

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Denise Adams

v.

PECO Energy Company

**DOCKETED**  
APR 04 2006

C-20065746

**DOCUMENT  
FOLDER**PREHEARING ORDER

On February 28, 2006, I was assigned as the presiding officer in this case. The purpose of this order is to bring to the attention of the parties certain procedural rules that apply to the participants in this proceeding. An **Initial Hearing** in this case is scheduled for **Tuesday, April 25, 2006 at 1:30 p.m. in Hearing Room 2 on the 13<sup>th</sup> floor of 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 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.

On January 6, 2006, the Complainant filed a formal complaint against PECO Energy Company ("PECO" or the Respondent) alleging the following: that she was in the CAP Rate program; that as of November 2005, she is no longer eligible for CAP Rate; that she is a single parent with three young children; that she works 38 hours a week; that she wants a payment arrangement. The Complainant stated that she could pay her budget plus \$50.00 a month on the outstanding balance.

On January 30, 2006, the Respondent filed an Answer, New Matter and a Motion to Dismiss. The Respondent denied that the Complainant is unable to pay her electric bill. The Respondent averred that the Complainant's account balance was \$1,918.28. The Respondent referred to the Bureau of Consumer Services decision, dated October 4, 2005, which closed the case since the Complainant was already participating in the Respondent's customer assistance program. In the New Matter, the Respondent averred that the Complainant was enrolled in the CAP Rate program on March 7, 2003. In the program, the Complainant receives a 50% discount on the first 500 kilowatts of electric service each month. The Respondent requested that the complaint be dismissed since section 1405(c) of the Public Utility Code, 66 Pa. C. S. §1405(c), provides that the Commission shall not negotiate or approve payment arrangements for customer assistance customers.

#### Motion to Dismiss

In the Motion to Dismiss, the Respondent averred that the Complainant currently participates in the CAP Rate program and receives a monthly discount. Consequently, the Respondent requested that the complaint be dismissed pursuant to section 1405(c) of the Public Utility Code, 66 Pa. C. S. §1405(c).

Pursuant to the Commission's rule at 52 Pa. Code §5.101 preliminary motions can be filed. Preliminary motions are limited to the following:

- (1) A motion questioning the jurisdiction of the Commission.
- (2) A motion to strike a pleading that is insufficient as to form.
- (3) A motion to dismiss a pleading that is insufficient as to substance, that does not indicate on its face the standing of the party to participate in the proceeding or that fails to join an indispensable party.
- (4) A motion for a more specific pleading.

52 Pa. Code §5.101(a).

The Commission's preliminary motion practice is similar to Pennsylvania civil practice respecting the filing of preliminary objections. Equitable Small Transportation Interveners v. Equitable Gas Co., 1994 Pa. PUC LEXIS 69, PUC Docket No. C-00935435, Final Order entered July 18, 1994. A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources, 486 Pa. 536, 406 A.2d 1020 (1979); Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc., 595 A.2d 172 (Pa. Super. 1991). The Commission has adopted this standard. Montague v. Philadelphia Electric Co., 66 Pa. PUC 24 (1988). Therefore, a preliminary motion seeking dismissal of a complaint will be granted only in unusual circumstances, where the right to this remedy is clear and no doubt exists as to its appropriateness. Reid v. GTE North, Inc., 1993 Pa. LEXIS 31, Docket No. C-00934777, Final Order entered May 25, 1993; Montague, 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. Commonwealth of Pa., 507 Pa. 360, 490 A.2d 402 (1985); Commonwealth of Pa. v. The Bell Telephone Co. of Pa., 551 A.2d 602 (Pa. Commonwealth. 1988). The motion may be granted only if the moving party prevails as a matter of law. Roc v. Flaherty, 527 A.2d 211 (Pa. Commonwealth 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. Commonwealth 2003) (citing Boyd v. Ward, 802 A.2d 705 (Pa. Commonwealth 2002)). 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, supra.

