

Legal Department
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Direct Dial: 215-841-6841

December 11, 2018

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

RE: Martha Rodriguez v. PECO Energy Company
PUC Docket No.: C-2018-3006124

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is the *Preliminary Objection of Respondent, PECO Energy Company* with regard to the matter referenced above.

I have enclosed a Certificate of Service showing that a copy of the above document was served on the interested parties. Thank you for your time and attention on this matter.

Very truly yours,



Shawane Lee
Counsel for PECO Energy Company

SL/ab

cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MARTHA RODRIGUEZ	:	
Complainant	:	
v.	:	DOCKET NO. C-2018-3006124
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

NOTICE TO PLEAD

Pursuant to 52 Pa. Code §§ 5.101 and 5.62(c), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Preliminary Objection within 10 days from service of this notice, a ruling may be entered against you. Your response must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Shawane L. Lee, and where applicable, the Administrative Law Judge presiding over the issue.

File with:
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

With a copy to:
Shawane L. Lee
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103

Dated at Philadelphia, PA, December 11, 2018



Shawane L. Lee
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103
(215) 841-6481
Shawane.Lee@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MARTHA RODRIGUEZ	:	
Complainant	:	
v.	:	DOCKET NO. C-2018-3006124
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

**PRELIMINARY OBJECTION OF RESPONDENT,
PECO ENERGY COMPANY**

Respondent, PECO Energy Company (“PECO”), pursuant to 52 Pa. Code § 5.101(a)(4) respectfully petitions this Honorable Commission to dismiss the instant Complaint as legally insufficient.

1. On November 21, 2018, PECO was served with a formal complaint filed by Martha Rodriguez (hereafter “Complainant”) on November 4, 2018.

2. In the Complainant’s formal complaint, she states the reason for her complaint is the proposed rate case at R-2018-3000164:

Prices of electric/gas keep going up.

See the Complainant’s formal complaint, attached hereto as Exhibit “1”.

3. In her request for relief, the Complainant states:

Ask for the reason why the increase.

4. In her formal complaint, the Complainant disputes PECO’s proposed General Base Rate Filing for Electric Operations at docket Number R-2018-3000164, proposing an electric rate increase under Tariff Number 6.

5. PECO simultaneously filed an Answer and the instant Preliminary Objection.

6. Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil procedure.¹

7. In deciding preliminary objections, the Public Utility Commission must determine, based on the factual pleadings of the petitioner, if relief or recovery is possible.²

8. A complaint must be able to recover under the law to survive a preliminary objection.³

9. All of the non-moving party's averments must be taken as true for the sake of deciding the preliminary objection.⁴

10. The court does not, however, need to accept, "unwarranted inferences from facts, argumentative allegations, or expressions of opinions."⁵

11. Section 703 of the Public Utility Code, 66 Pa.C.S.A. § 703(b) provides that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.

12. A hearing is required only when there is a disputed question of fact, and is not required to resolve questions of law. *Dee-Dee Cab, Inc. v. Pa.Pub. Util. Comm'n*, 817 A.2nd 593 (Pa. Commw. Ct. 2003), petition for allowance of appeal denied, 836 A.2d 123 (Pa. 2003).

13. Here, there are no genuine issues of fact and PECO Energy is entitled to judgment as a matter of law. Therefore, the complaint is legally insufficient and should be dismissed.

14. The Complainant disputes the rate increase that will occur under Tariff No. 6 as a result of PECO's Proposed General Rate Base filing.

¹ *Equitable Small Transportation Interveners v. Equitable Gas Co.*, 1994 Pa.PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994)

² 2006 Pa. PUC Lexis 111, *7.

³ *Milliner v. Enck*, 709 A.2d 417, 418 (Pa. Super. Ct. 1998) ("preliminary objection should be sustained only where it appears with certainty that, upon the facts averred, the law will not allow the plaintiff to recover").

⁴ *Id.* at 7-8.

⁵ *Feingold v. McNulty*, 2009 Phila. Ct. Com. Pl LEXIS 167, *3.

