

Legal Department
2301 Market Street / S23-1
Philadelphia, PA 19103

Direct Dial: 215-841-6841

May 5, 2017

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

RE: Kenneth LaFiandra v. PECO Energy Company
PUC Docket No: C-2017-2599036

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *PECO Energy Company's Preliminary Objections to the Formal Complaint* with regard to the matter referenced above.

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/d

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

KENNETH LAFIANDRA	:	
Complainant	:	
	:	
v.	:	DOCKET NO. C-2017-2599036
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

**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 April 21, 2017, PECO Energy was served with a formal complaint filed by Kenneth LaFiandra. (hereafter “Complainant”). A copy of the Complaint is attached hereto as Exhibit “1”.

2. In his Complaint, the Complainant states “this matter concerns PECO’s unreasonable and unnecessary proposed expansion of the use of a legally vague and previously undisclosed 60 year old “Right of Way Indenture” easement.”

3. The Complainant states “PECO’s Easement expansion proposal would substantially change the current use of the Easement across my property, 798 Woodlea Road, Bryn Mawr, Pennsylvania.”

4. The Complainant states “the proposed expansion of the Easement will substantially change the use of the recently revealed 60 year old Easement to install new (sic) a new poll

(sic) and equipment at the intersection of Woodlea Road and South Roberts Road in the Beaumont Neighborhood of Radnor Township.”

5. The Complainant states “the proposed Easement expansion has not been demonstrated to be necessary. In the two on-site meetings, PECO has stated that a technically and financially viable alternative to the proposed expanded Easement exists.”

6. The Complainant states “the proposed use of the Easement is also unreasonable in that it is only a piecemeal solution that will become immediately irrelevant.”

7. The Complainant states that “PECO’s proposed use of the Easement placed on the property is based on a map that is over 60 years old. The Easement was placed on the property on April 27, 1956 and is based on a survey of the land from 1920.”

8. The Complainant states that “PECO’s demand to its claimed Easement right is therefore unreasonable given the evolution of the property in the past 60 to 97 years.”

9. The Complainant states that “PECO has consistently failed to properly disclose their intentions for this property and appears to have intentionally obfuscated the scope of their substantial enlargement and change in the 60 year use of the Right of Way.”

10. The Complainant states that “the description of the Easement is legally ambiguous since it does not contain the metes and bounds nor any sketchy of the easement from which the scope of the easement can be reasonably determined.”

See Exhibit “1”.

11. In his request for relief, the Complainant requests:

1. Implementation of a Stop Work Order to stop planned installation of objected to telephone pole and equipment on April 20, 2017. Order would last until resolution of this matter.

2. PECO's production of all evidences that current telephone pole and equipment is the best reasonable design for modernization of currently functioning design. Evidence includes production of all easements on property and long term plan including problematic adjoining line on South Roberts Road, Bryn Mawr, PA.

3. Mediation of design dispute with PECO to determine best, long term, reasonable design of immediate and adjoining easement area of South Roberts Road. Development of design that takes into consideration design of adjoining complete Roberts Road line, which will need upgrading in the very near future.

4. Implementation of telephone and equipment design that reasonably uses the proven easements on the property.

See Exhibit "1".

12. In essence, the Complainant is disputing PECO's use of a Right of Way Easement to install and upgrade facilities and is requested that the Public Utility Commission interpret the interpret the easement and PECO's rights under the easement.

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

14. Pursuant to 52 Pa. Code § 5.101, preliminary objections may be filed against a complaint and dismissed for legal insufficiency. 52 Pa. Code § 5.101(a)(4).

15. Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil procedure. *Equitable Small Transportation Intervenors. v. Equitable Gas Co.*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

16. In deciding preliminary objections, the Public Utility Commission must determine, based on the factual pleadings of the petitioner, if relief or recovery is possible. *Roc v. Flaherty*, 527 A.2d 211 (Pa. Cmwlth. 1985).

17. A complaint must be able to recover under the law to survive a preliminary objection. *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”).

18. All of the non-moving party’s averments must be taken as true for the sake of deciding the preliminary objection. *County of Allegheny v. Comm. of Pa.*, 490 A.2d 402 (Pa. 1985).

19. The court does not, however, need to accept, “unwarranted inferences from facts, argumentative allegations, or expressions of opinions.” *Feingold v. McNulty*, 2009 Phila. Ct. Com. Pl LEXIS 167, *3.

20. Section 703 of the Public Utility Code, 66 Pa. C.S.A. § 703(b) provides that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary to the public interest.

21. 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).

22. Here, the Commission lacks subject matter jurisdiction over the issues in dispute; therefore, the Complainant should be dismissed.

I. The Public Utility Commission Has No Subject Matter Jurisdiction Over This Property and Easement Dispute.

23. The Complainant raises allegations in his formal complaint pertaining to real property rights. The Commission has no subject matter jurisdiction to examine the Right of Way easement issues in dispute.

