

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Linda Meade	:	
	:	
v.	:	C-2023-3041672
	:	
PECO Energy Company	:	

**INTERIM ORDER GRANTING IN PART AND
DENYING IN PART RESPONDENT’S PRELIMINARY OBJECTIONS**

On July 7, 2023, Linda Meade (Complainant or Ms. Meade) 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 shut off her service, there are incorrect charges on her bill, her bill is high, and she is having a reliability, safety, or quality problem with her service. The Complainant requests that her electric service be restored, an audit be conducted on bills issued to her since 2013, and a payment arrangement be awarded to her.

On July 31, 2023, the Respondent filed an Answer with New Matter (Answer) to the Complaint denying all material allegations in the Complaint. In addition, PECO indicates that the Complainant’s account finalized on June 21, 2023, with a balance of \$21,334.69 and that the Complainant is no longer a PECO customer. PECO acknowledges that the Complainant’s service was terminated on May 18, 2023. In New Matter, argues that the PUC has no jurisdiction to adjudicate the Complaint, and that the Complaint should be dismissed on the grounds of res judicata and failure to file the Complaint within the statutory limit for filing claims provided in the Public Utility Code (Code).¹

¹ 66 Pa. Code §§ 101 et seq.

Also on July 31, 2023, the Respondent filed Preliminary Objections on the grounds of: (a) lack of jurisdiction; and (b) legal insufficiency of the Complaint on the grounds of res judicata and failure to file the Complaint within the statutory limit for filing claims provided in the Code. The Preliminary Objections contained a Notice to Plead, requiring the Complainant to file a response within twenty days of service.² The Complainant did not file a response to the Preliminary Objections.

On September 19, 2023, the Commission issued a Motion Judge Assignment Notice, assigning this matter to me. For the reasons set forth below, the Preliminary Objections are granted in part and denied in part.

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:³

- (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.

Commission procedure regarding the disposition of preliminary objections is

² Commission regulations provide that an answer to a preliminary objection may be filed within 10 days of the date of service. 52 PA. Code §5.101(f).

³ 52 Pa. Code § 5.101(a)(1)-(7).

similar to that utilized in Pennsylvania civil practice.⁴ A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt.⁵

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.⁶ Therefore, in ruling on a preliminary objection, the Commission must assume, for decisional purposes only, that the factual allegations of the Complaint are true.⁷ The preliminary objection may be granted only if the moving party prevails as a matter of law.⁸ Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections.⁹

The Complainant checked all but one of the five boxes describing possible reasons for filing the Complaint: the utility is threatening to or has already shut off service, I would like a payment agreement, there are incorrect charges on my bill, and I am having a reliability, safety, or quality problem with my service.¹⁰ Although the Complainant did not check the box labeled “other (explain)” in the space provided for an explanation the following handwritten phrase appears: “my bill is extremely high (PECO)” [sic]. As remedies, the Complainant requests that her service be restored, an audit be conducted on bills issued to her since 2013, and a payment arrangement be awarded to her.

⁴ *Equitable Small Transp. Interveners v. Equitable Gas Co.*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

⁵ *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).

⁶ *Cnty. of Allegheny v. Commonwealth*, 490 A.2d 402 (Pa. 1985).

⁷ *Id.*

⁸ *Roc v. Flaherty*, 527 A.2d 211 (Pa. Cmwlt. 1985).

⁹ *Dep’t of Auditor General v. State Emps. Retirement Sys.*, 836 A.2d 1053 (Pa. Cmwlt. 2003) (citing, *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlt. 2002)).

¹⁰ Complaint ¶ 5.

PECO acknowledges that the Complainant's service was terminated on May 18, 2023. PECO also indicates that her account was finalized on June 21, 2023.¹¹ In its Preliminary Objections, PECO seeks dismissal of the Complaint on the grounds of: (a) lack of jurisdiction;¹² and (b) legal insufficiency of the Complaint on the grounds of res judicata and failure to file the Complaint within the statutory limit for filing claims provided in the Code.¹³ The Preliminary Objections contained a Notice to Plead, requiring the Complainant to file a response within twenty days of service.¹⁴ The Complainant did not file a response to the Preliminary Objections.

