

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Vince & Sue Mandato :
 :
 v. : C-20065823
 :
 PECO Energy Company :

ORDER DENYING MOTION TO DISMISS
AND SETTING RESOLUTION CONFERENCE

DOCUMENT
FOLDER

Before
Veronica A. Smith
Chief Administrative Law Judge

DOCKETED
OCT 19 2006

HISTORY OF THE PROCEEDING

On February 1, 2006, Vince & Sue Mandato (Complainants) filed a Formal Complaint with the Commission against PECO Energy Company (Respondent), objecting to an increase in their gas bill.

On February 22, 2006, Respondent filed an Answer and a Motion to Dismiss, addressing the allegations of the Complaint and moving to dismiss the Complaint on the basis that it fails to allege a cause of action upon which the Commission can grant relief and is therefore insufficient as to substance. Respondent is advised that when including, with its Answer, any statement of material fact, which is not merely a denial of the averments of the complaint, it shall be pled under the heading of "New Matter." 52 Pa. Code §5.62(b).

BTL

The 10-day response period has passed, and according to Commission records, Complainant did not file a response to the Motion to Dismiss¹. This proceeding was assigned to me by Motion Judge Assignment Notice dated February 2, 2006. The Motion to Dismiss is ripe for ruling.

Before the Commission is a Complaint and a Motion to Dismiss the Complaint on the basis that the complaint fails to state a cause of action upon which the Commission can grant relief and is therefore insufficient as to substance.

The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary motions. 52 Pa. Code §§5.101. Commission preliminary motion 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 (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

¹ Pursuant to 52 Pa. Code §5 101(d) a response to the Motion was due on or before March 4, 2006.

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)).

Complainants object to a 46% increase in their natural gas bills. Complainants state that this time last year they were paying \$1.14 per cubic foot and are now paying \$1.64 per cubic foot. Complainants request that the Commission bring the charges back to a "reasonable" rate.

Respondent, in its Answer states that the rates challenged by Complainants were increased due to the increased cost of purchasing gas from wholesale suppliers. However, Complainants do not explicitly aver that they are challenging gas supply costs nor does Respondent raise this averment as New Matter. In its Motion to Dismiss Respondent avers that its rates have been approved by either the Commission or the Federal Energy Regulatory Commission and are contained in Respondent's tariff on file with these Commissions. Respondent further avers that tariff rates are binding on both the utility and its customers and that the Complaint fails to set forth any violation of the Public Utility Code, Commission regulations or Commission Order and must therefore be dismissed.

The Public Utility Code (the Code) requires that the rates charged by a utility be just and reasonable. 66 Pa. C.S. §1301. Although Respondent is correct in its assertion that rates on file with the Commission are prima facie reasonable, the Code allows any person to file a complaint with the Commission "setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation of any law which the Commission has jurisdiction to administer or of any regulation or order of the Commission." 66 Pa. C.S. §701. The instant Complaint is challenging the rates charged by the Respondent which, if proven to be unreasonable or other than those contained in its tariff would be a violation of the Public Utility Code.

In Carlock, the Commission held that preliminary motions filed against unrepresented Complainant pursuing "small claims" against a utility should not be granted without a hearing and the development of a record with respect to the motion. Id. at 7. The

Commission reasoned that in many cases unrepresented complainants can explain their dispute orally much better than they can communicate their grievance in written form. Id. Therefore, Complainants will be given the opportunity to orally explain their dispute with Respondent at an evidentiary proceeding.

For the reasons set forth above, Respondent's Preliminary Motion to Dismiss is denied. This case will be set for a resolution conference to provide the parties with the opportunity to discuss the Complaint allegations and surrounding circumstances. The parties are directed to attempt to resolve this matter themselves and are strongly encouraged to participate in this process. This process is consistent with the Commission's regulations at 52 Pa. Code §§ 5.231(a) and 69.391.

