

PLEASE PRINT

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Henry & Edna Rush

v.

PECO Energy Company

:  
:  
:  
:  
:

C-20066026

RECEIVED  
2006 MAY 23 AM 11:07  
SECRETARY BUREAU

ORDER GRANTING MOTION TO DISMISS, IN PART

Before  
Veronica A. Smith  
Chief Administrative Law Judge

DOCUMENT  
FOLDER

HISTORY OF THE PROCEEDING

**DOCKETED**  
JAN 12 2007

On March 17, 2006, Henry & Edna Rush (Complainant) filed a Formal Complaint with the Commission against PECO Energy Company (Respondent), alleging that they are being overcharged for energy supply and that their meter is wrong or being misread and Respondent refused to investigate<sup>1</sup>.

On April 13, 2006<sup>2</sup>, Respondent filed an Answer and a Motion to Dismiss, addressing the allegations of the Complaint and moving to dismiss the Complaint on the basis that it is insufficient as to substance.

According to Commission records, Complainant did not file a response to either the Motion to Dismiss<sup>3</sup> or the New Matter<sup>4</sup> portion of Respondent's Answer. Therefore, the

<sup>1</sup> This Complaint is related to a Complaint against Commerce Energy at Docket No. C-20066025.  
<sup>2</sup> Respondent was served with a copy of the Complaint on March 24, 2006.  
<sup>3</sup> Pursuant to 52 Pa. Code §5.101(d) a response to the Motion was due on or before April 23, 2006.  
<sup>4</sup> Pursuant to 52 Pa. Code §5.62(c) Complainant's response to New Matter was due on or before May 3, 2006.

factual allegations raised as New Matter are deemed admitted<sup>5</sup>. This matter was assigned to me by Motion Judge Assignment Notice dated April 20, 2006. The Motion to Dismiss is ripe for ruling.

### FINDINGS OF FACT

1. Complainants are Henry & Edna Rush, 657 Ridge Road, Telford, Pennsylvania 19025.
2. Respondent is PECO Energy Company.
3. On March 17, 2006, Complainants filed a Formal Complaint alleging that they were overcharged by their energy supplier and that they believe their meter is wrong or being misread and Respondent refused to investigate.
5. Respondent moved for dismissal of certain Complaint allegations on the basis that the claims relating to supplier charges are not properly addressed to Respondent and that the Complaint is insufficient as to substance on that issue as it pertains to Respondent.
6. Complainants did not file a response to the Motion to Dismiss or to New Matter raised in Respondent's Answer.

### DISCUSSION

Before the Commission is a Complaint and a Motion to Dismiss the Complaint on the basis that the Complaint is insufficient as to substance because the Respondent is not the proper party to address certain allegations raised in the Complaint. Respondent's Motion does not address the metering issues raised by Complainants. Accordingly, the Motion will be

---

<sup>5</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).

considered as a motion to dismiss only those allegations relating to the service and billing provided by Complainants' alternative energy supplier.

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; Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources, 406 A.2d 1020 (Pa. 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 (Pa. 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. Roc 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)).

In order to be a legally sufficient formal complaint, the pleading submitted must set forth an "act or thing done or omitted to be done or about to be done or omitted to be done by the respondent in violation, or claimed violation, of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission." 52 Pa.Code §5.22(a)(4). *See also*, 66 Pa.C.S. §701.

Respondent avers that the billing issues raised in the Complaint relate to service provided by Complainants' alternative energy supplier, ACN Energy and/or Commerce Energy. Respondent argues that these allegations are not properly brought against it, that this portion of the Complaint is insufficient as to substance and therefore, must be dismissed.

Respondent is correct in its assertion that it is not the proper party against which to bring a dispute relating to charges billed by Complainants' alternative energy supplier. At the time the dispute arose, Respondent was not Complainants' energy supplier and cannot be held to answer for the actions of another company. This claim, as raised against Respondent, is insufficient as it fails to set forth any violation of the Public Utility Code, or a regulation or order of the Commission for which Respondent can be held responsible. The Complaint allegations relating to the service received and charges billed by ACN Energy and/or Commerce Energy are dismissed.

