

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Caleco, Inc. c/o Peter Hodson, GM

v.

PECO Energy Company

:
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:
:
:

C-20066945

ORDER DENYING RESPONDENT'S PRELIMINARY OBJECTION
AND SETTING THE MATTER FOR HEARING

DOCUMENT
FOLDER

Before
Veronica A. Smith
Chief Administrative Law Judge

DOCKETED
JAN 5 - 2007

HISTORY OF THE PROCEEDING

On October 10, 2006, Peter Hodson filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) on behalf of Caleco, Inc. (Complainant) against PECO Energy Company (PECO or Respondent). Complainant alleges a billing dispute. Specifically, Complainant asserts that, while the business was closed and not in operation, it received a bill for \$292.09 from PECO, although the rest of its electric bills averaged \$121.00 per month for basic lighting only. Complainant alleges that Respondent has been unable to justify the billing other than claim that its readings are correct. As relief, Complainant requests that Respondent be directed to (1) remove the incorrect charges and fees, and (2) make the Complainant's account current. The Complaint was signed by Peter Hodson, GM, Caleco.

On November 9, 2006, Respondent filed an Answer denying the material allegations and a Preliminary Objection seeking dismissal of the Complaint on the basis

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that the Complaint is defective because it was not filed by a counsel representing the Complainant, Caleco, Inc., which is a corporation.

According to Commission records, as of December 18, 2006, Complainant did not file a response to Respondent's Preliminary Objection¹. This matter was assigned to me by Motion Judge Assignment Notice dated November 16, 2006. The Preliminary Objection is ripe for ruling.

FINDINGS OF FACT

1. Complainant is Caleco Inc., a corporation and a commercial customer of PECO Energy Company.
2. Respondent is PECO Energy Company.
3. On October 10, 2006, Peter Hodson filed a Complaint with the Commission on behalf of Caleco, Inc. against PECO alleging that there were incorrect charges in Complainant's bill.
4. Complainant asserts that the business "location was closed with no activity using an average of \$121.00 per month in electric (sic) for basic lighting only. PECO then sends a bill for \$292.09 and is unable to justify the billing other than a claim that their readings are correct." Complaint, paragraph 4(B).
5. Complainant states that it "paid \$119.02 for the month feeling that that was what we have used normally." Complaint, paragraph 4(B).

¹ Pursuant to 52 Pa. Code §5.101(d) a response to the Preliminary Objection was due on or before November 19, 2006.

6. Complainant avers that the bills for Caleco, Inc. were always paid in full and on time. Complaint, paragraph 5.

7. As relief, Complainant requests that Respondent be directed to (1) remove the incorrect charges and fees, and (2) make the Complainant's account current. Complaint, paragraph 5.

8. On November 9, 2006, Respondent filed an Answer denying the material allegations and a Preliminary Objection seeking dismissal of the Complaint on the basis that the Complaint is defective because it was not filed by a counsel representing the Complainant, Caleco, Inc., which is a corporation.

9. The Complaint was signed by Peter Hodson, as "Peter Hodson, GM, Caleco." Complaint, paragraph 8.

DISCUSSION

Before the Commission is a Complaint and a Preliminary Objection seeking dismissal of the Complaint on the grounds that the Complaint is defective because it was not filed by a counsel representing the Complainant, Caleco, Inc., as a corporation.

The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections. 52 Pa. Code §§5.101-5.103. This practice is similar to Pennsylvania civil practice regarding the filing of preliminary objections. Equitable Small Transportation Interveners v. Equitable Gas Company, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources, 406 A.2d 1020 (Pa. 1979); Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc., 595 A.2d 172 (Pa. Super. 1991). The Commission has adopted this standard. Montague v. Philadelphia Electric Company, 66 Pa. PUC 24 (1988).

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)).

Respondent avers that dismissal of the instant Complaint is warranted because, Caleco, Inc, a commercial Complainant is not represented by an attorney licensed to practice law in the Commonwealth of Pennsylvania. However, the Commission has recently held that a complaint filed, by a non-attorney, on behalf of a corporation, using the Commission's pre-printed form does not amount to the unauthorized practice of law. Snyderville Community Development Corporation v. Philadelphia Gas Works, Docket No. C-20055032 (July 31, 2006). Specifically, the Commission explained:

The simple filing of a formal complaint does not automatically trigger an adversarial proceeding, because, until the answer is filed, it is not known whether the formal complaint will be contested. Furthermore, formal complaints may be and often are satisfied by the respondent, under the

procedures outlined in 52 Pa. Code §5.24, or via a mediation process.

The Commission stated that the filing of a complaint before the Commission is a routine activity done on preprinted or suggested forms prepared by the Commission. In the instant case, the Complaint was filed using the Commission's Formal Complaint form and thus, need not be filed by an attorney. See also, Days Inn of Lancaster v. Verizon Pennsylvania, Inc., Docket No. C-20066390, Final Order entered October 2, 2006.

Although a complaint filed on behalf of a business need not be signed by an attorney, the complaint must be filed by: (1) a member of a partnership if the complaint is brought on behalf of a partnership; or (2) a bona fide officer of a corporation, trust, or association if the complaint is brought on behalf of a corporation, trust, or association. 52 Pa. Code § 1.21(c). In this case, the Complaint was signed by "Peter Hodson, GM, Caleco" identifying Peter Hodson as the General Manager of the Caleco, Inc. and as a bona fide officer of the corporation authorized to file a complaint, on Complainant's behalf, before the Commission.

