

Legal Department

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June 4, 2012

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

Re: Alexandrea Semrau v. PECO Energy Company
PUC Docket No. C-2012-2306879

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are the following documents and copies in the matter referenced above.

<u> X </u>	Answer (1 original)
—	Answer & New Matter (1 original)
--	Motion to Dismiss (original)
—	Motion for Judgment on the Pleadings (1 original)
<u> X </u>	Preliminary Objection (1 original)
—	Exceptions (1 original)
—	Reply Exceptions (1 original)
—	Main Brief (1 original)
—	Reply Petition (1 original)

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,



Shawane Lee
Counsel for PECO Energy Company

SL/adz

Enc.

Scheduling Recommendation: Call of the docket ___ Non Call of the docket X

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ALEXANDREA SEMRAU	:	
Complainant	:	
	:	
v.	:	DOCKET NO. C-2012-2306879
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

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 within 10 days from service of this notice, a ruling may be entered against you. Your response must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Shawane L. Lee, and where applicable, the Administrative Law Judge presiding over the issue.

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

With a copy to:
Shawane L. Lee
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103

Dated at Philadelphia, PA, June 4, 2012



Shawane L. Lee
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103
(215) 841-6481
Shawane.Lee@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ALEXANDREA SEMRAU	:	
Complainant	:	
	:	
v.	:	DOCKET NO. C-2012-2306879
	:	
PECO ENERGY COMPANY	:	
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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)(4) respectfully petitions this Honorable Commission to dismiss the instant Complaint as legally insufficient.

1. On May 29, 2012, PECO Energy was served with a formal complaint filed by Alexandra Semrau (hereafter “Complainant”).

2. In her formal complaint, the Complainant disputes a utility pole located at or near her property at 1030 Kings Highway, Coatesville, PA that she alleges caused motorists to hit trees. The Complainant alleges that the PECO Energy utility pole is preventing the Township of Coatesville to erect a guard rail in that area, and that PECO Energy owes her for \$3,000 in damages for money she spent cleaning up the tree debris.

3. The Complainant also alleges in her Complaint that despite public records indicating the contrary, she is the owner of 1030 Kings Highway, Coatesville, and no Sheriff’s Sale has taken place. Consequently, PECO Energy has an obligation to “deal with [her]” regarding any plans the company has to fix the equipment on her property.

4. PECO Energy simultaneously filed an Answer and the instant Preliminary Objection.

5. Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil procedure.¹

6. In deciding preliminary objections, the Public Utility Commission must determine, based on the factual pleadings of the petitioner, if relief or recovery is possible.²

7. A complaint must be able to recover under the law to survive a preliminary objection.³

8. All of the non-moving party's averments must be taken as true for the sake of deciding the preliminary objection.⁴

9. The court does not, however, need to accept, "unwarranted inferences from facts, argumentative allegations, or expressions of opinions."⁵

10. A hearing is required only when there is a disputed question of fact, and is not required to resolve questions of law. *Dee-Dee Cab, Inc. v. Pa.Pub. Util. Comm'n*, 817 A.2nd 593 (Pa. Commw. Ct. 2003), petition for allowance of appeal denied, 836 A.2d 123 (Pa. 2003).

11. Here, the facts in this matter include the following:

- a. The Complainant alleges that a PECO Energy utility pole prevented the Coatesville Township authorities from erecting a guardrail at or near her property.

¹ *Equitable Small Transportation Interveners v. Equitable Gas Co.*, 1994 Pa.PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994)

² 2006 Pa. PUC Lexis 111, *7.

³ *Milliner v. Enck*, 709 A.2d 417, 418 (Pa. Super. Ct. 1998) ("preliminary objection should be sustained only where it appears with certainty that, upon the facts averred, the law will not allow the plaintiff to recover").

⁴ *Id.* at 7-8.

⁵ *Feingold v. McNulty*, 2009 Phila. Ct. Com. Pl LEXIS 167, *3.

- b. The Complainant alleges that the PECO Energy utility pole caused motorists to hit trees at or near her property, causing debris on her property.
- c. The Complainant avers that she is the rightful property owner of 1030 Kings Highway, Coatesville, PA; and therefore, PECO Energy must deal with her regarding the utility pole issue.
- d. Complainant has alleged that PECO Energy owes her \$3,000.00 for damages arising from costs she incurred to remove debris from her property.

12. In effect, Complainant is requesting that the Commission award her damages for the costs she incurred to remove debris from her property.

13. Indeed, PECO Energy submitted a claim form to the Complainant on March 27, 2012 for this purpose.

14. Assuming all of the Complainant's allegations are true, the Complainant is not entitled to relief under the law.

15. The Commission lacks jurisdiction to award damages pursuant to 52 Pa. Code § 5.101(a)(1).

16. The purported infractions in the Complainant's Complaint relate to PECO Energy's alleged responsibility to pay for damages arising from a utility pole that the Complainant wanted to be moved.

17. The utility pole at issue was removed under work order #07462844 on May 18, 2012.

18. Thus, the only issue in Complainant's Complaint is compensation for the debris she had to remove as the result of the utility pole.

19. Because the sole basis of Complainant's Complaint is to seek compensation for the alleged damages arising from the utility pole, her request should be denied pursuant to 52 Pa. Code § 5.101(a)(1).

REQUEST FOR RELIEF

WHEREFORE, for all of the reasons stated herein, PECO respectfully requests that your Honorable Commission dismiss the instant complaint with prejudice.

Respectfully submitted,



Shawane L. Lee
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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ALEXANDREA SEMRAU	:	
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PECO ENERGY COMPANY	:	
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VERIFICATION

I, Shawane L. Lee, hereby declare that I am counsel for 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.

Date: June 4, 2012



Shawane L. Lee

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

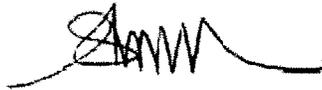
ALEXANDREA SEMRAU	:	
Complainant	:	
	:	
v.	:	DOCKET NO. C-2012-2306879
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

CERTIFICATE OF SERVICE

I, Shawane L. Lee, hereby certify that I have this day served a copy of PECO Energy Company's Answer in the above matter upon all interested parties by mailing a copy, properly addressed and postage prepaid to:

Alexandria Semrau
1030 West Kings Highway
Coatesville, PA 19320

Dated at Philadelphia, Pennsylvania, June 4, 2012



Shawane L. Lee
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