

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tasha Underwood	:	
	:	
v.	:	C-2018-3001478
	:	
PECO Energy Company	:	

INITIAL DECISION
GRANTING PRELIMINARY OBJECTIONS
AND DISMISSING COMPLAINT WITH PREJUDICE

Before
Andrew M. Calvelli
Administrative Law Judge

INTRODUCTION

Tasha Underwood (Ms. Underwood or Complainant) filed a Complaint against PECO Energy Company (PECO) with the Pennsylvania Public Utility Commission (Commission), alleging that PECO was refusing to accept Ms. Underwood’s promissory note as a form of payment for her electric bill. Ms. Underwood is seeking a Commission Order compelling PECO to accept her promissory note as payment for her electric bill. This Initial Decision dismisses the Complaint because Ms. Underwood has failed to demonstrate that PECO’s actions in refusing to accept her promissory note are a violation of the Public Utility Code, the Commission’s Regulations, a Commission Order or a Commission-approved Tariff of PECO. The Complaint is dismissed with prejudice because this very issue has previously been ruled upon by the Commission in several decisions of the Commission, and therefore there would be no judicial point served in allowing Ms. Underwood to attempt to rephrase her Complaint and refile a new Complaint on the issue of promissory notes as a form of utility bill payment.

HISTORY OF THE PROCEEDING

On April 20, 2018, Ms. Underwood filed a Complaint with the Commission against PECO, alleging that PECO was refusing to accept her promissory note as payment for her electric bill. The Complaint was served on PECO by the Commission's Secretary on April 27, 2018.

On May 10, 2018, PECO filed an Answer to the Complaint, along with Preliminary Objections to the Complaint. Responses to the Preliminary Objections were due within 20 days per Commission Regulations. Ms. Underwood did not file a response to the Preliminary Objections.

In the Preliminary Objections, PECO asserts that the Complaint should be dismissed because the Commission has already directly ruled on the issue of promissory notes by expressly rejecting the notion that promissory notes can be an acceptable form of utility bill payment. PECO cites to prior decisions of the Commission in its Preliminary Objections and requests that the Complaint be dismissed with prejudice as a result of the Commission's prior decisions on this issue.

By Motion Judge Assignment Notice issued on June 7, 2018, the parties were advised that the Preliminary Objections had been assigned to me for a ruling. The Preliminary Objections are now ripe for consideration. For the reasons discussed below, the Preliminary Objections will be granted, and the Complaint will be dismissed with prejudice.

FINDINGS OF FACT

1. The Complainant in this case is Tasha Underwood who resides at 4946 West Stiles Street, Philadelphia PA 19131.
2. The Respondent in this case is PECO Energy Company.

3. On April 20, 2018, the Complainant filed a Complaint with the Pennsylvania Public Utility Commission.
4. The Complaint was served on the Respondent by the Commission on April 27, 2018.
5. On May 10, 2018, the Respondent filed an Answer to the Complaint, along with Preliminary Objections to the Complaint.
6. The Complainant's responses to the Preliminary Objections were due no later than June 4, 2018.
7. The Complainant did not file a response to the Preliminary Objections.

DISCUSSION

The Commission's Rules of Practice and Procedure permit parties to file preliminary objections, on the grounds set forth in 52 Pa. Code § 5.101(a), as follows:

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.

Commission preliminary objection practice is analogous to Pennsylvania civil practice regarding preliminary objections. Equitable Small Transportation Intervenors v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994). Preliminary objections in civil practice requesting dismissal of a pleading will be granted only where the right to relief is clearly warranted and free from doubt. Interstate Traveller Services, Inc. v. Pa. Dept. of Environment Resources, 406 A.2d 1020 (Pa. 1979); Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc., 595 A.2d 172 (Pa. Super. 1991). The Commission follows this standard. Montague v. Philadelphia Electric Company, 66 Pa. PUC 24 (1988).

The Commission may not rely upon the factual assertions of the moving party but must accept as true for purposes of disposing of the motion all well pleaded, material facts of the nonmoving party, as well as every inference deducible from those facts. County of Allegheny v. Pennsylvania, 490 A.2d 402 (Pa. 1985); Commonwealth v. Bell Telephone Co. of Pa., 551 A.2d 602 (Pa. Cmwlth. 1988). The Commission must view the Complaint in this case in the light most favorable to the Complainant and should dismiss the Complaint only if it appears that the Complainant would not be entitled to relief under any circumstances as a matter of law. Equitable Small Transportation Intervenors v. Equitable Gas Company, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

The Commission Regulation at 52 Pa. Code § 5.21(a) states that a person may file a formal complaint claiming a violation of a statute that the Commission has jurisdiction to administer. The regulation at 52 Pa. Code § 5.21(d) authorizes the Commission to dismiss a complaint if a hearing is not necessary in the public interest and authorizes preliminary objections to be filed in response to a complaint.

