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May 10, 2023

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

RE: William Bowers v. PECO Energy Company
Docket No. C-2023-3040066

Dear Ms. Chiavetta:

Enclosed for filing with the Commission are the *Preliminary Objections 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
PECO Energy Company

Encl.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

WILLIAM BOWERS	:	
Complainant	:	
	:	
v.	:	DOCKET NO. C-2023-3040066
	:	
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 within 10 days from service of this notice, a ruling may be entered 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, 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
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103

Dated: May 10, 2023



Khadijah Scott
Counsel for PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19103
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Fax: 215.568.3389
Khadijah.Scott@exeloncorp.com

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

Respondent, PECO Energy Company (“PECO”), pursuant to 52 Pa. Code § 5.101(a)(5) respectfully petitions this Honorable Commission to dismiss the instant Complaint as the Complainant has a lack of capacity to sue.

1. On April 20, 2023, PECO Energy was served with a formal complaint filed by William Bowers (hereafter “Complainant”).
2. In his formal complaint, Complainant alleges that PECO Energy is threatening to terminate his service and is requesting a payment agreement. See Formal Complaint.
3. PECO Energy simultaneously filed an Answer and the instant Preliminary Objection.
4. Pursuant to 52 Pa. Code § 5.101, preliminary objections may be filed against a complaint and dismissed for lack of capacity to sue. 52 Pa. Code § 5.101(a)(5).
5. Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil procedure. Equitable Small Transportation Intervenors. v. Equitable Gas Co., 1994 Pa.PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

6. 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).

7. 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”).

8. 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).

9. 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.

10. 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.

11. 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).

12. Here, the facts in this matter reveal that the Complainant, William Bowers, has been deceased since 2001. See, Respondent’s Answer.

13. Our Supreme Court has stated “[t]he quintessential example of someone who lacks capacity to sue or be sued is a deceased, as capacity only exists in living persons.” In re Estate of Sauers, 32 A.3d 1241 (Pa. 2011).

14. Accordingly, the Complainant’s formal complaint should be denied pursuant to 52 Pa. Code § 5.101(a)(5).

REQUEST FOR RELIEF

WHEREFORE, for all of the reasons stated herein, PECO respectfully requests that your Honorable Commission dismiss the instant complaint with prejudice.

Respectfully submitted,



Khadijah Scott
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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: May 10, 2023



Khadijah Scott

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	:	
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PECO ENERGY COMPANY	:	
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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 Objections in the above matter upon all interested parties by E-mailing a copy to:

WILLIAM BOWERS
2806 NICE ST
LEVITTOWN, PA 19056
Via email: kspecialteacher571981@aol.com

Dated: May 10, 2023



Khadijah Scott
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