15. PECO's Proposed Rate Increase was approved in a Recommended Initial Decision by Administrative Law Judges Christopher P. Pell and F. Joseph Brady on October 9, 2018, docket number R-2018-3000164. The Recommended Initial Decision finds that PECO's rates are just, reasonable and lawful.

16. By way of background, On March 29, 2018, PECO filed a proposed General Base Rate Filing for Electric Operations at docket Number R-2018-3000164, proposing an electric rate increase under Tariff Number 6. Tariff No. 6 reflects an increase in annual distribution revenue of approximately \$82 million or 2.2% of PECO's total Pennsylvania jurisdictional operating revenues.

17. In April 2018, PECO notified the Complainant of the proposed rate increase through a bill insert. In that notice, PECO advised the Complainant:

You can file a formal complaint. If you want a hearing before a judge, you must file a formal complaint. By filing a formal complaint, you assure yourself the opportunity to take part in hearings about the electric rate increase request. All complaints should be filed with the PUC before June 29, 2018. If no formal complaints are filed the Commission may grant all, some or none of the request without holding a hearing before a judge.

See Notice attached hereto as Exhibit "2".

18. On April 19, 2018, the Commission issued an Order to institute a formal investigation to determine the lawfulness, justness and reasonableness of PECO's existing and proposed rates, rules and regulations.

19. In June 2018, the Commission held Public Input Hearings in five different counties. Forty-eight (48) PECO customers testified at the hearings.

20. During the rate case proceedings, Tariff No. 6 was suspended by operation of law until December 28, 2018.

21. On August 21, 2018, an evidentiary hearing was held and witnesses from PECO and NRG Energy presented testimony.

22. On August 28, 2018, all of the parties in the rate case (with the exception of NRG Energy) filed a Joint Petition for Partial Settlement resolving all issues in the proceeding. The sole issue for NRG Energy was a proposed a modification to the allocation of costs between distribution service and default service.

23. On October 9, 2018, Administrative Law Judges Christopher P. Pell and F. Joseph Brady issued a Recommended Initial Decision, which denied NRG Energy's proposed modification. The Initial Decision recommended approval of the Joint Petition for Partial Settlement and that PECO "shall be permitted to file a tariff supplement incorporating the terms of the Joint Petition and changes to rates, rules and regulations" to become effective for service rendered "on and after January 1, 2019."

24. The Commission is expected to adopt the Recommended Decision by Final Order in December 2018.

25. The Complainant alleges in her complaint that "the prices of electric/gas keep going up" and asks "why the increase."

26. PECO avers that the Complainant's formal complaint is untimely as set forth in 52 Pa. Code § 5.32.

§ 5.32. Complaints in rate proceedings.

(a) *Prior to suspension.* A person may file a complaint against a general rate increase within the meaning of section 1308(d) of the act (relating to

voluntary changes in rates) within the time period specified in the notice provided to customers of the tariff filing.

(b) *After suspension.* A person filing a complaint during the suspension of a proposed general rate increase shall take the record of the suspended rate proceeding as it stands at the time of the complaint's filing.

27. As a part of the rate case, PECO mailed a billing insert to the Complainant advising her of the proposed rate increase and the deadline to file a formal complaint. See Exhibit "2".

28. The notice stated that "all formal complaints should be filed with the PUC before June 29, 2018." See Exhibit "2".

29. The Complainant filed her formal complaint on November 4, 2018; accordingly, her complaint is untimely.

30. In addition, procedurally, this matter is in the suspension period, which remains in effect until December 28, 2018. Thus, the Complainant must take the record as it stands.

31. The regulation at 52 Pa Code § 5.32(b) states that "a person filing a complaint during the suspension of a proposed general rate increase shall take the record of the suspended rate proceeding as it stands at the time of the complaint's filing."

32. As of the date of the November 4, 2018, filing of the Complainant's formal complaint, the rate case in this proceeding had already been litigated, evidentiary and public hearings held; a Joint Petition for Settlement entered into, and an Initial Decision recommended by the Administrative Law Judges.

33. Procedurally, the Complainant must "take the record of the suspended rate proceeding as it stands." As it stands, the company's proposed rate increase under Tariff No. 6 has been approved in a Recommended Initial Decision by the Public Utility Commission as just, reasonable and lawful.