24. To state a claim over which the Commission has jurisdiction, the Complainant is required to allege a violation of the Code, Commission regulations, or Commission orders. 66 Pa.C.S. § 701; 52 Pa. Code § 5.21(a); *West Penn Power Co. v. Pa. Pub. Util. Commn*, 478 A.2d 947 (Pa. Cmwlth. 1984).

25. The Commonwealth Court stated, “Although the Public Utility Law (the Code) grants to the ... the Commission general supervisory and regulatory powers over public utilities, 66 Pa.C.S. §501, the Code does not confer an exclusive jurisdiction to decide all matters involving regulated public utilities.” *Springdale Twp. v. Allegheny County Bd. Of Property Assessment*, 467 A.2d 74, 77 (Pa. Cmwlth. 1983) quoting *Virgilli v. Southwestern Pa. Water Auth.*, 427 A.2d 1251, 1253 (Pa. Cmwlth. 1981).

26. The Commission must act within, and cannot exceed, its jurisdiction. *City of Pittsburgh v. Pa. Pub. Util. Comm’n*, 43 A.2d 348 (Pa. Super. 1945).

27. Subject matter jurisdiction is a prerequisite to the exercise of the power to decide a controversy. *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992), app. Denied, 637 A.2d 293 (1993).

28. Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967).

29. In this case, the allegations that PECO's use of an easement is not necessary, reasonable, and does not take into account evolutionary changes in the Complainant's property; and the allegation that the easement is legally ambiguous, are not claims over which the Commission has jurisdiction. The Complainant's claim involves a violation of private property rights.

30. The Commission does not have jurisdiction over private property disputes. *Bozar v. PPL Electric Utilities Corp.*, Docket No. C-20016332 (Order entered February 10, 2003)(concluding that the question of whether utility facilities are located on private property pursuant to a valid easement or right-of-way is a substantive property right which is within the exclusive jurisdiction of the courts); *McCullough v. National Fuel Gas Distribution Corp.*, Docket No. C00913667 (Order entered September 8, 1992); *Lou Amati/Amati's Service Station v. West Penn Power Co. and Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00945842 (Order entered October 25, 1995); *Jo Ann Nelson/Mary Snezak v. Columbia Gas of Pa., Inc.*, Docket No. C-20028763 (Opinion and Order entered April 21, 2003); and *Fairview Water Co. v. Pa. Public Util. Comm'n*, 502 A. 2d 162 (Pa. 1985)(Pa. Supreme Court held that the Commission does not have jurisdiction to determine scope or validity of easements).

31. The Commission has determined that it is not the proper forum for resolving property rights controversies. The Commission has concluded such controversies are a matter for a court of general jurisdiction. *Perrige v. Metropolitan Edison Co.*, Docket No. C-00004110 (Order entered July 3, 2003); *Fiorillo v. PECO Energy Co.*, Docket No. C-00971088 (Order entered September 15, 1999); and *Dengler v. Metropolitan Edison Co.*, Docket No. C-2009-2112197 (Order entered November 17, 2009).

32. The Complainant's easement property dispute is not within the jurisdiction of the Commission, and therefore, should be dismissed.

33. For the reasons set forth above, the Complainant's Complaint should be dismissed.

REQUEST FOR RELIEF

WHEREFORE, for the reasons set forth above, PECO Energy Company respectfully requests that your Honorable Commission summarily dismiss the Complainant's formal complaint for lack of subject matter jurisdiction.

Respectfully submitted,



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19103
(215) 841-6841
Fax: 215.568.3389
Shawane.Lee@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

KENNETH LAFIANDRA
Complainant

v.

PECO ENERGY COMPANY
Respondent

:
:
:
:
:
:
:
:
:

DOCKET NO. C-2017-2599036

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: May 5, 2017

Shawane L. Lee

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

KENNETH LAFIANDRA
Complainant

v.

PECO ENERGY COMPANY
Respondent

:
:
:
:
:
:
:
:
:
:

DOCKET NO. C-2017-2599036

CERTIFICATE OF SERVICE

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

Kenneth LaFiandra
798 Woodlea Road
Bryn Mawr, PA 19010

May 5, 2017



Shawane L. Lee
Counsel for PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19101-8699
(215) 841-6841
Fax: 215.568.3389
Shawane.Lee@exeloncorp.com

Legal Department
2301 Market Street / S23-1
Philadelphia, PA 19103

Direct Dial: 215-841-6841

May 5, 2017

Kenneth LaFiandra
798 Woodlea Road
Bryn Mawr, PA 19010

RE: Kenneth LaFiandra v. PECO Energy Company
PUC Docket No: C-2017-2599036

Dear Mr. LaFiandra:

Enclosed is a copy of PECO Energy Company's response to the formal complaint filed in the above-referenced docket. The law requires PECO Energy to file an answer to your Public Utility Commission complaint. Keep these papers for your records. This is not a decision on your complaint. PECO's response may include a New Matter, Motion or Preliminary Objection. Please note that if you do not respond to a New Matter, Motion, or Preliminary Objection an unfavorable decision may be rendered against you. Responses to New Matters and Motions must be filed within 20 days. Responses to Preliminary Objections must be filed within 10 days. If there is no New Matter, Motion or Preliminary Objection included, no response is required.

