006. The Motion to Dismiss is ripe for ruling.

#### FINDINGS OF FACT

1. Complainant is Colleen Cooper, 1626 Noblet Avenue, Sharon Hill, Pennsylvania 19079<sup>5</sup>.

2. Respondent is PECO Energy Company.

3. On March 31, 2006, Complainant filed a Formal Complaint with the Commission alleging that she was wrongfully removed from budget billing and wrongfully threatened with service termination. As relief, Complainant requested that she be reinstated in the budget billing program or alternatively, that a payment arrangement be issued on her account.

4. "On June 13, 2001, the Complainant was approved and enrolled in the CAP Rate Program. The Complainant receives a 50% discount on the first 500 kilowatt [hours] of electric service and a 25% discount on the first 500 kilowatts of gas service<sup>6</sup> each month." Respondent's New Matter, ¶ 1.

5. On April 25, 2005, Respondent filed a Motion to Dismiss and moved for dismissal of the Complaint on the basis that jurisdiction for a payment arrangement on Complainant's outstanding account balance is not properly before the Commission.

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

<sup>5</sup> Complainant listed the street address above but listed Philadelphia as her city. Complainant also indicated that this address is located in Delaware County. Records accompanying the Complaint match the street address provided but list Sharon Hill as the city. A search of the zip code listed in the Complaint at the U.S. Postal Service's website indicates that 19079 zip code is only associated with the city of Sharon Hill, Delaware County, Pennsylvania.

<sup>6</sup> I am presuming that the reference to kilowatts, in the New Matter portion of Respondent's Answer, when referring to gas service is a typographical error since natural gas is not measured in kilowatts.

6. The Motion to Dismiss focused solely on the Complainant's request for a payment arrangement and did not address the billing and service allegations raised in the Complaint.

7. Complainant did not file a response to the Motion to Dismiss.

### DISCUSSION

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

When considering a motion to dismiss, the Commission must view the Complaint in a light most favorable to the Complainant, and the Complaint should be dismissed only when it appears that the Complainant would not be entitled to relief under any circumstances.

Equitable Small Transportation Interveners, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435, Final Order entered July 18, 1994; Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources, 486 Pa. 536, 406 A.2d 1020 (1979). This is similar to Pennsylvania civil practice with respect to the filing of preliminary objections. Equitable Small Transportation Interveners, *supra*.

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

Respondent's Motion to Dismiss addresses only the prayer for relief portion of the Complaint where the Complainant requests a payment arrangement. The Motion does not address the allegations relating to Complainant's wrongful removal from budget billing or the threat of service termination. For the reasons set forth below, the Respondent's Motion will be granted because the Commission lacks the authority to establish payment arrangements for CAP customers. However, since the Complaint contains allegations regarding the billing and service rendered by Respondent that are not addressed by the Motion, a hearing will be scheduled for the disposition of those issues.

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

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

66 Pa. C.S. § 1405(c). The General Assembly has made it clear that the Commission lacks the authority to establish payment arrangements for customers participating in CAP programs offered by public utilities.

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

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

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

Complainant participates in Respondent's CAP rate program and receives discounted electric and natural gas service. Therefore, consistent with the provisions of the Act, the Commission is without authority to issue a payment arrangement on her account.

The Commission is granted discretion to dismiss a complaint without a hearing if a hearing is not necessary in the public interest. 66 Pa. C.S. §703(b); 52 Pa. Code §5.21(d). A hearing is necessary only to resolve disputed questions of fact, and is not required to resolve questions of law, policy or discretion. Dee-Dee Cab, Inc. v. Pa. Public Utility Comm., 817 A.2d 593, petition for allowance of appeal denied, 836 A.2d 123 (2003); Lehigh Valley Power Committee v. Pa. Public Utility Comm., 563 A.2d 548 (1989); Edan Transportation Corp. v. Pa. Public Utility Comm., 623 A.2d 6 (1993). Pursuant to 66 Pa. C.S. §1405(c), the Commission has been divested of the authority to establish a payment arrangement for Complainant and this portion of her Complaint must be dismissed as a matter of law. Accordingly, Respondent's Motion to Dismiss is granted.

