

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Regina Arties-Woodruff	:	
	:	
v.	:	C-2020-3022102
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Darlene Heep
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complaint because the unreasonable service claims were brought beyond the statute of limitations and because determining and awarding monetary damages are not within the jurisdiction of the Commission.

HISTORY OF THE PROCEEDING

On September 1, 2020, Regina Arties-Woodruff (Ms. Arties-Woodruff or Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO, Respondent, or the Company) alleging that the equipment and facilities that PECO attached to her home caused structural damage and, as relief, she is seeking compensation for the damages. PECO was served with the Complaint on September 24, 2020.

On October 15, 2020, PECO filed an Answer denying the material allegations of the Complaint. PECO also contended that the condition of the Complainant's home was not due to any action by PECO.

On October 16, 2020, an Initial Telephonic Hearing Notice was issued setting the hearing for December 1, 2020.

The hearing convened as scheduled on December 1, 2020. Ms. Arties-Woodruff appeared *pro se*. She testified on her behalf and presented nine exhibits. They are:

- Complainant Exhibit 1 -- (three photos of damage in 2015)
- Complainant Exhibit 2 -- (photo of renovation, rear of house, deck)
- Complainant Exhibit 3 -- (photo of renovation, top corner of two houses)
- Complainant Exhibit 4 -- (photo, rear of two homes)
- Complainant Exhibit 5 -- (photo, rear of homes, lower angle)
- Complainant Exhibit 6 -- (June 5, 2015 letter to PECO)
- Complainant Exhibit 7 -- (June 11, 2015 letter to PECO)
- Complainant Exhibit 8 -- (June 29, 2015 letter to PECO)
- Complainant Exhibit 9 -- (photos attached to complaint)

Khadijah Scott, Esq., represented the Respondent and presented the testimony of Greg Lund, PECO Claims Manager; Keith Henderson, PECO Manager of Workforce Development - Technical Operations; and Renee Tarpley, Senior Regulatory Assessor. PECO also presented four exhibits, marked as follows:

- PECO Exhibit 1 -- (summary report, July 6, 2015)
- PECO Exhibit 2 -- (claims department report of investigation)
- PECO Exhibit 3 -- (photos)
- PECO Exhibit 5 -- (photo, broken windows)

All exhibits were admitted into the record.

PECO was directed to file a memorandum of law regarding the applicable statute of limitations no later than January 15, 2021. The Complainant was given until ten days after receipt of the memorandum to file a reply.

PECO filed its memorandum on December 23, 2020. No response was filed by the Complainant. The record closed on January 4, 2021, the last day for submission of a reply by the Complainant.

FINDINGS OF FACT

1. The Complainant is Regina Arties-Woodruff.
2. The address at issue is 5038 Springfield Avenue, Philadelphia, Pennsylvania (service address). (Tr. 6).
3. The Complainant's family lived in the property beginning in 1973 and Complainant's mother bought the service address in 1978. (Tr. 6).
4. The Complainant served in the military and lived at another residence between 1979 and 2004, when she returned to the service address. (Tr. 8).
5. The Complainant moved out of the service address and her PECO account at the service address was closed in 2011. (Tr. 6, 99).
6. The Complainant received mail and stored property at the service address until 2016 when the property was sold. (Tr. 6-7).
7. The damage to the rear of the service address began prior to 2004 and continued until 2011. (Tr. 6, 8-9).
8. A contractor brought the deterioration issues at the service address to the Complainant's attention in 2015. (Tr. 11-12, 32).
9. On June 5, 2015, the Complainant wrote to PECO concerning the PECO facilities attached to her home. (Tr. 22-23; Complainant Exhibit 6).
10. The Complainant wrote to PECO again about her concerns on June 11, 2015. (Complainant Exhibit 7).

11. On June 26, 2015, PECO Manager of Claims Greg Lund and PECO contractor Alex MacMoran went to the service address, where they inspected the property and met with the Complainant. (Tr. 25, 49).

12. On June 29, 2015, the Complainant again wrote to PECO concerning damage to the service address. (Tr. 26; Complainant Exhibit 8).

13. On July 10, 2015, the Complainant called PECO and asked that the company remove the power lines from her house. (Tr. 25)

14. In 2015, PECO sent someone to the service address who removed the brackets and the power lines. (Tr. 25).

DISCUSSION

The Complainant alleges that PECO installed facilities that caused damage to her residential property. In particular, she contends that PECO incorrectly attached metal brackets and screws to the service address which, along with heavy PECO power lines, caused deterioration of the structure. In essence, the Complainant contends that the manner in which PECO installed its facilities was unreasonable service in violation of 66 Pa.C.S. § 1501. (Tr. 28). The Complainant is also seeking monetary damages. (Tr. 28).

The Pennsylvania Public Utility Code (“Code”) requires each public utility to provide the following:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, . . . Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501. The Complainant bears the burden of proof pursuant to Section 332(a) of the Code. 66 Pa.C.S. § 332(a).

Pursuant to Section 3314 of the Public Utility Code (the Code),
66 Pa.C.S. § 3314,

No action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefor arose, except as otherwise provided in this part.

