

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

D. Anne Wilson

v.

PECO Energy Company

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F-2017-2633420

ORDER DENYING MOTION FOR DISQUALIFICATION

BACKGROUND

On November 9, 2017, D. Anne Wilson (Ms. Wilson or Complainant) filed a formal Complaint against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission) at Docket No. F-2017-2633420 alleging that the utility is threatening to shut off her electricity service and that there are incorrect charges in her bills from PECO. As relief, the Complainant seeks to have her PECO bills reviewed and corrected to reflect the accurate amount of electricity used.

The present Complaint is a timely appeal of the informal decision issued by the Commission's Bureau of Consumer Services (BCS) at BCS Case # 3538109.

On November 27, 2017, Respondent filed an Answer denying the material allegations of the Complaint.

A Hearing Notice dated January 18, 2018, notified the parties that an initial hearing was scheduled in this matter for Monday, March 26, 2018, at 10:00 a.m.

A Prehearing Order was issued on March 9, 2018, advising the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to the proceeding, and directing the submission of documents prior to the hearing.

On March 26, 2018, the initial hearing was convened as scheduled. Ms. Wilson appeared *pro se*. Shawane Lee, Esquire, appeared on behalf of Respondent. The settlement judge process was utilized and upon conclusion of the negotiations, I instructed PECO to submit additional information with regard to Ms. Wilson's account history. Tr. 4. In particular, I instructed PECO to submit Ms. Wilson's account history from 2014 to the present in order to have a better understanding of Ms. Wilson's usage history with the Respondent. Tr. 4-5. No evidence was received. I informed the parties that a further hearing would be scheduled for a later date.

A Hearing Notice dated April 5, 2018, notified the parties that a further in person hearing was scheduled in this matter for June 4, 2018.

On April 19, 2018, I received Ms. Wilson's written request that the June 4, 2018 in-person further hearing be changed to a telephonic hearing.

Also, on April 19, 2018, I received Ms. Wilson's written request that a different Administrative Law Judge be assigned to preside over her present Complaint. Ms. Wilson's request is essentially a Motion for Disqualification of the Presiding Officer (Motion) and will be treated as such in this Order.

As it was not clear whether Ms. Wilson had served copies of these two documents upon the Respondent, I sent scanned copies of the documents to PECO's counsel, Ms. Lee. By e-mail dated May 2, 2018, Ms. Lee informed me that Respondent did not object to Ms. Wilson's request for a telephonic hearing, but that it did object to her request for a judge change as the Complainant has not articulated or demonstrated any bias. See Appendix A.

Ms. Wilson's request for a telephonic hearing and her Motion for Disqualification of the Presiding Officer are ripe for ruling.

DISCUSSION

The Commission's Rules of Practice and Procedure permit parties to file a motion for disqualification of a presiding officer, pursuant to 52 Pa. Code § 5.482, which states as follows:

§ 5.482. Disqualification of a presiding officer.

(a) A party may file a motion for disqualification of a presiding officer which shall be accompanied by affidavits alleging personal bias or other disqualification.

(b) A presiding officer may withdraw from a proceeding when deemed disqualified in accordance with law.

(c) A motion for disqualification shall be served on the presiding officer and the parties to the proceeding.

(d) The presiding officer will rule upon a motion for disqualification within 30 days of receipt. Failure to rule upon a motion for disqualification within 30 days of its receipt will be deemed to be a denial of the motion.

(e) The ruling of the presiding officer on a motion for disqualification is subject to the interlocutory appeal procedure in § 5.303 (relating to Commission action on petition for interlocutory review and answer).

