

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

LeRoy James Watters III	:	
	:	
v.	:	C-2016-2533996
	:	
PECO Energy Company	:	

**INITIAL DECISION**  
**GRANTING MOTION FOR JUDGMENT ON THE PLEADINGS**  
**AND DISMISSING COMPLAINT**

Before  
Andrew M. Calvelli  
Administrative Law Judge

**INTRODUCTION**

LeRoy James Watters III filed a Complaint against PECO Energy Company. In the Complaint, the Complainant asserts that he is complaining of issues with PECO “throughout West Norriton Township.” This Initial Decision dismisses the Complaint for lack of standing because the Complainant is not the customer who is directly affected by the challenged actions of the utility.

**HISTORY OF THE PROCEEDING**

On March 11, 2016, LeRoy James Watters III (Complainant or Mr. Watters) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (Respondent or PECO). In the Complaint, Mr. Watters purported to act on behalf of West Norriton Township in his capacity as the Chairman of the West Norriton Environmental Advisory Council.

On March 28, 2016, Mr. Watters filed an Amended Complaint with the Commission. The Amended Complaint was in Mr. Watters' name only, and removed all references to the West Norriton Environmental Advisory Council. In the Amended Complaint, Mr. Watters states that there are issues with PECO "throughout West Norriton Township" because PECO is not completing pole work. The relief requested by Mr. Watters was that PECO be required to contact all cable companies to have them move their cables off old poles to new poles so that PECO can then remove all the old poles, including poles laying along the road side.

On March 29, 2016, West Norriton Township filed with the Commission a Notice of Withdrawal of Formal Complaint against PECO Energy Company. PECO did not object to the Notice of Withdrawal. The Commission's Secretary's Bureau treated the Notice of Withdrawal as a Petition to Withdraw Formal Complaint. However, since the Complainant had filed an Amended Complaint, deleting any reference to West Norriton Township as a party to this proceeding, it is unnecessary for me to take any further action regarding the Petition to Withdraw, as the Amended Complaint has rendered that issue moot.

On March 30, 2016, the Commission served the Amended Complaint upon PECO. On April 18, 2016, PECO filed its Answer with New Matter to Mr. Watters' Amended Complaint. In its New Matter, PECO asserted that Mr. Watters did not have legal standing to maintain his Amended Complaint against PECO. PECO requested that the Commission dismiss Mr. Watters' Amended Complaint as a result of Mr. Watters' lack of legal standing.

On May 9, 2016, PECO filed a Motion for Judgment on the Pleadings (Motion). In the Motion, PECO asserted that Mr. Watters did not have legal standing to maintain his Amended Complaint against PECO. PECO requested that the Commission dismiss Mr. Watters' Amended Complaint as a result of Mr. Watters' lack of legal standing.

Mr. Watters did not respond to PECO's New Matter or Motion for Judgment on the Pleadings within 20 days of being served with those documents. As of this date, Mr. Watters has not responded to PECO's New Matter or PECO's Motion.

By Motion Judge Assignment Notice dated April 13, 2017, the parties were advised that PECO's Motion for Judgment on the Pleadings (herein "Motion") had been assigned to me for disposition. The Motion is now ripe for consideration, and for the reasons discussed below the Motion is granted and Mr. Watters' Amended Complaint is dismissed.

#### FINDINGS OF FACT

1. The Complainant in this case is LeRoy James Watters III who resides at #1 East Indian Lane, Norristown, PA 19403.
2. The Respondent in this case is PECO Energy Company.
3. On March 11, 2016, the Complainant filed a Complaint with the Pennsylvania Public Utility Commission.
4. On March 28, 2016, the Complainant filed an Amended Complaint with the Pennsylvania Public Utility Commission.
5. On April 18, 2016, the Respondent filed an Answer with New Matter to the Amended Complaint.
6. On May 9, 2016, the Respondent filed a Motion for Judgment on the Pleadings.
7. The Complainant did not respond to the New Matter or the Motion for Judgment on the Pleadings.

## DISCUSSION

### 1) Legal standard

The Commission's Rules of Administrative Practice and Procedure provide for the filing of motions for judgment on the pleadings. 52 Pa.Code § 5.102(a), (d)(1) and (d)(2). When disposing of a motion for judgment on the pleadings, the record must be examined in the light most favorable to the nonmoving party. First Mortgage Co. of Pennsylvania v. McCall, 313 Pa. Superior Ct. 54, 56, 459 A.2d 406, 408 (1983). To avoid the motion for judgment on the pleadings, the nonmoving party must set forth facts showing that there is a genuine issue for trial. Id. at 58-59.

The Commission will grant a motion for judgment on the pleadings only if the pleadings show there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. 52 Pa.Code § 5.102(d)(1). Only in a case where the moving party's right to prevail is so clear that a trial would be a fruitless exercise should judgment on the pleadings be granted. Williams v. Lewis, 466 A.2d 682 (Pa. Super. 1983); Service Employees International Union, Local 69, AFL-CIO v. The Peoples Natural Gas Company, d/b/a Dominion Peoples, Docket No. C-20028539 (Order entered December 19, 2003); *see also*, Doran v. Pennsylvania American Water Company, Docket No. C-2016-2529277 (Order entered July 14, 2016). Judgment on the pleadings should be entered only when the case is clear and free from doubt. Reuben v. O'Brien, 496 A.2d 913 (Pa. Super 1985).

