

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Frank Toroney	:	
	:	
v.	:	C-2024-3045932
	:	
PECO Energy Company	:	

INTERIM ORDER ON RESPONDENT’S PRELIMINARY OBJECTION

On January 17, 2024, Frank Toroney (Complainant or Mr. Toroney) filed a Formal Complaint (Complaint) against PECO Energy Company (PECO, Respondent or Company) with the Pennsylvania Public Utility Commission (Commission). In the present Complaint, Mr. Toroney alleges that the utility has improperly charged him for a meter that was intended to provide a discount for off-peak usage. As relief, the Complainant requests that PECO stop charging him monthly for the meter while it has discontinued the discount for the off-peak usage and reimburse him for all the years that he was charged unfairly. In the alternative, the Complainant seeks reimbursement for any costs related to the rewiring of the hot water heater if the meter in question is removed.

On February 20, 2024, the Respondent filed an Answer and New Matter, along with a Notice to Plead. In its Answer, PECO denied the material allegations of the Complaint and averred,

[I]f the Complainant no longer wishes to have an off-peak meter, PECO has no objection. The Complainant was advised that he can have the meter removed at his expense. Until the meter is removed, pursuant to PECO’s tariff, it has a right to bill a \$2.04 fee per month. See, PECO Tariff, Rate R Residence Service, attached hereto as Exhibit “2.” See also, Bureau of Consumer Services decision, attached hereto as Exhibit “3.” The bills and balance are correct. This Complaint is without merit and should be dismissed.

Complaint ¶ 5. Along with the Answer, PECO filed a New Matter in which it argued that the Complainant lacks standing to seek reimbursement for claims stemming back to 2003 because he was not a customer of record at the property at issue until June 2022.

Also on February 20, 2024, the Respondent filed a Preliminary Objection seeking dismissal of the portion of the Complaint which addresses billing issues prior to 2022, because the Complainant lacks standing to raise those issues, and the statute of limitations on them has run.

By Motion Judge Assignment Notice dated March 20, 2024, PECO's Preliminary Objection was assigned to me for disposition.

As of the date of this Order, the Complainant has not filed a response to PECO's Preliminary Objection.

For the reasons set forth below, PECO's Preliminary Objection will be denied, in part, and granted, in part, and the matter will be set for an evidentiary hearing.

DISCUSSION

Commission regulations permit the filing of preliminary objections. 52 Pa.Code §§ 5.101(a)(1)-(7). Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

Commission regulations provide:

§ 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.

In deciding preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the complainant, recovery or relief is possible. *Dep't of Auditor General, et al v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa.Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa.Cmwlth. 1996). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlth. 2002). All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees' Retirement Bd.*, 690 A.2d 1312 (Pa.Cmwlth. 1997).

A preliminary objection can be granted only if recovery or relief is not possible

after all of the Complainant's averments in the complaint are viewed as true for purposes of deciding the preliminary objection, using only those facts specifically admitted.

In the present case, the Complainant alleges that the utility has improperly charged him for a meter that was intended to provide a discount for off-peak usage. In particular, Mr. Toroney explains his situation as follows, "Upon my father's passing in 2003, I have been paying for that meter on a monthly basis. I feel that this cancellation of the off-peak discount and then charging me a monthly fee, for the meter is equivalent to bait and switch." Complaint ¶ 6.

In its New Matter, the Respondent argues that the Complainant lacks standing to seek reimbursement for claims stemming back to 2003 because he was not a customer of record at the property at issue until June 2022. PECO's Preliminary Objection seeks dismissal of the portion of the Complaint which addresses billing issues prior to 2022, because the Complainant lacks standing to raise those issues, and the statute of limitations on them has run.

On the issue of standing, I note that Chapter 14 of the Pennsylvania Public Utility Code defines a customer as follows,

"Customer." —A natural person in whose name a residential service account is listed and who is primarily responsible for payment of bills rendered for the service or any adult occupant whose name appears on the mortgage, deed or lease of the property for which the residential utility service is requested.

66 Pa.C.S. §1402 (Emphasis added). Because Mr. Toroney claims that, since his father's passing in 2003, he has paid the PECO bill for the service address every month, his status as "customer" and consequently, his standing to raise the issues in the Complaint become factual matters to be resolved through an evidentiary hearing. For the purposes of PECO's Preliminary Objection, any doubt with regard to Mr. Toroney's standing must be resolved in favor of the Complainant by refusing to sustain the Preliminary Objections. *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlth. 2002).

With regard to the statute of limitations, I agree with PECO's statement of the law. 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. (Emphasis added). In addition, title 66 Pa.C.S. §1312(a) represents a special limitation fixing the scope of the Commission's power to order refunds., 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).

Because the disputed charges are ongoing, the statute of limitations outlined in 66 Pa.C.S. § 3314 has not run on the claims raised in the present Complaint. However, pursuant to 66 Pa.C.S. § 1312(a), the Complainant is barred from obtaining a refund for the disputed charges beyond four years from the date of the filing of the Complaint. Consequently, PECO's Preliminary Objection is denied, in part, with regard to its challenge to Mr. Toroney's standing and its claim of the running of the statute of limitations. However, the Preliminary Objection is granted, in part, with regard to the limitation of the refund period.

The matter shall be set for a hearing.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by PECO Energy Company in the matter of Frank Toroney v. PECO Energy Company at Docket No. C-2024-3045932 is granted, in part, and denied, in part, in accordance with the discussion above.

2. That matter shall be set for a hearing.

Date: April 11, 2024

_____/s/_____
Eranda Vero
Administrative Law Judge

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