34. The Complainant now has no opportunity to put on a case at a hearing since the Recommended Decision has already stated that the rates are just and reasonable.

35. It is anticipated in December 2018 the Commission will issue a Final Order adopting the Recommended Decision and make the same findings.

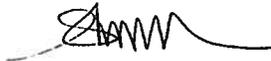
36. Accordingly, at this late date, the Complainant's complaint challenging the rates is untimely and she is not entitled to relief under the law.

37. As the Complainant's formal complaint challenging the rate increase at R-2018-3000164 is untimely, her complaint should be dismissed as legally insufficient under 52 Pa.Code §5.101(a)(4).

REQUEST FOR RELIEF

WHEREFORE, for all of the reasons stated herein, PECO respectfully requests that your Honorable Commission dismiss the instant complaint with prejudice.

Respectfully submitted,



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19103
(215) 841-6841
Fax: 215.568.3389
Shawane.Lee@exeloncorp.com

EXHIBIT “1”

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
400 NORTH STREET, HARRISBURG PA 17120

Formal Complaint
Docket #: C-2018-3006124

Date Served: November 21, 2018

RICHARD G. WEBSTER, JR., ESQUIRE
PECO ENERGY COMPANY
2301 MARKET STREET, SUITE S15
PHILADELPHIA, PA 19103

RE: PA PUC vs PECO ENERGY COMPANY-ELECTRIC
Rate Case Docket #: R-2018-3000164

Dear Sir:

A Formal Complaint has been filed against you in the above-captioned matter before the Pennsylvania Public Utility Commission by Martha Rodriguez.

This true and correct copy of the complaint has been filed of record with the Pennsylvania Public Utility Commission. Both the Pennsylvania Public Utility Code, 66 Pa. C.S. and the Commission's regulations at 52 Pa. Code Section 1.53, requires the Commission to serve on each party named in a Formal Complaint a copy of the complaint.

Within ten (10) days from the above date of service, you may either satisfy or answer this complaint in accordance with the provisions of 52 Pa Code, §5.61(d).

When filing your answer to the Formal Complaint, please reference the "Formal Complaint Docket Number" located in the upper-right hand corner of this Notice.

Very Truly Yours,



Rosemary Chiavetta
Secretary

RC:Jbs

(SEAL)

Certified Mail
Return Receipt Requested

Richard G. Webster, Jr.

DEC 3 2018

Received

PECO
Exhibit # 1

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint to Proposed Rate Increase C-2018-3006124

Filing this form will make you a party to a legal proceeding or case. If you do not wish to be a party to the case, consider filing a Comment to Proposed Rate Increase.

To complete this form, please type or print legibly in ink.

1. Customer (Complainant) Information

Provide your name, mailing address, county, telephone number(s), e-mail address and utility account number. It is your responsibility to update the Commission with any changes to your address and to where you want documents mailed to you.

Name MARTHA RODRIGUEZ
Street/P.O. Box 904 MAURIAUX Apt #
City CROYDON State PA Zip 19021-6291
County BUCKS

Telephone Number(s) Where We Can Contact You During the Day:

(215) 788-2306 (home) () (mobile)

E-mail Address (optional):

Utility Account Number (from your bill):

If your complaint involves utility service provided to a different address or in a different name than your mailing address, please list this information below.

Name
Street/P.O. Box
City State Zip

2. Name of Utility

Provide the full name of the utility who filed the proposed rate increase about which you are complaining. The name of your utility is on your bill.

PLCO

RECEIVED

NOV 19 2018

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

420469

3. PUC Case Docket Number

Provide the Public Utility Commission case docket number (if known). It begins with the letter "R" and contains the year of filing and a 7-digit code, such as R-2014-1234567.

