

July 6, 2020

Via Electronic Filing

Rosemary Chiavetta, Esquire
Secretary
PA Public Utility Commission
Commonwealth Keystone Building, 2 North
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Docket No. C-2019-3013582
Deborah A. Redman v. Pennsylvania Electric Company
Reply Exceptions of Penelec**

Dear Secretary Chiavetta:

Attached for filing is the Reply of Pennsylvania Electric Company to the Exceptions filed by Deborah A. Redman (Complainant) in the above referenced proceeding.

A copy of the Reply Exceptions has been provided to the Complainant in the manner indicated on the attached Certificate of Service.

If there are any questions, please do not hesitate to contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

MAM/co
Enclosures

cc: The Hon. Mary D. Long, PA Public Utility Commission [w/encls.]
Office of Special Assistants, PA Public Utility Commission [w/encls.]
John L. Munsch, Esquire, FirstEnergy Service Company [w/encls.]
Deborah A. Redman [w/encl.]

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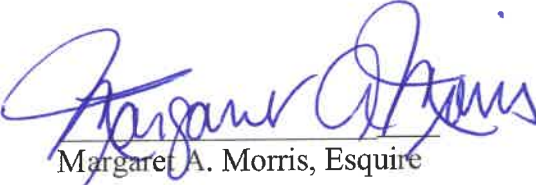
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following person, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

Via Electronic Mail

Deborah A. Redman
daredman@verizon.net

Dated: July 6, 2020


Margaret A. Morris, Esquire

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DEBORAH A. REDMAN :
 :
 v. : Docket No. C-2019-3013582
 :
 PENNSYLVANIA ELECTRIC COMPANY :

**REPLY EXCEPTIONS ON BEHALF OF PENNSYLVANIA ELECTRIC COMPANY
TO COMPLAINANT'S EXCEPTIONS**

Margaret A. Morris, Esq.
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Philadelphia, PA 19104

Dated: July 6, 2020

Counsel for Pennsylvania Electric Company

I. Introduction

Pennsylvania Electric Company (Penelec or the Company) files its Reply to the Exceptions of Debra A. Redman (Complainant) which support the adoption of the Initial Decision (ID) of Administrative Law Judge Mary D. Long (Judge Long) without modification. The Commission should affirm Judge Long's dismissal of the matter without prejudice for the Complainant's failure to appear at the duly scheduled hearing. While the Complainant's Exception on the dismissal of the Complaint is moot, other Exceptions should be addressed so that if the Complainant refiles her complaint, there is a clear understanding of the Commission's jurisdiction. In accordance with the Commission's directive and Section 5.535 of the Commission's regulation, 52 Pa. Code § 5.535, the Company submits its Reply Exceptions.

II. Procedural Background

On October 15, 2019, the Complainant filed a Formal Complaint against Penelec alleging a safety and reliability issue. Specifically, she stated that she did "not want [the Commission] to make a further decision in this matter." She requested the matter be "transferred to a lay body because the power companies and [the Commission] are not the least bit neutral, honest or good-willed." The Complainant sought damages in the amount of \$600,000.

On November 6, 2019, Penelec filed an Answer and New Matter denying the material allegations. In New Matter, Penelec requested that the Complaint be referred to the Commission's mediation unit.

On December 16, 2019, the Complainant filed a pleading entitled "Response to Respondent's Answer and Opposition to Respondent's Request for Mediation and Motion for Summary Judgment." Penelec filed its response to the Motion for Summary Judgment on January 6, 2020. By Interim Order dated, January 30, 2020, Judge Long denied the Motion for Summary Judgment finding there were relevant facts which were disputed and that a hearing was required by law. The Interim Order also denied the Complainant's request to transfer the Complaint to "a lay body of Meadville/Erie residents willing to hear it," since the

Commission lacked jurisdiction to transfer the Complaint to another tribunal.

By Notice, dated February 3, 2020, a telephonic hearing was scheduled for March 24, 2020. A Prehearing Order was issued on February 3, 2020, which provided instructions for participating in the hearing and also explained the procedures for the conduct of the hearing and the process to request a continuance.

