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August 9, 2022

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

**RE: Marie Blitzer v. PECO Energy Company**  
**PUC Docket No. C-2022-3033912**

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *Preliminary Objection of Respondent, PECO Energy Company*.

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,

A handwritten signature in blue ink that reads "Khadijah Scott".

Khadijah Scott, Esquire  
Assistant General Counsel, Exelon BSC  
Encl.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

MARIE BLITZER :  
Complainant :  
v. : DOCKET NO. C-2022-3033912  
:  
PECO ENERGY COMPANY :  
Respondent :

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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 Objections of PECO Energy Company, within 20 days from service of this notice, a decision may be rendered against you. All pleadings, such as a Reply to Preliminary Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for PECO Energy Company, Khadijah Scott, and where applicable, the Administrative Law Judge presiding over the issue.

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

With a copy to:  
Khadijah Scott, Esq.  
PECO Energy Company  
2301 Market Street, S-23  
Philadelphia, PA 19103

Dated: August 9, 2022



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Khadijah Scott  
Counsel for PECO Energy Company  
2301 Market Street S-23  
Philadelphia, PA 19103  
215-841-6841  
Khadijah.scott@exeloncorp.com

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>MARIE BLITZER</b>	:	
<b>Complainant</b>	:	
v.	:	<b>DOCKET NO. C-2022-3033912</b>
	:	
<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

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

Respondent, PECO Energy Company (“PECO”), pursuant to 52 Pa. Code §5.101(a)(1), respectfully petitions this Honorable Commission to dismiss the instant Complaint as outside of the Commission’s jurisdiction.

1. On July 20, 2022, PECO was served with a formal complaint filed by Marie Blitzer (hereafter “Complainant”).
2. In her Complaint, the Complainant alleges that she was switched to a third-party supplier, Green Mountain Energy, by PECO Energy without her knowledge or consent.
3. The Complainant requests reimbursement of the supplier fees from October 18, 2013 to February 4, 2022.
4. The Complainant is beyond the three (3) year statute of limitations in which to bring a claim. 66 Pa.C.S. §3314(a).
5. The Complainant is beyond the four (4) year statute of limitations in which to request a refund. 66 Pa.C.S. §1312(a).
6. PECO therefore files the instant Preliminary Objection.

7. Pursuant to 52 Pa. Code §5.101, preliminary objections may be filed against a complaint and dismissed for lack of Commission jurisdiction. 52 Pa. Code § 5.101(a)(1).

8. Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil procedure. Equitable Small Transportation Intervenor. v. Equitable Gas Co., 1994 Pa.PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

9. 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).

10. 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”).

11. 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).

12. 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.

13. 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.

14. 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.2<sup>nd</sup> 593 (Pa.Comm. Ct. 2003), petition for allowance of appeal denied, 836 A.2d 123 (Pa. 2003).

15. Here, there are no genuine issues of fact and PECO Energy is entitled to judgment as a matter of law with respect to all of the allegations in the Complaint.

**I. THE PUBLIC UTILITY COMMISSION LACKS THE JURISDICTION TO ISSUE THE COMPLAINANT A REFUND.**

1. By way of background, on December 3, 1996, the Pennsylvania Legislature passed the Electricity Generation Customer Choice and Competition Act (“Competition Act”) under 66 Pa.C.S. § 2807.

2. The Competition Act required electric distribution companies, such as PECO Energy to unbundle transmission, distribution and generation rates for retail customers. The Competition Act deregulated electricity generation and provided all customers in Pennsylvania the opportunity to choose their electric generation supplier (“EGS”). 66 Pa.C.S. § 2807.

3. Section 2806(a) explicitly states:

All customers of electric distribution companies in this Commonwealth shall have the opportunity to purchase electricity from their choice of electric generation suppliers. The ultimate choice of the electric generation supplier is to rest with the consumer.

66 Pa.C.S. § 2806(a).

4. The Pennsylvania Public Utility Commission (“Commission”) issued regulations under 52 Pa. Code § 54.1 et. seq. to enable customers to make informed choices regarding the purchase of electricity services. 52 Pa. Code § 54.1(a).

5. The Commission approved Section 23 in PECO’s Electric Tariff to set forth the requirements for customers to switch to EGSs.

6. According to the Commission-approved tariff, customers were permitted to switch to EGSs and PECO Energy would “accommodate requests to switch in accordance with [Rule 23] and any applicable Commission Orders.” See PECO’s Electric Service Tariff, Section 23.

7. The Legislature and the Commission authorized customers to choose alternative electric suppliers consistent with the Electricity Generation Customer Choice and Competition Act, the regulations promulgated under 52 Pa. Code § 54.1; and PECO’s Commission-approved Electric Service Tariff.