The Supreme Court of Pennsylvania has stated that once a motion for recusal has been made, "it is the duty of the judge to decide whether he feels he can hear and dispose of the case fairly and without prejudice . . ." *Reilly v. Southeastern Pennsylvania Transportation Authority*, 507 Pa. 204, 489 A.2d 1291, 1300 (1985). Other courts have said that, "It is the judge's duty not to sit when he is disqualified. It is equally his duty to sit where there is no valid reason for recusation." *Andrews et al. v. General Insurance Company*, 418 F. Supp. 304 (W.D. Oklahoma 1976); *Edwards v. United States*, 334 F.2d 360 (5th Cir. 1954) (emphasis added). The Pennsylvania Supreme Court stated in *Commonwealth v. Blakeney*, 596 Pa. 510; 946 A.2d 645, 662 (2008):

"[A] trial judge should recuse himself whenever he has any doubt as to his ability to preside impartially in a criminal case or whenever he believes his impartiality can be reasonably questioned." *Commonwealth v. Goodman*, 454 Pa. 358, 311 A.2d 652, 654 (Pa. 1973). It is presumed that the judge has the ability to determine whether he will be able to rule impartially and without

prejudice, and his assessment is personal, unreviewable, and final. *Commonwealth v. Druce*, 577 Pa. 581, 848 A.2d 104, 108 (Pa. 2004). "Where a jurist rules that he or she can hear and dispose of a case fairly and without prejudice, that decision will not be overturned on appeal but for an abuse of discretion." *Commonwealth v. Abu-Jamal*, 553 Pa. 485, 720 A.2d 79, 89 (Pa. 1998).

Parties to a proceeding are entitled to a fair hearing without bias, hostility, or prejudgment. *Pennsylvania Publications v. Public Utility Commission*, 152 Pa. Superior Ct. 279, 32 A.2d 40, *reversed on other grounds*, 349 Pa. 184, 36 A.2d 777, 153 ALR 457 (1943). To render a hearing unfair, the defect or the practice complained of must be such as might lead to a denial of justice, or there must be an absence of one of the elements deemed essential to due process of law. 2 Am Jr. 2d, Administrative Law § 410. Unfairness is evident if the tribunal's partiality and hostility goes too far toward the extreme of its authority, and its members engage in conduct such as heated, argumentative questioning of a party more characteristic of a prosecutor than of a neutral, detached and impartial decision maker. *Dayoub v. Commonwealth of Pennsylvania, State Dental Council & Examining Board*, 70 Pa. Commonwealth Ct. 621, 453 A.2d 751 (1982).

When reviewing a motion for recusal, only those facts that are contained in an affidavit that have been alleged with particularity will be weighed as evidence in support of recusal. "First, the affidavit must state facts with sufficient particularity. Only the facts contained therein are relevant, not conclusions." *United States v. Thomas*, 299 F. Supp. 494, 499 (E.D. Missouri 1968) (emphasis added).

Ms. Wilson's Motion in its entirety reads as follows: "This is a request for change/or a different Admin. Law Judge presiding for the above case. Would like to be in hope of a fair and unbiased case."

Ms. Wilson's Motion is not accompanied by an affidavit, and neither one of the two statements which comprise her Motion alleges a specific disqualifying act on my part. Arguably Ms. Wilson's Motion raises the question of my impartiality. However, merely raising the question is not sufficient, in and of itself, to warrant recusal. If that was so, then any judge

may be compelled to recuse him or herself just because the issue was raised. That is contrary to the guiding precedent cited in this order that only facts, not conclusions, are relevant in deciding the motion. *United States v. Thomas, supra*.

A party moving for recusal must show facts that demonstrate personal bias or prejudgment on the part of the presiding officer exist. 52 Pa. Code § 5.482 (a); *United States v. Thomas, supra*. "Personal bias," has been defined as attitudes, opinions, or comments which are "based on purely personal feelings towards the parties in a case." *Johnson v. Trueblood*, 629 F.2d 287, 291 (3d Cir. 1980). It is a personal feeling about a party that causes the decision-maker to favor or disfavor that party. To be disqualifying, personal bias must result in an opinion on the merits of a case not supported by the record. *United States v. Grinnell Corp.*, 384 U.S. 563, 583, 86 S.Ct. 1698, 1710 (1966). That personal bias must be pronounced, as even intemperate or vehement statements do not require disqualification. *Johnson*, 629 F.2d at 291; *Knapp v. Kinsey*, 232 F.2d 458 (6th Cir. 1956). Ms. Wilson has provided no factual support for a claim that I am personally biased towards or against any party in this case or that I have prejudged this proceeding.