### 2) The Complainant lacks standing to maintain the Amended Complaint

Standing to participate in proceedings before an administrative agency is primarily within the discretion of the agency. Pennsylvania National Gas Association v. T.W. Phillips Gas and Oil Co., 75 Pa. PUC 598, 603 (1991). Generally, the Commission has held that a person or entity has standing when the person or entity has a direct, immediate and substantial interest in the subject matter of a proceeding. William Penn Parking Garage, Inc. v. City of Pittsburgh, 464 Pa. 168, 346 A.2d 269 (1975); Landlord Service Bureau, Inc. v. Equitable Gas

Co., 79 Pa. PUC 342 (1993); Re Equitable Gas Co., 76 Pa. PUC 23 (1992); (other citations omitted).

As discussed in the matter of Luke v. Columbia Gas of Pennsylvania, Docket No. C-2014-2425948 (Order entered August 27, 2014), the legal considerations as to whether a party had standing to maintain a complaint was explained as follows:

The Complainant's interest in the subject matter of the proceeding is direct if her interest is adversely affected by the actions challenged in the complaint, is immediate if there is a close causal nexus between her asserted injury and the actions challenged in the complaint and is substantial if she has a discernible interest other than the general interest of all citizens in seeking compliance with the law. Ken R. ex rel. C.R. v. Arthur Z., 682 A.2d 1267 (Pa. 1996); In re El Rancho Grande, Inc., 437 A.2d 1150 (Pa. 1981); William Penn Parking Garage, Inc.; Empire Coal Mining & Development, Inc. v. Department of Environmental Resources, 623 A.2d 897 (Pa. Cmwlth. 1993).

Luke v. Columbia Gas of Pennsylvania, Docket No. C-2014-2425948 (Order entered August 27, 2014). I will apply the above legal precedent to PECO's Motion below.

The Amended Complaint does not involve the utility service at Mr. Watters' mailing address. In fact, the Amended Complaint does not even state that Mr. Watters is a PECO customer. Instead, the Amended Complaint states that Mr. Watters is complaining about PECO's service "throughout West Norriton Township." Amended Complaint at Page 1.

The Amended Complaint also states that "PECO is not completing pole work" and requests the following relief:

PECO needs to contact all cable companies and have them move their cables off old pole to new pole and remove old pole. PECO must remove old poles laying along road side. This condition also exists in [neighboring] townships.

Amended Complaint at Pages 2 and 3.

Accepting the allegations in the Amended Complaint as true for purposes of disposing of the Motion, it is clear that Mr. Watters is not complaining about service to his own mailing address - in that regard, Mr. Watters has not even asserted that he is actually a PECO customer. Instead, Mr. Watters is complaining of conditions as they generally exist “throughout West Norriton Township.” The relief requested by Mr. Watters also concerns having PECO complete pole work throughout West Norriton Township. Accordingly, Mr. Watters’s legal interest in this proceeding is the same as all of the other residents of West Norriton Township. Therefore Mr. Watters does not have a discernible interest in this matter, other than the general interest of all citizens in seeking compliance with the law. Mr. Watters also does not have a direct, immediate or substantial interest in this matter, as there are no allegations in the Amended Complaint to indicate such an interest. As a result, Mr. Watters lacks standing to bring the Amended Complaint.

In this case, the Respondent is entitled to judgment as a matter of law because the Complainant lacks the legal standing to maintain the Amended Complaint on his own behalf. Therefore, the Respondent’s Motion for Judgment on the Pleadings is granted and the Amended Complaint is dismissed.

Although the Complaint is being dismissed due to lack of standing on the part of the Complainant, the allegations in the Complaint raise the issue of whether or not the Respondent is maintaining safe and reasonable facilities while providing service to the public. Pursuant to Section 1501 of the Public Utility Code:

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 interruption or delay.

66 Pa.C.S. § 1501. Given the allegations in the Complaint, I conclude that this matter should be referred to the Commission's Bureau of Investigation and Enforcement, in order for the Bureau to review the issues raised in the Complaint and determine what actions, if any, may be appropriate under the circumstances.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this dispute. 66 Pa.C.S. § 701.

2. The Commission will grant a motion for judgment on the pleadings only if the pleadings show there is no genuine issue as to a material fact and that the moving party is entitled to judgment as a matter of law. 52 Pa.Code § 5.102(d)(1).

3. A person or entity has standing when the person or entity has a direct, immediate and substantial interest in the subject matter of a proceeding. William Penn Parking Garage, Inc. v. City of Pittsburgh, 464 Pa. 168, 346 A.2d 269 (1975).

4. The Complainant does not have a direct, immediate and substantial interest in the subject matter of this proceeding.

5. The Complainant does not have a discernible interest in this proceeding other than the general interest of all citizens in seeking compliance with the law. Ken R. ex rel. C.R. v. Arthur Z., 682 A.2d 1267 (Pa. 1996).

6. It is just, reasonable and in the public interest for the complaint filed at Docket No. C-2016-2577571 to be dismissed.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion for Judgment on the Pleadings filed at Docket No. C-2016-2533996 by PECO Energy Company is hereby granted.
2. That the Amended Complaint of LeRoy James Watters III at Docket No. C-2016-2533996 against PECO Energy Company is dismissed.
3. That the docket at Docket No. C-2016-2533996 shall be marked closed by the Secretary's Bureau.
4. That this matter shall be referred to the Public Utility Commission's Bureau of Investigation and Enforcement for investigation and any action that the Bureau may deem appropriate.

Date: April 25, 2017

/s/  
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Andrew M. Calvelli  
Administrative Law Judge