

GRIESING LAW LLC

Angela M. Lorenz, Esquire
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November 27, 2019

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

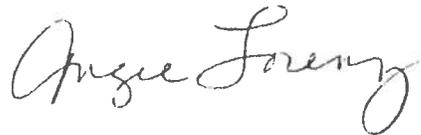
RE: Michael Carr v. PECO Energy Company
PUC Docket No. C-2019-3014144

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are *PECO Energy's Preliminary Objections* 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,



Angela Lorenz, Esq

Cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MICHAEL CARR,	:	
Complainant	:	
	:	
v.	:	DOCKET NO. C-2019-3014144
	:	
PECO ENERGY COMPANY,	:	
Respondent	:	
	:	

NOTICE TO PLEAD

Pursuant to 52 Pa. Code §§ 5.101 and 5.62(c), you are hereby notified that, if you do not file a written response denying or correcting the enclosed PRELIMINARY OBJECTION of PECO Energy Company within 20 days from service of this notice, a decision may be rendered against you. Your response must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Angela M. Lorenz, and where applicable, the Administrative Law Judge presiding over the issue.

File with:
Rosemarie Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

With a copy to:
Angela M. Lorenz, Esq.
Counsel for PECO Energy Company
Griesing Law, LLC
1880 JFK Blvd.
Suite 1800
Philadelphia, PA 19103
215-618-3720
alorenz@griesinglaw.com

Dated at Philadelphia, PA, November 27, 2019

Angela Lorenz

Angela M. Lorenz
Counsel for PECO Energy Company
Griesing Law, LLC
1880 JFK Blvd.
Suite 1800
Philadelphia, PA 19103
215-618-3720
alorenz@griesinglaw.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MICHAEL CARR,	:	
Complainant	:	
	:	
v.	:	DOCKET NO. C-2019-3014144
	:	
PECO ENERGY COMPANY,	:	
Respondent	:	
	:	

**PRELIMINARY OBJECTION OF RESPONDENT,
PECO ENERGY COMPANY**

Respondent, PECO Energy Company (“PECO”), pursuant to 52 Pa. Code § 5.101(a)(1-4) respectfully petitions this Honorable Commission to disregard and dismiss the Complainant’s formal Complaint as it fails to conform to this Court’s rules and procedures.

1. On November 7, 2019, PECO was served with a formal complained filed by Michael Carr (hereafter “Complainant”). A copy of the Complaint is attached hereto as Exhibit “1.”

2. In his Complaint, the Complainant requests that the Commission “revise the rules on PECO” to allow for trees to be cleared every two years instead of its current policy of five years.

3. Pursuant to 52 Pa. Code § 5.101, preliminary objections may be filed against a pleading when it is legally insufficient and where the Commission lacks jurisdiction over the subject matter. 52 Pa. Code § 5.101(a)(1-4).

4. Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil procedure.¹

¹ Equitable Small Transportation Interveners v. Equitable Gas Co., 1994 Pa.PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994)

5. 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).

6. 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”).

7. 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. Commw. of Pa., 490 A.2d 402 (Pa. 1985).

8. 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.

9. 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.

10. 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).

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

The Public Utility Commission Has No Subject Matter Jurisdiction Over This Dispute.

12. The Complainant raises allegations in his formal complaint pertaining to his personal opinions about PECO policies and procedures. He does not contend that the PECO is in violation of the PUC approved tariff. Accordingly, the Commission has no subject matter jurisdiction to examine these issues in dispute.

13. 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. Comm'n, 478 A.2d 947 (Pa.Cmwth. 1984).

14. 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. Cmwth. 1983) quoting Virgilli v. Southwestern Pa. Water Auth., 427 A.2d 1251, 1253 (Pa. Cmwth. 1981).

15. 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).

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

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

18. In this case, allegations that PECO's policies relating to how often PECO trims and clears trees in Horsham, Pennsylvania are not satisfactory, are not claims over which the Commission has jurisdiction.

19. As the Complainant's opinions relating to a tree clearing policy that does not violate the Commission approved tariff is not within the jurisdiction of the Commission, his Complaint should be dismissed.

REQUEST FOR RELIEF

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

Respectfully submitted,



Angela M. Lorenz
Counsel for PECO Energy Company
Griesing Law, LLC
1880 JFK Blvd.
Suite 1800
Philadelphia, PA 19103
215-618-3720
alorenz@griesinglaw.com

Dated: November 27, 2019

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MICHAEL CARR,	:	
Complainant	:	
v.	:	DOCKET NO. C-2019-3014144
	:	
PECO ENERGY COMPANY,	:	
Respondent	:	
	:	

VERIFICATION

I, Angela M. Lorenz, 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: November 27, 2019

Angela M. Lorenz

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

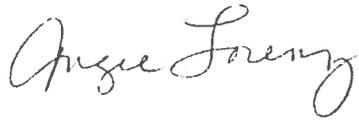
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Complainant	:	
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	:	
PECO ENERGY COMPANY,	:	
Respondent	:	
	:	

CERTIFICATE OF SERVICE

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

Michael Carr
10 Fawn Lane
Horsham, PA 19044

Dated at Philadelphia, Pennsylvania, November 27, 2019.



