

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Sharon Smith :
 :
 v. : C-20043717
 :
 PECO Energy Company :

DOCKETED
DEC 21 2004

PREHEARING ORDER RE RULING ON MOTION TO DISMISS AND
BASIC PROCEDURES

On September 19, 2004, Sharon Smith (Smith, Complainant or Customer) filed this formal complaint against PECO Energy Company (PECO, Company or Respondent) alleging that PECO's contract employee removed her meter in an improper manner, and thereby caused damage to her house and electrical and electronic equipment.

On October 8, 2004, the Company filed an Answer and simultaneously a Motion to Dismiss (Motion) under 52 Pa. Code §103. The Motion was accompanied by a Notice to Plead. Smith has not filed a response to the Motion.

In the Answer, PECO admits that a service visit was made to Complainant's address on or about January 17, 2004, but avers it is without sufficient knowledge to confirm or deny the remaining allegations, and thus denies them. PECO also avers that damages relating to this incident are being claimed in a concurrent Municipal Court action. Finally, PECO avers that to the extent that the complaint is a request for relief, no Answer is required. PECO argues that to the extent that the Complaint seeks damages, the PUC is not authorized to award damages, citing *Elkin v. Bell Tel. Co.*, 491 Pa. 123, 420 A.2d 371, (1980).

In its Motion, after reciting the basic facts alleged and averred in its Answer, and the relief sought by Smith, PECO argues that Smith is seeking property damages, and that Smith has also filed a Municipal Court private action for the same claim and alleged damages. PECO

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contends that this complaint is improperly brought by the Commission because the Commission's remedial and enforcement powers were designed to allow the Commission to enforce its orders and regulations, but not to empower it to award damages. PECO concludes by asking that the Commission dismiss the complaint.

On October 28, 2004, the Office of Administrative Law Judge issued a notice scheduling the complaint for an initial telephone hearing to be held on Wednesday, March 2, 2005 at 10:00 a.m. At the request of the ALJ, this hearing will be converted to be held in-person in the Philadelphia State Office Building. The case was assigned to Administrative Law Judge Allison K. Turner (ALJ) for hearing and decision.

DISCUSSION

Generally, the Commission does not hear litigation of actions seeking damages because it does not have the jurisdiction to enforce a judgment for an award of damages. However, the same facts that underlie a claim for damages may also support claims of inadequate service or tariff violations, which are matters squarely within the jurisdiction of the Commission. Here, PECO avers that it has complied with its tariff, and has not acted improperly. However, Smith has alleged that PECO's contract employee removed her meter in an unreasonable manner, caused a power outage at her house, did not properly restore service, and caused damages to her property. Whether the provision of service to a customer is reasonable and adequate falls under Section 1501 of the Public Utility Code.

A violation of Section 1501 could be the foundation for a fine or a credit or refund to Smith of monies she paid to PECO for service. According to PECO, Smith is claiming that it caused damages to her property, and in fact, Smith does claim damages to her property. However, Smith's allegations are not necessarily in conflict with averments of improper service.

Smith has not responded in opposition to the Motion. To the extent that Smith's complaint represents a claim for damages, the Commission should not hear it. However, to the extent that her complaint represents allegations of inadequate service, the Commission should

hear her complaint. PECO asserts that Smith is already pursuing damages before Municipal Court, and she should continue this pursuit. PECO's Motion to Dismiss will be granted to the extent that Smith is seeking damages.

However, to the extent that Smith is alleging inadequate service, PECO's Motion is not well taken. The same facts that give rise to a damages claim may give rise to an inadequate service claim. Therefore, the Motion will not be granted *in toto*, and to the extent that this is a service complaint, the case will go forward.

The following Order will also address basic procedures to be followed before and during the hearing.

ORDER

1. PECO Motion to Dismiss is hereby granted in part, without prejudice, and denied in part.
2. If for any reason any party cannot appear at this initial hearing as scheduled, that party should request a continuance. Continuances are only granted if good cause is presented. Any request for a change of the scheduled date for the initial hearing **must** be sent to the Office of Administrative Law Judge Scheduling Staff, to the office of the presiding officer, and to the opposing party or parties. The mailing address for the Scheduling Staff is: PA PUC, P.O. Box 3265, Harrisburg, PA 17105-3265, and the phone number is (717) 787-1399. The scheduling officer for your case is Susan Licon. The mailing address for the Philadelphia Administrative Law Judges is: PA PUC, Room 1302 Philadelphia State Office Building, 1400 W. Spring Garden Street, Philadelphia, PA 19130. The phone number for this office is (215) 560-2105. The presiding officer on your case is Administrative Law Judge Allison K. Turner, and she is responsible to rule on continuance requests.
3. Commission policy is to encourage settlements. 52 Pa. Code §5.231(a). Therefore, Smith and PECO are directed to negotiate with the aim of settling some or all of the

disputes issues raised by Smith in this complaint. If the parties are unable to settle this case, they may still resolve as many questions or issues as possible during their negotiations.

