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Highlights: PA PUC Public Session of October 28, 2011

Note: Audio from each public meeting is available on the Pennsylvania Public Utility Commission's website for approximately six months. To access the audio stream for this public meeting, please visit <http://www.puc.state.pa.us/general/PMAudio.aspx>. The public meeting calendar and agendas may be viewed at http://www.puc.state.pa.us/general/public_meeting.aspx.

At the October 28, 2011, Public Meeting of the Pennsylvania Public Utility Commission ("Commission"), the Commissioners adopted Staff's recommendations for action by a vote of 5-0 on all items listed on the Main Agenda and Carry-In Agenda, except as reflected herein below under the respective Commission agenda headings. Review of particular items addressed by the Commissioners at this Public Meeting which may be of interest are addressed under the respective Commission agenda headings below. Any relevant motions and statements are attached hereto and to the original of this Session Memo filed in the Public Meeting Agenda and Session Memo binder. The next regular Public Meeting is tentatively scheduled for **Thursday, November 10 at 10:00 a.m.** The minutes of the Public Meeting of September 22, 2011, were, by a vote of 5-0, approved without modification.

MAIN AGENDA

BUREAU OF TECHNICAL SERVICES & BUREAU OF INVESTIGATION & ENFORCEMENT (Transportation)

- All matters approved as submitted.

BUREAU OF AUDITS

- All matters approved as submitted.

BUREAU OF CONSUMER SERVICES

- Equitable Gas Co., 2111130-BCS, M-2009-2111130. Revised Universal Service and Energy Conservation Plan for 2010-2012, filed on 9/13/10, in accordance with the Commission's regulations at 52 Pa. Code sections 62.1-62.8. RECOMMENDATION: that the Commission adopt the proposed Final Order, which approves Equitable's Plan. Vote 5-0.

OFFICE OF SPECIAL ASSISTANTS

- John Peluso vs Pennsylvania Power Company, 2152607-OSA, F-2010-2152607. Formal Complaint filed on 1/14/10, alleging, inter alia, that prior to the installation of a new transformer in 4/09, he was not receiving sufficient power. Mr. Peluso requested that he be reimbursed for overcharges on his electric bill and for the shortened life of his furnace motor, appliances and light bulbs. By Initial Decision issued 11/18/10, ALJ Dunderdale sustained the Complaint and directed that Penn Power recalculate the Complainant's electric consumption and issue a corrected bill. Penn Power filed Exceptions on 12/8/10. By Opinion and Order entered 7/14/11, the Commission granted the Exceptions in part, denied them in part, reversed the Decision. and dismissed the Complaint. On 7/20/11, Mr. Peluso filed a Petition for Reconsideration. Penn Power filed an Answer to the Petition on 8/22/11. RECOMMENDATION: That the Commission adopt the proposed Opinion and Order that denies the Petition for Reconsideration. Vice Chairman Coleman's Conflict's Statement is attached. Vote 5-0.

BUREAU OF TECHNICAL UTILTY SERVICES

- Fairpoint Business Services, LLC., 2259342-FUS, A-2011-2259342. Application filed on 8/25/11, for approval to offer, render, furnish or supply telecommunication services as a Competitive Access Provider throughout PA. No protests were filed and no hearings were held. RECOMMENDATION: That the Commission approve the application consistent with the proposed Order. Vote 5-0.

LAW BUREAU

- All matters approved as submitted.