Respondent's Motion does not address the billing and service allegations raised in the Complaint. Therefore, these issues remain outstanding and a hearing will be scheduled to provide Complainant with the opportunity to present evidence related to her alleged wrongful removal from budget billing and the threat of service termination. Complainant is advised that she will bear the burden of proof at hearing and must present evidence sufficient to demonstrate that she is entitled to be reinstated in budget billing. 66 Pa. C.S. § 332(a).

#### CONCLUSIONS OF LAW

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

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

4. The Commission may dismiss a complaint without a hearing if a hearing is not necessary in the public interest.

ORDER

THEREFORE,

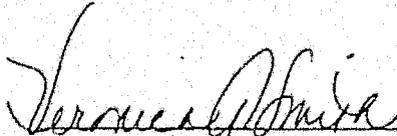
IT IS ORDERED:

1. That PECO Energy Company's Motion to Dismiss the Complaint filed by Colleen Cooper at Docket No. C-20066071 is granted.

2. That the portion of the Complaint filed by Colleen Cooper at Docket No. C-20066071 requesting that the Commission issue a payment arrangement on her account is dismissed.

3. That a hearing be scheduled to address the billing and service issues raised in the Complaint.

Dated: June 5, 2006

  
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Veronica A. Smith  
Chief Administrative Law Judge



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Office of Administrative Law Judge  
P.O. BOX 3265, HARRISBURG, PA 17105-3265  
June 16, 2006

IN REPLY PLEASE  
REFER TO OUR FILE

In Re: C-20066071

(See attached list)

DOCUMENT  
FOLDER

Colleen Cooper v. PECO Energy Company

Billing and service dispute.

Hearing Notice

This is to inform you that your case is scheduled for hearing at 1:30 p.m. in Hearing Room 2 in the Philadelphia State Office Building. Your case is one of several cases that have been scheduled at this time in Hearing Room 2. You must be available in the hearing room when your case is called by the presiding Administrative Law Judge. You should arrive at the Hearing Room no later than 1:15 p.m. and wait in the Hearing Room until the presiding Administrative Law Judge calls your case. Your case might not be the first one to be called and you should be prepared to stay in the hearing room all afternoon, if necessary. If you are not present and prepared to go forward with your case when it is called, your case will be dismissed by the Administrative Law Judge.

Type: Initial Hearing  
Date: Tuesday, July 25, 2006  
Time: 1:30 p.m.  
Location: Hearing Room 2  
State Office Building  
Broad & Spring Garden Streets  
Philadelphia, PA

**DOCKETED**  
JUN 27 2006

Presiding: Administrative Law Judge Charles E. Rainey, Jr.  
1302 Philadelphia State Office Building  
1400 West Spring Garden Street  
Philadelphia, PA 19130  
Telephone: 215.560.2105  
Fax: 215.560.3133

Attention: You must be available in the hearing room when your case is called by the presiding Administrative Law Judge. If you are not present and prepared to go forward with your case when it is called, your case will be dismissed by the Administrative Law Judge.

If you intend to file exhibits, bring 4 copies with you to the hearing.

Individuals may represent themselves or be represented by an attorney. Individuals representing themselves do not need to be represented by an attorney. If you have an attorney representing you, your attorney should file a Notice of Appearance before the scheduled hearing date.

If you are a person with a disability, and you wish to attend the hearing, we may be able to make arrangements for your special needs. Please call the scheduling office at the Public Utility Commission:

- Scheduling Office: (717) 787-1399.
- AT&T Relay Service number for persons who are deaf or hearing-impaired: 1-800-654-5988.

pc: Judge Rainey  
Susan Licon  
Beth Plantz  
Docket Section  
Calendar File

#502239 09/04

#502239 03/05