

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Uniform Cover and Calendar Sheet

1. <u>REPORT DATE:</u> April 26, 2005	2. <u>BUREAU AGENDA NO.</u> MAY-2005-OSA-0154*
3. <u>BUREAU:</u> Office of Special Assistants	5. <u>PUBLIC MEETING DATE:</u>
4. <u>SECTION(S):</u>	May 5, 2005
6. <u>APPROVED BY:</u> Director: C.W. Davis 7-1827 Mgr/Spvr: K.G. Sophy 7-8108 Legal Review:	7. <u>PERSONS IN CHARGE:</u> James E. Brown, II 7-8754
8. <u>DOCKET NO.:</u> Z-01172975	9. <u>EFFECTIVE DATE OF FILING:</u> N/A

10. (a) **CAPTION** (abbreviate if more than 4 lines)
 (b) Short summary of history & facts, documents & briefs
 (c) Recommendation

(a) Ladonna Smalls (Complainant) v. PECO Energy Company (Respondent)

(b) On March 13, 2004, the Complainant filed a Formal Complaint with the Commission against the Respondent. The Complainant appealed the February 20, 2004 informal decision of the Commission's Bureau of Consumer Services (BCS), at Case No. 1172975. The Complaint alleged that the Respondent billed the Complainant for service attributable to the previous tenant. On April 9, 2004, Respondent filed an Answer denying the material allegations of the Complaint. The Complainant failed to appear for the December 15, 2004 hearing and the Respondent's counsel moved for dismissal of the case for failure to prosecute. The ALJ denied the motion. Instead, the ALJ dismissed the case as moot. The record closed at the conclusion of the hearing. The Respondent filed Exceptions to the Initial Decision.

(c) The Office of Special Assistants recommends that the Commission adopt a draft Opinion and Order granting the Respondent's Exceptions and reversing the Initial Decision of Louis G. Cocheres.

DOCKETED
MAY 20 2005

Order Doc. No. 538760

Calendar Doc. No. 539337

10. MOTION BY: Commissioner Chm. Holland	Commissioner Pizzingrilli - Yes
SECONDED: Commissioner Bloom	Commissioner Commissioner

CONTENT OF MOTION: Staff recommendation adopted.

BTL



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

IN REPLY PLEASE
REFER TO OUR FILE

May 9, 2005

Z-01172975

**DOCUMENT
FOLDER**

LADONNIA SMALLS
614 WASHINGTON STREET APT 2
PHILADELPHIA PA 19133

Ladonna Smalls
V.
PECO Energy Company

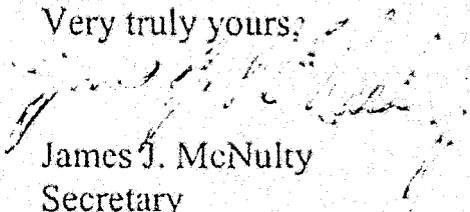
DOCKETED
JUN 17 2005

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on May 5, 2005 has adopted an Opinion and Order in the above-entitled proceeding.

An Opinion and Order has been enclosed for your records.

Very truly yours,


James J. McNulty
Secretary

Enclosure
Certified Mail
jeh

ANTHONY D KANAGY ESQUIRE
PECO ENERGY COMPANY
2301 MARKET STREET S23-1
PO BOX 8699
PHILADELPHIA PA 19101-8699

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265

Public Meeting held May 5, 2005

Commissioners Present:

Wendell F. Holland, Chairman
Robert K. Bloom, Vice Chairman
Kim Pizzingrilli

Ladonia Smalls

v.

Z-01172975

PECO Energy Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Commission for consideration and disposition are the Exceptions of PECO Energy Company (Respondent) filed on January 31, 2005, to the Initial Decision of Administrative Law Judge Louis G. Cocheres (ALJ) issued on January 10, 2005. Ladonia Smalls (Complainant) did not file Reply Exceptions.

