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April 17, 2012

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

RE: William Byrne v. PECO Energy Company
Docket No. C-2012-2295519

Dear Secretary Chiavetta:

Enclosed for filing on behalf of PECO is an original of its Preliminary Objections to the Complaint filed in this matter. This document has been e-filed at the Pennsylvania Public Utility Commission's website. A copy has been served on the Complainant in accordance with the attached Certificate of Service.

If you have any questions, please feel free to contact me.

Best Regards,

STEVENS & LEE

Michael A. Gruin / KDD
Michael A. Gruin

Encl.

cc: Certificate of Service

Philadelphia • Reading • Valley Forge • Lehigh Valley • Harrisburg • Lancaster • Scranton
Wilkes-Barre • Princeton • Cherry Hill • New York • Wilmington

A PROFESSIONAL CORPORATION

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

WILLIAM BYRNE
Complainant

v.

PECO ENERGY COMPANY
Respondent

Docket No. C-2012-2295519

NOTICE TO PLEAD

To: William Byrne

You are hereby notified to file a written response to the attached Preliminary Objections of PECO Energy Company within ten (10) days from the date of service of this notice. If you do not file a written response denying or correcting the enclosed Preliminary Objections within ten (10) days of service, the facts set forth PECO Energy Company may be deemed to be true, thereby requiring no other proof, and judgment may be entered against you. All pleadings, such as responses to Preliminary Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission:

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

You must also serve a copy of your response on the undersigned counsel for PECO Energy Company. Failure to respond to these Preliminary Objections could result in the dismissal of your case.

STEVENS & LEE



Michael A. Gruin, (I.D. No. 78625)
17 N. 2nd St., 16th Fl
Harrisburg, PA 17101
Tel. (717) 255-7365
Fax (610) 988-0852
COUNSEL FOR PECO

DATE: April 17, 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|---------------------|---|---------------------------|
| WILLIAM BYRNE | : | |
| Complainant | : | |
| | : | |
| v. | : | Docket No. C-2012-2295519 |
| | : | |
| PECO ENERGY COMPANY | : | |
| Respondent | : | |

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

AND NOW, PECO Energy Company (“Respondent” or “PECO”), by and through its attorneys Stevens & Lee, P.C., hereby files these Preliminary Objections requesting partial dismissal of the Complaint of William Byrne (hereinafter “Complainant”). As set forth below, the Complaint should be dismissed pursuant to 52 Pa. Code § 5.101(a)(4) because it is legally insufficient in that some of the relief sought by the Complaint cannot be granted by the Commission as a matter of law.

I. INTRODUCTION

1. On March 28, 2012, PECO was served with a notice of the Formal Complaint (“Complaint”) filed by the Complainant against PECO. A copy of the Formal Complaint is attached hereto as Exhibit 1 and incorporated herein by reference.

2. The Commission’s Rules of Administrative Practice and Procedure permit the filing of Preliminary Objections. See, 52 Pa. Code §5.101. Pursuant to 52 Pa. Code § 5.101(a)(4), a formal complaint may be dismissed for legal insufficiency.

3. The PECO’s Preliminary Objections request partial dismissal of the Formal Complaint for legal insufficiency under 52 Pa. Code § 5.101(a)(4). One of the reliefs

requested by the Complainant is monetary compensation for the alleged devaluation of Complainant's property as a result of the placement of certain PECO equipment in proximity to the Complainant's property. To the extent that the Complaint seeks monetary damages, the Commission is without jurisdiction to award such damages. It is well settled that the Commission does not have the power or jurisdiction to award monetary damages for the actions of a utility company. See *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1977).

4. PECO is also filing an Answer and New Matter in response to the Complaint, simultaneously with the filing of these Preliminary Objections.

II. Preliminary Objection under 52 Pa. Code § 5.101(a)(4) – Legal Insufficiency

5. Pursuant to 52 Pa. Code § 5.101(a)(4), a formal complaint may be dismissed for legal insufficiency. 52 Pa.Code § 5.101(a)(4) is comparable to Pa.R.C.P. 1028(a)(4), “legal insufficiency of a pleading (demurrer).”

6. The principles applied in ruling upon a demurrer are well-settled:

[W]hen ruling on preliminary objections, [the] Court considers as true all well-pleaded facts which are material and relevant. Specifically, a preliminary objection in the nature of a demurrer is deemed to admit all well-pleaded facts and all inferences reasonably deduced therefrom. In determining whether to sustain a demurrer the court need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. A demurrer will not be sustained unless the face of the complaint shows that the law will not permit recovery, and any doubts should be resolved against sustaining the demurrer. *Giffin v. Chronister*, 151 Pa.Cmwlth. 286, 290, 616 A.2d 1070, 1072 (1992) (citations omitted).

7. The relief requested by the Complaint in this case includes a request to be compensated for the alleged devaluation of his property. This portion of the Complaint is legally insufficient and fails to state a claim for which relief can be granted.

8. It is well settled that the Commission does not have the power or jurisdiction to award monetary damages for the actions of a utility company. See *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1977). As such, it is evident that one of the reliefs requested by the Complainant (compensation for alleged decrease in property value) is beyond the power of the Commission to Order. Therefore, the Complaint is legally insufficient to the extent that it seeks compensation, and the Counts of the Complaint which seek such relief should be dismissed.