Initially, I note that subject matter jurisdiction is a prerequisite to the exercise of power to decide a controversy.¹⁵ In ruling on a jurisdictional issue, it is clear that the Commission is bound by the express provisions of the Code and "possesses only the authority the state legislature has specifically granted to it in the Code['s] . . . express language or necessary implication therefrom."¹⁶ Section 1405(a) of the Code expressly limits the Commission's authority to disputes between utilities and customers.

PECO argues that the Commission lacks jurisdiction to rule on all claims in the Complaint because the Complainant does not have an active account with PECO and is not a

¹¹ Preliminary Objections ¶3.

¹² PECO made the objection pursuant to and cites regulation 52 Pa. Code § 5.101(a)(1) as authority for this objection.

¹³ PECO made the objection pursuant to and cites regulation 52 Pa. Code § 5.101(a)(4) as authority for this objection.

¹⁴ The Notice to Plead appears to have misstated the period allowed to answer Preliminary Objections. Commission regulations provide that an Answer to Preliminary Objections may be made "within 10 days of the date of service." 52 Pa.Code §5.101(f)(1).

¹⁵ *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa. Cmwlth. 1992) *alloc. denied*, 637 A.2d 293 (Pa. 1993).

¹⁶ *Sowers v. PPL Gas Utilities Corp.*, Docket No. C-20066530, (entered January 26, 2007) (citing 66 Pa C.S. §§ 1011, et seq.); See *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1977); *Allegheny County Port Auth. v. Pa. Public Util. Comm'n.*, 237 A.2d 602 (Pa. 1967); *Behrend v. Bell of Pa.*, 390 A.2d 233 (Pa.Super. 1978); *Pa. Dep't of Highways v. Pa. Public Util. Comm'n.*, 182 A.2d 267 (Pa.Super. 1962); *City of Erie v. Pa. Electric Co.*, 383 A.2d 575 (Pa.Cmwlth. 1978).

PECO customer.¹⁷ In support of its argument, PECO cites Section 1405(a) of the Code, which provides”¹⁸

The commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants, and customers.”
“the commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants, and customers. The commission is authorized to establish payment arrangements between a public utility, customers and applicants within the limits established by this chapter.

Although not cited by PECO in its Preliminary Objections, PECO’s argument appears to be grounded, in part, on the definition of the term “customer.” Commission regulations define a customer, in part, as “a person who, within 30 days after service termination or discontinuance of service, seeks to have service reconnected at the same location or transferred to another location within the service territory of the public utility.”¹⁹

The Complaint does not include any statement by the Complainant directly addressing her status as a PECO customer or an applicant for PECO service. Ms. Meade did, however, acknowledge that that on May 18, 2023, PECO “posted a notice on my door [and] shut off my electricity.”²⁰ She also indicates that on May 18, 2023, she “traveled to Virginia” and when filing the Complaint “was still not able to leave Virginia to come back home.”²¹

There is no indication in the Complaint that the Complainant has taken any action other than the filing of the Complaint to have her service reconnected or transferred to another location. As a result, her statements in the Complaint lend support to PECO’s argument that she was not a customer at the time she filed the Complaint.

¹⁷ Preliminary Objections Preliminary Objections ¶5-6.

¹⁸ 66 Pa.C.S. §1405(a). Neither Ms. Meade nor PECO made any reference to Ms. Meade being an applicant for service or having filed an application for service after May 18, 2023, in any of their filings.

¹⁹ 52 Pa. Code 56.2 definition of customer, subparagraph (ii) (emphasis added).

²⁰ Complaint ¶ 6.

²¹ *Id.*

In addition, Commission rules permit me to deem the facts raised in PECO’s New Matter as admitted.²² Thus, it is undisputed that the Complainant’s service was terminated on May 18, 2023. Consequently, under Commission regulation 56.2,²³ Ms. Meade ceased to be a PECO customer on June 17, 2023.²⁴ The Complaint was not filed until July 7, 2023; therefore, I conclude that Ms. Meade was not a PECO customer when she filed the Complaint.

As noted above, PECO, argues that under Section 1405(a) of the Code, the Commission lacks the statutory authority to adjudicate all claims made in the Complaint.²⁵ I disagree. It is undisputable that the Commission possesses only the authority the State Legislature has specifically granted to it in the Code.²⁶

Section 1405(a) of the Code expressly grants and circumscribes the Commission’s authority over payment disputes to “complaints regarding payment disputes between a public utility, applicants and customers.”²⁷ Here, Ms. Meade ceased to be a PECO customer on June 7, 2023. She did not file the Complaint until one month later on July 7, 2023. Therefore, I conclude that the Commission does not have jurisdiction over the Complainant’s request for a payment arrangement.

