PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG PENNSYLVANA 17120

KA at Fairless Hills, LP	**Public Meeting held November 8, 2018**
v.	**2592335-OSA**
PECO Energy Company	**Docket No. C-2017-2592335**

MOTION OF COMMISSIONER DAVID W. SWEET

Before the Commission are the Exceptions of PECO Energy Company (PECO) to the Initial Decision (ID) of Administrative Law Judge Eranda Vero (ALJ) in a formal Complaint filed by KA at Fairless Hills, LP. After purchasing a vacant grocery store, in January of 2016, KA contacted PECO to have the electric service placed in its name in order to keep the lights and sprinkler system operational while seeking a tenant. A PECO employee asked KA about rate schedule selection, and the KA employee asked that everything be kept "as is," until a supervisor from KA could get back to PECO for a discussion. The rate in place was a contract rate for a set minimum usage which PECO then reserves, instead of a rate which measured and charged for the actual usage.

PECO kept the same rate that had been appropriate for a fully functioning grocery store in place until six months later, when KA noticed that the electric bills were abnormally high for a vacant building and contacted PECO. PECO entered into a contract for an alternate rate schedule effective September 1, 2016, which substantially lowered the electric bill, and KA asked that it be rebilled for the period of January to September 2016 at the lower rate. PECO declined, and this Complaint followed.

The ID sustains the formal Complaint and directs PECO to refund $22,000 in rates and to pay a $4,000 civil penalty.

In its Exceptions, PECO agrees that, once actual notice was received of the change in service conditions, PECO had an affirmative duty to assist KA in making a proper rate decision, and points out that it acted in accordance with its tariff in maintaining the existing rate until the customer informed it of actual change in circumstances. Case law supports its claims that the duty is upon the customer to inform the utility when circumstances change.[1] The idea that a utility has a duty to monitor the consumption habits of its customers and to immediately apply the most advantageous rate was rejected by case law and should not be imposed. Rather, the duty is on the customer to contact the utility and to seek review.

Once that contact is made, then the utility does have a duty to address the situation as quickly as possible by providing the rate most advantageous to the customer.[2] Where the rate change can be made quickly and easily, it should be done. Here, the complication is that the existing rate is one which locks customers into a contract so that PECO will reserve capacity at PJM by determining the Peak Load Contribution (PLC) value for the customer's account, which occurs in July but is not effective until May of the following year. PECO had transferred the contract with the prior grocery store to KA in order to maintain the existing rate in accordance

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[1] _Ben Mauro v Duquesne Light Company,_ 69 Pa PUC 105 (1989), and _Springfield Twp., Victory Condominium Assoc. v PECO Energy Company,_ Docket No, C-2011-2268126 (Order entered September 27, 2012).
[2] 66 Pa. C.S.A. § 1303.

with its tariff requirements. In addition, the PECO tariff requires that a change in rates be supported by documentation such as an engineering estimate of diversified peak demand, which is a reasonable requirement when dealing with substantial usage of large businesses and industry. This provision is less important where the building is vacant.

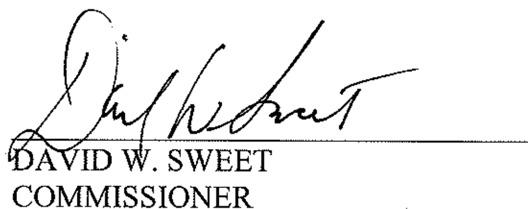
It is safe to assume that KA anticipated leasing the premises as soon as it could, possibly to another grocery store, and therefore, PECO was justified in maintaining the existing rate schedule unless and until KA informed it that circumstances had changed. While the bankruptcy of the prior occupant and owner of the building would have resulted in PECO's knowledge of the bankruptcy, the bankruptcy itself would not cause PECO to assume that there would be a change in usage of the building. It is not unusual for businesses to continue to operate through a bankruptcy.

Accordingly, PECO's actions were consistent with its tariff and its obligations under the Public Utility Code until July 2016, when it should have applied a separate rate schedule upon the request of the customer. Therefore, PECO should reimburse KA for the difference in rates for the time between the customer's request in July 2016 and the application of the new rates on September 1, 2016. There is no evidence to support the imposition of a civil penalty.

THEREFORE,

I MOVE:

1. That the Initial Decision of Administrative Law Judge Eranda Vero is reversed, consistent with this motion.
2. That PECO Energy Company reimburse or credit the account of KA of Fairless Hills, LLC for the difference between the Rate HT and Rate GS for the time period from July 13, 2016 to the application of Rate GS.
3. That the Office of Special Assistants prepare an appropriate Opinion and Order consistent with this motion.



November 8, 2018
DATE

DAVID W. SWEET
COMMISSIONER