

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Marjorie Adderley

v.

PECO Energy Company

DOCUMENT
FOLDER

C-20077580

ORDER GRANTING PRELIMINARY OBJECTION, IN PART
AND SETTING RESOLUTION CONFERENCE

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2007 JUN 18 PM 12:56
SECRETARY'S BUREAU

DOCKETED
JUL 05 2007

Before
Veronica A. Smith
Chief Administrative Law Judge

HISTORY OF THE PROCEEDING

On April 12, 2007, Marjorie Adderley (Complainant) filed a Formal Complaint with the Commission against PECO Energy Company (Respondent or PECO) alleging that her account number was changed and charges were added to her outstanding account balance. The Complainant states she was ill, had a heart attack and was unemployed as a result of these medical issues. Complainant maintains that her balance, as of September 2006 was \$570.01. As relief, Complainant requests that the Commission determine why Respondent is saying that her account balance is \$9,000 and establish a payment arrangement.

On May 11, 2007¹, Respondent filed an Answer with New Matter and a Preliminary Objection requesting dismissal of the Complaint on the basis that jurisdiction for a payment arrangement on Complainant's outstanding account balance is not properly before the Commission.

According to Commission records, as of June 11, 2007, Complainant did not file a response to either the Preliminary Objection² or the New Matter³ portion of Respondent's Answer.

¹ Respondent was served with a copy of the Complaint on April 19, 2007.

² Pursuant to 52 Pa. Code §5.101(f) a response to the Preliminary Objection was due on or before May 21, 2007.

³ Pursuant to 52 Pa. Code §5.63 Complainant's response to New Matter was due on or before May 31, 2007.

BA

Therefore, the factual allegations raised as New Matter are deemed admitted⁴. This matter was assigned to me by Motion Judge Assignment Notice dated May 23, 2007. The Respondent's Preliminary Objection is ripe for ruling.

FINDINGS OF FACT

1. Complainant is Marjorie Adderley, 7553 Gilbert Street, Philadelphia, Pennsylvania, 19180.
2. Respondent is PECO Energy Company.
3. On April 12, 2007, Complainant filed a Formal Complaint with the Commission alleging that her account number was changed and incorrect charges were added to her bill. Complainant maintains that her account balance, as of September 2006 was \$570.01. As relief, Complainant requests that the Commission determine why Respondent is billing her \$9,000 and establish a payment arrangement.
4. "The Complainant was approved and enrolled in the CAP Rate Program. The Complainant receives a 50% discount on the first 500 kilowatt [hours] of electric service each month." Respondent's New Matter, ¶ 1.
5. On May 11, 2007, Respondent filed a Preliminary Objection moving for dismissal of the Complaint on the basis that jurisdiction for a payment arrangement on Complainant's outstanding account balance is not properly before the Commission.
6. Complainant did not file a response to the Preliminary Objection.

⁴ The Commission's regulations state: "A reply to new matter shall be filed within 20 days of the date of service of the answer or other pleading raising new matter. Failure to file a timely reply to new matter shall be deemed in default, and relevant facts stated in the new matter may be deemed admitted." 52 Pa. Code §5.62(c).

DISCUSSION

Before the Commission is a Complaint and a Motion to Dismiss the Complaint on the basis that a jurisdiction for payment arrangements on Complainant's outstanding account balance is not properly before the Commission.

The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections. 52 Pa. Code §§5.101-5.103. Preliminary Objections practice before the Commission 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 preliminary objection, 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 objection 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's Preliminary Objection moves for dismissal of this Complaint on the basis that the Commission is without authority to establish a payment arrangement for Complainant since she participates in Respondent's CAP program. For the reasons set forth below, the Respondent's Preliminary Objection will be granted, in part and this case set for a resolution conference.

The Responsible Utility Customer Protection Act ("Act"), 66 Pa. C.S. §1401, *et seq.*, became effective December 14, 2004, and applies to this proceeding. This new law provides strict guidelines that the Commission must follow in handling customer complaints. Section 1405(c) of the Public Utility Code reads as follows:

(C) Customer Assistance Programs. – Customer assistance program rates shall be timely paid and shall not be the subject of payment agreements negotiated or approved by the commission.

66 Pa. C.S. § 1405(c). The General Assembly has made it clear that the Commission lacks the authority to establish payment arrangements for customers participating in CAP programs offered by public utilities.