In this matter, there is a factual dispute regarding whether the Complainant is still eligible for the CAP Rate program. When the motion is viewed in the light most favorable to the Complainant, the complaint should not be dismissed. However, if based on the evidence

presented at the hearing, the Complainant is still eligible for the CAP Rate program; the Respondent can renew the Motion to Dismiss.

### Hearing

The parties are hereby directed to comply with the following requirements:

1. A request for a continuance of the scheduled hearing date must state the agreement or opposition of other parties, and must be submitted in writing no later than five (5) business days prior to the hearing. 52 Pa. Code §1.15(b). Requests for a change of hearing date must be sent to me and all parties of record. The correct address is:

Administrative Law Judge Cynthia Williams Fordham  
1302 Philadelphia State Office Building  
1400 West Spring Garden Street  
Philadelphia, PA 19130  
Telephone: (215) 560-2105  
Fax: (215) 560-3133

**Changes are granted only in rare situations where good cause exists.**

2. **The Commission's policy promotes settlements.** 52 Pa. Code §5.231(a). **The utility shall contact the Complainant at least one week before the scheduled hearing to discuss a possible settlement of this case.** Even if you are unable to settle this case, you may still resolve many questions or issues during your talks. If an agreement is reached, a formal hearing will not be necessary and the scheduled hearing will be cancelled.

3. The Complainant has the burden of proving that the allegations in the complaint are true. Section 332(a) of the Public Utility Code, 66 Pa. C.S. §332(a).

4. The Pennsylvania Legislature has recently enacted the Responsible Utility Customer Protection Act. 66 Pa. C.S. §1401 *et seq.* This new law provides strict guidelines as to how the Commission must handle customer complaints. The application of this law may result in

the issuance of a less favorable payment arrangement than a customer's current payment arrangement.

5. The customer must make monthly payments towards his/her utility bill while the complaint is pending. **FAILURE TO MAKE PAYMENTS MAY RESULT IN AN ORDER REQUIRING A CATCH UP PAYMENT EQUAL TO THE AMOUNT OF THE PAYMENTS THAT SHOULD HAVE BEEN MADE. FAILURE TO MAKE PAYMENTS MAY RESULT IN THE UTILITY TERMINATING YOUR SERVICE.**

6. If you wish to offer documents into evidence during the hearing (i.e. letters, bills, canceled checks, receipts, account statements, etc.), you must bring four (4) copies (a copy for the presiding officer, two (2) copies for the Court Reporter and a copy for each party of record). Please keep a copy for yourself. 52 Pa. Code §5.409.

7. During the hearing, the Complainant must be prepared to testify about the total gross monthly income of the household. A household includes all adults living at the service address and benefiting from the utility service. The "total gross monthly household income" includes but is not limited to the following:

- (a) income 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 source(s) of income.

8. The utility must bring the following documents to the hearing:

- (a) an account statement, showing the history of the account for a minimum of 24 months or the entire history of the account, whichever is less;
- (b) a service usage comparison report for the same period as the account statement;
- (c) a copy of the most recent Bureau of Consumer Services (BCS) decision; and,
- (d) a brief summary of any payment arrangement(s) made between the utility and the customer other than determinations of the BCS or the Commission.

9. Pursuant to 52 Pa. Code §§1.21 & 1.22, you may represent yourself, if you are an individual, or you may have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, represent you. However, if you are a partnership, corporation, trust, association, or governmental agency or subdivision, you must have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, represent you in this proceeding. Unless you are an attorney, you may not represent someone else. Attorneys shall insure that their appearance is entered in accordance with the provisions of 52 Pa. Code §1.24(b).

10. If you intend to subpoena witnesses for the hearing, you should review the procedures established in 52 Pa. Code §5.421. You must submit your written application to me sufficiently in advance of the hearing date so that the other parties will have the required ten (10) days' notice to answer or object, and so that you will have enough time to receive the subpoena and serve it.