R-2018-3000164 *ms*

4. Type of Utility Service

Check the box listing the type of utility service that is the subject of your complaint (check only one):

- | | |
|--|---|
| <input checked="" type="checkbox"/> ELECTRIC | <input type="checkbox"/> WASTEWATER/SEWER |
| <input checked="" type="checkbox"/> GAS | <input type="checkbox"/> TELEPHONE/TELECOMMUNICATIONS (local, long distance) |
| <input type="checkbox"/> WATER | <input type="checkbox"/> MOTOR CARRIER (e.g. taxi, moving company, limousine) |
| <input type="checkbox"/> STEAM HEAT | |

5. Reason for Complaint

Explain why you oppose the company's proposed rate increase. Use additional paper if you need more space.

PRICES OF ELECTRIC & GAS HAVE GONE UP.

6. Requested Relief

How do you want your complaint to be resolved? Use additional paper if you need more space.

ASK FOR THE REASON WHY THE INCREASE

7. Protection from Abuse

Has a court granted a "Protection from Abuse" order that is currently in effect for your personal safety or welfare? The PUC needs this information to properly process your complaint so that your identity is not made public.

Has a court granted a "Protection from Abuse" order for your personal safety or welfare?

YES

NOTE: I WAS NEVER ABUSED

NO

If your answer to the above question is "yes," attach a copy of the current Protection from Abuse order to this Formal Complaint to Proposed Rate Increase.

8. Legal Representation

If you are filing a Formal Complaint to Proposed Rate Increase as an individual on your own behalf, you are not required to have a lawyer. You may represent yourself at the hearing.

If you are represented by a lawyer in this matter, provide your lawyer's name, address, telephone number, and e-mail address, if known. Please make sure your lawyer is aware of your complaint. If represented by a lawyer, both you and your lawyer must be present at your hearing. NEVER HAD ONE

Lawyer's Name _____

Street/P.O. Box _____

City _____ State _____ Zip _____

Area Code/Phone Number _____

E-mail Address (if known) _____

Note: Corporations, associations, partnerships, limited liability companies and political subdivisions are required to have a lawyer represent them at a hearing and to file any motions, answers, briefs or other legal pleadings.

9. Verification and Signature

You must sign your complaint. Individuals filing a Formal Complaint to Proposed Rate Increase must print or type their name on the line provided in the verification paragraph below and must sign and date this form in ink. If you do not sign the Formal Complaint to Proposed Rate Increase, the PUC will not accept it. By filing this Formal Complaint to Proposed Rate Increase, you will be a party to the case.

NOTE PECO NEVER CONSIDER THE CONSUMER LET STOCKHOLDERS HANDLE THIS

Verification:

I MARTHA RODRIGUEZ, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Martha Rodriguez
(Signature of Complainant)

11/04/12
(Date)

Title of authorized employee or officer (only applicable to corporations, associations, partnerships, limited liability companies or political subdivisions)

Note: If the Complainant is a corporation, association, partnership, limited liability company or political subdivision, the verification must be signed by an authorized officer or authorized employee. If the Formal Complaint to Proposed Rate Increase is not signed by one of these individuals, the PUC will not accept it.

10. **Filing**

You may electronically file your Formal Complaint to Proposed Rate Increase with the PUC. To do so, you need to establish an account on the PUC's eFiling system, which may be accessed at <http://www.puc.pa.gov/efiling/default.aspx>.

If you do not electronically file your Formal Complaint to Proposed Rate Increase, mail the completed form (along with any attachments) to one of the addresses listed below:

If using U.S. Postal Service:

If using overnight delivery service:

Secretary Pennsylvania Public Utility Commission P.O. Box 3265 Harrisburg, PA 17105-3265	Secretary Pennsylvania Public Utility Commission 400 North Street Commonwealth Keystone Building, 2 nd Floor Harrisburg, Pennsylvania 17120
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Note: Formal Complaints sent by fax or e-mail will not be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

Keep a copy of your Formal Complaint to Proposed Rate Increase for your records.

/JAV

EXHIBIT “2”

NOTICE OF PROPOSED ELECTRIC RATE CHANGES

To Our Customers:

PECO is filing a request with the Pennsylvania Public Utility Commission (PUC) to increase your electric rates as of May 28, 2018. This notice describes the Company's electric rate request, the PUC's role, and what actions you can take.