By its terms, Section 1405(a) of the Code relates specifically to the Commission’s authority to issue a repayment arrangement to a Complainant. PECO cites no cases or other authority in support of the proposition that Section 1405(a) of the Code relates to any and all claims in the Complaint. Therefore, PECO’s Preliminary Objection made pursuant to regulation

²² 52 Pa.Code § 5.63(c).

²³ 52 Pa.Code § 56.2.

²⁴ 52 Pa.Code § 5.63(c).

²⁵ *See* Preliminary Objection ¶ 7-8.

²⁶ *See* fn. 15-16 and accompanying text.

²⁷ 66 Pa.C.S. §1405(a).

§ 5.101(a)(1) will be granted but only to the extent that it relates to the Complainant's request for a repayment arrangement, and it is denied as to all other claims found in the Complaint.

In its Preliminary Objections, PECO also argues that the Complainant's allegations of incorrect billing, high billing and foreign wiring arising since 2013 in Complaint should be dismissed on the grounds of res judicata.²⁸

The doctrine of res judicata applies to preclude collateral attack of final orders rendered in proceedings brought before the Commission.²⁹ Res judicata is a judicially created doctrine. The purposes of the rule are the protection of the litigant from the dual burden of relitigating an issue with the same party or his privy and the promotion of judicial economy through prevention of needless litigation.³⁰ For the res judicata doctrine to prevail, four elements common to both actions, sometimes termed the four criteria or "identities" must exist: (1) identity of issues, (2) identity of causes of action, (3) identity of persons and parties to the action, and (4) identity of the quality or capacity of the parties suing or being sued.³¹

As a matter of procedure, res judicata is an affirmative defense. Therefore, it is not technically appropriate to raise the doctrine by way of a preliminary objection.³² Both the courts and this Commission have struggled with the appropriate way to address improperly raised affirmative defenses. The Commonwealth Court has recognized circumstances which permit a tribunal to consider an affirmative defense raised by preliminary objection in three sets of circumstances: where the basis of the defense is apparent on the face of the pleading; where the opposing party fails to object to the defect; or where a defense is clear on the face of the

²⁸ Preliminary Objection ¶14.

²⁹ *O'Toole v. Bell Tel. Co. of Pa.*, 77 Pa. P.U.C. 98 (1992).

³⁰ *In re Coatesville Area Sch. Dist.*, 244 A.3d 373 (Pa. 2021) (*Coatesville*) and cases cited therein.

³¹ *Coatesville*.

³² See e.g., *Cuff v. PECO Energy Co.*, Docket No. C-2013-2370894 (Final Order entered October 7, 2013); *Wroblewski v. Pennsylvania Electric Company*, Docket No. C 2008-2058385 (Opinion and Order entered May 15, 2009).

pleading and the non-moving party fails to file a preliminary objection to the preliminary objections.³³

The Commission has followed a similar approach. The most common is to employ Commission Regulation 1.2(a)³⁴ which permits a presiding officer to overlook a defect in procedure, and to consider the preliminary objection under the standard found in Rule 5.102,³⁵ governing judgment on the pleadings and summary judgment. The Commission has recently considered the failure of the complainant to object to the procedural defect as a waiver of any objection, particularly when the basis for the affirmative defense is raised both in the complaint and by the fact the complainant responded to the preliminary objection and failed to object.³⁶

I am mindful of the Complainant's self-represented status and the Commission's preference for permitting a self-represented litigant to have their "day in court."³⁷ However, this preference must be balanced against the expense of time and resources to both PECO and the Commission. In this case, I find that it is appropriate to consider PECO's defense of res judicata. First, PECO raised the affirmative defense in both its Answer (in New Matter) and also by Preliminary Objection. PECO included a recitation of the facts and the Commission decision³⁸ upon which its defense was based. Both the New Matter and the Preliminary Objections included a notice to plead which advised the Complainant that she was required to respond.

³³ *Wurth by Wurth v. City of Philadelphia*, 584 A.2d 403 (Pa.Cmwlt. 1990).