In the present case, it is appropriate to evaluate Canon 3 (C) of the Pennsylvania Code of Judicial Conduct, governing the disqualification of judges, to determine whether disqualification is appropriate. In her Motion, Ms. Wilson has not alleged (1) personal bias or prejudice concerning a party, or personal knowledge of disputed facts; (2) that I have served as a lawyer in this matter, for any of the parties, with any of the lawyers representing any party, or am otherwise a material witness; (3) that I or my family has a fiduciary interest in the outcome of the case or (4) that I or my family is a party to the proceeding, acting as a lawyer in the proceeding, has an interest in the proceeding, or is likely to be a material witness in the proceeding. Canon 3 (C) requires that a judge should disqualify himself or herself in instances where these circumstances exist. Ms. Wilson has failed to allege any facts that would support a conclusion that I should disqualify myself pursuant to Canon 3 (C) of the Pennsylvania Code of Judicial Conduct.

I agree with the principle that a trial judge should recuse herself whenever she has any doubt as to her ability to preside impartially or whenever she believes her impartiality can be reasonably questioned. In this case, I have no doubt about my ability to be impartial. My impartiality has not been reasonably questioned because Ms. Wilson has failed to provide any factual support for her assertion.

CONCLUSION

After consideration of the facts and the law applicable to Ms. Wilson's Motion for Disqualification, I have decided not to recuse myself from this proceeding. I am not biased for or against any party in this case, nor have I prejudged this case. I have and will treat the parties in this proceeding impartially. In addition, I shall grant Ms. Wilson's request that the further hearing in this matter be conducted telephonically. A new Hearing Notice with the corrected information will be mailed to the parties in the near future.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion for Disqualification filed by D. Anne Wilson at Docket No. F-2017-2633420 is denied.
2. That D. Anne Wilson's request that the further hearing in this matter be conducted telephonically is granted

Date: May 9, 2018



Eranda Vero
Administrative Law Judge

F-2017-2633420 D ANNE WILSON (DORIS) v. PECO ENERGY COMPANY

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Appendix A

Vero, Eranda

From: Lee, Shawane L:(PECO) <Shawane.Lee@exeloncorp.com>
Sent: Wednesday, May 2, 2018 2:20 PM
To: Vero, Eranda
Subject: RE: D. Anne Wilson v. PECO, Docket No. F-2017-2633420

Good morning Judge Vero,

PECO is in receipt of the documents you forwarded from Ms. Wilson requesting a telephonic hearing and a Judge change.

PECO has no objection to a telephonic hearing. PECO objects to a judge change as the Complainant has not articulated or demonstrated any bias.

Thank you.

Shawane L. Lee, Assistant General Counsel
PECO Energy Company
Legal Department
2301 Market Street, S23-1
Philadelphia, PA 19103
Tel: (215) 841-6841
Fax: (215) 568-3389

 Please consider the environment before printing this e-mail.

From: Vero, Eranda [mailto:evero@pa.gov]
Sent: Friday, April 27, 2018 4:08 PM
To: Lee, Shawane L:(PECO)
Subject: [EXTERNAL] D. Anne Wilson v. PECO, Docket No. F-2017-2633420

Good afternoon Ms. Lee,
Attached to this e-mail please find scanned copies of two documents that our office received yesterday from Ms. Wilson.

Have a pleasant day!

Eranda Vero
Administrative Law Judge
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
Philadelphia, PA 19107

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