For the above-mentioned reasons, Respondent's Preliminary Objection will be denied and the case will be set for hearing. I note that, pursuant to 52 Pa. Code §§ 1.21(b) and 1.22 (a), the Complainant must be represented by an attorney at law admitted to practice before the Supreme Court of Pennsylvania in all the future proceedings.

CONCLUSIONS OF LAW

1. Commission regulations provide for the filing of preliminary objections. 52 Pa. Code §§5.101-5.103.
2. A complaint filed, by a non-attorney, on behalf of a corporation, using the Commission's pre-printed form does not amount to the unauthorized practice of

law. Snyderville Community Development Corporation v. Philadelphia Gas Works, Docket No. C-20055032 (July 31, 2006).

3. A formal complaint filed on behalf of a corporation must be signed by a bona fide corporate officer. 52 Pa. Code § 1.21(c).

ORDER

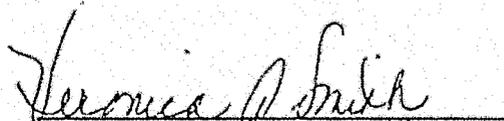
THEREFORE,

IT IS ORDERED:

1. That PECO Energy Company's Preliminary Objection seeking dismissal of the Complaint filed by Caleco, Inc. c/o Peter Hodson, GM, at Docket No. C-20066945, is denied.

2. That the Complaint filed by Caleco, Inc. c/o Peter Hodson, GM, against PECO Energy Company, at Docket No. C-20066945 is set for hearing

Dated: December 21, 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
December 28, 2006

IN REPLY PLEASE
REFER TO OUR FILE

In Re: C-20066945

(SEE ATTACHED LIST)

Caleco, Inc. c/o Peter Hodson, GM v. PECO Energy Company

Billing Dispute

Hearing Notice

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

Type: Initial Hearing

Date: Friday, February 23, 2007

Time: 10:00 a.m.

Location: In an available hearing room
Philadelphia State Office Building
Broad and Spring Garden Streets
Philadelphia, PA 19130

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

BTL

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FOLDER

DOCKETED
JAN 10 2007

Attention: You may lose the case if you do not come to this hearing and present facts on the issues raised.

If you intend to file exhibits, 2 copies of all hearing exhibits to be presented into evidence must be submitted to the reporter. An additional copy must be furnished to the Presiding Officer. A copy must also be provided to each party of record.

Individuals representing themselves do not need to be represented by an attorney. All others (corporation, partnership, association, trust or governmental agency or subdivision) must be represented by an attorney. An attorney representing you 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 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 Fordham
Stacy Nolan, Scheduling Officer
Beth Plantz
Docket Section
Calendar File

Legal Department

Exelon Business Services Company
240 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

ORIGINAL

Direct Dial: 215.841.6841
January 10, 2006

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

Re: **CALECO Inc. c/o Peter Hodson GM v. PECO Energy Company**
Docket Number: C-20066945

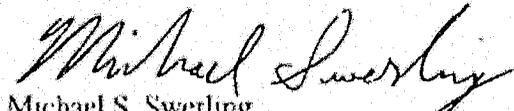
Dear Secretary McNulty:

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: Mr. Peter Hodson
Administrative Law Judge Cynthia W. Fordham
PUC Scheduling

SECRETARY'S OFFICE

JAN 10 2006

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ORIGINAL

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CALECO, INC. C/O PETER HODSON, GM :

COMPLAINANT :

v. :

DOCKET NO. C-20066945

PECO ENERGY COMPANY :

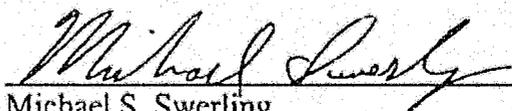
RESPONDENT :

CERTIFICATE OF SATISFACTION

I, Michael S. Swerling, Esquire, representing PECO Energy Company ("PECO Energy") 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 Number C-20066945 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.

**DOCUMENT
FOLDER**



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: January 10, 2007

DOCKETED
JAN 19 2007

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

CALECO, INC. C/O PETER HODSON, GM :

COMPLAINANT :

v. :

DOCKET NO. C-20066945

PECO ENERGY COMPANY :

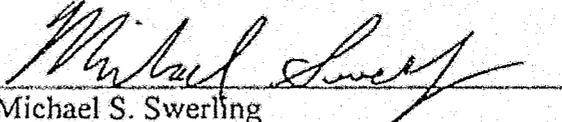
RESPONDENT :

CERTIFICATE OF SERVICE

I, Michael S. Swerling, hereby certify that I have this day served a true and correct copy of the foregoing document upon the interested parties and in the manner indicated below.

Service by first class mail:

Mr. Peter Hodson
CALECO, Inc.
P.O. Box 1239
West Chester, PA 19380


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

Dated: January 10, 2007

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

DATE: January 11, 2007

SUBJECT: C-20066945
CALECO Inc. c/o Peter Hodson, GM v. PECO Energy Company

TO: Wanda Zeiders
Docket Management

FROM: Stacy Nolan, ALJ Support Staff
Office of Administrative Law Judge

On January 10, 2007, 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 Cynthia W. Fordham
Beth Plantz
Case File

DOCUMENT
FOLDER

DOCKETED
JAN 19 2007



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

IN REPLY PLEASE
REFER TO OUR FILE

February 1, 2007

C-20066945

PETER HODSON, GM
CALECO INC
PO BOX 1239
WEST CHESTER PA 19380

CALECO INC C/O PETER HODSON GM
v.
PECO ENERGY COMPANY

DOCKETED
JAN 31 2007

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

DOCUMENT
FOLDER