

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Martha Rodriguez	:	
	:	
v.	:	C-2018-3006124
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Darlene D. Heep  
Administrative Law Judge

**INTRODUCTION**

PECO Energy Company filed a Preliminary Objection seeking dismissal of the Complaint filed in the PECO Base Rate proceedings pursuant to 52 Pa. Code § 5.32(b). The Complaint was filed during the suspension period after issuance of the Recommended Decision, which was subsequently adopted by the Commission. The Preliminary Objection is sustained, and the Complaint is dismissed.

**HISTORY OF THE PROCEEDING**

On November 19, 2018, Martha Rodriguez (Complainant) filed a formal Complaint against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). This Complaint was filed in the PECO rate case at R-2018-3000164 (Complaint, page 2, Section 3). In the Complaint, Ms. Rodriguez contests an increase in PECO rates, asks why there is the proposed increase, avers that PECO never considers the consumer, and that the stockholders should handle the burden rather than the customers.

On December 11, 2018, PECO filed an Answer denying the material allegations of the Complaint.

On December 12, 2018, PECO filed a Preliminary Objection seeking that the matter be dismissed.

The Preliminary Objection was assigned to Administrative Law Judge Jeffrey Watson. On February 23, 2019, the Preliminary Objection was transferred to the undersigned.

The Complainant did not file a response to PECO's Preliminary Objection. The matter is ready for a decision. For the reasons set forth below, PECO's Preliminary Objection is granted, and the Complaint is dismissed.

#### FINDINGS OF FACT

1. The Complainant in this proceeding is Martha Rodriguez.
2. The Respondent in this proceeding is PECO Energy Company.
3. The Complainant is a PECO electric and gas customer in Croydon, Pennsylvania.
4. PECO filed a proposed General Base Rate filing for Electric Operations on March 29, 2018, at Docket No. R-2018-3000164.
5. An insert advising customers of the proposed rate increase and their opportunity to file a formal complaint if they wanted a hearing and to take part in the proceedings was included in bills sent out by PECO in April of 2018. (PECO Rate Increase filing March 29, 2018, (R-2018-3000164); PECO Preliminary Objection Exhibit 2).

6. The insert also advised customers that complaints should be filed with the Commission before June 29, 2018. *Id.*

7. On April 19, 2018, the Commission issued an Order to institute a formal investigation into the General Base Rate filing at Docket No. R-2018-3000164 to determine the lawfulness, justness and reasonableness of PECO's existing and proposed rates, rules and regulations.

8. The April 19, 2018 Commission Order also suspended the tariff proposed in the General Base Rate filing at Docket No. R-2018-3000164, Tariff Electric-Pa. P.U.C. No. 6, by operation of law until December 28, 2018, unless otherwise directed by Order of the Commission.

9. By Hearing Notice dated May 17, 2018, five in-person Public Input Hearings were scheduled in order to allow PECO's customers the opportunity to express their concerns or opinions regarding the rate increase request, as follows:

June 6, 2018, at 6 p.m. in Media, PA;  
June 7, 2018, at 6 p.m. in Norristown, PA;  
June 12, 2018, at 6 p.m. in Newtown, PA;  
June 14, 2018, at 10 a.m. in Philadelphia, PA; and  
June 14, 2018, at 6 p.m. in Philadelphia, PA.

10. By Hearing Notice dated June 11, 2018, an additional Public Input Hearing was scheduled for June 18, 2018 at 6 p.m. in Oxford, PA.

11. All public input hearings were held.

12. On August 15, 2018, PECO communicated to the ALJs that a Partial Settlement in principle had been reached; NRG did not agree to the partial settlement.

13. On August 21, 2018, an evidentiary hearing was held and witnesses from PECO and NRG Energy presented testimony.<sup>1</sup>

14. On August 28, 2018, parties in the rate case, with the exception of NRG Energy, filed a Joint Petition for Partial Settlement resolving all issues in the proceeding. The sole issue for NRG Energy was a proposed modification to the allocation of costs between distribution service and default service.

15. On October 9, 2018, Administrative Law Judges Christopher P. Pell and F. Joseph Brady issued a Recommended Decision, which recommended denial of NRG Energy's proposed modification, recommended approval of the Joint Petition for Partial Settlement, and recommended that PECO "be permitted to file a tariff supplement incorporating the terms of the Joint Petition and changes to rates, rules and regulations" to become effective for service rendered "on and after January 1, 2019."

16. An October 18, 2018 Secretarial letter stated that all exceptions to the Recommended Decision were due by October 29, 2018.

17. Exceptions were filed by NRG Energy, Inc. on October 29, 2018, and Replies to Exceptions were filed by PECO and the Office of Consumer Advocate on November 5, 2018.

18. On November 21, 2018, Martha Rodriguez filed the instant Complaint in the PECO rate case.

19. On December 11, 2018, PECO filed an Answer and the instant Preliminary Objections to the Complaint.

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<sup>1</sup> NRG opposed PECO's allocation of certain costs to residential distribution service and the effect of re-allocating those costs to residential default service, with a commensurate reduction in the level of residential distribution charges. (*Pennsylvania PUC v. PECO Energy Company - Electric Division*, Docket No. R-2018-3000164 (Order and Opinion entered December 20, 2018) p.6.