History of Proceeding

On March 13, 2004, the Complainant filed a Formal Complaint with the Commission against the Respondent. The Complainant appealed the February 20, 2004 informal decision of the Commission's Bureau of Consumer Services

(BCS), at Case No. 1172975. The Complainant alleged that the Respondent billed the Complainant for service attributable to the previous tenant.

On April 9, 2004, Respondent filed an Answer denying the material allegations of the Complaint. By Hearing Notice dated August 26, 2004, the parties were notified that an initial telephonic hearing was scheduled for December 15, 2004. On the day of the hearing, the ALJ called the home and work numbers for the Complainant, but was unable to reach her. The Respondent's counsel presented the testimony of one witness, Renee Tarpley, and introduced three exhibits, which were admitted into the record.

As the Complainant failed to appear, the Respondent's counsel moved for dismissal of the case for failure to prosecute. The ALJ denied the motion. Instead, the ALJ dismissed the case as moot. The record closed at the conclusion of the hearing on December 15, 2004. The Respondent filed Exceptions to the Initial Decision as above noted.

Discussion

As a preliminary matter, we note that any issue or Exception that we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly, or at length, each contention or argument raised by the Parties.

Consolidated Rail Corp. v. Pennsylvania Public Utility Commission, 625 A.2d 741 (Pa. Cmwlth. 1993); see also, generally, *University of Pa. v. Pennsylvania Public Utility Commission*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

In his Initial Decision, the ALJ reached fourteen Findings of Fact (I. D. at 2-3) and also drew two Conclusions of Law (I.D. at 6). We shall adopt

and incorporate herein by reference the ALJ's Findings of Fact and Conclusions of Law unless they are either expressly or by necessary implication overruled or modified by this Opinion and Order.

Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is axiomatic that "[a] litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible." *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

The Respondent excepts to the Initial Decision because it concludes that the Respondent intentionally continues to charge its customers after arrearages are paid in full until the customer notices the overpayment and contacts PECO. (I.D. at 3, Finding of Fact 14). The Respondent also excepts to the ALJ's recommendation to serve a copy of the Initial Decision on BCS and the Commission's Law Bureau for investigation of the Respondent's billing policy and other potential violations. (I.D. at 7, Ordering Paragraphs 4 and 5).

The ALJ determined that the underlying issue in this matter, the billing dispute that generated the arrearage and payment arrangement, is moot. The ALJ made this determination because the Complainant had paid her current bill and satisfied the entire arrearage. (I.D. at 4).

On consideration of the facts in this matter, we agree with the Respondent. The Complainant in this matter filed a Complaint alleging that the Respondent billed her for service attributed to a previous tenant. The Complaint was an appeal from a BCS informal decision, which directed the Complainant to

pay a budget bill for her current service and to pay an additional \$15 monthly (payment arrangement) on the disputed arrearage. (I.D. at 2, Finding of Fact 5).

At the time of the February 20, 2004 informal decision, the arrearage totaled \$235.65. By the time of the December 15, 2004 hearing, the Respondent alleges the Complainant owed \$21.65 toward the arrearage and had a credit of \$83.05 on the budget billing portion of her account. (Exc. at 7). The Respondent's witness, Ms. Tarpley, testified and the ALJ noted that the Complainant had an account credit of \$61.40.¹ (I.D. at 3, Finding of Fact 9; Tr. at 15 and 17).

The ALJ determined that the Complainant had no balance owing on her account. (I.D. at 4). The ALJ concluded that the Complainant's account credit of \$61.40 meant that the arrearage was paid. (I.D. at 4; Tr. at 21). Furthermore, the ALJ further concluded that it was the Respondent's policy to wrongfully extend payment arrangements until its customers notified it that an arrearage was satisfied. (I.D. at 5; I.D. at 6, Ordering Paragraphs 4 and 5; Tr. at 23-25).

However, the record demonstrates the existing credit did not extend to the payment arrangement. The existence of a credit on one portion of an account will not automatically apply and satisfy the outstanding arrearage or obligation on another portion of the account. For billing purposes, the Respondent treats the payment arrangement and budget billing separately. Payments for budget billing are not automatically applied to payment arrangements, even if there is a credit showing on the overall budget billing account. (Tr. at 20).

