**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Gregory Kennedy :

:

v. : C-2015-2471718

:

PECO Energy Company :

**INITIAL DECISION**

Before

Susan D. Colwell

Administrative Law Judge

INTRODUCTION

This initial decision grants the Respondent’s Preliminary Objections and dismisses the formal complaint because the Commission does not have jurisdiction over interpreting negotiable instruments under the Uniform Commercial Code, and because the Commission has previously ruled that Respondent’s accepted methods of payment policy is not unreasonable and therefore not in violation of Section 1501.

HISTORY OF THE PROCEEDING

On February 23, 2015, Gregory Kennedy (Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent). Complainant alleged that PECO was threatening to shut off service or had already shut off service. Complainant also alleged that PECO was providing unreasonable customer service by refusing to accept any form of payment other than cash, check, or credit cards; a policy which Complainant asserts is in violation UCC 3-603 Tender of Payment, and 31 USC 5118 The Gold Clause and Consent to Sue. Complainant states that he attempted to discharge his debt pursuant to Public Law 73-10 by submitting a negotiable instrument in the form of a promissory note to PECO, and that PECO rejected the promissory note as a form of payment for his bill. Complainant alleges that he spoke to PECO representatives via telephone and tried to explain to them that his promissory notes are negotiable instruments under the Uniform Commercial Code (UCC), under which he alleges PECO is governed, but that PECO’s representatives still refused to accept his promissory note as payment. Complainant states that his case was heard in Municipal Court (no location, date, or docket number provided) wherein PECO successfully had the case dismissed on Summary Judgment.[[1]](#footnote-1) Complainant requests that the Pennsylvania Public Utility Commission (Commission) investigates what he alleges are PECO’s willful violations of law and to direct PECO to accept his promissory note as payment for his bill.

On March 20, 2015, PECO filed its Answer to the Complaint. Attached to the Answer are the Complainant’s billing history and a copy of a Bureau of Consumer Services (BCS) Informal Decision on the matter. PECO avers that it accepts cash, certified checks, money orders, valid bank checks, personal checks, and a number of credit cards for payment of utility accounts. PECO also states that it will not apply as credit to any customer account non-negotiable documents, sight drafts, 1099 Forms, Acceptance for Value, UCC Certified Tender of Payments, Promissory Notes or other UCC documents. PECO states that Complainant has been sending in documents he claims are payments toward his account. These documents, which were refused by PECO as payment of Complainant’s bill, include forms 1099A and 1099C, along with a bill of exchange and promissory notes. PECO notes that the Complainant is currently enrolled in PECO’s Customer Assistance Program (CAP) and has a balance totaling $4,860.80.[[2]](#footnote-2) PECO states that unless Complainant pays his bill with any of the aforementioned accepted methods of payment, his account will go into the collections process and his service will be terminated. PECO admits that it had Complainant’s Municipal Court proceeding dismissed on Summary Judgment. PECO cites a previous Commission decision[[3]](#footnote-3) and seeks dismissal of the Complaint for legal insufficiency.

On March 20, 2015, PECO also filed its Preliminary Objections (POs) to the Complaint, properly accompanied by a Notice to Plead. PECO’s POs assert that Respondent is entitled to judgment as a matter of law and seek for the Commission to dismiss the Complaint on the grounds that it is legally insufficient. PECO again cites *James Coppedge v. PECO,* Docket No. F-2014-2406180 (Order entered July 29, 2014), as controlling, along with a prior decision addressing the Commission’s lack of jurisdiction to interpret the UCC to determine the negotiability of instruments.[[4]](#footnote-4) Copies of both decisions are attached to the POs.

On March 30, 2015, the matter was assigned to me by Motion Judge Assignment Notice.

More than ten days has run since the filing of the Preliminary Objections, and no responsive pleading has been filed. 52 Pa. Code § 5.101(f)(1).

The matter is ripe for disposition.

FINDINGS OF FACT

1. Complainant is Gregory Kennedy of Philadelphia, PA.

2. Respondent is PECO Energy Company, a jurisdictional public utility company providing electric service in the Commonwealth of Pennsylvania.