A hearing will be scheduled on the metering issue raised in the Complaint.

#### CONCLUSIONS OF LAW

1. Commission regulations provide for the filing of preliminary motions, including a motion questioning the jurisdiction of the Commission.
2. To be a legally sufficient formal complaint, the pleading submitted must set forth an "act or thing done or omitted to be done or about to be done or omitted to be done by the respondent in violation, or claimed violation, of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission." 52 Pa.Code §5.22(a)(4). *See also*, 66 Pa.C.S. §701.
3. The Complaint allegations relating to the service and billing of ACN Energy and/or Commerce Energy are insufficient as to substance as raised against Respondent.

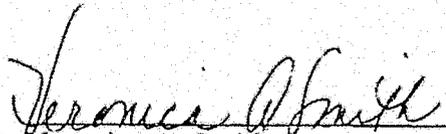
ORDER

THEREFORE,

IT IS ORDERED:

1. That PECO Energy Company's Motion to Dismiss seeking dismissal of the claims raised in the Complaint filed by Henry & Edna Rush, at PUC Docket No. C-20066026, relating to service provided by an alternative energy supplier is granted.
2. That this matter be set for hearing on the remaining Complaint allegations.

Dated: May 19, 2006

  
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  
July 20, 2006

IN REPLY PLEASE  
REFER TO OUR FILE

In Re: C-20066025,  
C-20066026

(See attached list)

## DOCUMENT FOLDER

C-20066025 Henry and Edna Rush v. Commerce Energy, Inc.  
C-20066026 Henry and Edna Rush v. PECO Energy Company

Billing dispute.

### Telephone Hearing Notice

This is to inform you that a hearing by telephone on the above-captioned case will be held as follows:

Type: Initial telephone hearing  
Date: Monday, August 28, 2006  
Time: 10:00 a.m.  
Presiding: Administrative Law Judge Herbert Smolen  
1302 Philadelphia State Office Building  
1400 West Spring Garden Street  
Philadelphia, PA 19130  
Telephone: 215.560.2105  
Fax: 215.560.3133

**DOCKETED**  
AUG 30 2006

At the above date and time, the Presiding Officer will contact the parties as follows:

Henry and/or Edna Rush	215-234-0903
Inger Goodman	714-259-2508
Lisa A. Lutz, Esquire	215-841-5841

If you have not provided a current telephone number where you can be reached for participation in the hearing OR YOUR AREA CODE HAS CHANGED, then you must contact the presiding officer at least 7 days before the actual hearing and provide the necessary information.

If you have any hearing exhibits to which you will refer during the hearing, 3 copies must be sent to the Administrative Law Judge and 1 copy each must be sent to every other party. All copies must be received at least 5 days before the hearing.

*Attention: You may lose the case if you do not take part in this hearing and present facts on the issues raised.*

Except for those individuals representing themselves, the Commission's rules require that all parties have an attorney; therefore, you should have an attorney of your choice file an entry of appearance before the scheduled hearing.

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 at least (2) two business days prior to your hearing:

- Scheduling Office: 717.787.1399
- AT&T Relay Service number for persons who are deaf or hearing-impaired: 1.800.654.5988

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

**Legal Department**

Exelon Business Services Company  
2301 Market Street / 523-1  
PO Box 8699  
Philadelphia, PA 19101-8699

Telephone 215 841 5544  
Fax 215 568 3389  
www.exeloncorp.com

Business Services  
Company

Direct Dial: 215 841 6841

August 10, 2006

**RECEIVED**

AUG 10 2006

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

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

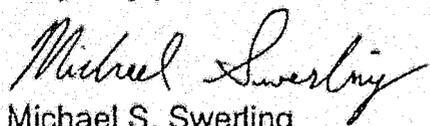
RE: **Henry and Edna Rush v. PECO Energy Company**  
**Pa. PUC Docket No.: C-20066026**

Dear Secretary McNulty:

Please find original and three copies of Entry of Appearance of Michael S. Swerling to be filed in the above referenced matter scheduled for Monday, August 28, 2006.