On February 21, 2020, the Complainant filed a “Notice of Inability to Attend Hearing and Repeat Request for Transfer to a Neutral Group.” On March 3, 2020, the Complainant filed a Motion for Recusal of Judge Long. By Interim Order, entered March 4, 2020, the Complainant’s Motion for Recusal was denied. Additionally, the Complainant was directed to provide specific information and documentation substantiating her disability, as well as the specific accommodation she is seeking with as much specificity as possible, on or before Friday, March 13, 2020. No documentation supporting the Complainant’s request was received.

On March 10, 2020, Complainant filed her Notice of Inability to Participate Due to Flu which was treated as a Motion for Continuance. By Interim Order, entered March 16, 2020, the March 24, 2020 scheduled telephonic hearing was cancelled.

A Notice was emailed to the parties on April 21, 2020, scheduling a telephonic hearing on May 21, 2020. A Prehearing Order was also served by email. Both the Notice and the Prehearing Order provided the toll-free conference bridge number and PIN as well as the time and date of the hearing.

In response to the Complainant’s pleading again stating she would not be able to attend the scheduled hearing, Judge Long emailed the parties on May 20, 2020, that the scheduled telephonic hearing for May 21, 2020, would proceed as scheduled. The hearing

convened as scheduled. Penelec appeared, along with four witnesses. The Complainant did not call into the hearing. The record closed on May 21, 2020.

III. Initial Decision

Judge Long granted Penelec's oral Motion to Dismiss for failure to appear at the scheduled hearing but denied the request that the dismissal be with prejudice. She specifically stated in her Initial Decision:

“Additionally, the Complainant states in her May 14, 2020 Notice of Inability to Attend Hearing and Repeat Request to Transfer Matter to a Neutral Group, that she “will never be able to participate in a hearing of any kind given that she is living in sewage.” She goes on to explain the hardship caused by the blockage of her sewer system which she attributes to the wisteria. She repeats her request for an “accommodation” by having this matter “transferred to a neutral body.”

As explained in my order disposing of the Complainant's motion for summary judgment, the Commission does not have the authority to transfer a complaint to a “neutral body.” The Commission's regulations found in Chapter 5 of Title 52 of the Pennsylvania Code provide for the resolution of formal complaints via evidentiary hearings presided over by Commission- employed ALJs. The regulations do not provide for any of the alternate dispute resolution processes Complainant suggests.

The regulation at 52 Pa. Code § 5.21 provides, “The filing of a formal complaint entitles the complainant to a formal hearing before the Commission except that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.” Here, given the Complainant's statement that she will never be able to participate in a hearing of any kind, the Commission can not consider her request for relief.

In conclusion, the Complainant was notified of the scheduled hearing call-in procedure, date, and time, as well as how to contact the Office of Administrative Law Judge, but failed to appear without explanation. Although the Complainant claimed to have not received the prehearing order, she was nevertheless aware of the hearing as evidenced by her Notice of Inability to Participate. Under these circumstances, the Complainant had an opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. The due process rights of the Complainant have been fully protected. The Complaint is dismissed. However, due to the unusual circumstances caused by the Covid-19 state of emergency and modified Commission procedures, the Complaint is dismissed without prejudice.

IV. Exceptions and Reply Exceptions

Overview

The Complainant excepts to Judge Long's ruling that her absence from the scheduled hearing was not for good cause. Her Exceptions also argue the merit of her Complaint, contend that Judge Long was biased and that her Complaint should be transferred to a neutral third party. While the dispositive issue before the Commission is whether the Complainant's absence at the hearing was for good cause, the practical result of the dismissal without prejudice renders such a determination moot.

Specific Exceptions

1. Judge Long mischaracterizes the Complaint.

In support of this Exceptions, the Complainant argues that Judge Long mislabeled the caption and mischaracterizes the Complaint arguing that a complaint should never have been filed since vegetation maintenance of power lines are "routine." She also requests damages for lost wages in the amount of \$1,500,000.

Penelec's Response

The Formal Complaint is properly captioned. The Code authorizes the Commission to regulate electric distribution companies such as Penelec. The Complainant has failed to provide any support that the Commission has jurisdiction over the actions of Penelec's parent company, First Energy Corp.