PECO argues the issue raised in the Complaint has already been directly addressed by the Commission via previous decisions of the Commission. PECO first points to the case of Coppedge v. PECO Energy Co., Docket No. F-2014-2406180 (Opinion and Order entered January 29, 2015). In that case, the Complainant alleged that PECO would not credit his account with payments made by other private negotiable debt instruments such as 1040V payment voucher, money order, UCC1 partial release, 1099's and EFT checks. Preliminary

Objections at ¶¶ 16-17. PECO responded that it only accepts cash, certified checks, money orders and valid bank checks or payment by credit card. Preliminary Objections at ¶ 18. Administrative Law Judge Mary Long determined that the Commission does not have jurisdiction to determine the negotiability of instruments. Preliminary Objections at ¶ 19. Judge Long further determined that the Complainant failed to show that PECO's policy of only accepting payments by cash, certified checks, money order, validated checks or credit cards was unreasonable or in violation of the Public Utility Code or any regulation of the Commission. Preliminary Objections at ¶ 20.

Mr. Coppedge filed exceptions to Judge Long's decision and the Commission upheld the decision, stating:

As the ALJ correctly found, neither Section 1501 of the Code nor our Regulations requires that in order to provide reasonable and reliable service PECO must accept as payment on account any and all legitimate or self-proclaimed forms of payment.

Preliminary Objections at ¶ 23;

The Commission again addressed the issue of promissory notes being tendered as payment in the case of Kennedy v. PECO Energy Co., Docket No. C-2015-2471718 (Opinion and Order entered October 22, 2015). In that case, the ALJ granted PECO's Preliminary Objections, and the Commission affirmed the decision on the grounds that the Commission lacked subject matter jurisdiction to determine the negotiability of Mr. Kennedy's alleged tender of payment. Preliminary Objections at ¶ 25.

The facts in this case are the same as the facts presented in Coppedge and Kennedy. Here, as in those cases, the Complainant seeks to tender utility bill payments via a promissory note. Paragraph 4 of the Complaint (Reason for Complaint) states that PECO is refusing to accept a promissory note for payment. Paragraph 5 of the Complaint (Requested Relief) states that the Complainant seeks a Commission Order directing PECO to accept her promissory note for payment. No other complaints are mentioned in the Complaint, and no other relief is requested in the Complaint.

Viewing the Complaint in the light most favorable to the Complainant, it is clear that the issues complained of have already been adjudicated by the Commission, and that the Commission has concluded that there is no legal duty for a utility company to accept promissory notes as a form of payment. It is also clear that the Commission has concluded that it lacks subject matter jurisdiction to hear complaints involving promissory notes as alleged tender of payment for utility bills. *See, Coppedge and Kennedy, supra.*

Given the above precedent, and given that the instant case is identical to the cases cited above, there is no need to hold a hearing in this case. The Commission has ruled that the issues complained of exceed the scope of the Commission's jurisdiction, and the Commission has ruled that promissory notes are not required to be accepted by a utility company in any event. Additionally, since these issues have been adjudicated by the Commission in precedential decisions, the Complaint in this case will be dismissed with prejudice, since there would be no judicial point served by allowing the Complainant to attempt to rephrase the Complaint on the issue of promissory notes.

In reaching the above conclusions, I am mindful of the fact that the Commission tends to afford unrepresented litigants every reasonable opportunity to set forth their cases on the record, and hesitates to dispose of complaints by way of preliminary motions. *See, e.g., Carlock v. The United Telephone Company of Pennsylvania*, Docket No. F-00163617 (Order entered July 14, 1993) (*Carlock*). However, unlike *Carlock*, this case does not rest on the ability of the Complainant to describe the factual underpinnings of her Complaint but instead concerns the issue of subject matter jurisdiction. The relief requested is a review of, and a ruling on, the negotiability of a promissory note. Allowing an amended complaint or allowing Ms. Underwood to proceed to a hearing would not enable Ms. Underwood to better explain her position or provide additional facts which would alter the inevitable conclusion that this Commission lacks jurisdiction to entertain her Complaint in the first instance. On that basis, I distinguish *Carlock* from this particular case. *See, Carlock and Kennedy, supra.*

CONCLUSIONS OF LAW

1. Preliminary objections in civil practice requesting dismissal of a pleading will be granted only where the right to relief is clearly warranted and free from doubt. Interstate Traveller Services, Inc. v. Pa. Dept. of Environment Resources, 406 A.2d 1020 (Pa. 1979); Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc., 595 A.2d 172 (Pa. Super. 1991). The Commission follows this standard. Montague v. Philadelphia Electric Company, 66 Pa. PUC 24 (1988).

2. The presiding officer will grant a preliminary motion if the record shows that 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. The Commission has held that it lacks subject matter jurisdiction to determine the negotiability of instruments such as promissory notes. Coppedge v. PECO Energy Co., Docket No. F-2014-2406180 (Opinion and Order entered January 29, 2015); Kennedy v. PECO Energy Co., Docket No. C-2015-2471718 (Opinion and Order entered October 22, 2015).

4. The Commission has held that a utility is not required to accept promissory notes as a form of payment for utility bills. Coppedge v. PECO Energy Co., Docket No. F-2014-2406180 (Opinion and Order entered January 29, 2015).

5. The Complainant's Complaint fails to state a claim upon which relief can be granted because the sole issue complained of is that the utility is refusing to accept a promissory note for payment.

6. It is just, reasonable and in the public interest that the complaint filed at Docket No. C-2018-3001478 be dismissed. 52 Pa. Code § 5.21(d).