Section 1403 of the Public Utility Code defines a CAP program as follows:

A plan or program sponsored by a public utility for the purpose of providing universal service and energy conservation, as defined by Section 2202 (relating to definitions) or Section 2803 (relating to definitions), in which customers make monthly payments based on household income and household size and under which customers must comply with certain responsibilities and restrictions in order to remain eligible for the program.

66 Pa. C.S. § 1403 (Definition of "Customer Assistance Program").

Complainant participates in Respondent's CAP rate program and receives discounted electric and natural gas service. Therefore, consistent with the provisions of the Act, the Commission is without authority to issue a payment arrangement on her account.

However, Complainant also questions the amount of her account balance. Complainant asserts in the Complaint that her account number was changed and that certain charges were added to her bill. Complainant states that her balance should not be \$9,000 because she made payments and received Crisis grant money that should have reduced her outstanding balance.

Respondent, in the new matter portion of its Answer, averred that Complainant filed a Chapter 13 bankruptcy petition and that the dismissal of the petition by the Bankruptcy Court resulted in the amount of \$8,060.79 being added to Complainant's post-petition account balance. Respondent's

new matter does not include any statement regarding payments made by Complainant or whether it received energy assistance grant money on Complainant's behalf. Accordingly, the amount of Complainant's post-petition account balance remains in dispute.

Respondent moves for dismissal of the Complaint in its entirety; however, resolution of the billing dispute alleged in the Complaint will hinge on questions of fact, not law and therefore, this issue is not appropriate for dismissal by preliminary objection. See Roc v. Flaherty, 527 A.2d 211 (Pa. Commw. 1985). However, it is clear, as a matter of law, that the Commission has been divested of the authority to issue payment arrangements to customers participating in a utility's CAP program and Respondent's Preliminary Objection will be granted as to this issue.

The Commission is granted discretion to dismiss a complaint without a hearing if a hearing is not necessary in the public interest. 66 Pa. C.S. §703(b); 52 Pa. Code §5.21(d). A hearing is necessary only to resolve disputed questions of fact, and is not required to resolve questions of law, policy or discretion. Dee-Dee Cab, Inc. v. Pa. Public Utility Comm., 817 A.2d 593, petition for allowance of appeal denied, 836 A.2d 123 (2003); Lehigh Valley Power Committee v. Pa. Public Utility Comm., 563 A.2d 548 (1989); Edan Transportation Corp. v. Pa. Public Utility Comm., 623 A.2d 6 (1993). Pursuant to 66 Pa. C.S. §1405(c), the Commission has been divested of the authority to establish a payment arrangement for Complainant and this portion of her Complaint must be dismissed as a matter of law. Respondent's Preliminary Objection is granted, in part.

After reviewing the pleadings, it appears that the billing dispute alleged by Complaint could be resolved if Respondent explained how and why Complainant's pre-bankruptcy petition account balance was added to her post-petition balance and also reviewed with Complainant the payments and credits made to her account. Accordingly, this case will be set for a resolution conference to provide the parties with the opportunity to resolve this issue. 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 June 25, 2007, 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 July 16, 2007. No later than ten days following the

conference, Respondent shall file a report with Herbert R. Nurick, Mediation Coordinator, 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 July 26, 2007, 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.⁵ 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 an Administrative Law Judge, who will consider the case and issue a written decision.⁶

CONCLUSIONS OF LAW

1. Commission regulations provide for the filing of preliminary motions, including a motion questioning the jurisdiction of the Commission.
2. The Responsible Utility Customer Protection Act, 66 Pa. C.S. §1401, *et seq.*, applies to this proceeding.
3. The Commission lacks the authority to establish payment arrangements for customers participating in CAP programs offered by public utilities, pursuant to 66 Pa. C.S. §1405(c).

⁵ 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.

⁶ Should this case proceed to hearing, the evidence permitted will be limited to the billing dispute. Furthermore, Complainant will bear the burden of proof and must demonstrate that Respondent has violated a statute, regulations or orders of the Commission. 66 Pa. C.S. §332(a).