20. The Commission denied the Exceptions of NRG Energy, Inc. and adopted the October 9, 2018 Recommended Decision by Final Order entered on December 20, 2018.

21. Complainant did not file a response to the Preliminary Objection.

### DISCUSSION

Section 5.101 of Commission regulations, 52 Pa.Code § 5.101, sets forth the grounds for granting preliminary objections. That section provides 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).

Commission procedure regarding the disposition of preliminary objections is similar to the procedure utilized in Pennsylvania civil practice. A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. *Interstate Traveller Services, Inc. v. Pa. Dep't of Environmental Resources*, 486 Pa. 536, 406 A.2d 1020 (1979). The moving party may not rely on its own factual assertions but must accept for the purposes of disposition of the preliminary objection all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. *County of Allegheny v. Commonwealth of Pa.*, 507 Pa. 360, 490 A.2d 402 (1985). The preliminary objection may be granted only if the moving party prevails as a matter of law. *Rok v. Flaherty*, 527 A.2d 211 (Pa.Cmwlth. 1987). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Dep't. of Auditor General, et al. v. State Employees' Retirement System, et al.*, 836 A.2d 1053, 1064 (Pa.Cmwlth. 2003) (citing *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlth. 2002)).

The regulation at 52 Pa.Code § 5.101(a)(4) permits the filing of a preliminary objection to dismiss a pleading for legal insufficiency. The provision at 52 Pa.Code § 5.101(a)(4) serves judicial economy by avoiding a hearing where no factual dispute exists. If no factual issue pertinent to the resolution of a case exists, a hearing is unnecessary. 66 Pa.C.S. § 703(a); *Lehigh Valley Power Committee v. Pa. Pub. Util. Comm'n.*, 563 A.2d 548 (Pa.Cmwlth. 1989); *S.M.E. Bessemer Cement, Inc. v. Pa. Pub. Util. Comm'n.*, 540 A.2d 1006 (Pa.Cmwlth. 1988); *White Oak Borough Authority v. Pa. Pub. Util. Comm'n.*, 103 A.2d 502 (Pa.Super. 1954)

PECO contends that the Complaint is legally insufficient and should be dismissed. PECO contends that the Complaint is untimely and references 52 Pa.Code § 5.32, which states:

**§ 5.32. Complaints in rate proceedings.**

- (a) *Prior to suspension.* A person may file a complaint against a general rate increase within the meaning of section 1308(d) of the act (relating to voluntary changes in rates) within the time period specified in the notice provided to customers of the tariff filing.

(b) *After suspension.* A person filing a complaint during the suspension of a proposed general rate increase shall take the record of the suspended rate proceeding as it stands at the time of the complaint's filing.

PECO also asserts that because the Complaint was filed during the suspension period, the Complainant must take the record as it stands, referencing the regulation at 52 Pa.Code § 5.32(b), as cited above.

The record supports sustaining the Preliminary Objection of PECO.

The insert sent to PECO customers in April of 2018 advised that complaints should be filed with the Commission before June 29, 2018. The Complainant did not file her Complaint until November 21, 2018. Additionally, because the Complaint was filed after "the time period specified in the notice provided to customers of the tariff filing" for filing a complaint, the Complainant must "take the record of the suspended rate proceeding as it stands at the time of the complaint's filing." 52 Pa.Code §§ 5.32(a) and (b).

By the time the Complaint was filed, the rate case in this proceeding had been litigated and a Recommended Decision had been issued by the Administrative Law Judges, wherein they found that the rates agreed upon by the settling parties were just and reasonable. Additionally, the date by which Exceptions could be filed, October 29, 2018, had also passed by the time the Complainant filed this Complaint on November 21, 2018. Given the posture of the rate case at that time, the Complainant could not present evidence or file exceptions. The Commission subsequently adopted the Recommended Decision in an Opinion and Order dated December 20, 2018.

As the rate case has been adjudicated and a Final Decision issued, there are no disputed questions of law or fact in the instant Complaint, a hearing is not required or in the public interest. Therefore, PECO's Preliminary Objection to the Complaint must be sustained.

Accordingly, the Complaint is dismissed.

## CONCLUSIONS OF LAW

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

2. A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. *Interstate Traveller Services, Inc. v. Pa. Dep't of Environmental Resources*, 486 Pa. 536, 406 A.2d 1020 (1979).

3. A person may file a complaint against a general rate increase within the meaning of within the time period specified in the notice provided to customers of the tariff filing. 52 Pa. Code § 5.32(a).

4. A person filing a complaint during the suspension of a proposed general rate increase shall take the record of the suspended rate proceeding as it stands at the time of the complaint's filing. 52 Pa. Code § 5.32(b).

5. The Complaint is legally insufficient, and no hearing is required. 52 Pa.Code § 5.22(a)(4); *Dee-Dee Cab, Inc. v. Pa.Pub. Util. Comm'n*, 817 A.2d 593 (Pa.Cmwlth. 2003).

## ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by PECO Energy Company in the matter captioned Martha Rodriguez v. PECO Energy Company at Docket Number C-2018-3006124 is sustained;