The Complainant's argument that an emergency situation exists and must be resolved without a hearing is without merit. Commission regulations specifically address the process for filing an emergency petition with the Commission. The Complainant has not filed any petition seeking relief, let alone *ex parte* relief. See, 52 Pa. Code § 3.1 *et seq.* This issue is not properly before the Commission and should not be entertained. Penelec has the due process right to respond to any properly filed petition and to present evidence in support of that position at an evidentiary hearing. There is no record evidence to support the Complainant's position.

It is well settled that the commission lacks jurisdiction to award damages.

Behrend v. Bell Telephone Co., 363 A.2d 1152 (Pa, Super 1976); *Brockway Glass Company, Inc. v. West Penn Power Co.*, 54 Pa P.U.C. 509 (1980); *Bones v. Bates Taxi, Inc.*, 51 Pa. P.U.C. 346 (1977).

Complainant's Exception #1 is without merit and should be denied.

2. Judge Long ignores the law involving invasive species and therefore breaks the law.

The Complainant argues that her *Response to Respondent's Answer* plainly and clearly lays out that Penelec's actions violate state and federal law on invasive species. She contends that Judge Long's dismissal of her Complaint "ensures the violation will continue."

Penelec's Response

The issue before Judge Long was Penelec's Motion to Dismiss for failure to appear at the scheduled hearing. There is no record evidence to address the merits of the Complaint, i.e. a utility's obligation regarding invasive species growing on and near power lines. As the Commission has previously recognized, a *pro se* litigant is not absolved of complying with procedural rules.¹ In *Blauhut v. PECO Energy Co.*,² the Commission recognized that a *pro se* litigant whose exceptions were based on evidence not of record and additional argument were not a basis for exceptions under Section 5.533 of the Commission's regulations and could not be considered. The same result should occur here; the Complainant's Exceptions addressing the merits of the Complaint should not be considered by the Commission.

Complainant's Exception #2 is without merit and should be denied.

3. Judge Long wrongly dismisses the Complaint "because the Complainant failed to appear for the hearing without good cause."

The Complainant alleges, for the first time in her Exceptions, that she was ill the morning of the scheduled hearing and unable to participate in the hearing. She never advised Judge Long of this illness after the hearing and before the Initial Decision was issued,

¹ *Tremayne Shanault Lewis v. PECO Energy Co.*, Docket No. C-2010-2189187 (Order entered May 4, 2011).

² *Adolf H. Blauhut v. PECO Energy Co.*, Docket No. C-2009-2087552 (Order entered January 29, 2010).

Penelec's Response

As an administrative agency of the Commonwealth, the Commission is required to provide due process to the parties appearing before it. Due process is satisfied when the parties are afforded notice and the opportunity to appear and be heard.³ Once notice of a hearing and the opportunity to be heard have been provided by the Commission, it is the responsibility of the parties to appear and participate in the hearing.⁴

Judge Long specifically found that:

The Complainant was notified of the scheduled hearing call-in procedure, date, and time, as well as how to contact the Office of Administrative Law Judge, but failed to appear without explanation. Although the Complainant claimed to have not received the prehearing order, she was nevertheless aware of the hearing as evidenced by her Notice of Inability to Participate. Under these circumstances, the Complainant had an opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. The due process rights of the Complainant have been fully protected. The Complaint is dismissed.⁵ **However, due to the unusual circumstances caused by the Covid-19 state of emergency and modified Commission procedures, the Complaint is dismissed without prejudice. (Emphasis added).**

ID at p. 6-7.

The Complainant's argument that her illness constituted "good cause" and her Complaint should not have been dismissed is moot. Since the Complainant can refile her complaint against Penelec, this issue need not be addressed.

Complainant's Exception #3 is without merit and should be denied.

4. The Commission and Judge flagrantly violated the Americans with Disabilities Act (ADA).

³ *Schneider v. Pa. PUC*, 479 A.2d 10, 15 (Pa. Cmwlth. 1984).

⁴ *Mumma v. PPL Electric Utilities Corporation*, Docket No. C-00014869 (Order entered January 24, 2002); *Sentner v. Bell Tel. Co. of PA*, Docket No. F-00161106 (Order entered October 25, 1993).