3. On February 23, 2015, Complainant filed a formal Complaint against Respondent. Complainant alleged that PECO was threatening to shut off service or already shut off service. Complainant also alleged that PECO refused to accept any form of payment other than cash, check, or credit cards, which he believes to be in violation of the Uniform Commercial Code (UCC).

4. The Complaint seeks for the Commission to investigate Respondent’s alleged violations of the UCC, and to direct Respondent to accept Complainant’s promissory note as valid payment for his bill.

5. On March 20, 2015, Respondent filed its Answer, as well as Preliminary Objections to the formal Complaint.

6. No responsive pleading was filed to the Answer or to the Preliminary Objections.

DISCUSSION

Complainant seeks an alternative form of payment for his utility bill, which PECO refuses to accept. Respondent’s POs seek to dismiss the case because there is no issue of material fact and because the Commission has no jurisdiction to interpret the negotiability of instruments under the Uniform Commercial Code.

Commission preliminary objection practice is similar to Pennsylvania civil practice. *Equitable Small Transportation Interveners v. Equitable Gas Company,* 1994 Pa. PUC LEXIS 69, PUC Docket No. C-000935435 (July 18, 1994). When considering the preliminary objection, the Commission must determine “whether the law says with certainty, based on well-pleaded factual averments . . . that no recovery or relief is possible. *P. J. S. v. Pa. State Ethics Commission,* 669 A.2d 1105 (Pa.Cmwlth. 1996). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward,* 802 A.2d 705 (Pa.Cmwlth. 2002).” *Dept. of Auditor General, et al. v. State Employees’ Retirement System, et al.,* 836 A.2d 1053, 1064 (Pa.Cmwlth. 2003).

The rules regarding preliminary objections are as follows:

**§ 5.101. Preliminary objections.**

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

(1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.

(2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.

(3) Insufficient specificity of a pleading.

(4) Legal insufficiency of a pleading.

(5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.

(6) Pendency of a prior proceeding or agreement for alternative

dispute resolution.

(7) Standing of a party to participate in the proceeding.

\* \* \*

52 Pa.Code § 5.101(a).

In reviewing preliminary objections, only the facts in the Complaint can be presumed to be true in order to determine whether recovery is possible. In order for Complainant to prevail ultimately, there must be a statute, regulation or order which the Commission is authorized to enforce. The Complaint must set forth anything done or omitted to be done by the utility company in violation of any law which the Commission has jurisdiction to administer. 66 Pa.C.S. § 701; 52 Pa.Code § 5.21(a).

In its Answer and POs, Respondent raised the issue of the Commission’s lack of jurisdiction to interpret the negotiability of instruments under the UCC and asserted that it was entitled to judgment as a matter of law.

I will view the factual averments in the Complaint in this case as true for purposes of disposing of the POs. The factual averments are that: (1) Respondent is threatening to shut off or has already shut off Complainant’s service; and (2) Respondent is providing unreasonable customer service by refusing to accept Complainant’s proffered promissory note as payment. The Complaint requests that the Commission investigate Respondent’s alleged violation of the UCC, and direct PECO to accept his promissory note as payment for his bill.

PECO points out in that many of the issues present in this Complaint have been addressed in *James Coppedge v. PECO Energy Company*, Docket No. F-2014-2406180.

All Commission-regulated public utilities, including PECO, are statutorily required to provide reasonable customer service. 66 Pa.C.S. § 1501. The Commonwealth Court has cautioned that the Commission may not sustain a complaint pursuant to Section 1501 unless it finds that a utility has violated a duty to render reasonable and reliable service. *West Penn Power Co. v. Pa. Pub. Util. Comm’n*, 478 A.2d 947, 949 (Pa.Cmwlth. 1984). The test to determine the adequacy of both a utility’s service and facilities and the adequacy of a utility's response to customer service complaints is that of reasonableness. *Scherich v. Verizon Pennsylvania Inc.*, PUC Docket Nos. C-2008-2061244, C-2008-2068818 (Final Order January 28, 2010).

