

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Thuy Lam	:	
	:	
v.	:	F-2022-3032683
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision grants the Preliminary Objection of PECO Energy Company and dismisses the Complaint of Thuy Lam at Docket No. F-2022-3032683 due to legal insufficiency of the pleading.

HISTORY OF THE PROCEEDING

On May 25, 2022, Thuy Lam (Complainant or Ms. Lam) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (Respondent or PECO). In the Complaint, the Complainant alleges that PECO did not credit her account with the last month of Pre-Program Arrearages (PPA) as agreed to in its Customer Assistance Program (CAP) because she did not maintain twelve (12) months of active service. The Complainant requests that PECO provide a credit in the amount of \$537.99, which she avers represents an unpaid balance on her account.

On June 15, 2022, the Respondent filed an Answer to the Complaint averring that: the Complainant initiated service with PECO on July 10, 2015; the Complainant enrolled in PECO's CAP on April 8, 2021; the Complainant's outstanding balance at the time of enrollment was \$6,011.55; PECO has credited over \$5,000.00 to the Complainant's account in PPA forgiveness; the Complainant's account finalized with a balance of \$541.69 on March 1, 2022, which was prior to the twelfth month, as prescribed by the PPA program; and there are no additional PPA credits owed to the Complainant.

Also on June 15, 2022, the Respondent filed a Preliminary Objection to the Complaint on the grounds that the Complaint is legally insufficient because it fails to identify any violation of a tariff, the Public Utility Code, or a Commission Order or regulation. The Preliminary Objection contained a Notice to Plead, requiring the Complainant to file a response within ten days of service. The Complainant did not file a response to the Preliminary Objection.

On July 7, 2022, the Commission issued a Motion Judge Assignment Notice, assigning this matter to me.

The Respondent's Preliminary Objection is procedurally ready to be ruled upon. For the reasons discussed below, the Objection will be granted.

FINDINGS OF FACT

1. The Complainant is Thuy Lam.
2. The Respondent is PECO Energy Company.
3. On May 25, 2022, the Complainant filed a Complaint alleging that PECO did not credit her account with the last month of PPA as agreed to in its CAP because she did not maintain twelve (12) months of active service. Complaint ¶¶ 4-5.
4. As relief, Complainant requests that PECO provide a credit in the amount of \$537.99. Complaint ¶ 5.

5. The Complainant states in her Complaint that she cancelled service prior to the twelfth month because she sold her home. Complaint ¶¶ 4-5.

6. On June 15, 2022, the Respondent filed an Answer to the Complaint averring that the Complainant's account finalized prior to the twelfth month, as prescribed by the PPA program, and thus, there are no additional PPA credits owed to the Complainant.

7. On June 15, 2022, the Respondent filed a Preliminary Objection to the Complaint on the grounds that the Complaint is legally insufficient because it fails to identify any violation of a tariff, the Public Utility Code, or a Commission Order or regulation.

8. The Preliminary Objection contained a Notice to Plead, requiring the Complainant to file a response within ten days of service.

9. The Complainant did not file a response to the Preliminary Objection.

DISCUSSION

The Commission's Rules of Administrative Practice and Procedure provide for the filing of preliminary objections. The Commission's Rules at 52 Pa. Code § 5.101(a) limit preliminary objections to the following grounds:

- (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)(1)-(7).

Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transp. Interveners v. Equitable Gas Co*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994). 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 Servs., Inc. v. Pa. Dep't of Env'tl. Res.*, 406 A.2d 1020 (Pa. 1979); *Rivera v. Phila. Theological Seminary of St. Charles Borromeo, Inc.*, 595 A.2d 172 (Pa. Super. 1991). The Commission has adopted this standard. *Montague v. Phila. Elec. Co.*, 66 Pa. PUC 24 (1988).

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. *Cnty. of Allegheny v. Commonwealth*, 490 A.2d 402 (Pa. 1985). Therefore, in ruling on a preliminary objection, the Commission must assume, for decisional purposes only, that the factual allegations of the Complaint are true. *Id.* The preliminary objection may be granted only if the moving party prevails as a matter of law. *Roc v. Flaherty*, 527 A.2d 211 (Pa. Cmwlth. 1985). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Dep't of Auditor General v. State Emps. Retirement Sys.*, 836 A.2d 1053 (Pa. Cmwlth. 2003) (citing, *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002)).

In order to be legally sufficient, a complaint must set forth an act or thing done or omitted to be done or about to be done by the respondent in violation, or claimed violation, of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission. *Drake v. Pa. Elec. Co.*, Docket No. C-2014-2413771 (Final Order entered June 12, 2014); 66 Pa.C.S. § 701.

In the present case, the Complainant alleges that PECO did not credit her account with the last month of PPA as agreed to in its CAP because she did not maintain twelve (12) months of active service. The Complainant does not dispute that she did not maintain an active account with PECO for twelve months as required by its PPA program. Rather, the Complainant is requesting that PECO credit her the outstanding balance of \$541.69 to her finalized

account because she experienced a financial hardship, which caused her to end service with PECO prior to the full twelve months of active service, as required by the PPA program.

Even accepting as true all well-pleaded material facts and reasonable inferences, the Complaint does not raise a violation of the Public Utility Code, Commission Order or regulation, or any rule contained within the Company's Commission-approved tariff. It is undisputed that the Complainant did not maintain twelve months of active service with PECO after her enrollment in PECO's CAP, as required by the PPA program. Therefore, the Complainant does not qualify for PPA arrearage credits during the twelfth month in which she was not an active PECO customer.

Section 703 of the Public Utility Code provides that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa.C.S. § 703(b); *see also* 52 Pa. Code § 5.21(d). Here, the Complainant fails to state a claim against the Respondent for which the Commission can grant relief. Thus, a hearing in this case would be a fruitless exercise and not necessary in the public interest.

Based on the foregoing, I shall grant the Respondent's Preliminary Objection and dismiss the Complaint.

CONCLUSIONS OF LAW

1. Commission regulations provide for the filing of preliminary objections. 52 Pa. Code § 5.101.

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 Traveler Servs., Inc. v. Pa. Dep't of Env'tl. Res.*, 406 A.2d 1020 (Pa. 1979).

3. The preliminary objection may be granted only if the moving party prevails as a matter of law. *Roc v. Flaherty*, 527 A.2d 211 (Pa. Cmwlth. 1985).

4. The Complainant failed to set forth an act or thing done or omitted to be done or about to be done by the Respondent in violation, or claimed violation, of a statute which the Commission has jurisdiction to administer, or of a regulation or order of the Commission. *Drake v. Pa. Elec. Co.*, Docket No. C-2014-2413771 (Final Order entered June 12, 2014); 66 Pa.C.S. § 701.

5. The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing, is not necessary in the public interest. 66 Pa.C.S. § 703(b)

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by PECO Energy Company seeking dismissal of the Complaint filed by Thuy Lam at Docket No. F-2022-3032683 is granted.

2. The Formal Complaint filed by Thuy Lam against PECO Energy Company at Docket No. F-2022-3032683 is dismissed.

3. That the Docket No. F-2022-3032683 be marked closed.

Date: July 29, 2022

/s/
F. Joseph Brady
Administrative Law Judge