Soon, the Public Utility Commission will schedule either a settlement conference or a hearing on your complaint. The Commission will let you know by mail whether there will be a conference or a hearing and will include instructions on what to do next. If the matter is set for hearing, the notice will provide you with information about the date, time and place of the hearing. If we are unable to resolve your complaint and have to proceed with a hearing, a judge will be at the hearing and will decide your complaint. You must call the Public Utility Commission if you have any questions about the hearing or if you cannot attend the hearing.

Thank you for your time and attention on this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Shawane Lee", with a stylized flourish at the end.

Shawane Lee
Counsel for PECO Energy Company

SL/ld
Enclosure

EXHIBIT “1”

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint

Filing this form begins a legal proceeding and you will be a party to the case. If you do not wish to be a party to the case, consider filing an informal complaint.

To complete this form, please type or print legibly in ink.

1. Customer (Complainant) Information

Provide your name, mailing address, county, telephone number(s), e-mail address and utility account number. It is your responsibility to update the Commission with any changes to your address and to where you want documents mailed to you.

Name Kenneth LaFiandra

Street/P.O. Box 788 Woodlea Road Apt #

City Bryn Mawr State PA Zip 19010

County Delaware

Telephone Number(s) Where We Can Contact You During the Day:

(610) 527-8980 (home) (215) 588-9978 (mobile)+
+Mobile Phone is preferred

E-mail Address (optional): kafiandra@comcast.net

Utility Account Number (from your bill) 2794300806

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

Name NA

Street/P.O. Box

City State Zip

2. Name of Utility or Company (Respondent)

Provide the full name of the utility or company about which you are complaining. The name of your utility or company is on your bill.

PECO/Excelon

3. Type of Utility Service

Check the box listing the type of utility service that is the subject of your complaint (check only one):

- ELECTRIC WASTEWATER/SEWER
 GAS TELEPHONE/TELECOMMUNICATIONS (local, long distance)
 WATER MOTOR CARRIER (e.g. taxi, moving company, limousine)
 STEAM HEAT

4. Reason for Complaint

What kind of problem are you having with the utility or company? Check all boxes below that apply and state the reason for your complaint. Explain specifically what you believe the utility or company has done wrong. Provide relevant details including dates, times and places and any other information that may be important. If the complaint is about billing, tell us the amount you believe is not correct. Use additional paper if you need more space. Your complaint may be dismissed without a hearing if you do not provide specific information.

- The utility is threatening to shut off my service or has already shut off my service.
- I would like a payment agreement.
- Incorrect charges are on my bill. Provide dates that are important and an explanation about any amounts or charges that you believe are not correct. Attach a copy of the bill(s) in question if you have it/them.
- I am having a reliability, safety or quality problem with my utility service. Explain the problem, including dates, times or places and any other relevant details that may be important.
- Other (explain).

See Attachment A Complaint/Stop Work Order Request

Note: If your complaint is only about removing or modifying a municipal lien filed by the City of Philadelphia, the Public Utility Commission (PUC) cannot address it. Only local courts in Philadelphia County can address this type of complaint. The PUC can address a complaint about service or incorrect billing even if that amount is subject to a lien.

In addition, the PUC generally does not handle complaints about cell phone or internet service, but may be able to resolve a dispute regarding voice communications over the internet (including the inability to make voice 911/E911 emergency calls) or concerns about high-speed access to internet service.

5. Requested Relief

How do you want your complaint to be resolved? Explain what you want the PUC to order the utility or company to do. Use additional paper if you need more space.

- 1. Implementation of a Stop Work Order to stop planned installation of objected to telephone pole and equipment on April 20, 2017. Order would last until resolution of this matter.**
- 2. PECO's production of all evidence that current telephone pole and equipment is the best reasonable design for modernization of currently functioning design. Evidence includes production of all easements on property and long term plan including problematic adjoining line on South Roberts Road, Bryn Mawr, Pa.**
- 3. Mediation of design dispute with PECO to determine best, long term, reasonable design of immediate and adjoining easement area of South Roberts Road. Development of design that takes into consideration design of adjoining complete Roberts Road line, which will need upgrading in very near future.**
- 4. Implementation of telephone and equipment design that reasonably uses the proven easements on the property.**

Note: The PUC can decide that a customer was not billed correctly and can order billing refunds. The PUC can also fine a utility or company for not following rules and can order a utility or company to correct a problem with your service. Under state law, the PUC cannot decide whether a utility or company should pay customers for loss or damages. Damage claims may be sought in an appropriate civil court.