The Commission’s regulations do not specifically address the forms of payment which a utility is required to accept from a customer as payment for services rendered. However, the regulations relating to termination note that a customer may avoid termination if “payment in full is tendered in *any reasonable manner*…” The regulation also notes that payment “in any reasonable manner includes payment by personal check . . .” 52 Pa.Code § 56.94 (emphasis added). PECO’s tariff also does not appear to directly define its view of payment in “any reasonable manner” except to note that customers who are deemed to not be “creditworthy” are required to make payment “by means of a certified, cashier’s, teller’s or bank check, or by wire transfer, or in cash or other immediately available funds.” PECO Tariff Rule 17.3.

The Complainant contends that PECO should accept his proffered promissory note as payment for electricity service. He claims that this mode of payment is an acceptable “negotiable instrument” as defined by the UCC. In his view, PECO is unlawfully demanding a specific form of payment.

The Commission must act within and cannot exceed its jurisdiction. *Behrend v. Bell Telephone Co.,* 363 A.2d 1152 (Pa. Super 1976). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 427 Pa. 581, 235 A.2d 602 (1967).

The Commission has held that it does not have jurisdiction to interpret the Uniform Commercial Code to determine the negotiability of instruments. *Alkhatib v. PECO Energy Company,* PUC Docket No. C-2011-2242125 (Opinion and Order entered January 12, 2012); *Coppedge v. PECO Energy Company,* PUC Docket No. F-2009-2135893 (Opinion and Order entered August 3, 2010).

Furthermore, the Commission has held that PECO’s policy regarding acceptable methods of payment is not unreasonable:

PECO has in the past advised Mr. Coppedge that it will not accept his proposed methods of payment and that it will only accept cash, certified checks, commercial money orders, validated checks, credit cards, and debit cards. Tr. At 29, 40-41. *We do not find that PECO’s limitation to the foregoing means to satisfy his debts for the Company’s provision of utility service is unreasonable.*Mr. Coppedge’s Complaint, therefore, must be dismissed.

*James Coppedge v. PECO Energy Company*, Docket No. F-2014-2405180 (Page 12, Opinion and Order, entered January 29, 2015) (Emphasis added).

Therefore, PECO's action in refusing to accept Complainant’s promissory note as payment for his bill does not violate a statute, regulation, or order of the Commission necessary for the adjudication of this matter.

Since the Commission lacks jurisdiction to grant the remedy sought, and because there is no issue of material fact, Respondent's POs are granted.

Section 703 of the Public Utility Code, [66 Pa. C.S. § 703(b)](https://www.lexis.com/research/buttonTFLink?_m=5c1f6c91e3fbd90883be71e98c39e5d2&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2011%20Pa.%20PUC%20LEXIS%2086%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=32&_butInline=1&_butinfo=66%20PACS%20703&_fmtstr=FULL&docnum=2&_startdoc=1&wchp=dGLbVzk-zSkAb&_md5=eab35ee1fef0692d0813c92822238303), provides that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. *See also*, [52 Pa. Code § 5.21(d)](https://www.lexis.com/research/buttonTFLink?_m=5c1f6c91e3fbd90883be71e98c39e5d2&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2011%20Pa.%20PUC%20LEXIS%2086%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=33&_butInline=1&_butinfo=52%20PA%20CODE%205.21&_fmtstr=FULL&docnum=2&_startdoc=1&wchp=dGLbVzk-zSkAb&_md5=773e91d3bde6ffde7bb028cdfb787527). The public interest does not require a hearing in this case. The Commission does not have the requisite subject matter jurisdiction to determine the negotiability of Complainant's alleged tender of payments. A hearing in this case would be a fruitless exercise and therefore is not necessary or in the public interest.

CONCLUSIONS OF LAW

1. The Complaint must set forth anything done or omitted to be done by the utility company in violation of any law which the Commission has jurisdiction to administer. 66 Pa.C.S. § 701; 52 Pa.Code § 5.21(a).

2. All Commission-regulated public utilities are statutorily required to provide reasonable customer service. 66 Pa.C.S. § 1501.

3. The test to determine the adequacy of a utility’s service and facilities is that of reasonableness. *Scherich v. Verizon Pennsylvania Inc.*, PUC Docket Nos. C-2008-2061244, C-2008-2068818 (Final Order January 28, 2010).

