



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>FRANK TORONEY</b>	:	
<b>Complainant</b>	:	
	:	
v.	:	<b>DOCKET NO. C-2024-3045932</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 January 31, 2024, PECO was served with a formal complaint filed by Frank Toroney (hereafter “Complainant”). *See*, Complainant’s Complaint.
2. On February 20, 2024 , the Respondent filed an Answer with New Matter to the Complainant’s Complaint. *See*, Respondent’s Answer to Complaint.
3. In his Complaint, the Complainant states that states that his father accepted an offer to have an off-peak meter installed at his property in exchange for a billing discount. In 2003, his father passed away and the property is no longer receiving the discount. The Complaint requests that the billing for the off-peak meter be refunded back to 2003 and that he be reimbursed for the expense of an electrician to remove the meter from the property.
4. Pursuant to 52 Pa. Code §5.101, preliminary objections may be filed against a complaint and dismissed for lack of jurisdiction and lack of Standing to participate in the proceeding. 52 Pa. Code §§5.101(a)(1) and (a)(7).

5. PECO therefore files the instant Preliminary Objection.
6. 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).
7. 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).
8. 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).
9. 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”).
10. 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).
11. 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.

12. 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.

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

14. 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).

15. 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).

16. In this matter, the Complainant did not become PECO’s customer of record until June 24, 2022.

17. PECO did not bill the Complainant prior to June 24, 2022 at the property at issue.

18. PECO has not requested payment from the Complainant for billing at the property at issue prior to June 24, 2022.

19. Accordingly, the Complainant does not have standing to seek a refund for billings which he asserts began in 2003.

20. Thus, the Complainant has not in any way “in fact, been aggrieved,” as he was neither PECO’s customer of record nor being billed for the property located at 176 Springton Rd., Glenmoore, PA prior to June 24, 2022.

21. Moreover, to the extent the Complainant seeks the court to review billing issues which began in or before 2003, the Complainant is beyond the three (3) year statute of limitations in which to bring a claim. 66 Pa.C.S. §3314(a).

22. The Complainant is beyond the four (4) year statute of limitations in which to request a refund. 66 Pa.C.S. §1312(a).

23. 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.

24. The Complainant is requesting that the court review a matter which stemmed from 2003.

25. Eleven (11) years later, the Complainant requests a refund of billings.

26. An eleven (11) 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).

27. 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 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)*.

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

29. An eleven (11) 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).

30. Administrative Law Judge Cynthia Williams Fordham ("ALJ Fordham") reached a similar conclusion in the matter Darryl Hicks v. Philadelphia Gas Works, Docket No. C-2010-2207800 (Initial Decision entered, July 12, 2012). In that case, the Complainant disputed charges on his bill from May 2005 and a meter exchange that took place in 2005. Philadelphia Gas Works argued that the Complainant was barred from contesting his bill due to the three year statute of limitations. Id. ALJ Fordham dismissed the Complainant's case and the Complainant filed Exceptions. Id. The Commission agreed with ALJ Fordham, dismissed the Complainant's Exceptions and adopted ALJ Fordham's Initial Decision as follows:

We find that the ALJ properly concluded that the Complainant is barred from contesting the May 2005 bill. Sections 3314(a) and 1312(a) preclude the Complainant from filing a Complaint in 2010 regarding the May 2005 meter exchange or the May 2005 bill. Accordingly, the ALJ correctly concluded that the Complainant has not met his burden of proof, pursuant to Section 332(a), *supra*, on the matter of the Company's alleged incorrect billing.

Darryl Hicks v. Philadelphia Gas Works, Docket No. C-2010-2207800 (Opinion and Order entered, February 14, 2013).

31. Accordingly, to the extent the Complainant's formal complaint seeks to have the court address billing that stemmed from or before 2003, the Complainant should be dismissed as the Public Utility Commission does not have the jurisdiction to adjudicate matters outside of the three year statute of limitations or to award customer refunds outside of the proscribed statute of limitations. 52 Pa. Code §5.101(a)(1).

32. The Complainants' Complaint without regard to any billing issues prior to June 2022, when he became the customer of record are outside of the PUC's jurisdiction.

### **REQUEST FOR RELIEF**

WHEREFORE, for the reasons set forth above, PECO Energy Company respectfully requests that your Honorable Commission summarily dismiss the portion of the Complainant's formal Complaint which seeks to address billing issues prior to 2022, which are outside of the court's jurisdiction.

Respectfully submitted,



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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: February 20, 2024

\_\_\_\_\_  
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 Objection in the above matter upon all interested parties by *E-mailing* a copy to:

FRANK TORONEY  
176 SPRINGTON RD  
GLENMOORE PA 19343  
*Via email: franktoroney@gmail.com*

Dated: February 20, 2024



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