4. The Commission may dismiss a complaint without a hearing if a hearing is not necessary in the public interest.

ORDER

THEREFORE,

IT IS ORDERED:

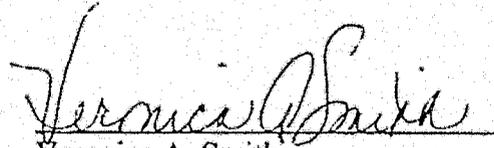
1. That PECO Energy Company's Preliminary Objection seeking dismissal of the Complaint filed by Marjorie Adderley at Docket No. C-20077580 is granted, in part.
2. That the portion of the Complaint filed by Marjorie Adderley requesting that the Commission issue a payment arrangement on her account is dismissed.
3. That this case be set for resolution conference on the billing issue raised in the Complaint.
4. That PECO Energy Company shall contact Marjorie Adderley no later than June 25, 2007, to set a mutually convenient date, time and location to conduct a conference to discuss the possible resolution of the billing issue raised in the Complaint.
5. That the resolution conference shall take place no later than July 16, 2007.
6. That PECO Energy Company shall file a report addressed to Herbert R. Nurick, Mediation Coordinator, 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 parties consent to have this case set for mediation by Commission staff; and
- (d) a statement listing any resolved issued, if a full resolution was not achieved.

7. 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 July 26, 2007 giving the reason(s) why the due date was not met.

8. 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 for adjudication of the billing issue raised in the Complaint.

Dated: June 13, 2007


Veronica A. Smith
Chief Administrative Law Judge

Legal Department

Exelon Business Services Company
2201 Market Street/5231
PO Box 8699
Philadelphia, PA 19101-8699

Telephone 215-841-4000
Fax 215-568-3389
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Business Services
Company

Direct Dial: 215-841-6841
July 18, 2007

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

ORIGINAL

Re: Marjorie Adderley v. PECO Energy Company
Docket Number: C-20077580

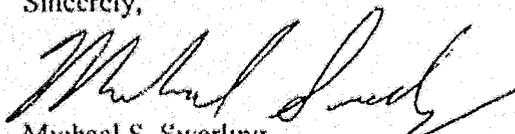
Dear Secretary McNulty:

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: Ms. Marjorie Adderley
PUC Scheduling

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JUL 20 2007

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ORIGINAL

MARJORIE ADDERLEY

COMPLAINANT

v.

PECO ENERGY COMPANY

RESPONDENT

DOCKET NO. C-20077580

CERTIFICATE OF SATISFACTION

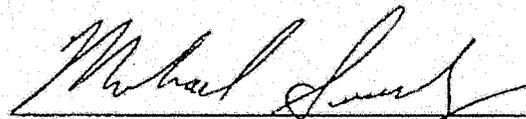
I, Michael S. Swerling, Esquire, representing PECO Energy Company ("PECO") in this matter, hereby certify that the issues raised in the Formal Complaint filed by Complainant with the Pennsylvania Public Utility Commission and docketed at Complaint Docket No. C-20077580 has been satisfied.

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**

DOCKETED
JUL 24 2007

Date: July 18, 2007



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

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JUL 20 2007

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MARJORIE ADDERLEY

COMPLAINANT

v.

PECO ENERGY COMPANY

RESPONDENT

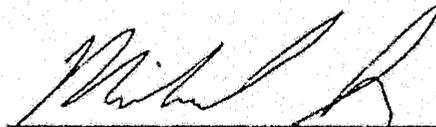
DOCKET NO. C-20077580

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.

Ms. Marjorie Adderley
7553 Gilbert Street
Philadelphia, PA 19180



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: July 18, 2007

COMMONWEALTH OF PENNSYLVANIA
PUBLIC UTILITY COMMISSION

DATE: July 23, 2007
SUBJECT: Marjorie Adderley v. PECO Energy Company
C-20077580
TO: Wanda Zeiders
Docket Management
FROM: Linda Salome, ALJ Support Staff
Office of Administrative Law Judge

DOCUMENT
FOLDER

On July 20, 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: Herbert Nurick, Mediation Coordinator
Beth Plantz
Case File

DOCKETED
JUL 31 2007

BTL



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

IN REPLY PLEASE
REFER TO OUR FILE

August 24, 2007

C-20077580

MARJORIE ADDERLEY
7553 GILBERT STREET
PHILADELPHIA PA 19150

MARJORIE ADDERLEY
v.
PECO ENERGY COMPANY

DOCKETED
AUG 21 2007

TO WHOM IT MAY CONCERN:

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

Very truly yours,

A handwritten signature in black ink that reads "James J. McNulty". The signature is written in a cursive style.

James J. McNulty
Secretary

cc: All parties of Record

nvl

**DOCUMENT
FOLDER**

BTL