

Timothy and Denise Donahue
6035 Lower Mountain Road
New Hope, PA 18938

RECEIVED

April 14, 2014

APR 14 2014

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

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**RE: Timothy and Denise Donahue v. PECO Energy Company
PUC Docket No.: C-2014-2409977**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is the following document in the matter referenced above.

Answer to Preliminary Objections

A copy of the above document has been sent to Shawane Lee, Counsel for PECO Energy, via USPS certified mail as well as email today.

Thank you in advance for your time and consideration.

Sincerely,



Denise Donahue

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Timothy and Denise Donahue,

v.

PECO Energy Company

:
:
:
:
:

Docket No. C-2014-2409977

RECEIVED

Answer To Preliminary Objections

APR 14 2014

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Timothy and Denise Donahue (the Complainants) submit this Answer to the Preliminary Objection of Respondent, PECO Energy Company (PECO). In its Preliminary Objection, PECO requested that the Pennsylvania Public Utility Commission (Commission) dismiss the Formal Complaint (Complaint) filed by the Complainants. For the reasons detailed below, the Complainants request that the PECO's Preliminary Objections be dismissed.

I. Introduction

On February 20, 2014, the Complainants filed with the Commission a Formal Complaint due to three severe power surges that the Complainants experienced on October 29, 2011, July 28, 2012 and February 4, 2014 which caused more than \$30,000 in damage to their home. The Complainants requested: (1) that the Company provide safe and reliable service; (2) that the Company respond to numerous complaints and perform whatever work is necessary to stop power surges from damaging property and putting residents in danger of "dying in a fire;" and (3) reimbursement for repair costs of more than \$30,000 in damages.

On April 1, 2014, PECO served by first class mail on the Complainants an Answer and Preliminary Objection. PECO specifically argues that the Commission lacks jurisdiction for reimbursement of damages to property and therefore the instant complaint should be dismissed with prejudice. Objections at ¶¶ 13-17.

II. Answer

As part of its Preliminary Objection, PECO requests that the Commission enter an order dismissing the Formal Complaint with prejudice for lack of jurisdiction. The Pennsylvania Supreme Court has held that cases should be dismissed on preliminary motions only “where the dismissal is clearly warranted and free from doubt.” Interstate Traveler Services, Inc. v. Comm. Dept. of Env'tl. Resources, 406 A.2d 1020 (Pa. 1979), citing Baker v. Brennane, 213 A.2d 362 (Pa. 1965). In making such a determination, the decision maker must assume the truth of all facts averred by a complaint. Feingold v. Bell of Pa., 383 A.2d 791 (Pa. 1977). In addition, any inferences fairly deducible from the facts must be accepted for purposes of the disposition of the motion. County of Allegheny v. Comm., 490 A.2d 4042 (Pa. 1985); Comm. v. Bell Telephone of Pa., 551 A.2d 602 (Pa. Commw. 1988). As is explained below, the Complainants allege facts in the Formal Complaint, if proven at hearing, sufficient to support a finding that the Commission has jurisdiction over this proceeding. The Complainants raise a fundamental issue that is within the Commission's jurisdiction - has PECO provided safe and adequate service to the Complainants pursuant to Section 1501 of the Public Utility Code? Accordingly, the Complainants request that the Commission dismiss PECO's Preliminary Objection.

PECO's argument that the Commission lacks jurisdiction over the central issues raised in the Formal Complaint is without merit. The central issues raised in the Complaint are not

regarding the \$30,000 in damages, but instead are related to repair of the safety issues caused by power surges on three separate occasions. The Preliminary Objection states that because the Complaint alleges damages that therefore the Commission lacks the ability to address the Complainants' Formal Complaint and such a complaint may be dismissed if a hearing is not necessary to the public interest. Objections at ¶¶ 10, 12-17. The Preliminary Objection ignores that the Complainants have also requested the Commission order PECO to provide safe and reliable service and to make whatever repairs are necessary in order to prevent further damage to the Complainants or their home. Section 1501 of the Public Utility Code specifically provides:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission. Subject to the provisions of this part and the regulations or orders of the commission, every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service.

66 Pa.C.S. § 1501 (emphasis added). In counts one and two of the requested relief, the Complainants have requested that the Commission order PECO to make such repairs as are necessary to provide safe and reliable service in a reasonably continuous manner. A history of three power surges which caused over \$30,000 in damages to the home and which required the fire department to be called, is a safety issue that is exclusively within the jurisdiction of the Commission.

III. Conclusion

WHEREFORE, the Complainants' respectfully request that PECO's Preliminary Objection should be dismissed because the Commission does, in fact, have jurisdiction over the Formal Complaint.

Respectfully submitted,



Timothy and Denise Donahue

DATE: April 15, 2014

CERTIFIED MAIL™

From:

Donahue
6035 Lw/ Mountain Rd
New Hope PA 18938



7014 0510 0000 2703 7854



1000

17120

U.S. POSTAGE
PAID
NEW HOPE, PA
18938
APR 14, 14
AMOUNT

\$6.70
00010515-04

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

APR 14 2014

RECEIVED

To: Rosemary Chiavetta, Secretary
PA PUC
Commonwealth Keystone Bldg
400 North St. 2nd Floor
Harrisburg, PA 17120

Ready **P**ost.

Document Mailer

RETURN RECEIPT
REQUESTED