6. Protection From Abuse (PFA)

Has a court granted a "Protection From Abuse" order that is currently in effect for your personal safety or welfare? The PUC needs this information to properly process your complaint so that your identity is not made public.

Note: You must answer this 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 problem involving billing, 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

If your answer to the above question is "yes," attach a copy of the current Protection From Abuse order to this Formal Complaint form.

7. **Prior Utility Contact**

a. Is this an appeal from a decision of the PUC's Bureau of Consumer Services (BCS)?

YES

NO

Note: If you answered yes, move to Section 8. No further contact with the utility or company is required. If you answered no, answer the question in Section 7 b. and answer the question in Section 7 c. if relevant.

b. If this is not an appeal from a BCS decision, have you spoken to a utility or company representative about this complaint?

YES

NO

Note: You must contact the utility first if (1) you are a residential customer, (2) your complaint is against a natural gas distribution utility, an electric distribution utility or a water utility AND (3) your complaint is about a billing problem, a service problem, a termination of service problem, or a request for a payment agreement.

c. If you tried to speak to a utility company representative about your complaint but were not able to do so, please explain why.

Since November of 2016, I have attempted to first discover what PECO was planning to do and then work with their people to attempt to resolve the matter. PECO initially announced, via three letters, that they would be doing some tree trimming and equipment upgrades. No notice was provided of the substantial change they intended to make in the use of the claimed easement. In order to discover PECO's full intent, I was forced to file an Informal PUC Complaint (#0034889111). PECO then held an onsite meeting to discuss their plans for use of the easement.

At both the first and second onsite meetings, PECO stated they would work to develop a mutually acceptable design for the equipment upgrade. During the second meeting, Friday April 7, 2017, PECO requested to have their Real Estate Department call me on Monday April 10, to discuss possible alternative designs. After failing to call on April 10, PECO left a message on April 11 indicating they would call on April 13. Again, I received no call on April 13 and PECO did not respond to any of my calls

or emails. On April 14, PECO called and stated that they intended to implement their proposed design on April 20, 2017, within just six days from this notice. I instructed them that I planned to file a PUC complaint. PECO asked that I hold off until they could confirm an adjournment of the project. Late on Friday April 14, despite promising to provide information on alternative designs and promising that no work would be done without full disclosure and resolution of the dispute, PECO announced that they would just go forward with their plans.

Note: Even if you are not required to contact the utility or company, you should always try to speak to a utility or company representative about your problem before you file a Formal Complaint with the PUC.

8. Legal Representation

If you are filing a Formal Complaint as an individual on your own behalf, you are not required to have a lawyer. You may represent yourself at the hearing.

If you are already represented by a lawyer in this matter, provide your lawyer's name, address, telephone number, and e-mail address, if known. Please make sure your lawyer is aware of your complaint. If represented by a lawyer, both you and your lawyer must be present at your hearing.

Lawyer's Name Kenneth LaFiandra, Esquire (Self) _____

Street/P.O. Box Same as above _____

City _____ State _____ Zip _____

Area Code/Phone Number _____

E-mail Address (if known) _____

Note: Corporations, associations, partnerships, limited liability companies and political subdivisions are required to have a lawyer represent them at a hearing and to file any motions, answers, briefs or other legal pleadings.


9. Verification and Signature

You must sign your complaint. Individuals filing a Formal Complaint must print or type their name on the line provided in the verification paragraph below and must sign and date this form in ink. If you do not sign the Formal Complaint, the PUC will not accept it.

Verification:

I Kenneth LaFiandra _____, 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).

 _____ 4/16/17
(Signature of Complainant) (Date)

Title of authorized employee or officer (only applicable to corporations, associations, partnerships, limited liability companies or political subdivisions)

Note: If the Complainant is a corporation, association, partnership, limited liability company or political subdivision, the verification must be signed by an authorized officer or authorized employee. If the Formal Complaint is not signed by one of these individuals, the PUC will not accept it.

10. Two Ways to File Your Formal Complaint

Electronically. You must create an account on the PUC's eFiling system, which may be accessed at <http://www.puc.pa.gov/eFiling/default.aspx>.

Note: If you are appealing your Bureau of Consumer Services (BCS) decision, you must file your formal complaint by mail.

Mail. Mail the completed form with your original signature and any attachments, by certified mail, first class mail, or overnight delivery to this address:

**Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, Pennsylvania 17120**

Note: Formal Complaints sent by fax or e-mail 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 Formal Complaint for your records.