8. On October 18, 2013, the Complainant entered into a contract with supplier, Green Mountain Energy, through PECO Energy’s Standard Offer Program.

9. The Complainant now requests from PECO Energy reimbursement of the Green Mountain supplier fees billed from October 18, 2013 to February 4, 2022.

10. The guideline for the statute of limitations is set forth at 66 Pa.C.S. §3314(a). Pursuant to section 3314(a):

**General Rule.** —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. 66 Pa.C.S. § 3314.

11. On October 24, 2013, the Complainant was mailed an enrollment notification letter, Pursuant to Section 23 of PECO Energy’s supplier tariff and in compliance with 52 Pa. Code 57.177.

12. Effective November 21, 2013, the Complainant was also placed on notice every month for nine (9) years through her billing statement that her electric supplier was Green Mountain Energy – not PECO.<sup>1</sup>

13. The Complainant enrolled with supplier Green Mountain Energy effective November 21, 2013.

14. Nine (9) years later, the Complainant requests a refund of its billings.

15. A nine year old claim is clearly beyond the three (3) year Statute of Limitations to which PECO Energy and the Court are bound. 66 Pa.C.S. §3314(a).

16. Pursuant to 66 Pa.C.S. § 1312(a), the Complainant is barred from obtaining a refund for the disputed charges beyond four years. Section 1312(a) specifies:

(a) **General Rule.**-- If, in any proceeding involving rates, the Commission shall determine that any rate received by a public utility was unjust or unreasonable, or was in violation of any regulation or order of the Commission, or was in excess of the applicable rate contained in an existing and effective tariff of such public utility, the Commission shall have the power and the authority to make an order requiring the public utility to

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• <sup>1</sup> PECO’s billing statement specifically instructs customers to obtain information about switching to an EGS at [www.papowerswitch.com](http://www.papowerswitch.com). Once there, it states: “*Electric generation suppliers are responsible for posted prices. It also states that the customer should Contact their supplier to confirm the accuracy of their bill and rate.*”

refund the amount of any excess paid by any patron, in consequence of such unlawful collection, **within four years prior to the date of the filing of the complaint**, together with interest at the legal rate from the date of each such excessive payment ...

*(emphasis added)*.

17. Title 66 Pa.C.S. §1312(a) represents a special limitation fixing the scope of the Commission's power to order refunds.

18. A nine year old refund request is clearly beyond the four (4) year Statute of Limitations to which PECO Energy and the Court are bound. 66 Pa.C.S. §1312(a).

19. In this matter, the Complainant requests reimbursement of supplier fees for nine (9) years, stemming from 2013.

20. In *Popp v PECO Energy*, Docket Number F-2022-3030964, Deputy Chief Administrative Law Judge Christopher Pell held the Commission does not have jurisdiction to address the complainant's complaint regarding the change in her electric generation supplier since she filed the complaint more than three years after the change occurred. *Citing* 66 Pa.C.S. §3314(a).

21. The Commission upheld Deputy Chief Administrative Law Judge Christopher Pell's ruling that no action for the recovery of any penalties or forfeitures incurred under the provisions of the public utility code and no prosecutions on account of any matter or thing mentioned in the public utility code shall be maintained unless brought within three years from the date at which the liability therefore arose. *Citing* 66 Pa.C.S. §3314(a).

22. Accordingly, the Complainant's formal complaint should be dismissed as the Public Utility Commission does not have the jurisdiction to award customer refunds outside of the proscribed statute of limitations. 52 Pa. Code §5.101(a)(1).

**REQUEST FOR RELIEF**

WHEREFORE, for the reasons set forth above, PECO Energy Company respectfully requests that your Honorable Commission summarily dismiss the Complainant's formal complaint, and all issues which were raised in the Complaint.

Respectfully submitted,



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Khadijah Scott  
Counsel for PECO Energy Company  
2301 Market Street, S23-1  
Philadelphia, PA 19103  
(215) 841-6841  
Fax: 215.568.3389  
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<b>PECO ENERGY COMPANY</b>	:	
<b>Respondent</b>	:	

**VERIFICATION**

I, Khadijah Scott, 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: August 9, 2022



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Khadijah Scott

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<b>Respondent</b>	:	

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**CERTIFICATE OF SERVICE**

I, Khadijah Scott, 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 *E-mailing* a copy to:

MARIE BLITZER  
300 BLACKBERRY CIR  
NEW HOPE PA 18938  
*Via Email: [donnamarielaudio@gmail.com](mailto:donnamarielaudio@gmail.com)*

Dated: August 9, 2022



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