⁵ 66 Pa.C.S. § 332(f).

The Complainant alleges that Judge Long's directive to submit "specific information and documentation substantiating her disability" as well as the actions of certain Commission employees violated the ADA. She contends the ADA requires the Commission to transfer the case to a neutral group and ensure that that group complies with the ADA.

Penelec's Response

The Complainant has not demonstrated that she has a disability as defined in the ADA nor has she complied with Judge Long's directive that she present documentation that she is "disabled" within the meaning of the statute. *Assuming arguendo* that the Complainant has demonstrated a disability within the meaning of the ADA, the Commission has offered the Complainant the reasonable opportunity to participate and have her case heard by permitting her to participate by phone.

The Complainant has offered no legal basis to support her conclusion that the matter must be transferred to a neutral group nor has she identified the "neutral group." The Code specifically authorizes the Commission to entertain allegations regarding the service provided to the Complainant by Penelec. However, a complaint proceeding is a contested proceeding and the Commission must ensure that the due process rights of all parties are protected. The Commission cannot extend an accommodation to the point where it treads on Penelec's right to due process. A party's right to cross-examination is a fundamental tenant of due process. In Pennsylvania, administrative due process rights include the fundamental right to cross-examine witnesses, inspect documents, and offer evidence in explanation or rebuttal. *Zied v PECO Energy Company*, Docket Nos. P-2015-252074 and F-2015-2500342 (Opinion and Order entered April 6, 2017).

Complainant's Exception #4 is without merit and should be denied.

5. Judge Long makes the Commission completely inaccessible to the Complainant.

The Complainant argues that Judge Long's finding, based on the Complainant's own admission that the Complainant will never be able to participate in a hearing of any kind, results in the Complainant being locked out of the Commission's complaint process. She

contends that Judge Long “had gotten as much information from the Complainant as she would have had she ordered briefs.”

Penelec’s Response

The Complainant’s argument that the information she provided in her pleadings are sufficient for Judge Long to make a finding that Penelec is responsible for the actions alleged completely ignores Penelec’s due process rights. No hearing has been held. The Complainant has not testified nor been cross-examined. Penelec has not presented its testimony and exhibits to refute the Complainant’s allegations. A party’s right to cross-examination is a fundamental tenant of due process. *Zied, supra*.

Complainant’s Exception #5 is without merit and should be denied.

6. *Judge Long wrongly finds that “Complainant did not contact the Commission to explain her failure to appear for the hearing.”*

The Complainant contends the finding is “false” and that Judge Long was aware that she will never be able to participate in a telephonic hearing.

Penelec’s Response

This issue is moot since the Complaint was dismissed without prejudice. However, Penelec asserts that should the Complainant refile her allegations, the Complainant will be required to appear the scheduled hearing.

Complainant’s Exception #6 is without merit and should be denied.

7. *Judge Long’s June 3 Initial Decision is predicated upon her Interim Order Denying Motion for Disqualification (March 4, 2020), which wrongly faults Redman for failing to base her arguments on facts: “My impartiality has not been reasonable questioned because the Complainant has failed to provide any factual support for her assertion that she cannot receive a fair hearing without bias, hostility, or prejudgment. Interim Order Denying Motion for Disqualification, p. 5. That view is particularly pertinent*

here because the arguments presented here are essentially the same as those in her motion for recusal.

The Complainant argues that her Complaint does deal with “facts” since her statements contained verification clauses wherein the Complainant swears the facts are “true.”

Penelec’s Response

The Complainant alleged Judge Long’s ruling denying the Motion for Summary Judgement shows a “striking bias against the Complainant and makes a mockery of the quasi-judicial process of the Commission.”

Disqualification of a presiding officer is governed by Section 5.482 of the Commission’s regulations.⁶ Although the Complainant did not provide the required affidavit, Judge Long, nevertheless, considered the merits of the Motion for Recusal. The ALJ stated that, to be disqualifying, personal bias must result in an opinion on the merits of a case that is not supported by the record. The ALJ found that the Complainant provided no factual support for a claim that she is personally biased or has prejudged the proceedings. Accordingly, the ALJ did not recuse or disqualify herself from presiding over this proceeding.