PECO has requested an overall electric rate increase of \$82 million per year. If the Company's entire request is approved, the total monthly bill for a residential customer using 700 kWh would increase by \$3.28 from \$102.65 to \$105.93 or by 3.2%.

The total monthly bill for a commercial customer using 10,000 kWh would increase from \$859.09 to \$870.15 or by 1.3%. The total monthly bill for an industrial customer using 200,000 kWh would increase from \$14,769.32 to \$14,963.31 or by 1.3%.

To find out your customer class or how the requested increase may affect your electric bill, contact PECO at 1-800-494-4000. The electric rates requested by the Company may be found in Electric Tariff No. 6. You may examine the material filed with the PUC, which explains the requested increase and the reasons for it. A copy of this material is kept at PECO's office. Upon request, the Company will send you the Statement of Reasons for Electric Tariff No. 6, explaining why the electric rate increase has been requested. A copy can also be viewed by visiting peco.com/rates.

The state agency which approves electric rates for public utilities is the PUC. The PUC will examine the requested electric rate increase and can prevent existing rates from changing until it investigates and/or holds hearings on the request. The Company must prove that the requested electric rates are reasonable. After examining the evidence, the PUC may grant all, some, or none of the request or may reduce existing electric rates. The PUC may change the amount of the electric rate increase or decrease requested by the utility for each customer class. As a result, the electric rate charged to you may be different than the electric rate requested by the Company and shown above.

(Over)

There are three ways to challenge a Company's request to change its electric rates:

1. You can file a formal complaint. If you want a hearing before a judge, you must file a formal complaint. By filing a formal complaint, you assure yourself the opportunity to take part in hearings about the electric rate increase request. All complaints should be filed with the PUC before June 29, 2018. If no formal complaints are filed the Commission may grant all, some or none of the request without holding a hearing before a judge.

2. You can send the PUC a letter telling why you object to the requested electric rate increase. Sometimes there is information in these letters that makes the PUC aware of problems with the Company's service or management. This information can be helpful when the PUC investigates the electric rate request.

Send your letter or request for a formal complaint form to the:

Pennsylvania Public Utility Commission
Post Office Box 3265
Harrisburg, PA 17105-3265

Complaint forms can also be accessed at the PUC website in Adobe Acrobat format: http://www.puc.state.pa.us/general/onlineforms/pdf/official_complaint_form_final.pdf.

3. You can be a witness at a public input hearing. Public input hearings are held if the Commission opens an investigation of the Company's electric rate increase request and if there is a large number of customers interested in the case. At these hearings you have the opportunity to present your views in person to the PUC judge hearing the case and the Company representatives. All testimony given "under oath" becomes part of the official electric rate case record. These hearings are held in the service area of the Company.

For more information, call the PUC at 1-800-692-7380. You may leave your name and address so you can be notified of any public input hearings that may be scheduled in this case.



An Exelon Company

PEC 04/18
07 EXE 110600

www.peco.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MARTHA RODRIGUEZ
Complainant

v.

PECO ENERGY COMPANY
Respondent

:
:
:
:
:

DOCKET NO. C-2018-3006124

VERIFICATION

I, Shawane L. Lee, hereby declare that I am counsel for PECO Energy Company; that as such I am authorized to make this verification on its behalf; that the facts set forth in the foregoing Pleading are true to the best of my knowledge, information and belief, and that I make this verification subject to the penalties of 18 Pa. C.S. § 4904 pertaining to false statements to authorities.

Date: December 11, 2018



Shawane L. Lee

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

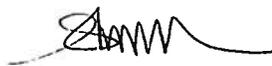
MARTHA RODRIGUEZ	:	
Complainant	:	
v.	:	DOCKET NO. C-2018-3006124
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

CERTIFICATE OF SERVICE

I, Shawane L. Lee, hereby certify that I have this day served a copy of PECO Energy Company's Answer in the above matter upon all interested parties by mailing a copy, properly addressed and postage prepaid to:

Martha Rodriguez
904 Mauri Avenue
Croydon, PA 19021

Dated at Philadelphia, Pennsylvania, December 11, 2018



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
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(215) 841-6841
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