

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Denise Adams

v.

PECO Energy Company

:  
:  
:  
:  
:

C-20065746

ORDER DENYING MOTION TO DISMISS

**DOCKETED**  
APR 11 2006

Before  
Veronica A. Smith  
Chief Administrative Law Judge

DOCUMENT  
FOLDER

On January 6, 2006, Denise Adams (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (Respondent or PECO). Complainant alleges an inability to pay her electric bill and requests a payment arrangement.

On January 30, 2006<sup>1</sup>, Respondent filed its Answer with New Matter and a Motion to Dismiss (Motion) the Complaint addressing the allegations in the Complaint, stating that Complainant is enrolled in Respondent's Customer Assistance Program (CAP) Rate Program and moving to dismiss the Complaint on the basis that jurisdiction for a payment arrangement on Complainant's outstanding balance is not properly before the Commission.

According to Commission records, as of February 27, 2006, no response to the New Matter<sup>2</sup> or the Motion<sup>3</sup> had been filed. The Motion was assigned to me by Motion Judge Assignment Notice dated February 3, 2006 and is procedurally ready for a ruling.

<sup>1</sup> The Complaint was served on January 17, 2006.

<sup>2</sup> Complainant's response to the New Matter was due by February 20, 2006, pursuant to 52 Pa. Code § 5.26(c)

<sup>3</sup> Complainant's response to the Motion was due by February 9, 2006, pursuant to 52 Pa. Code § 5.101(d).

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 (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 states in its Answer and Motion that Complainant is part of its CAP Rate Program and thus, according to section 1405 (c) of the Public Utility Code, customer assistance program rates shall not be subject to payment agreements. However, Complainant states in her Complaint that she is no longer on Respondent's CAP Rate Program

Assuming the factual allegations of the Complaint are true, the issue of whether Complainant is in PECO's CAP Rate Program is a contested question of fact. Therefore, Respondent's Motion to Dismiss must be denied.

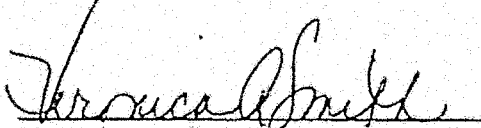
ORDER

THEREFORE,

IT IS ORDERED:

1. 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.
2. That this matter be set for hearing.

Dated: February 28, 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  
February 28, 2006

IN REPLY PLEASE  
REFER TO OUR FILE

In Re: C-20065746

(See attached list)

Denise Adams v. PECO Energy Company

Requests payment arrangements.

**DOCUMENT  
FOLDER**

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

**DOCKETED**  
MAR 09 2006

Presiding: Administrative Law Judge Cynthia W. Fordham  
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 Fordham  
Susan Licon  
Beth Plantz  
Docket Section  
Calendar File

#502239 09/04

#502239 03/05