OFFICE OF ADMINISTRATIVE LAW JUDGE

- Nehemiah Thomas vs PECO Energy Co., 2187197-ALJ, C-2010-2187197. Formal Complaint filed 7/8/10, alleging PECO had overbilled him from 12/07 to 6/08 and that his electric bills should be between \$10 and \$15 a month. He asked that the Commission investigate PECO's practice. PECO filed its answer 8/2/10. Hearings were held 4/4/11 and 7/22/11. COMMISSION REVIEW: That the Commission adopt ALJ Nguyen's Initial Decision denying the complaint. Vice Chairman Coleman's Motion is attached. Vote 5-0.
- Peggy Robles vs. Service Electric Telephone, 2187832-ALJ, C-2010-2187832. Matter was postponed from the 10/14/2011 Public Meeting. Formal Complaint filed 7/13/10, alleging inadequate service. An Answer and a Preliminary Objection were filed 8/4/10. COMMISSION REVIEW: That the Commission adopt ALJ Salapa's Initial Decision sustaining the Preliminary Objection and dismissing the complaint with prejudice for lack of jurisdiction. Commissioner Cawley's Concurring Statement in result only is attached. Vote 5-0.
- Ethan Clay vs. Duquesne Light Company, 2226084-ALJ, C-2011-2226084. Formal Complaint filed on 2/14/11, alleging improper termination of commercial electric service on 12/20/10 for nonpayment of bill. Duquesne filed its answer on 3/4/11. A hearing was held on 7/19/11. COMMISSION REVIEW: That the Commission adopt Judge Corbett's Initial Decision granting the complaint, in part, to the extent it alleged Duquesne violated 52 Pa. Code §55.2(b) by failing to serve Complainant's billing address with written notice of a proposed service termination. The matter has been postponed to the 11/10/11 Public Meeting.

OFFICE OF ADMINISTRATIVE LAW JUDGE

- PECO Energy Company – Gas, 2239263-ALJ, R-2011-2239263. The matter was postponed from the 10/14/2011 Public Meeting. Pre-filing and definitive annual purchased gas cost filing, filed 4/29/11 and 5/27/11, respectively, pursuant to 52 Pa. Code §§53.64 and 53.65. This tariff supplement proposed to increase the PGC from \$5.7395/Mcf to \$6.6403/Mcf. PECO also filed a reconciliation of previously incurred expenses and revenues. On 8/16/11, a Joint Petition for Complete Settlement of Rate Investigation was filed. COMMISSION REVIEW: That the Commission adopt Judges Chestnut and Vero's Recommended Decision approving the Settlement without modification. Commissioner Witmer's and Commissioner Cawley's Statements are attached. Vote 5-0.

CARRY-IN AGENDA

OFFICE OF SPECIAL ASSISTANTS

- West Penn Power Company, 2093218-OSA, M-2009-2093218. Energy Efficiency and Conservation Plan filed on 7/1/09. By Order entered 10/23/09, the Commission, inter alia, approved the Plan, as modified, and directed West Penn to file a revised Plan within 60 days. West Penn filed its Revised Plan on 12/21/09. By Order entered 3/1/10, the Commission approved in part and rejected in part the revised Plan. On 4/29/10, West Penn submitted its Amended Plan. By Order entered 6/23/10, the Commission approved West Penn's Amended Plan. On 9/10/10, West Penn filed its Second Amended Plan. By Order entered 1/13/11, the Commission approved West Penn's Second Amended Plan as modified by the Joint Stipulation. On 8/9/11, West Penn filed Petitions. On 9/12/11, the following Parties filed Comments to the Petitions: West Penn Power Industrial Intervenors; Pennsylvania Communities Organizing for Change; the Office of Consumer Advocate; and the Pennsylvania State University. RECOMMENDATION: That the Commission adopt the proposed Interim Opinion & Order that rules on certain issues and refers the other issues to the OALJ for the scheduling of such proceedings as may be necessary and the issuance of a Recommended Decision on an expedited basis. Commissioner Witmer's Statement is attached. Vote 5-0.

BUREAU OF TECHNICAL UTILITY SERVICES

- All matters approved as submitted.

LAW BUREAU

- All matters approved as submitted.

NO ANNOUNCEMENTS

NEXT PUBLIC MEETING IS TENTATIVELY SCHEDULED FOR THURSDAY, NOVEMBER 10, 2011 AT 10:00 A.M.