³⁴ 52 Pa.Code § 1.2(a).

³⁵ 52 Pa.Code § 5.102.\

³⁶ *Stillwater Lakes Coalition of Independent Owners c/o Ruben Collazo v. Stillwater Sewer Corporation*, Docket C-2022-3031532 (Opinion and Order entered December 22, 2022), *affirmed*, 145 C.D. 2023 (Pa. Cmwlt. Ct. July 25, 2023).

³⁷ *Carlock v. The United Telephone Company of Pennsylvania*, Docket No. F 00163617 (Order entered July 14, 1993)

³⁸ Preliminary Objections ¶¶ 11-14, citing *Linda Meade v. PECO Energy Company* Docket C-2020-3015372 (Final Order entered May 5, 2021).

While the Commission must consider her status as a self-represented complainant, the Commission must also be fair to PECO. While some procedural leeway is provided to self-represented litigants, a self-represented litigant is still required to comply with the Commission's procedural rules.³⁹ It is not the function of the administrative law judge to develop a party's argument.⁴⁰ Further, as an administrative law judge, I must be a steward of Commission resources. I find that the Complainant had ample notice and opportunity to respond to the factual allegations in PECO's Answer, including New Matter. Although PECO improperly raised an affirmative defense by preliminary objection, it is appropriate to consider PECO's claim in order to secure a just, speedy, and inexpensive result.⁴¹

Section 5.102 of the Commission's Rules provides in relevant part:

(a) Generally. After the pleadings are closed, but within a time so that the hearing is not delayed, a party may move for judgment on the pleadings or summary judgment. A motion must contain a notice which states that an answer or other responsive pleading shall be filed within 20 days of service of the motion.

(b) Answers. An answer to a motion for judgment on the pleadings or summary judgment, including an opposing affidavit or verification to a motion for summary judgment, may be filed within 20 days of the date of service of the motion. The answer to a motion for summary judgment may be supplemented by depositions, answers to interrogatories or further affidavits and admissions.

An administrative law judge may grant a motion for judgment on the pleadings, if the record shows that no facts are at issue and that the law is so clear that a trial would be a fruitless exercise.⁴² All of the opposing party's well-pleaded allegations are viewed as true but

³⁹ E.g., *Commonwealth v. Lyons*, 833 A.2d 245, 251-52 (Pa. Super. 2003).

⁴⁰ *C.M. v. Pa. State Police*, 269 A.3d 1280, 1285 (Pa. Cmwlth. 2022). See also *Vann v. Unemployment Compensation Board of Review*, 494 A.2d 1081 (Pa. 1985)(pro se litigant must, to some extent, assume the risk that his lack of legal training will prove his undoing.).

⁴¹ *Stillwater; Spirat v. Metropolitan Edison Co.*, Docket No. C-2018-3005589 (Adopted by Order entered March 28, 2019).

⁴² 52 Pa. Code § 5.102(d)(1).

only those facts admitted may be considered against the non-moving party.⁴³ In short, in order for PECO’s motion to be granted, no material facts may be at issue and based upon those facts PECO must be entitled to a judgment as a matter of law.

On January 6, 2020, the Complainant filed a formal Complaint against PECO docketed at C-2020-3015372 (2020 Complaint). An Initial Decision (2021 Initial Decision) and a Final Order dismissing the 2020 Complaint were issued in that matter (2021 Final Order).⁴⁴ The 2021 Initial Decision and 2021 Final Order related to the following claims by Ms. Meade: foreign wiring, reliability of service and high billing from “around 2013.”⁴⁵ In this proceeding, the Complainant also makes claims against PECO based on incorrect charges, high bills, and reliability safety or quality problems.⁴⁶

Unquestionably, there are common elements in the Complaint filed by Ms. Meade in this matter and the 2020 Complaint, including: the parties, the cause of action, and claims of unreasonable service, and high and/or incorrect billing. As in the 2020 Complaint, in the Complaint filed in this matter, Ms. Meade explicitly requests an audit of “the high bill the company has been assessing me since 2013.”⁴⁷ Further, in the Complaint she specifically references actions by PECO relating to her service in 2017 and the claims she made against PECO in 2020.⁴⁸ Thus, on its face the Complaint reflects three of the four criteria for application of the doctrine of res judicata: (1) identity of persons and parties to the action, (2) identity of causes of action, and (3) identity of issues.

