

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Lance Haver

v.

PECO Energy Company

C-20066009

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ORDER GRANTING MOTION FOR MORE SPECIFIC PLEADING
AND DENYING MOTION TO DISMISS

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Before
Veronica A. Smith
Chief Administrative Law Judge

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HISTORY OF THE PROCEEDINGS

On March 2, 2005, Lance Haver¹ (Complainant) filed a Formal Complaint against PECO Energy Company² (Respondent) challenging the surcharge imposed by Respondent when paying bills using a credit or debit card. Complainant requests that the Commission investigate these surcharges and prohibit Respondent from collecting surcharges from customers depending on their method of payment.

On April 14, 2006, Respondent filed a Motion for More Specific Pleading, averring that from the face of the Complaint it is unclear in what capacity Complainant is bringing the Complaint. Respondent requests that Complainant be directed to file an amended complaint clarifying his position. Concomitantly, Respondent filed an Answer with New Matter and Preliminary Motion to Dismiss moving to dismiss the Complaint on the basis that Complainant lacks the requisite standing to bring a complaint in this matter, that the Complaint fails to join indispensable parties and that the Complaint is insufficient as to substance.

¹ The Complaint was accompanied by a cover letter on official letterhead from the Mayor's Office of Consumer Affairs.

² The Complaint repeatedly references "other utilities" without specific reference to any utility but Respondent.

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On April 27, 2006, Complainant filed a Response to New Matter, and also replied to the Motion to Dismiss and Motion for More Specific Pleading. This matter was assigned to me by Motion Judge Assignment Notice dated April 20, 2006. The Motions are ripe for ruling.

As set forth in the discussion below, Respondent's Motion for More Specific Pleading is granted and its Motion to Dismiss denied without prejudice to Respondent's right to renew the motions upon review of the amended complaint.

Before the Commission is a Complaint and a Motion for More Specific Pleading averring that the Complaint fails to specify the capacity in which Complainant filed the Complaint. Respondent also filed a Motion to Dismiss the Complaint on the basis that the Complainant lacks standing to bring his Complaint, that the Complaint is insufficient as to substance and that Complainant failed to join indispensable parties.

The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary motions. 52 Pa. Code § 5.101(a). Preliminary motions for more specific pleadings are authorized by 52 Pa. Code §5.101(a)(4). A motion for more specific pleading shall be filed within 20 days after the date of service of the complaint and no answer may be filed until further directed by the presiding officer or the Commission. An answer to a preliminary motion may be filed within 10 days of the date of service of the motions. 52 Pa. Code §§ 5.61, 5.101(c), (d)

The Complaint was filed using the Commission's Formal Complaint Form. However, the cover letter accompanying the Complaint form contained the official letter head of the City of Philadelphia and identified Complainant as the director of the Mayor's Office of Consumer Affairs. No where in the Complaint does Complainant identify whether he is filing the Complaint in an official or personal capacity. Adding to this confusion is the fact that although complainant states, in his Answer to Respondent's Motion for More Specific Pleading, that he filed his complaint as an individual, this response is accompanied by a cover letter on City of Philadelphia letterhead. Furthermore, in his responses to Respondent's Motions, Complainant includes numerous new factual averments which are substantially different than those contained in the Complaint.

Administrative agencies, like the Public Utility Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. Schneider v. Pa. PUC, 479 A.2d 10 (1984). There is no provision in the Commission regulations that would permit Respondent to address the new factual allegations raised in Complainant's responses to new matter and the motion to dismiss. To accept these new averments as fact without providing Respondent the opportunity to respond, would deprive it of the due process required by law.

The customary disposition of these averments would be to strike them from the record and rule on the motions accordingly. However, I am mindful of the fact that Complainant may be bringing his Complaint in a personal capacity and therefore, rather than striking these averments, I conclude that the appropriate course of action is to grant Respondent's Motion for More Specific Pleading and direct Complainant to file an amended complaint containing specific information regarding the facts giving rise to his complaint and the capacity in which he brings this complaint. This ruling is consistent with the Commission policy articulated in Carlock v. The United Telephone Co. of Pa., Order entered May 17, 1993 at Docket No. F-00163617.

Complainant is directed to file an amended complaint within 20 days of service of this Order that contains specific facts that support and clarify his dispute and clearly identifies the capacity in which he brings the Complaint. The amended complaint should contain specific information regarding the facts giving rise to the Complaint, the specific charges or services in dispute and the relief sought.

If Complainant fails to file an amended complaint within 20 days of service of this Order, the Formal Complaint at Docket No. C-20066009 will be dismissed with prejudice. Should Complainant file an amended complaint within the prescribed timeframe, Respondent may file an answer and any other appropriate motions within 20 days after the date of service of the amended complaint, pursuant to 52 Pa. Code §§5.61(a) and 5.101(c).

Finally, Complainant is advised that if he is filing a Complaint in his official capacity, as Director of the Mayor's Office of Consumer Affairs, he must identify the specific authority pursuant to which he is authorized to bring a complaint on the City's behalf. Furthermore,

it should be noted that if Complainant is filing his Complaint on behalf of the City, he is required to be represented by legal counsel at all future stages of this proceeding.

THEREFORE,

IT IS ORDERED:

1. That the Motion for More Specific Pleading filed by PECO Energy Company to the Complaint of Lance Haver filed at Docket No. C-20066009 is hereby granted.

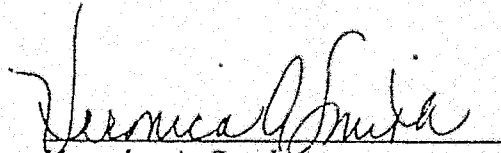
2. That the Motion to Dismiss filed by PECO Energy Company seeking to dismiss the Complaint filed by Lance Haver at Docket No. C-20066009 is hereby denied without prejudice to PECO Energy Company's right to renew its motions upon receipt and review of an amended complaint.

3. That Lance Haver shall file an amended complaint within 20 days of service of this Order containing a statement regarding the capacity in which the complaint is filed and the specific facts that support and clarify his dispute. The amended complaint should contain all factual allegations giving rise to the complaint as well as the specific charges or services in dispute and the relief sought.

4. That if Lance Haver fails to file an amended complaint within 20 days of service of this Order, the Formal Complaint at Docket No. C-20066009 will be dismissed with prejudice.

5. That if Lance Haver files an amended complaint within the prescribed time period, PECO Energy Company shall file an answer and any other appropriate motions within 20 days after the date of service of the amended complaint, pursuant to 52 Pa. Code §§5.61(a) and 5.101(c).

Dated: May 24, 2006


Veronica A. Smith
Chief Administrative Law Judge