* Denotes Order

PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120


John M. Peluso
v.
Pennsylvania Power Company

Public Meeting October 28, 2011
2152607-OSA
Docket No. F-2010-2152607

STATEMENT OF
VICE CHAIRMAN JOHN F. COLEMAN, JR.

Prior to joining my staff, Matthew Totino was employed by a law firm that served as counsel to a party in the above-captioned proceeding. Therefore, to avoid any appearance of impropriety arising from his previous employment, I wish to note that I have not been advised by Matthew Totino regarding this matter.

DATE: October 28, 2011



JOHN F. COLEMAN, JR., VICE CHAIRMAN

PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120

Nehemiah B. Thomas
v.
PECO Energy Company

Public Meeting October 28, 2011
2187197-ALJ
Docket No. C-2010-2187197

MOTION OF
VICE CHAIRMAN JOHN F. COLEMAN, JR.

Before the Commission for disposition is an Initial Decision (ID) dismissing the above-captioned Formal Complaint for failure to meet the burden of proof in accordance with Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), and related Commission precedent.

The Complaint alleges, in part, that Respondent overbilled him from December 2007 to June 2008. According to the record, service was first established in Complainant's name on December 18, 2007. The ID found that Complainant did not carry his burden of proof under Waldron v. Philadelphia Electric Company, 54 PA PUC 98 (1980) and its progeny. Although I agree with the ultimate outcome here, I do not agree with ID's statement of the Waldron Rule.

According to the ID, a Complainant establishes a prima facie case under Waldron by presenting the following testimony: (1) that the number of occupants in a household has not changed; (2) that the potential for energy utilization was low; and, (3) that complainant's prior billing history showed no previous abnormalities. Upon review, I do not agree that Waldron limits the establishment of a prima facie case to these three factors.

Rather, consistent with our holding in Christine Bennett v. Peoples Natural Gas Co., Docket No. C-2009-2122979 (Order entered October 13, 2010), the Waldron Rule allows a Complainant to establish a prima facie case in a "high bill" complaint by showing that the disputed bill is abnormally high when compared to prior usage patterns and his or her pattern of usage has not changed *or by providing other relevant evidence showing that the disputed bill is unreasonably high*. In evaluating a "high bill" complaint, the Commission may consider such evidence as the billing history of the account, any change in usage patterns (such as a change in the number of occupants residing in the household or potential energy utilization), *and any other relevant facts or circumstances that come to light during the proceeding*.

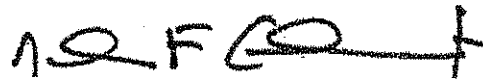
As stated in Bennett, limiting the Waldron rule to the above three factors creates the situation where a new customer is being asked to produce evidence that he or she does not possess regarding prior usage. This interpretation of Waldron is too narrow and would prevent a new customer from challenging a high bill.

Nevertheless, for the reasons stated in the ID, I agree that the Complainant has not met his burden of proof that he was over billed.

THEREFORE, I move that:

1. The Initial Decision be modified consistent with this Motion.
2. The Commission's Office of Special Assistants draft an Order consistent with this Motion.

DATE: October 28, 2011



**JOHN F. COLEMAN, JR.
VICE CHAIRMAN**

PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105-3265

Peggy Robles

PUBLIC MEETING: October 28, 2011
2187832-ALJ*

v.

Docket No. C-2010-2187832

Service Electric Telephone Company, LLC

STATEMENT OF COMMISSIONER JAMES H. CAWLEY
CONCURRING IN RESULT ONLY

Before us for final disposition is the Initial Decision Sustaining Preliminary Objections And Dismissing Complaint (ID) of Administrative Law Judge (ALJ) David A. Salapa. I agree with the result of the recommended disposition in this matter. However, I have certain concerns regarding the application of Pennsylvania's 2008 Voice-Over-Internet Protocol Freedom Act, 73 P.S. § 2251.3 *et seq.*, that has been utilized for dismissing this Complaint.

