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May 20, 2024

VIA E-FILING

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

RE: Barbara Distefano v. PECO Energy Company
Docket No. C-2024-3048791

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**

BARBARA DISTEFANO	:	
Complainant	:	
	:	
v.	:	DOCKET NO. C-2024-3048791
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

NOTICE TO PLEAD

Pursuant to 52 Pa. Code §§5.101 and 5.62, you are hereby notified that, if you do not file a written response denying or correcting the enclosed Preliminary Objections of PECO Energy Company, within ten (10) days from service of this notice, a decision may be rendered against you. All pleadings, such as a Reply to Preliminary Objections, 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, Esq.
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103
Khadijah.scott@exeloncorp.com

Dated: May 20, 2024



Khadijah Scott
Counsel for PECO Energy Company
2301 Market Street S-23
Philadelphia, PA 19103
(267) 533-1830
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), respectfully petitions this Honorable Commission to dismiss the instant Complaint as legally insufficient.

1. On May 1, 2024, PECO Energy Company ("PECO Energy") was served with a formal complaint filed by BARBARA DISTEFANO (hereafter “Complainant”) in the above captioned docket. *See*, Complainant’s Complaint.

2. PECO simultaneously filed an Answer and the instant Preliminary Objections.

3. In the Complaint, the Complainant states that she is entitled to an account credit because PECO failed to send a licensed contractor to her home to perform Low Income Usage Reduction Program (“LIURP”) related repairs to her home. The Complainant requests that a fully licensed HVAC heating/air conditioning company be assigned to her property.

4. PECO therefore files the instant Preliminary Objections.

5. Pursuant to 52 Pa. Code §5.101, preliminary objections may be filed against a complaint for legal insufficiency. 52 Pa. Code §5.101(a)(4).

6. 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).

7. 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).

8. 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”).

9. 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).

10. 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.

11. 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.

12. 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).

13. Here, there are no genuine issues of fact and PECO Energy is entitled to judgment as a matter of law with respect to all of the allegations in the Complaint.

14. On October 26, 2023, a LIURP Audit was conducted at the Complainant's property.

15. On February 22, 2024, the Complainant reported heating issues at her property.

16. LIURP offered to replace the heating system.

17. Contractor, Oval Heating and Air Conditioning Company, LLC ("Oval") was assigned the work order.

18. PECO's contractor, Oval, is a licensed corporation. *See*, Oval License, Insurance and EPA certification attached hereto as Exhibit "1."

19. Oval is an insured corporation. *Id.*

20. Oval is an EPA certified corporation. *Id.*

21. Oval is a registered corporation with the Commonwealth of Pennsylvania's Attorney General's Office. *Id.*

22. The Complainant defines the relief sought as: "I would like the PUC to force PECO/LIURP Program to use a fully licensed heating/cooling HVAC company to totally inspect my heater/air conditioning to make sure it is the proper BTU's for my house." *See* Complaint at ¶5.

23. PECO's contractor, Oval, is a licensed, insured and certified corporation.

24. This Complaint is moot and without merit.

25. Accordingly, the Complainant's formal complaint should be dismissed as it fails to set forth a violation by PECO Energy of either the Public Utility Code, the regulations of the PUC or PECO's Electric Service Tariff as required by 52 Pa. Code §5.22(a)(4).

REQUEST FOR RELIEF

WHEREFORE, for the reasons set forth above, PECO Energy Company respectfully requests that your Honorable Commission summarily dismiss the Complainant's formal complaint, and all issues which were raised in the Complaint.

Respectfully submitted,



Khadijah Scott
Counsel for PECO Energy Company
2301 Market Street, S23-1
Philadelphia, PA 19103
(267) 533-1830
Khadijah.scott@exeloncorp.com

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	:	
PECO ENERGY COMPANY	:	
Respondent	:	

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 20, 2024

Khadijah Scott

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

BARBARA DISTEFANO	:	
Complainant	:	
	:	
v.	:	DOCKET NO. C-2024-3048791
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

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:

BARBARA DISTEFANO
440 ALDAN AVENUE
ALDAN, PA 19018
Via E-Mail: chefrolf@aol.com

Dated: May 20, 2024



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

EXHIBIT 1

United States Environmental Protection Agency

This is to certify that



OVAL Heating & A/C Co., LLC

has fulfilled the requirements of the Toxic Substances Control Act (TSCA) Section 402, and has received certification to conduct lead-based paint renovation, repair, and painting activities pursuant to 40 CFR Part 745.89

