

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Dawn Bancroft	:	
	:	
v.	:	C-2024-3046862
	:	
PECO Energy Company	:	

ORDER- PECO PRELIMINARY OBJECTION GRANTED IN PART

On February 15, 2024, Dawn Bancroft, Complainant, filed a Formal Complaint with the Pennsylvania Public Utility Commission (“Commission”) against PECO Energy Company (“PECO”). In the Complaint, Ms. Bancroft asserts that PECO charged her for the wrong meter from 2017 until December of 2023. She further states that PECO refunded charges for four years of the incorrect billing, December of 2019-December of 2023, but will not refund for the balance of the years she was incorrectly billed, April 2017-November 2019.

PECO was served the Complaint on February 27, 2024. On March 18, 2024, PECO filed an Answer. In the Answer, PECO admitted that on November 3, 2023, a meter mix-up was discovered at the Complainant’s place of business, Dawn Bancroft Bucks Elite Fitness. PECO also stated that service was established by the Complainant on July 11, 2017 and that on November 8, 2023, PECO informed the Complainant about the meter mix-up and that she was incorrectly billed. PECO averred that the company cancelled bills issued from December 18, 2019 to November 6, 2023 totaling \$18,050.00 and, after correcting the billing for that period, reimbursed Ms. Bancroft \$11,547.25, which included interest.

PECO further asserted in its Answer that the Complainant is barred from obtaining a refund beyond four years of the filing of the Complaint, referencing 66 Pa.C.S. § 1312(a).

Also on March 18, 2023, PECO filed a Preliminary Objection. Therein, PECO again asserted that 66 Pa.C.S. § 1312(a) bars the Commission from awarding a refund that arose more than four years prior to the discovery of the meter mix-up. PECO also stated in the Preliminary Objection that the three-year statute of limitations in 66 Pa.C.S. § 3314(a) precludes the Commission from jurisdiction over a 2024 complaint for charges incurred 2017-2019. The Preliminary Objection included a Notice to Plead.

Complaint did not file a reply to the Preliminary Objection.

DISCUSSION

The grounds for granting Preliminary Objections are found in Section 52 Pa. Code § 5.101(a). It states in pertinent part:

§ 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(a). Here, PECO contends that the Complaint should be dismissed under 52 Pa. Code § 5.101(a)(1) because the Commission lacks jurisdiction.

A preliminary objection will be granted only where relief is clearly warranted and free from doubt. *Interstate Traveller Servs., Inc. v. Pa. Dep't of Env't Res.*, 406 A.2d 1020 (Pa. 1979). 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. *Cnty. of Allegheny v. Commonwealth*, 490 A.2d 402 (Pa. 1985).

The preliminary objection may be granted only if the moving party prevails as a matter of law. *Rok v. Flaherty*, 527 A.2d 211 (Pa. Cmwlth. 1987). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objection. *Pa. Dep't of Auditor General v. State Emps.' Ret. Sys.*, 836 A.2d 1053 (Pa. Cmwlth. 2003) (citing *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002)).

Relying on all well-pleaded, material facts of the Complainant, as well as every inference fairly deducible from those facts, the service address was connected to the wrong PECO meter from July 11, 2017 through November 8, 2023. Complainant makes this assertion in the Complaint and PECO does not dispute it. PECO acknowledges that the Complainant was incorrectly charged for services. PO Exhibit 5.

The Preliminary Objection will be granted with respect to any claim for damages¹ and reimbursement outside of the statute of limitations. However, exactly when the statute of limitations applies and what was refunded to the Complainant and for what period are not definitive in the record and raise remaining questions of fact. Also, the Complaint notes in the Complaint that the service address was connected to the incorrect meter for many years, which raises an issue of whether reasonable service was provided. This matter will proceed to a hearing to address these issues.

¹ It is well-established under Pennsylvania law that the enforcement powers of the Commission do not include the power to award money damages. *Elkin v. Bell Tel. Co. of Pa.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1978). To the extent that the Complainant is seeking monetary damages, they must be pursued in a Court of Common Pleas.

REPRESENTATION

Another issue that the record raises is whether counsel is needed in this matter. If the customer at issue is an unincorporated sole proprietorship, representation by counsel is not required. Under procedural rules, if you are an individual, you may represent yourself or you may have an attorney represent you. However, if the customer is a partnership, corporation (including an LLC), trust, association, or governmental agency or subdivision, it must be represented by an attorney licensed to practice law in Pennsylvania or admitted pro hac vice² or the matter cannot proceed.

² 52 Pa. Code §§ 1.21 & 1.22.

ORDER

THEREFORE

IT IS ORDERED

1. That the Preliminary Objection of PECO Energy Company filed in Dawn Bancroft v. PECO Energy Company, Docket Number C-20236862, is sustained, in part, with respect to reimbursement for incorrect charges beyond the statute of limitations.
2. That the matter will continue to a hearing as scheduled.
3. That if the customer of record is a partnership, corporation, trust, association, or governmental agency or subdivision, it must be represented by an attorney licensed to practice law in Pennsylvania, or admitted *pro hac vice*, and an attorney must file an appearance on behalf of the Complainant no later than July 17, 2024.

Date: June 26, 2024

/s/
Darlene D. Heep
Administrative Law Judge

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