I agree with ALJ Salapa that the Complaint does not implicate "any of the exceptions set forth in 73 P.S. §2251.6," including "the provision and administration of 911 service." ID at 6. I also agree that Complainant receives retail VoIP service from Service Electric Cablevision (SECV - Service Electric Cable Services in the ID), and that this matter involved a technical issue of incoming telephone calls to the Complainant which has been corrected. ID at 2. However, the "Cablevision Digital Phone Service Agreement" (SECV Agreement) that was included with the legal pleadings filed by the Respondent in this proceeding raises certain concerns of a more generic nature.¹

I will primarily focus on selected provisions of the SECV Agreement that relate to public safety which can potentially implicate this Commission's authority under 73 P.S. § 2251.6(1)(i) as well as the authority of other Pennsylvania State Government agencies such as the Pennsylvania Emergency Management Agency. The SECV Agreement specifically states:

14. **LIMITATIONS OF 911/E911**

- a. The Services include 911/E911 functions that may differ from the 911 or E911 function furnished by other providers. As such, it [*sic*] may have certain limitations. CAREFULLY READ THE INFORMATION BELOW. CUSTOMER ACKNOWLEDGES AND ACCEPTS ANY LIMITATIONS OF 911/E911. YOU AGREE TO CONVEY THESE LIMITATIONS TO ALL PERSONS WHO MAY PLACE CALLS OVER THE SERVICES. IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT SECV.

* * *

- c. The Services use the electrical power in [*sic*] at Customer's property. If there is an electrical power outage, 911 calling may be interrupted if the battery backup in the associated MTA [Multimedia Terminal Adapter] is not installed, fails, or is exhausted after several hours. *Furthermore, calls, including calls to 911/E911,*

¹ Docket No. C-2010-2187832, Service Electric Telephone Company, Supplement to Respondent's Preliminary Objections, Attachment 1, Attachment 1, Service Electric Cablevision, Inc. Digital Phone Service Agreement Effective December 1, 2008 (SECV Agreement).

may not complete if there is a problem with network facilities, including network congestion, network/equipment/power failure, or another technical problem.

- d. **LIABILITY:** CUSTOMER ACKNOWLEDGES AND AGREES THAT SECV WILL NOT BE LIABLE FOR ANY SERVICE OUTAGE, INABILITY TO DIAL 911 USING THE SERVICES, AND/OR INABILITY TO ACCESS EMERGENCY SERVICES PERSONNEL. CUSTOMER AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS SECV AND ITS ASSOCIATED PARTIES FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, FINES, PENALTIES, COSTS, AND EXPENSES (INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY FEES) BY, OR ON BEHALF OF, CUSTOMER OR ANY THIRD PARTY OR USER OF THE SERVICES RELATING TO THE FAILURE OR OUTAGE OF THE SERVICES, INCLUDING THOSE RELATED TO 911/E911.
15. Customer understands and acknowledges that Customer will not be able to use the Services, including 911/E911, under certain circumstances, including but not limited to the following: (a) if SECV's network or facilities are not operating; or (b) if normal electrical power to the MTA is interrupted and the MTA does not have a functioning battery backup. Customer also understands and acknowledges that the performance of the battery backup is not guaranteed.

SECV Agreement, at 6-7 (emphasis in italics added).

Although this is not a litigated issue in this proceeding, I cannot readily discern whether the terms of the SECV Agreement regarding the provision of 911/E911 services and functionalities and the related limitation of liability are fully consistent with the letter and the spirit of Pennsylvania's VoIP Freedom Act. This Commission possesses the appropriate scope of statutory jurisdiction so that end-user consumers of ordinary telecommunications services have access to emergency 911/E911 calling services that enable life-saving assistance from a variety of public safety agencies. The potential failure of one or more 911/E911 calls from one or more SECV retail VoIP end-user customers may test the limits of this Commission's jurisdiction over 911/E911 matters under the VoIP Freedom Act. Perhaps, this issue may become the subject of a future generic inquiry.