4. PECO and Smith shall notify the ALJ and/or the Scheduling Office, the address and phone number of which are given in this Prehearing Order, if a settlement has been reached, so that the hearing can be cancelled. If a settlement is reached, a joint petition for settlement or a certificate of satisfaction shall be filed promptly.

Hearing Procedures

5. **You may lose this case if you do not take part in the initial hearing and present evidence on the issues raised, if you have not obtained a continuance.**

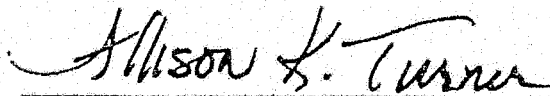
6. **ALTHOUGH THIS IS AN ADMINISTRATIVE HEARING, IT IS A FORMAL HEARING AND WILL BE CONDUCTED IN ACCORDANCE WITH THE COMMISSION'S RULES OF PRACTICE AND PROCEDURE. TESTIMONY WILL BE TAKEN UNDER OATH, AND BE SUBJECT TO CROSS-EXAMINATION, ETC.**

7. Smith, as the complainant, has the burden of proof to show that her allegations are true, and that she is entitled to the relief she requests (other than damages). Smith will present her evidence first because as the complainant she has the burden of proof. She will also have the opportunity to give any closing testimony.

8. **As an individual**, Smith may represent herself, or she may choose to be represented by an attorney. If Smith does intend to be represented by counsel, she should choose one as soon as possible. The attorney should immediately enter an appearance at this docket so as to get service of notices and documents. If Smith does not hire an attorney for this case, we will proceed with Smith representing herself. **As a corporation**, the Company must be represented by counsel.

9. Smith must produce evidence to support her allegations. Documentary evidence such as copies of bills, receipts, letters from PECO, etc., that are to be submitted for the record should be prepared and marked as exhibits, and four (4) copies of each should be provided at the hearing: one (1) for the ALJ, two (2) for the Court Reporter, and one (1) for PECO. PECO must likewise support its rebuttal case with evidence, and documentary evidence should be prepared and submitted in the same way. PECO should be prepared to present the appropriate contract employees as witnesses.

10. The parties should exchange lists of their proposed witnesses at least three days before the hearing.



ALLISON K. TURNER
Administrative Law Judge

Date: November 10, 2004

Legal Department

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

Telephone 215 841 5544
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Business Services
Company

Direct Dial: 215.841.6841

Fax: 215.568.3389

February 28, 2005

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

ORIGINAL

Re: **Sharon Smith v. PECO Energy Company**
Docket Number: C-20043717

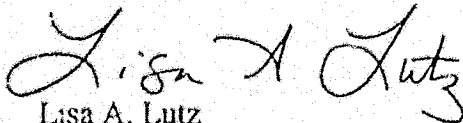
Dear Secretary McNulty:

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

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Cc: Ms Sharon Smith, 2545 N. 28th Street, Philadelphia, PA 19132
Administrative Law Judge Allison K. Turner
Susan Licon

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MAR 2 2005

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MAR 2 1 2005

OALJ Hearing Report

Please Check Those Blocks Which Apply

Docket No.:	C-20043717	YES	NO
Case Name:	Sharon Smith v. PECO Energy Company	Prehearing Held:	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
		Hearing Held:	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
		Testimony Taken:	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
		Transcript Due:	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
		Hearing Concluded:	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
Location:	Philadelphia, PA	Further Hearing Needed:	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
Date:	March 2, 2005	Estimated Add'l Days:	- 0 -
ALJ:	Allison K. Turner	RECORD CLOSED:	<input checked="" type="checkbox"/> YES <input type="checkbox"/> NO
Reporting Firm:	Precision Reporting, Inc.	DATE:	3/4/05
		Briefs to be Filed:	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
		DATE:	
		Bench Decision:	<input type="checkbox"/> YES <input checked="" type="checkbox"/> NO
		REMARKS:	Case settled

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RECEIVED
MAR 8 2005

PA PUBLIC UTILITY COMMISSION
~~SECRET~~ **PROUDLY** • 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.

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: March 10, 2005
SUBJECT: C-20043717 Sharon Smith v. PECO Energy Company
TO: Wanda Zeiders
Docket Management
FROM: Susan Licon, Scheduling Officer
Office of Administrative Law Judge

On March 2, 2005, 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 Allison K. Turner
Beth Plantz
Case File

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MAR 24 2005

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Legal Department

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February 28, 2005

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

COMMUNICATIONS SECTION
PA PUC
FEB 29 2005

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Docket Number: C-20043717

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Sincerely,

Lisa A. Lutz
Counsel for PECO Energy Company

Cc: Ms. Sharon Smith, 2545 N. 28th Street, Philadelphia, PA 19132
Administrative Law Judge Allison K. Turner
Susan Licon

SECRET



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

June 22, 2005

C-20043717

SHARON SMITH
2545 N 28th STREET
PHILADELPHIA PA 19132

DOCKETED
JUN 24 2005

SHARON SMITH
v.
PECO ENERGY COMPANY

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TO WHOM IT MAY CONCERN:

Please be advised that the Commission has marked closed the above-entitled proceeding.

Very truly yours,

James J. McNulty
Secretary

nvl

cc: All parties of Record
Office of ALJ