

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CHARLES W. KINSKY

v.

PECO ENERGY COMPANY

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DOCKET NO. C-2009-2095391

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 of PECO Energy Company, within 10 days from service of this notice, and if you do not file a written response denying or correcting the enclosed New Matter within 20 days from service of this notice, the facts set forth by PECO Energy Company in the New Matter may be deemed to be true, thereby requiring no other proof. All pleadings, such as a Reply to Preliminary Objection and Reply to New Matter, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Michael S. Swerling, and where applicable, the Administrative Law Judge presiding over the issue.

File with:

James J. McNulty, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

With a copy to:

Ward L. Smith, Esq.
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103

Dated at Philadelphia, PA, April 6, 2009



Ward L. Smith
Counsel for PECO Energy Company
2301 Market Street S-23
Philadelphia, PA 19101-8699
215-841-6863
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PRELIMINARY OBJECTION OF RESPONDENT, PECO ENERGY COMPANY

Respondent, PECO Energy Company (“PECO Energy”), pursuant to 52 Pa. Code § 5.101(a)(3) respectfully petitions this Honorable Commission to dismiss this Complaint inasmuch as it requests damages for the following reasons:

1. This Complaint should be dismissed inasmuch as it is request for damages pursuant to 52 Pa. Code § 5.101(a)(1) because the Commission lacks jurisdiction to award damages.
2. Complainant filed a Formal Complaint with the Pennsylvania Public Utility Commission on March 9, 2009 wherein Complainant requested compensation for claimed property devaluation related to a PECO substation near his home.
3. PECO is filing an Answer and New Matter in conjunction with this Preliminary Objection.
4. To the extent that Complainant is seeking compensation for the alleged property devaluation, that request should be denied.
5. The Public Utility Commission is without the power or jurisdiction to award damages to Complainant and therefore the Complaint is insufficient as to substance because it fails to state a claim upon which the Commission can grant relief. Therefore, since the Commission lacks the jurisdiction to award damages and the Complaint is insufficient in as

much as it requests monetary relief, the part of the Complaint seeking damages should be dismissed pursuant to 52 Pa. Code § 5.101(a)(1).

WHEREFORE, PECO Energy Company respectfully requests that your Honorable Commission dismiss the instant Complaint inasmuch as it is request for damages pursuant to 52 Pa. Code § 5.101(a)(1) because the Commission lacks jurisdiction to award damages.

Respectfully Submitted,



Ward L. Smith
Counsel for PECO Energy Company
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VERIFICATION

I, Ward L. Smith, hereby declare that I am an attorney representing 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.



Ward L. Smith

Date: April 6, 2009

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of PECO Energy Company's Motion to Dismiss in the above matter upon all interested parties by mailing a copy thereof Certified mail, properly addressed and postage prepaid to:

Charles W. Kinsky
3220 Fisher Road
Lansdale, PA 19446

Dated at Philadelphia, Pennsylvania, April 6, 2009.



Ward L. Smith
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