Thank you.

Very truly yours,



Michael S. Swerling  
Counsel for PECO Energy Company

**DOCUMENT  
FOLDER**

MSS/zr

Enc.

**ORIGINAL**

cc: Henry and Edna Rush  
ALJ Herbert Smolen  
Inger Goodman Sr Regulatory Analyst  
Sue Licon (via fax)

RECEIVED

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AUG 10 2006

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

HENRY AND EDNA RUSH

v.

PECO ENERGY COMPANY

:  
:  
:  
:  
:  
:

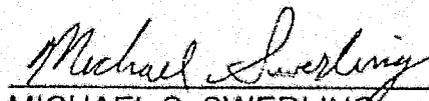
DOCKET NO. C-20066026

ENTRY OF APPEARANCE

TO JAMES MCNULTY, SECRETARY:

Kindly enter my appearance on behalf of Respondent PECO Energy  
Company in the above-captioned matter.

DOCUMENT  
FOLDER



MICHAEL S. SWERLING  
Counsel for PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19101-8699  
215-841-6841  
[michael.swerling@exeloncorp.com](mailto:michael.swerling@exeloncorp.com)

**DOCKETED**  
SEP 12 2006

Dated: August 10, 2006

ORIGINAL



Legal Department

Exelon Business Services Company  
2301 Market Street/523-1  
PO Box 8699  
Philadelphia, PA 19101-8699

Telephone 215 841 5544  
Fax 215 568 3389  
www.exeloncorp.com

Business Services  
Company

Direct Dial: 215-841-6841  
August 18, 2006

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

DOCUMENT  
FOLDER

Re: Henry & Edna Rush v. PECO Energy Company  
Docket Number: C-20066026

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 its 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,

*Michael S. Swerling*  
Michael S. Swerling  
Counsel for PECO Energy Company

**DOCKETED**  
SEP 6 2006

cc: Henry & Edna Rush  
Administrative Law Judge Herbert Smolen  
Susan Licon

CSA  
196

COMMONWEALTH OF PENNSYLVANIA  
PUBLIC UTILITY COMMISSION

DATE: August 21, 2006  
SUBJECT: C-20066026 Henry & Edna Rush v. PECO Energy Company  
TO: Wanda Zeiders  
Docket Management  
FROM: Susan Licon, ALJ Support Staff  
Office of Administrative Law Judge

DOCUMENT  
FOLDER

On August 18, 2006, a Certificate of Satisfaction was filed in the above-captioned proceeding. If no objection is filed to this certificate within 10 days of the filing, 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 Herbert Smolen  
Beth Plantz  
Case File

**DOCKETED**  
SEP 6 2006

Legal Department

Exelon Business Services Company  
2301 Market Street/ 523 1  
PO Box 8699  
Philadelphia, PA 19101-8699

Telephone 215 841 5544  
Fax 215 568 3389  
www.exe'oncorp.com

Business Services  
Company

Direct Dial: 215-841-6841  
August 23, 2006

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

# ORIGINAL

Re: **Henry & Edna Rush v. PECO Energy Company**  
Docket Number: C-20066026

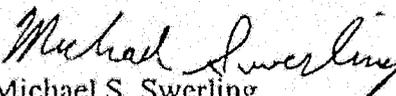
Dear Secretary McNulty:

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 its 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,

  
Michael S. Swerling  
Counsel for PECO Energy Company

DOCUMENT  
FOLDER

cc: Henry & Edna Rush  
Administrative Law Judge Herbert Smolen  
Susan Licon

2006 AUG 25 4:19:03  
EXCELON

7

2006 AUG 25 11:51 AM

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

HENRY & EDNA RUSH

COMPLAINANT

v.

PECO ENERGY COMPANY

RESPONDENT

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

DOCKET NO. C-20066026

CERTIFICATE OF SATISFACTION

I, Michael S. Swerling, Esquire, representing PECO Energy Company ("PECO") in this matter, hereby certify that the issues raised in the Formal Complaint filed by Complainant with the Pennsylvania Public Utility Commission and docketed at Complaint Docket No. C-20066026 have been satisfied.