In the Jurisdiction of:

All EPA Administered States, Tribes, and Territories

This certification is valid from the date of issuance and expires October 19, 2025

NAT-48316-3

Certification #

October 05, 2020

Issued On



Michelle Price, Chief

Lead, Heavy Metals, and Inorganics Branch

Commonwealth of Pennsylvania

Office of Attorney General

THIS IS TO CERTIFY THAT

OVAL HEATING & AIR CONDITIONING
35 LEWIS ST
FEASTERVILLE PA 19053

HAS REGISTERED IN PENNSYLVANIA AS A HOME IMPROVEMENT CONTRACTOR


7/2/2024

VALID UNTIL

PA141209

REGISTRATION NUMBER


SIGNATURE OF REGISTRATION CERTIFICATE HOLDER


JOSH SHAPIRO, PENNSYLVANIA ATTORNEY GENERAL



City of Philadelphia
 Department of
 Licenses & Inspections
 P.O. Box 53310
 Philadelphia, Pa. 19105

**OCCUPATIONAL
 LICENSEE ONLY**

PASTE YOUR
 PHOTOGRAPH HERE

1 1/2" SQUARE

DISPLAY PROMINENTLY

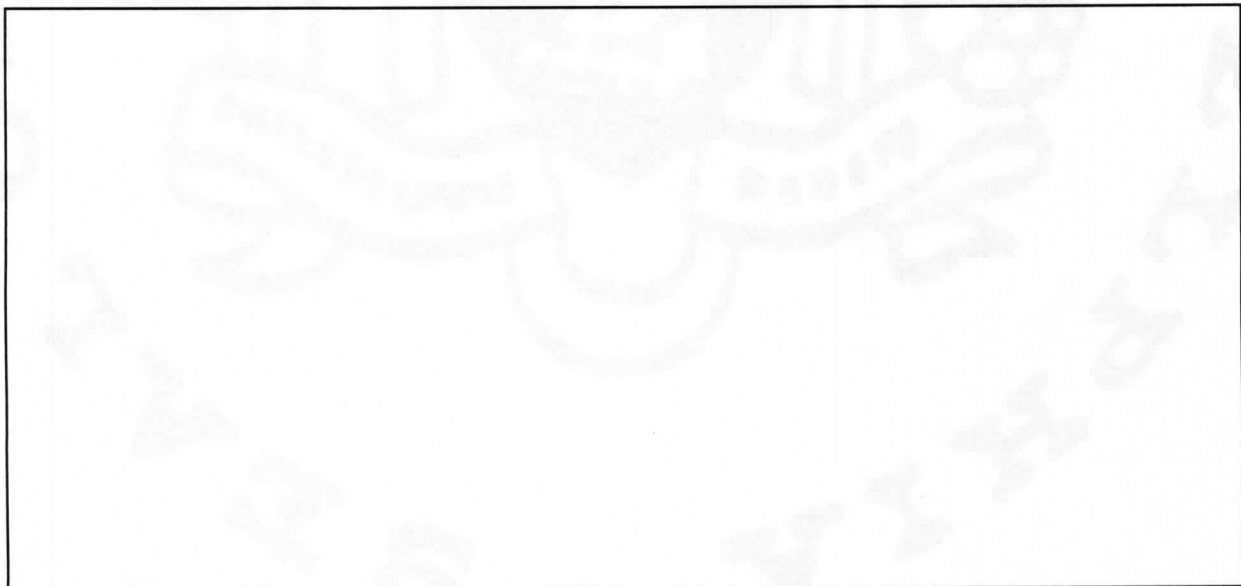
if required by law

OVAL HEATING & AIR COND CO LLC
 STOYKOV DIMITAR
 35 LEWIS ST
 FEASTERVILLE TREVOSE PA 19053

3702 COMMERCIAL ACTIVITY LICENSE
 STOYKOV DIMITAR

THIS LICENSE IS GRANTED TO THE PERSON AND LOCATION FOR THE PURPOSE STATED ABOVE.
 IT IS SUBJECT TO IMMEDIATE CANCELLATION BY THIS DEPARTMENT FOR VIOLATIONS OF
 CITY ORDINANCES AND REGULATIONS. INQUIRIES 311 (215-686-8686).

LICENSE CODE	LICENSE NO.	BUSINESS TAX NO.	DOES NOT EXPIRE	PAID THIS AMOUNT	ON DATE
3702	[REDACTED]	[REDACTED]		300.00	08/01/12



LICENSE