



An Exelon Company

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May 22, 2015

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

**RE: Michael A. Rizzo v. PECO Energy Company**  
**PUC Docket No.: C-2015-2469134**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *PECO Energy Company's Reply Exceptions* 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,

A handwritten signature in black ink, appearing to read "Shawane Lee", with a long, sweeping underline.

Shawane Lee  
Counsel for PECO Energy Company

cc: Certificate of Service  
Michael A. Rizzo

SL/ab



## REPLY EXCEPTIONS

PECO Energy Company ("PECO") hereby replies to the Exceptions filed by Michael A. Rizzo ("Complainant") in the above-referenced matter on May 8, 2015. The Pennsylvania Public Utility Commission ("PUC") served PECO with the Exceptions on May 19, 2015.

On February 2, 2015, Complainant filed a formal complaint against PECO. In his formal complaint, Complainant alleged that his Electric Generation Supplier ("EGS") Public Power had tripled and quadrupled his rates and that he had been scammed. Respondent, PECO filed an Answer with New Matter on March 10, 2015, stating that PECO is not a proper party to the formal complaint and that PECO has no control over Public Power's rates. PECO also filed a Preliminary Objection to Complainant's Complaint, averring that PECO is not a party to the contract between the Complainant and Public Power and had no visibility into the agreement; therefore, PECO should be dismissed from the case. Complainant did not respond to PECO's Preliminary Objection.

On April 13, 2015, Administrative Law Judge David A. Salapa issued an Initial Decision, dismissing Complainant's Complaint, holding inter alia:

Here, the complaint does not allege any facts that could be construed as a violation by the Respondent of any statute, regulation or order which the Commission has jurisdiction to administer. Rather, the complaint alleges high rates charged by an EGS. The complaint is therefore legally insufficient as it pertains to the Respondent.

See Michael A. Rizzo. v. PECO Energy Company, C-2015-2469134, (Order entered, April 13, 2015).

In his Exceptions, Complainant states:

The Complaint I filed months ago was not against PECO or Public Power, it was against you, the PUC! Last year PECO along with Direct Energy quadrupled my rates. I filed a complaint against them. In December 2014, it happened again. While energy prices are plummeting (sic), Public Power quadrupled my rates. This is so wrong in so many

ways. This is why my complaint is with the PUC, that they let this happen again. The PUC is supposed to regulate these companies but it is like the wild west out there and the PUC is nowhere to be found!

In his Exceptions, the Complainant argues that the PUC “deliberately turned its back on these energy providers and let them do whatever they want.” The Complainant questions “why is the PUC not up the energy companies butt?” The issues the Complainant raises in his Exceptions are not directed against PECO. Even, even if they are: it is not pertinent to: (1) whether Public Power charged the Complainant high rates; and (2) whether PECO violated The Public Utility Code, Commission Order or Commission-approved tariff. PECO is not Public Power and did not charge the Complainant the rates complained about in his formal complaint. Therefore, the Complainant’s argument regarding whether the PUC is properly monitoring the energy suppliers does not challenge ALJ Salapa’s ruling that the complaint is legally insufficient against PECO, and Complainant’s argument is an irrelevant basis to overturn ALJ Salapa’s decision.

The Complainant argues that the Pennsylvania Public Utility Commission “deliberately turned its back on these energy providers and let them do whatever they want.” However, this argument does not challenge the key question of law – whether PECO was a party to the contract between the Complainant and Public Power and charged the rates the Complainant is disputing. In his Exceptions, Complainant has provided no legal justification to support his allegations. Complainant’s Exceptions do not present any grounds for overturning the Initial Decision. The Exceptions do not allege any misstatement of facts or misapplication of the law. Complainant does not provide any argument regarding why the Initial Decision was incorrect or improper. The Exceptions provide no grounds for overturning the Initial Decision whatsoever, and consist solely of policy arguments. The Exceptions, raising either irrelevant points or policy arguments,

are without any merit. Nothing in the Complainant's Exceptions warrant a reversal of ALJ Salapa's decision.

The Commission's Rules of Administrative Practice and Procedure permit the filing of Preliminary Objections. 52 Pa. Code Section 5.101. Pursuant to 52 Pa. Code §5.101(a)(4), a formal complaint may be dismissed without a hearing for legal insufficiency. The Complainant was served with a copy of PECO's Preliminary Objections with a Notice to Plead and was given an opportunity to respond. Where a question presented to the Commission is one of law, there is no necessity to hold a hearing. White Oak Borough Authority v. Pennsylvania Public Utility Commission, 183 A.2d 502, 175 Pa.Super. 114. 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 (Pa. Commw. 2003); Lehigh Valley Power Committee v. Pa. Public Utility Comm., 563 A.2d 548 (Pa. Commw. 1989); Edan Transportation Corp. v. Pa. Public Utility Comm., 623 A.2d 6 (Pa. Commw. 1993).

Here, as noted by ALJ Salapa in the Initial Decision, it is clear from the pleadings that PECO has not violated the Public Utility Code, any Commission Order or regulation or any Commission-approved Company tariff. As ALJ Salapa correctly concluded:

Giving the Complainant the opportunity to explain his position against the Respondent at a hearing would be a fruitless exercise. Sustaining the Respondent's preliminary objections and dismissing the complaint is appropriate under the circumstances.

ALJ Salapa's Initial Decision correctly applied the standard for resolving preliminary objections and assumed for decisional purposes that the factual allegations of the Complaint are

true. None of the facts asserted in Complainant's formal complaint states a case against PECO Energy and as a matter of law, PECO is not a proper party to the dispute between the Complainant and Public Power. As such, it was proper and appropriate to dismiss the Complaint based on PECO Energy's preliminary objections without holding a hearing. Accordingly, ALJ Salapa's Initial Decision should be upheld.

For the reasons set forth above, PECO respectfully requests that the Commission deny the Exceptions and issue an Order upholding the Initial Decision in its entirety.

Respectfully submitted,



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