4. The Commission must act within and cannot exceed its jurisdiction. *Behrend v. Bell Telephone Co.,* 363 A.2d 1152 (Pa. Super 1976). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 427 Pa. 581, 235 A.2d 602 (1967).

5. The Commission does not have jurisdiction to interpret the Uniform Commercial Code to determine the negotiability of instruments. *Alkhatib v. PECO Energy Company,* PUC Docket No. C-2011-2242125 (Opinion and Order entered January 12, 2012); *Coppedge v. PECO Energy Company,* PUC Docket No. F-2009-2135893 (Opinion and Order entered August 3, 2010).

6. The Commission has held that PECO Energy Company’s acceptable methods of payment policy is not unreasonable. *James Coppedge v. PECO Energy Company*, Docket No. F-2014-2405180 (Page 12, Opinion and Order entered January 29, 2015).

7. PECO's refusal to accept Complainant’s promissory note as payment for his bill does not violate the Public Utility Code. 66 Pa.C.S. § 1501.

8. Preliminary objections are available to parties and may be filed in response to a complaint citing lack of Commission jurisdiction or improper service of the pleading initiating the proceeding and legal insufficiency of a pleading. 52 Pa.Code 5.101(a)(1),(4).

9. In reviewing preliminary objections, only the facts in the Complaint can be presumed to be true in order to determine whether recovery is possible. In order for Complainant to prevail ultimately, there must be a statute, regulation or order which the Commission is authorized to enforce. The Complaint must set forth anything done or omitted to be done by the utility company in violation of any law which the Commission has jurisdiction to administer. 66 Pa.C.S. § 701; 52 Pa.Code § 5.21(a).

10. PECO has met the standard for dismissal of the Complaint without a hearing based on lack of Commission jurisdiction and insufficiency of the pleading.

11. Section 703 of the Public Utility Code, [66 Pa.C.S. § 703(b)](https://www.lexis.com/research/buttonTFLink?_m=5c1f6c91e3fbd90883be71e98c39e5d2&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2011%20Pa.%20PUC%20LEXIS%2086%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=32&_butInline=1&_butinfo=66%20PACS%20703&_fmtstr=FULL&docnum=2&_startdoc=1&wchp=dGLbVzk-zSkAb&_md5=eab35ee1fef0692d0813c92822238303), provides that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. *See also*, [52 Pa.Code § 5.21(d)](https://www.lexis.com/research/buttonTFLink?_m=5c1f6c91e3fbd90883be71e98c39e5d2&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2011%20Pa.%20PUC%20LEXIS%2086%5d%5d%3e%3c%2fcite%3e&_butType=4&_butStat=0&_butNum=33&_butInline=1&_butinfo=52%20PA%20CODE%205.21&_fmtstr=FULL&docnum=2&_startdoc=1&wchp=dGLbVzk-zSkAb&_md5=773e91d3bde6ffde7bb028cdfb787527).

12. The public interest does not require a hearing in this case. The Commission does not have the requisite subject matter jurisdiction to determine the negotiability of Complainant's alleged tender of payments. A hearing in this case would be a fruitless exercise and therefore is not necessary or in the public interest.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objections filed in the case captioned *Gregory Kennedy v. PECO Energy Company* at Docket No. C-2015-2471718 are granted.

2. That the Complaint filed by Gregory Kennedy against PECO Energy Company at Docket No. C-2015-2471718 is dismissed.

2. That the Secretary mark this docket closed.

Dated: April 9, 2015 /s/

Susan D. Colwell

Administrative Law Judge

1. Complainant’s account of the Municipal Court proceeding can be found in Paragraph 7 of the Complaint. [↑](#footnote-ref-1)
2. $3,581.19 for account number 47126-26012, $1,009.61 for account number 12751-08510. Paragraph 4, PECO Answer. [↑](#footnote-ref-2)
3. *James Coppedge v. PECO Energy Company*, Docket No. F-2014-2406180 (Order entered July 29, 2014). [↑](#footnote-ref-3)
4. *Alkhatib v. PECO Energy Company*, PUC Docket No. C-2011-2242125 (Opinion and Order entered January 12, 2013). [↑](#footnote-ref-4)