Once again, the Complainant’s argument ignores the fundamental due process rights of Penelec to cross-examine and provide evidence to refute the allegations. Simply disagreeing with Judge Long’s ruling on the Motion for Summary Judgement without any legal basis for reversing is not sufficient justification from removing Judge Long from presiding over the proceedings. Judge Long properly denied the Motion for Summary Judgement and the Complainant has provided no legal basis to reverse that ruling.

Complainant’s Exception #7 is without merit and should be denied.

The Complainant characterizes Exceptions #8-10 as “Objections to Procedural Aspects that Cause Prejudice.”

⁶ 52 Pa. Code § 5.482.

8. *The Initial Decision sketches a very long procedure, which to date has lasted more than a year, and a very demanding one for Complainant. To file and manage the Complaint, Complainant had to forgo work and the associated income, so the practical effect of complaining has been to gut the Complainant financially.*

Penelec's Response

The Code does not confer jurisdiction upon the Commission to award monetary damages. The Company avers that the Commission possesses no jurisdiction to consider any implied request for reimbursement for property damage. *See, DeFrancesco v. Western Pennsylvania Water Co.*, 499 Pa. 374, 453 A.2d 595 (1982); *Elkin v. Bell*, 491 Pa. 123, 420 A.2d 371 (1980); *Feingold v. Bell of Pa.*, 477 Pa. 1, 383 A.2d 791 (1977). The Court of Common Pleas retains original jurisdiction over suits for monetary damages. *Behrend v. Bell of Pa.*, 257 Pa. Superior Ct. 35, 390 A.2d 233 (1978).

Complainant's Exception #8 is without merit and should be denied.

9. *The Judge requires complainants to have unfailingly reliable Internet service.*

The Complainant contends several "bugs" were left on her computer when it was upgraded and as a result, does not allow her to register for e-filing. She objects to the *Emergency Order* requiring filings to be done using the Commission's electronic filing system.

Penelec's Response

As a result of the COVID-19 situation, the Commission issued an *Emergency Order* setting forth the process for filings while under this unique pandemic situation. The Complainant has not presented any support for her position that she has been prejudiced. Rather she presents "potential future" issue, i.e. computer will likely not allow registration for e-filing service or *may* break.

Complainant's Exception #9 is without merit and should be denied.

10. Complainant has no way to attach photos to this filing.

The Complainant contends she could not attach photos to her exceptions and requested that the undersigned counsel scan and send the photos to Secretary Chiavetta.

Penelec's Response

The photos that the Complainant sought to file with her Exceptions are not relevant to the issues addressed by Judge Long. The photos are insufficient for a finding that Penelec is responsible for the actions alleged. No hearing has been held. The Complainant has not testified nor been cross-examined. Penelec has not presented its testimony and exhibits to refute the Complainant's allegations. A party's right to cross-examination is a fundamental tenant of due process. In Pennsylvania, administrative due process rights include the fundamental right to cross-examine witnesses, inspect documents, and offer evidence in explanation or rebuttal. *Zied, supra*.

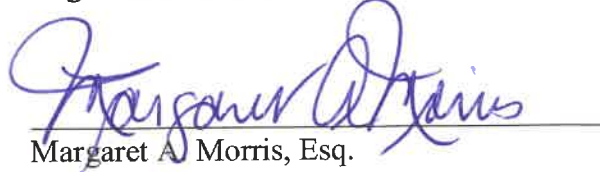
Complainant's Exception #10 is without merit and should be denied.

V. Conclusion

The Exceptions, raising either irrelevant points or repeating unsupported positions that Judge Long soundly rejected, are without merit. The Complainant is not prejudiced by Judge Long's dismissal without prejudice. An issue on the merits is not possible given that no hearing has occurred.

For the reasons set forth in these Reply Exceptions, Pennsylvania Electric Company respectfully requests that the Commission adopt the Initial Decision of the Honorable Mary Long, without modification, and dismiss the Formal Complaint of Deborah A. Redman without prejudice.

Respectfully submitted,
Reger Rizzo & Darnall LLP



Dated: July 6, 2020

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