Respondent shall contact Complainant no later than April 12, 2006, to set a mutually convenient date, time and location to conduct a conference to discuss the possible resolution of this case. The conference shall occur no later than May 3, 2006. No later than ten days following the conference, Respondent shall file a report with Bruce Bigelow, Mediator, setting forth:

- (a) The date, time and location of the conference;
- (b) The participants representing each party;
- (c) A statement describing whether a full resolution, including withdrawal of the complaint, was achieved; and, if not, whether the parties consent to have this case set for mediation by Commission staff; and
- (d) A statement listing any resolved issues, if a full resolution was not achieved.

Should the conference not take place by the due date, Respondent shall file a report with the mediator, no later than May 13, 2006, giving the reason(s) why the due date was not met.

The Commission encourages mediation if the parties cannot reach an agreement through the resolution conference.² If the parties do not reach an agreement on their own, consent to mediate, or if mediation is unsuccessful, they are entitled to a hearing, which will include the presentation of oral testimony and other evidence before a Commission Administrative Law Judge, who will consider the case and issue a written decision.

THEREFORE,

IT IS ORDERED:

1. That the Motion to Dismiss filed by PECO Energy Company, seeking dismissal of the Complaint filed by Vince & Sue Mandato, at PUC Docket No. C-20065823 is denied.
2. That this case be set for resolution conference
3. That PECO Energy Company shall contact Vince & Sue Mandato no later than April 12, 2006, to set a mutually convenient date, time and location to conduct a conference to discuss the possible resolution of the issues raised in the Complaint.
4. That the resolution conference shall take place no later than May 3, 2006.
5. That PECO Energy Company shall file a report addressed to Bruce Bigelow, Mediator, Office of Administrative Law Judge, P.O. Box 3265, Harrisburg, PA 17105-3265, no later than ten days following the resolution conference setting forth:
 - (a) the date, time and location of the conference;
 - (b) the participants for each party
 - (c) a statement describing whether a full resolution, including withdrawal of the complaint was achieved; and, if not, whether the

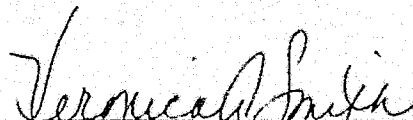
² Mediation is an informal process in which the parties attempt to resolve the case with the help of a mediator. The mediator is a neutral staff member of the Commission who does not give advice, make a decision or represent any party. Instead, the mediator assists the parties in their efforts to come to an agreement.

- parties consent to have this case set for mediation by Commission staff; and
- (d) a statement listing any resolved issues, if a full resolution was not achieved.

6. That, if the resolution conference does not take place by the due date, PECO Energy Company shall file a report with the mediator, no later than May 13, 2006 giving the reason(s) why the due date was not met.

7. That, if the parties do not reach an agreement on their own, consent to mediate, or if mediation is unsuccessful, this matter will be set for hearing

Dated: April 5, 2006



Veronica A. Smith
Chief Administrative Law Judge

Legal Department

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Business Services
Company

Exelon Business Services Company
2301 Market Street
PO Box 8699
Philadelphia, PA 19101

Direct Dial: 215-841-6841

April 18, 2006

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

ORIGINAL

Re: **Vince & Sue Mandato v. PECO Energy Company**
Docket Number: C-20065823

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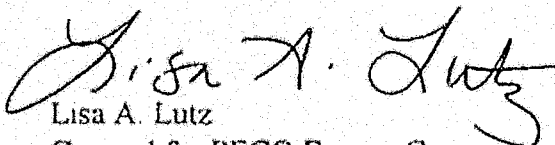
Dear Secretary McNulty:

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 Complainants of their 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

DOCKETED **RECEIVED**
APR 25 2006

APR 19 2006
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

cc: Mr. and Mrs. Vince Mandato
Susan Licon

SA

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

DATE: April 24, 2006

SUBJECT: Vince & Sue Mandato v. PECO Energy Company
C-20065823

TO: Wanda Zeiders
Docket Management

FROM: Linda Salome, ALJ Support Staff
Office of Administrative Law Judge

On April 19, 2006, 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: Bruce Bigelow, Mediator
Beth Plantz
Case File

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