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December 21, 2023

VIA E-FILING

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

RE: Zoe Landau v. PECO Energy Company
Docket No. C-2023-3044632

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is 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, appearing to read "Khadijah Scott".

Khadijah Scott, Esquire
Assistant General Counsel, PECO Energy Company

Encl.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ZOE LANDAU	:	
Complainant	:	
	:	
v.	:	DOCKET NO. C-2023-3044632
	:	
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: December 21, 2023



Khadijah Scott
Counsel for PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19103
(267) 533-1830
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)(4) and (a)(7) respectfully petitions this Honorable Commission to dismiss the instant Complaint as the Complaint is legally insufficient and the Complainant has a lack of Standing to participate in the proceeding.

1. On December 5, 2023, PECO Energy was served with a formal complaint filed by Zoe Landau (hereafter “Complainant”).

2. In her formal complaint, the Complainant alleges that PECO Energy is threatening to terminate her service and that her bills are too high. She is requesting that PECO waive the billing from July 2023 to October 2023 due to a malfunctioning HVAC unit at the property of 2222 Frankford Ave., 3rd Fl., Philadelphia PA 19125. 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 legally insufficiency and lack of Standing to participate in the proceeding. 52 Pa. Code §§5.101(a)(4) and (a)(7).

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.Comm. Ct. 2003), petition for allowance of appeal denied, 836 A.2d 123 (Pa. 2003).

12. The Complainant's Complaint is legally insufficient as PECO's billing has no direct and immediate effect on her as she is not PECO's customer of record at 2222 Frankford Ave., 3rd Fl., Philadelphia PA 19125. See, Respondent's Answer.

13. The Complainant alleges that PECO Energy is threatening to terminate her service and that her bills are too high. She is requesting that PECO waive her bill from July 2023 to October 2023.

14. The Complainant, Zoe Landau is not PECO's customer of record at 2222 Frankford Ave., 3rd Fl., Philadelphia PA 19125. See, Respondent's Answer.

15. PECO has neither threatened to terminate her service nor sent her a bill for service at 222 Frankford Ave., 3rd Fl., Philadelphia PA 19125.

16. The Complainant does not have an account in her name with PECO.

17. PECO's customer of record at 2222 Frankford Ave., 3rd Fl., Philadelphia PA, is the property owner, 2222 Frankford Avenue, LLC.

18. Our Supreme Court has explained that the hallmark of standing is that "a person who is not adversely affected in any way by the matter he seeks to challenge is not 'aggrieved' thereby." William Penn Parking Garage, Inc. v. City of Pittsburgh, 346 A.2d 269, 280 (Pa. 1975). An individual is aggrieved if he has a "substantial, direct and immediate interest in the outcome of the litigation." Fumo v. City of Philadelphia, 972 A.2d 487, 496 (Pa. 2009).

19. For standing to exist, the underlying controversy must be real and concrete, such that the party initiating the legal action has, in fact, been “aggrieved.” Pittsburgh Palisades Park, LLC v. Commonwealth. 888 A.2d 655, 659 ([Pa.] 2005).

20. In this matter, PECO’s customer of record is the property owner, 2222 Frankford Avenue.

21. PECO has billed its customer of record, 2222 Frankford Avenue.

22. PECO has not sent any billing to the Complainant, Zoe Landau.

23. PECO has not requested payment from Complainant, Zoe Landau, for billing at 2222 Frankford Avenue, 3rd floor, Philadelphia, PA.

24. The Complainant has neither asserted nor provided evidence that she is an authorized agent of PECO’s customer of record, 2222 Frankford Avenue.

25. Thus, the Complainant has not in any way “in fact, been aggrieved,” as she is neither PECO’s customer of record nor being billed for the property located at 2222 Frankford Avenue, 3rd floor, Philadelphia, PA.

26. The Complainant’s Complaint is legally insufficient because the threat of termination nor billing has a direct and immediate effect on her, as she is not PECO’s customer or record, has not been sent any bills from PECO, has not been threatened with termination by PECO nor billed improperly by PECO.

27. The Complainant lacks standing to participate in the formal complaint proceedings on behalf of 2222 Frankford Avenue.

28. Accordingly, the Complainant’s formal complaint should be denied pursuant to 52 Pa. Code §§5.101(a)(4) and (a)(7).

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: December 21, 2023



Khadijah Scott

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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:

ZOE LANDAU
2222 FRANKFORD AVE *FL 3RD
PHILADELPHIA PA 19125
Via email: zlandau235@gmail.com

Dated: December 21, 2023



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