(Emphasis added). 66 Pa.C.S. § 3314(a). This provision provides a general limitation period of three years for any action under the Code, except as otherwise provided. *See, Duquesne Light Co. v. Pa. Pub. Util. Comm'n* 611 A.2d 370 (Pa.Cmwlth. 1992) (*Duquesne*). *See also Collins v. Pennsylvania-American Water Co.*, F-2017-2628770 (Order entered August 29, 2019). Allegations that fall outside of the statute of limitations in the Code are outside of the Commission's jurisdiction. *Collins* at 16-17.

Additionally, statute of limitations is non-waivable if the time limitation contained in it terminates not just the remedy but the actual right to bring the action. *Reuben v. O'Brien*, 445 A.2d 801 (Pa. Super. 1982). The statute of limitations at 66 Pa. C.S. § 3314 is non-waivable because it terminates the remedy and the right to bring an action before the Commission. *Duquesne Light Co. v. Pa. Pub. Util. Comm'n*, (*Duquesne*).

Also, it is well-established under Pennsylvania law that the enforcement powers of the Commission do not include the power to award money damages. *Elkin v. Bell Tel. Co. of Pa.*, 420 A.2d 371 (Pa. 1980) (*Elkin*); *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1978). The Commission cannot award the reimbursement sought by the Complainant here. *Baker v PECO Energy Co.*, Docket Number C-2016-2573166 (Order entered November 16, 2018) at 20, fn. 2; *Morrow v. Bell Tel. Co. of Pa.*, 330 Pa. Super. 276, 479 A.2d 548 (1984); *W. Penn Power Co. v. Pa. Pub. Util. Comm'n*, 104 Pa. Cmwlth. 21, 521 A.2d 75 (1987); *Ostrov v. I.F.T., Inc.*, 402 Pa. Super. 87, 586 A.2d 409 (1991). A request for monetary damages must be pursued before a Magisterial District Justice or a Court of Common Pleas. *See Poorbaugh v. Pa. Pub. Util. Comm'n*, 666 A. 2d 744 (Pa. Cmwlth. 1995).

Ms. Artes-Woodruff testified that she had to move out of the family house because of the damage she asserts was caused by PECO. Tr. 6. In support of her case, the Complainant presented photos of the service address showing deterioration and the location of the PECO facilities when she lived at the service address. Complainant Exhibits 1, 9. The Complainant also presented photos of the sold and renovated service address and testified that they showed that PECO facilities and wiring were not connected directly on to the renovated structure. (Tr. 14-18; Complainant Exhibits 2, 3, 4, 5, 9). She strongly contended that the damage to her former home was caused by the incorrect installation of PECO equipment, resulting in the side of the structure pulling away. (Tr. 15). However, the claims of Ms. Artes-Woodruff must be dismissed.

First, the Complaint was filed beyond the statute of limitations. The Complainant testified that the damage she alleges that was caused by PECO occurred prior to 2015 and that she was aware of the damage when she moved back to the property in 2011. She also testified that in 2015, a contractor told her that the PECO facilities were causing damage to the service address. The record also shows that in June of 2015, the Complainant began to write and contact PECO regarding her concerns about the PECO facilities. (FOFs 7-10, 12-14). PECO denied any claims against PECO beginning on a June 10, 2015 and again after a visit to the service address by PECO Claims Manager Greg Lund on June 26, 2015. (PECO Exhibit 2).

Any potential or alleged liability of PECO arose no later than June of 2015. This was more than three years prior to the September 1, 2020 filing of the instant Complaint. The Complainant filed an action with the Commission more than three years after she became aware of the alleged problem. Clearly, the Complaint was filed beyond the statute of limitations and therefore this action cannot be maintained. 66 Pa.C.S. § 3314(a).¹

¹ The statute of limitations can be tolled by the filing of an informal complaint with the Commission, see *Duquesne Light Co. v. Pa. Pub. Util. Comm'n*, 611 A.2d 370, 383 (Pa. Cmwlth. 1992), and by the doctrine of equitable estoppel, see *Lester Ely v. Pennsylvania-American Water Company*, C-20055616 (Order entered July 10, 2006). The Complainant did not file an informal complaint here. The doctrine of equitable estoppel does not apply here because PECO did not lead the Complainant to believe that PECO would pay for or repair the damage. (See Tr. 44).

Second, as to the Complainant's claims for compensation or payment, in accordance with *Elkin, supra.*, the Commission does not have the authority to award the monetary damages sought by the Complainant. Such remedies can be sought in a civil court but not in this forum. The damages claim will be dismissed for lack of jurisdiction.

CONCLUSIONS OF LAW

1. The Commission does not have jurisdiction over the parties of this proceeding. 66 Pa.C.S. § 701.

2. The party filing the Complaint bears the burden of proving by a preponderance of the evidence that he is entitled to relief from the Commission. 66 Pa.C.S. § 332(a).

3. The Complaint cannot be maintained because it was filed after the three-year statute of limitations. 66 Pa.C.S. § 3314(a); *Collins v. Pennsylvania-American Water Company*, F-2017-2628770 (Order entered August 29, 2019).

4. The Complainant's monetary damages claims are not within the jurisdiction of the Commission. *Elkin v. Bell Tel. Co. of Pa.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1978).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint filed by Regina Arties-Woodruff against PECO Energy Company at Docket Number C-2020-3022102 is dismissed.

2. That the Secretary mark this docket closed.

Date: March 22, 2021

_____/s/
Darlene Heep
Administrative Law Judge