Angela M. Lorenz
Counsel for PECO Energy Company
Griesing Law, LLC
1880 JFK Blvd.
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EXHIBIT 1



PENNSYLVANIA PUBLIC UTILITY COMMISSION

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eFiling Successfully Transmitted

Your filing has been electronically received. Upon review of the filing for conformity with the Commission's filing requirements, a notice will be issued acknowledging acceptance or rejection (with reason) of the filing. The matter will receive the attention of the Commission and you will be advised if any further action is required on your part.

The date filed on will be the current day if the filing occurs on a business day before or at 4:30 p.m. (EST). It will be the next business day if the filing occurs after 4:30 p.m. (EST) or on weekends or holidays.

Print this page for your records.



Docket Number:	C-2019-3013144
Description:	Michael Carr - Answer to Formal Complaint
Transmission Date:	11/27/2019 12:38:40 PM
Filed On:	11/27/2019 12:38:40 PM
eFiling Confirmation Number:	1830914

Uploaded File List

Michael Carr-Answer.pdf	Communication	Answer to Formal Complaint
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For filings exceeding 250 pages, the PUC is requiring that filers submit one paper copy to the Secretary's Bureau within three business days of submitting the electronic filing online. Please mail the paper copy along with copy of this confirmation page to Secretary, Pennsylvania Public Utility Commission, 400 North Street, Harrisburg, PA 17120 a copy of the filing confirmation page or reference the filing confirmation number on the first page of the paper copy.

No paper submission is necessary for filings under 250 pages.

You can view a record of this filing and previous filings you have submitted to the PUC by clicking the My Filings link in the left navigation menu.

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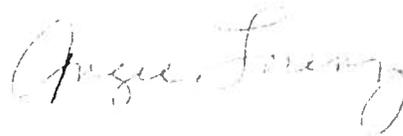
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Very truly yours,



Angela Lorenz, Esq

Cc: Not Recommended for Call of the Docket

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MICHAEL CARR,
Complainant

v.

PECO ENERGY COMPANY,
Respondent

:
:
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:
:

DOCKET NO. C-2019-3014144

ANSWER OF RESPONDENT,
PECO ENERGY COMPANY

On November 7, 2019, PECO Energy Company ("PECO") was served with a formal complaint filed by Michael Carr (hereafter "Complainant") in the above captioned docket. Pursuant to 52 Pa. Code § 5.61, PECO responds to the Complaint and states:

1. Admitted.
2. Admitted.
3. Admitted.
4. Unless specifically admitted herein, PECO denies all material allegations of fact and conclusions of law in the instant Complaint.

In his Complaint, the Complainant states that PECO has inadequate policies as it relates to clearing potential hazards, such as old and sick trees, and requests that the Commission "revise the rules on PECO" to allow for trees to be cleared every two years instead of its current policy of five years.

The Commission lacks subject matter jurisdiction over the issues in the Complainant's Complaint, and therefore, the Complaint should be dismissed. In order 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. As the Complainant, has failed to do so

in his Complaint. PECO respectfully requests that the Complaint be dismissed since the Commission has no jurisdiction over this matter.

5. Denied.

6. PECO neither admits nor denies the allegations in Paragraph 6. PECO is without knowledge or information sufficient to form a belief as to the truth of this averment and, therefore, such allegation is deemed denied.

7. Admitted.

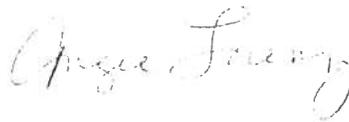
8. PECO neither admits nor denies the allegations in Paragraph 8. PECO is without knowledge or information sufficient to form a belief as to the truth of this averment and, therefore, such allegation is deemed denied.

9. Paragraph 9 is a Verification and Signature to which no response is required.

10. Paragraph 10 contains information regarding Filing, to which no response is required.

WHEREFORE. PECO Energy Company respectfully requests that your Honorable Commission dismiss the instant Complaint.

Respectfully Submitted,



Angela M. Lorenz
Counsel for PECO Energy Company
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1880 JFK Blvd.
Suite 1800
Philadelphia, PA 19103
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Dated at Philadelphia, Pennsylvania, November 27, 2019.



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