This Certificate of Satisfaction is provided pursuant to 52 Pa. Code §5.24(b). Unless Complainant files an objection to this Certificate within ten (10) days of its filing, the Formal Complaint shall be withdrawn and the Commission's file closed.

**DOCKETED**  
SEP 08 2006

*Michael Swerling*

Michael S. Swerling  
Counsel for PECO Energy Company  
2301 Market Street, S23-1  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
(215) 841-6841  
Michael.Swerling@exeloncorp.com

Date: August 23, 2006

DOCUMENT  
FOLDER



Legal Department

Exelon Business Services Company  
2301 Market Street/ 523-1  
PO Box 8699  
Philadelphia, PA 19101 8699

Telephone 215 841 5544  
Fax 215 568 3389  
www.exeloncorp.com

Business Services  
Company

Direct Dial: 215 841 6841

ORIGINAL

August 30, 2006

James McNulty, Secretary  
Pennsylvania Public Utility Commission  
P. O. Box 3265  
Harrisburg, PA 17105-3265

RECEIVED

AUG 30 2006

RE: Henry & Edna Rush v. PECO Energy Company  
Pa. PUC Docket No.: C-20066026

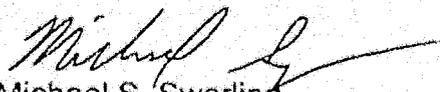
PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

Dear Secretary McNulty:

Enclosed is a copy of Withdrawal of Complaint signed by the Complainant in the above-referenced case. The Complainant has agreed to withdraw the complaint without prejudice. Please send me a final order or closing notice in this matter.

Thank you for your help and if you have any questions regarding this request, please call my direct dial number (215) 841-6841.

Very truly yours,



Michael S. Swerling  
Counsel for PECO Energy Company

MSS/zr

Enc.

DOCUMENT  
FOLDER

BA

WITHDRAWAL OF  
PENNSYLVANIA PUBLIC UTILITY COMMISSION FORMAL COMPLAINT

Henry & Edna Rush v. PECO Energy Company  
Docket Number: C-20066026

The circumstances causing the above Pennsylvania Public Utility Commission  
formal complaint have been resolved, and we wish to withdraw this complaint.

*Henry Rush*  
HENRY RUSH

*8/25/06*  
Date

*Edna Rush*  
EDNA RUSH

*8/25/06*  
Date

RECEIVED

AUG 30 2006

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

DOCUMENT  
FOLDER

DOCKETED  
OCT 5 2006



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
Office of Administrative Law Judge  
P.O. BOX 3265, HARRISBURG, PA 17105-3265  
August 30, 2006

IN REPLY PLEASE  
REFER TO OUR FILE

In Re: C-20066368

(SEE LETTER DATED 7/19/06)

Silvanus E. Greene v. Philadelphia Gas Works  
Billing Dispute / Requests Payment Arrangement

Hearing Cancellation/Reschedule Notice

This is to inform you that the Initial Hearing on the above-captioned case previously scheduled for Tuesday, August 15, 2006 has been canceled.

The hearing has been rescheduled as follows:

Type: Initial Hearing  
Date: Friday, October 13, 2006  
Time: 10:00 a.m.  
Location: In an available hearing room  
13th Floor  
Philadelphia State Office Building  
Broad and Spring Garden Streets  
Philadelphia, PA 19130  
Presiding: Administrative Law Judge Herbert Smolen  
1302 Philadelphia State Office Building  
1400 West Spring Garden Street  
Philadelphia, PA 19130  
Telephone: 215.560.2105  
Fax: 215.560.3133

DOCUMENT  
FOLDER

**DOCKETED**  
OCT 5 2006

BA

Please mark your records accordingly.

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 at least (2) two business days prior to your hearing:

- Scheduling Office: 717.787.1399
- AT&T Relay Service number for persons who are deaf or hearing-impaired: 1.800.654.5988

pc: Judge Smolen  
Cherie Pyle, Scheduling Officer  
Beth Plantz  
Docket Section  
Calendar File