For these reasons I shall concur only in the result in the final disposition of the present Complaint.

DATED: October 28, 2011



James H. Cawley
Commissioner

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

PA PUC, OSBA, OCA v. PECO
Energy Company – Gas Division
§ 1307(f)

Public Meeting: October 28, 2011
2239263-ALJ
Docket No. R-2011-2239263

STATEMENT OF COMMISSIONER JAMES H. CAWLEY

On April 29, 2011, and May 27, 2011, PECO submitted its pre-filing and definitive annual purchased gas cost filing, respectively, pursuant to 52 Pa. Code §§ 53.64 and 53.65. This tariff supplement proposed to increase the PGC from \$5.7395/Mcf to \$6.6403/Mcf. PECO also filed a reconciliation of previously incurred expenses and revenues. On August 16, 2011, a Joint Petition for Complete Settlement of Rate Investigation (Settlement) was filed.

As part of the Settlement, PECO will develop a plan that is designed to reduce Lost and Unaccounted For Gas (LUFG) by reducing or eliminating sources of LUFG. As part of its plan, PECO will identify the principal potential sources of LUFG. PECO will develop an action plan for addressing potential sources and will describe how it will track and measure its progress in reducing the identified source of LUFG. PECO's plan will be in addition to its current, on-going accelerated program to repair and replace its gas infrastructure, which was described in PECO Statement No. 5-R at page 5. A draft of the plan will be served on the Parties on or before March 31, 2012 for their review and comments. At the request of one or more Parties, the Company will meet with the Parties to discuss the contents of its plan and the Parties' comments. The plan, including modifications that the Company may make in response to comments, will be submitted with the Company's next annual Section 1307(f) filing for review and approval by the Commission. The Parties will have the opportunity to review the filed plan as part of the Company's next annual Section 1307(f) proceeding. If agreement has not previously been reached on the plan prior to filing, the Parties may submit testimony with respect to the plan, including proposing modifications thereto. In the event the Company and Parties submitting testimony do not reach agreement on the plan during the course of the Company's next annual Section 1307(f) proceeding, the Commission will resolve any disagreements and approve the plan either as filed by the Company or with such modifications as the Commission determines, after adjudication, may be required.

This provision stems from the testimony that PECO's LUFG has increased from 2.7% for the 12 months ended March 31, 2009, to 5.4% for the months ended March 31, 2011. What is surprising, given many of the Commission's expressed concerns about high LUFG rates, is that PECO did not have a formal plan to begin with. While the Settlement provisions are certainly appropriate, it is time to move from mere promises to develop plans and to be actively carrying out plans which produce results to the benefit of consumers. All utilities should have active and cost effective plans to measure and improve LUFG.

DATE: October 28, 2011


James H. Cawley, Commissioner

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120


PECO Energy Company - Gas

Public Meeting - October 28, 2011
2239263 - ALJ
Docket No. R-2011-2239263

STATEMENT OF
COMMISSIONER PAMELA A. WITMER

Prior to joining my staff, Shelby Linton-Keddie was employed by a law firm that served as counsel to a party in the above-captioned proceeding. Therefore, to avoid any impropriety arising from her previous employment, I wish to note that I have not been advised by Shelby Linton-Keddie regarding this matter.

DATE: October 28, 2011



PAMELA A. WITMER
COMMISSIONER

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120

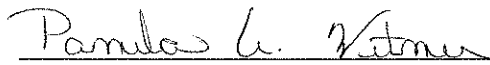
**Petition of West Penn Power Company
for Amendment of the Orders
Approving Energy Efficiency and
Conservation Plans and Petition for
Approval of its Amended Energy
Efficiency and Conservation Plans**

**Public Meeting - October 28, 2011
2093218 - OSA
Docket No. M-2009-2093218**

**STATEMENT OF
COMMISSIONER PAMELA A. WITMER**

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DATE: October 28, 2011



**PAMELA A. WITMER
COMMISSIONER**