¹ The account credit represents the difference between the credit of \$83.05 on the budget billing portion of the account and the remainder on the arrearage of \$21.65.

Ms. Tarpley testified that when customers notice, on their billing statements, the possibility of satisfying an arrearage early, they contact the Respondent to make the necessary adjustment to their accounts. (Tr. at 22). Ms. Tarpley testified that she attempted to contact the Complainant to inform her of the possibility of satisfying the arrearage immediately by applying the credit from the budget billing portion of her account to the arrearage. (Tr. at 18). The transfer of the budget billing credit would have ended the special payment arrangement for the arrearage before the scheduled termination date.² Ms. Tarpley did not want to transfer the credit from the budget billing to the arrearage without informing the Complainant. (Tr. at 23).

As Ms. Tarpley was unable to inform the Complainant of this possibility, she did not alter the balances within the account to satisfy the arrearage. Instead, Ms. Tarpley left the payment arrangement for the arrearage in place so the Complainant could satisfy the remaining amount by continuing to make the required payments.³ (Tr. at 17-18). Thus, the continued payments were not over and above those required by the payment arrangement, but were continued to satisfy the payment arrangement. The payments continued on the arrearage because no transfer occurred. The budget billing portion of the account is unrelated to the payments toward satisfaction of the arrearage. (Tr. at 20). When the arrearage is satisfied, billing for the payment arrangement ceases. (Tr. at 18; Exc. at 8).

The Complainant's account would have to be treated as if it were a straight revenue account for the Respondent to automatically adjust the billing

² The Payment arrangement for the arrearage spanned a fifteen month period beginning in April 2004. (Exc. at 8).

³ The remainder on the arrearage was \$21.65 and the payment arrangement required payment of \$15/month, so the arrearage could be met within the next 1-2 billing cycles.

portions in this matter. (Tr. at 19-20). Ms. Tarpley's testimony merely concerned the possibility of adjusting the Complainant's account to zero because of the credit on the unrelated budget billing portion of the account. The arrearage that is the subject of the payment arrangement was actually not at zero. (Tr. at 19-20).

At the time of the initial hearing, the arrearage's remaining balance was \$21.65. (Exc. at 7). The overall credit of \$61.40 merely illustrated the offset between the budget billing and the payment arrangement for the arrearage. No adjustments to the account had yet been made to satisfy the arrearage, which means this obligation was still outstanding.

As the Respondent was unable to inform the Complainant of possibility of satisfying the arrearage and the balance was still owing, the payment arrangement was still viable. Consequently, we reverse the A.I.J.'s decision and his recommendation to investigate the Respondent's billing policy, potential violations and implementing any changes to the billing policy based on these facts. Accordingly, we grant the Respondent's Exceptions. **THEREFORE;**

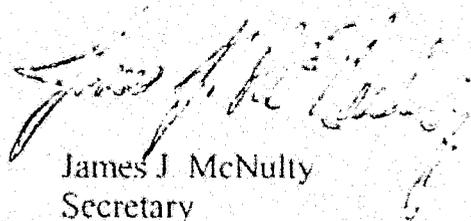
IT IS ORDERED:

1. That the Exceptions of PECO Energy Company to the Initial Decision of Administrative Law Judge Louis G. Cocheres are granted.
2. That the Initial Decision of Administrative Law Judge Louis G. Cocheres issued on September 8, 2004 is reversed.
3. That the account for electric service to Ladonna Smalls at No. 230406122062 shall continue in budget bill format until Ms. Smalls contacts PECO Energy Company and requests a change.

4. That the Complaint of *Ladonna Smalls v PECO Energy Company*, at Docket No. Z-01172975, is hereby dismissed with prejudice.

5. That the Secretary shall mark this Docket as closed.

BY THE COMMISSION,



James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: May 5, 2005

ORDER ENTERED: **MAY 09 2005**