**11. THIS CASE WILL BE DISMISSED IF THE CUSTOMER FAILS TO PARTICIPATE IN THE HEARING AND PRESENT EVIDENCE IN SUPPORT OF THE COMPLAINT.**

12. This is a formal hearing and will be conducted in accordance with the Commission's Rules of Practice and Procedure.

ORDER

THEREFORE,

IT IS ORDERED:

That the Motion to Dismiss filed by PECO Energy Company seeking dismissal of the complaint filed by Denise Adams at Docket No. C-20065746 is denied.

Date: March 27, 2006

*Cynthia Williams Fordham*  
Cynthia Williams Fordham  
Administrative Law Judge

**Legal Department**

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Business Services  
Company

Direct Dial: 215-841-6841

April 21, 2006

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

ORIGINAL

Re: Denise Adams v. PECO Energy Company  
Docket Number: C-20065746

DOCKETED  
MAY 03 2006

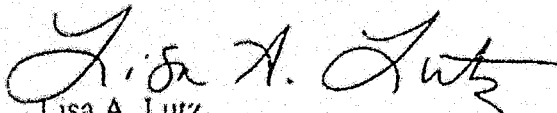
Dear Secretary McNulty:

Pursuant to 52 Pa. Code §5.24(b), PECO Energy Company certifies that the parties in the above referenced complaint have reached an accord.

By copy of this letter, I am alerting the Complainant of her right to object to the closing of this matter in writing to the Public Utility Commission within ten (10) days of the date of this letter.

If additional information is needed about this matter, please contact me at my direct-dial number above. Thank you.

Sincerely,

  
Lisa A. Lutz  
Counsel for PECO Energy Company

DOCUMENT  
FOLDER

cc: Ms. Denise Adams  
Administrative Law Judge Cynthia W. Fordham  
Susan Licon

RECEIVED  
2006 APR 27 AM 9:42  
PA P.U.C.  
SECRETARY'S BUREAU

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# OALJ Hearing Report

Please Check Those Blocks Which Apply

Docket No.:	C-20065746		YES	NO
		Prehearing Held:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Case Name:	Denise Adams v. PECO Energy Company	Hearing Held:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		Testimony Taken:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		Transcript Due:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		Hearing Concluded:	<input type="checkbox"/>	<input type="checkbox"/>
Location:	Philadelphia, PA	Further Hearing Needed:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		Estimated Add'l Days:		
Date	April 25, 2006	RECORD CLOSED:	<input type="checkbox"/>	<input type="checkbox"/>
ALJ:	Cynthia W. Fordham	DATE:		
		Briefs to be Filed:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Reporting Firm:	Sargents Court Reporting	DATE:		
		Bench Decision:	<input type="checkbox"/>	<input checked="" type="checkbox"/>
		REMARKS:	<i>Hearing cancelled; certificate of satisfaction filed</i>	

DOCUMENT FOLDER

PLEASE PRINT CLEARLY - Incomplete information may result in delay of processing.

Name and Telephone Number	Address	Who are you representing?
	City      State      Zip	
Telephone:	E-mail Address:	Fax Number:
	City      State      Zip	
Telephone:	E-mail Address:	Fax Number:
	City      State      Zip	
Telephone:	E-mail Address:	Fax Number:

Check this box if additional parties or attendees appear on back of form.

4/27/06 *elp*

\_\_\_\_\_  
Reporter's Signature

*Note: Completion of this form does not constitute an entry of appearance, see 52 Pa. Code §§1.24 and 1.25.*

COMMONWEALTH OF PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

DATE: April 27, 2006  
SUBJECT: C-20065746 Denise Adams v. PECO Energy Company  
TO: Wanda Zeiders  
Docket Management  
FROM: Susan Licon, ALJ Support Staff  
Office of Administrative Law Judge

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On April 24, 2006, a Certificate of Satisfaction was filed in the above-captioned proceeding. If no objection is filed to this certificate within 10 days of service, this proceeding will be closed.

All parties should be notified that the case is closed and a copy of that notification placed in the document folder.

Attachment

pc: ALJ Cynthia W. Fordham  
Beth Plantz  
Case File

**DOCKETED**  
MAY 8 - 2006