⁴³ *Beardell v. Western Wayne School District*, 496 A.2d 1373 (Pa. Cmwlth.1985).

⁴⁴ See *Linda Meade v. PECO Energy Company* Docket C-2020-3015372 (Final Order entered May 5, 2021).

⁴⁵ 2021 Initial Decision at 1, 13. See also, 2020 Complaint ¶ 4.

⁴⁶ Complaint ¶¶ 5-6. The Complaint does not include any reference to foreign wiring.

⁴⁷ Complaint ¶ 6 (emphasis added).

⁴⁸ Complaint ¶ 6.

What is less clear is the extent to which the fourth criteria i.e., identity of the quality or capacity of the parties suing or being sued⁴⁹ applies to the claims made by Ms. Meade in the 2020 Complaint and the Complaint filed in this proceeding. The 2021 Final Order was the final disposition of Ms. Meade’s claims of unreasonable service, and high and/or incorrect billing made in the 2020 Complaint which arose during the period from 2013 through the date of filing of the 2020 Complaint i.e., January 6, 2020.

Under the doctrine of res judicata, Ms. Meade may not re-asset such claims arising during that period, in this proceeding. Thus, PECO’s the Preliminary Objection will be granted, and the Complaint will be dismissed as to Ms. Meade’s claims of unreasonable service, and high and/or incorrect billing to the extent her claims relate to the period from 2013 through January 6, 2020.

It is not entirely clear, however, whether any of Ms. Meade’s claims of unreasonable service, and high and/or incorrect billing against PECO raised in the Complaint arose after January 6, 2020. As a result, it is appropriate to deny PECO’s Preliminary Objections and to conduct a hearing on the Complainant’s claims of unreasonable service, and high and/or incorrect billing against PECO set forth in the Complaint to the extent they relate to PECO service and billing for the period not covered by the 2020 Complaint through the date she filed the Complaint in this matter i.e., January 7, 2020 – July 7, 2023.

In its Preliminary Objections, PECO also argued that the Complainant is “barred from contesting incorrect billing, high billing and foreign wiring stemming from 2013 in the present Complaint due to the three-year statute of limitations.”⁵⁰ While it is true that the Code provides for a three-year statute of limitations on claims against a utility.⁵¹ The Code also

⁴⁹ *Coatesville*.

⁵⁰ Preliminary Objections ¶ 25.

⁵¹ 66 Pa.C.S. §3314(a).

provides for a four-year statute of limitations on claims for a refund based on a claim against a utility.⁵²

The Complaint in this matter was filed on July 7, 2023. Under these statutes the Complaint cannot be used to support claims arising more than 3 years prior to July 7, 2023, or a request for refund of any payment made by the Complainant more than 4 years prior to July 7, 2023. Accordingly, any claims arising prior to July 7, 2020, or any request for refund of any payment made by the Complainant prior to July 7, 2019, cannot be addressed in a hearing in this matter. It is not clear which, if any, of the claims in the Complaint or remedies requested are not barred by those limitations. As a result, it is appropriate to conduct a hearing to determine which claims are not barred and may be addressed in this proceeding.

Based on the foregoing, I shall grant, in part and deny, in part, the Respondent's Preliminary Objections. The Complaint will be dismissed in part, consistent with this Order.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objections filed by PECO Energy Company seeking dismissal of the Complaint filed by Linda Meade at Docket No. C-2023-3041672 are granted, in part and denied, in part as set forth in this Order.

2. The following issues/allegations are stricken from the Complaint:

- a. Request for a Commission-issued payment arrangement.
- b. Claims of unreasonable service for electric service provided to the

⁵² 66 Pa. C.S. §1312.

Complainant arising on or before January 6, 2020.

- c. Claims of incorrect and/or high billing for electric service provided to the Complainant arising on or before January 6, 2020.
- d. Any claims arising prior to July 7, 2020.
- e. Any request for refund of a payment made prior to July 7, 2019.

3. That this matter be scheduled for an evidentiary hearing to address the remaining allegations of reasonableness of service and incorrect and/or high billing for electric service set forth in the Complaint at Docket No. C-2023-3041672, as modified by this Order.

Date: October 3, 2023

_____/s/
Arlene Ashton
Administrative Law Judge

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LINDA MEADE

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