

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Albert Bowman	:	
	:	
v.	:	C-2022-3035882
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Darlene Davis Heep
Administrative Law Judge

INTRODUCTION

This decision sustains the Preliminary Objection of PECO Energy Company and dismisses the Formal Complaint.

HISTORY OF THE PROCEEDINGS

On October 5, 2022, Albert Bowman (Complainant) filed a Formal Complaint (Complaint) against PECO Energy Company (PECO, Company or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, Mr. Bowman checked the box stating that the utility is threatening to, or has already shut off, his service. The Complainant also stated in a handwritten narrative that he moved out of the service address in September of 2022 and would like PECO to tell the new tenant at the service address that she has to pay his utility bill because he is out of work and will pay his bill when he is able.

PECO filed an Answer on October 24, 2022, denying all material allegations of fact in the Complaint. The Company also stated in the Answer: that the Complainant moved into

the service address and established electric and gas service with PECO in April of 2015; that the Complainant's service was finalized on September 16, 2022; and that the Complainant has not been billed for any service after that date. PECO further stated that the Complainant's outstanding balance is \$2,687.67. PECO also averred that on September 16, 2022, service at the service address was placed in the name of a new applicant under a new account number.

PECO also filed a Preliminary Objection on October 24, 2022. Therein, PECO argued that the Complaint should be dismissed as legally insufficient under 52 Pa. Code §5.101(a)(4) and 52 Pa. Code §5.22(a)(4) because it involves a private agreement between the Complainant and the new tenant and the Complaint does not allege a violation by PECO.

Attached to the Preliminary Objection was a Notice to Plead, wherein PECO informed the Complainant that pursuant to 52 Pa. Code §5.101 and 5.62(c), he must file any written response to the Preliminary Objection within 10 days of the October 24, 2022, service date of the Notice. The Complainant did not file a response to the Preliminary Objection.

This Preliminary Objection and Complaint were assigned to me on November 29, 2022, as a Motion Assignment. Also on November 29, 2022, an Initial Call-In Telephonic Hearing Notice was issued setting a hearing in this matter before me for January 18, 2023, at 10:00 a.m. A Prehearing Order was issued on December 12, 2022.

The record is now closed, and this matter is ready for a decision.

FINDINGS OF FACT

1. The Complainant is Albert Bowman.
2. The Respondent is PECO Energy Company, a jurisdictional utility.

3. From April of 2015 until September of 2022, the Complainant was a PECO gas and electric customer at the service address, 802 Madison Street, Coatesville, PA 19320 (service address).

4. In the Complaint, Mr. Bowman states that he would like PECO to inform the new tenant that she has to pay the Complainant's utility bill because he is out of work and will pay the bill when he is able.

5. The Complainant has not alleged in the Complaint that PECO violated the Code, a Commission Order or the regulations.

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 Env't Res., 406 A.2d 1020 (Pa. 1979).

In deciding preliminary objections, the Public Utility Commission must determine, based on the factual pleadings of the petitioner, if relief or recovery is possible. Rok v. Flaherty, 527 A.2d 211 (Pa. Cmwlth 1987). 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, 490 A.2d 402 (Pa. 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 v. State Emp.s' Ret. Sys., 836 A.2d 1053 (Pa. Cmwlth. 2003) (citing Boyd v. Ward, 802 A.2d 705 (Pa. Cmwlth. 2002)).

Section 703 of the Public Utility Code, 66 Pa.C.S. § 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. 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.2d 593 (Pa. Cmwlth. 2003), *appeal denied*, 836 A.2d 123 (Pa. 2003).

PECO asserts here that Mr. Bowman's request for relief that PECO inform the new tenant that she must pay his bill is a private matter outside of PECO's control. Further, PECO contends, the Complaint "fails to set forth a violation by PECO Energy of the Public

Utility Code, the regulations or PECO's Electric Service Tariff as required by 52 Pa. Code §5.22(a)(4).” Accordingly, PECO asserts, “the Complaint should be dismissed.” Preliminary Objection at 4.

There are two bases upon which this Complaint can be dismissed. First, the Commission has no jurisdiction over agreements between private persons or the financial responsibilities between private parties. See Leung v. Phila. Gas Works, Docket Number F-2020-3020041 (Opinion and Order entered Oct. 28, 2021); Yanko v. Pa. Am. Water Co., Docket Number F-2019-3011774 (Opinion and Order entered Mar. 25, 2021); B&Z Holdings, LLC v. PECO Energy Co., Docket Number F-2020-3019239 (Opinion and Order entered Jan. 13, 2022).

Second, the Complainant has not alleged a violation by PECO. Title 66 Pa.C.S. §701 provides that a Complaint must set forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission. The Complaint here does not.

Finally, the Complainant checked the box on the Complaint form that the utility had shut off or was threatening to shut off his service. The Complainant did not further address this issue in his handwritten narrative on the Complaint form. He also acknowledges in his Complaint that he is not paying and has not paid his PECO bill, stating that he is out of work and will pay when he can.

Pursuant to 66 Pa. C.S. §1406, PECO may notify a customer and terminate service provided to a customer for nonpayment of an undisputed delinquent account. It is undisputed that the Complainant had a delinquent balance on his account, for which the Respondent may terminate his service. 66 Pa. C.S. §1406. PECO committed no violation with respect to this issue. Therefore, a hearing on this issue is not in the public interest.

The Complaint lacks legal sufficiency and the Commission lacks jurisdiction over any proposed private agreement between the Complainant and the new tenant. Therefore, the Preliminary Objection of PECO will be granted, and the Complaint dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties of this proceeding. 66 Pa.C.S. § 701.
2. Preliminary objections may be granted where there is lack of jurisdiction or legal insufficiency of a pleading. 52 Pa. Code § 5.101(a)(1) and (a)(3).
3. In deciding preliminary objections, the Public Utility Commission must determine, based on the factual pleadings of the petitioner, if relief or recovery is possible. Rok v. Flaherty, 527 A.2d 211 (Pa. Cmwlt 1987).
4. The Commission has no jurisdiction over agreements between private persons or the financial responsibilities between private parties. See Leung v. Phila. Gas Works, Docket Number F-2020-3020041 (Opinion and Order entered Oct. 28, 2021); Yanko v. Pa. Am. Water Co., Docket Number F-2019-3011774 (Opinion and Order entered Mar. 25, 2021).
5. The Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary to the public interest. 66 Pa.C.S. § 703(b).
6. 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. Cmwlt. 2003).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection of PECO Energy Company at Albert Bowman v. PECO Energy Company, Docket Number C-2022-3035882, is sustained.
2. That the Formal Complaint filed by Albert Bowman in the matter of Albert Bowman v. PECO Energy Company, Docket Number C-2022-3035882, is dismissed.
3. That this matter be marked closed.

Date: February 2, 2023

_____/s/
Darlene Heep
Administrative Law Judge