REQUEST FOR RELIEF

WHEREFORE, for all of the reasons stated herein, Respondent Pennsylvania-American Water Company respectfully requests that your Honorable Commission grant its Preliminary Objections and dismiss the Counts of the Formal Complaint which seek compensation and punitive damages from the Company, pursuant to 52 Pa. Code § 5.101(a)(4) and the well-settled authority which holds that the Commission does not have the power to order or award monetary damages.

Respectfully submitted,

STEVENS & LEE



Michael A. Gruin, (I.D. No. 78625)
17 N. 2nd St., 16th Fl
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215-751-2890/610-371-7978 (fax)
dpc@stevenslee.com
COUNSEL FOR PECO

DATE: April 17, 2012

EXHIBIT 1

Zaketa, Anita D:(BSC)

From: eServe@pa.gov
Sent: Wednesday, March 28, 2012 12:41 PM
To: Smith, Ward L.:(BSC)
Cc: Zaketa, Anita D:(BSC)
Subject: PA PUC eServe Notice
Importance: High

Dear WARD L SMITH,

A(n) **Formal Complaint** has been served in this proceeding. This document is docketed as **C-2012-2295519**. You may view this document at [Formal Complaint](#)

You are receiving this email because you are a(n) **Respondent** for this case and have agreed to be served electronically. By selecting electronic service (eService), you have agreed that this notification constitutes valid service. Electronic service of any and all documents will be in place of paper service.

Thank You,
Public Utility Commission
Commonwealth of Pennsylvania

** Please do not respond to this automatically generated email.*

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint Form

Please print in ink or type.

1. CUSTOMER (COMPLAINANT) INFORMATION

Your name, mailing address, county, telephone number, utility account number and service address:

Name William Byrne

Street/P.O. Box 505 Whitford Rd. Apt #

City Exton State Pa Zip 19341

County Chester

Daytime Telephone Number Where We Can Contact You: (610) 363 2257

E-mail Address (optional):

Utility Account Number (from your bill) 945 680 1505

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

Name

Street/P.O. Box

City State Zip

2. FULL NAME OF UTILITY COMPANY (RESPONDENT):

Gregory M Cary Pecco

3. TYPE OF UTILITY (check one)

[X] ELECTRIC

[] GAS

[] WATER

[] TELEPHONE

(local, long distance)

[] STEAM HEAT

[] WASTE WATER

[] MOTOR CARRIER

(e.g., taxi, moving company, limousine)

RECEIVED 2012 MAR 23 AM 9:58 PA P.U.C. SECRETARY'S BUREAU

4. COMPLAINT (check one)

A. In general, what is your complaint?

- I want to oppose the company's proposed rate increase.
- There are incorrect charges on my bill.
- There is a reliability, safety or quality problem with my utility service.
- I received a notice that my utility service is being terminated.
- I would like a payment agreement.
- Other (explain).

B. State the facts of your complaint.

Include any specific dates, times or places that may be important. If the complaint is about a bill, tell us about any charges that you believe are not correct. Use additional paper if you need more space. Provide copies of all relevant documents you believe will support your complaint.

DURING the month of August to November of 2011, Peco crews erected a 100' communication pole with a gas station look alike thing in line of sight next to my front yard. Then they came along and put a dog pen around it. I've been living with this eye soak for 6 months. Now they are going to put trees around it to make it go away. They had no regard for this property and have devalued this property. I need to be compensated on this illegal act.

5. RELIEF

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

I would like the poll taken out or I want to be compensated for devaluing my property.

Relocate poll & and accessories to a different part of the property.

This could have been done but they couldnt have been bothered.

6. PROTECTION FROM ABUSE

Answer the following question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility AND your complaint is about a billing problem, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

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

YES

NO

7. PRIOR UTILITY CONTACT

Answer the following question only if you are a residential customer and your complaint is against an electric distribution utility, natural gas distribution utility or a water distribution utility.

Have you spoken to a utility company representative about this complaint?

YES (includes appeals of BCS determinations)

NO

If you tried to, but could not speak to a utility company representative about your complaint, please explain why.

8. LEGAL REPRESENTATION (IF ANY)

If you are represented by a lawyer in this matter you must provide your lawyer's name, address, telephone number, and e-mail address, if known.

Lawyer's Name Self

Street _____

City _____ State _____ Zip _____

Area Code/Phone Number _____

E-mail Address (If Known) _____

9. VERIFICATION AND SIGNATURE

You must print or type your name below on the line provided for the verification paragraph, and you must sign and date (in ink) this form on the lines provided.

Verification:

I William F Byrne, 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).

William F Byrne (Signature) 3/15/2012 (Date)

Regional External Affairs Manager Chester County
Title of authorized employee or officer MR. COOK

10. FILING

Please return the completed form 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 |
|---|--|

Facsimiles and/or electronic filings of the complaint 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 complaint for your records.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

WILLIAM BYRNE
Complainant

v.

PECO ENERGY COMPANY
Respondent

:
:
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:

Docket No. C-2012-2295519

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing Preliminary Objections upon the party listed below, in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party).

VIA First Class U.S. Mail

William Byrne
505 Whitford Rd.
Exton, PA 19341



Michael A. Gruin

DATED: April 17, 2012