

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|---------------------|---|----------------|
| Sigma Management Co | : | |
| | : | |
| v. | : | C-2024-3048336 |
| | : | |
| PECO Energy Company | : | |

**INTERIM ORDER SUSTAINING PRELIMINARY OBJECTION
AND REFERRING PROCEEDING TO MEDIATION**

On April 9, 2024, Sigma Management Co (Complainant or Sigma) filed a Formal Complaint against PECO Energy Company (PECO, Respondent or Company) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed a checkmark in the box marked “[o]ther,” next to which the Complainant indicated “PECO damaged underground sewer lines when installing electric cables on property. Requesting compensation for cost of repairs.” Under the “requested relief” section of the Complaint form, the Complainant again referenced the damaged sewer lines and specified that “[w]e are seeking reimbursement from PECO for the \$16,144 cost of repairing this damage.”

On April 30, 2024, the Respondent filed an Answer and New Matter to the Complaint. In the Answer, the Respondent denied all material allegations of fact in the Complaint. PECO further answered that a further investigation is being conducted into the Complainant’s claim, and requested the matter be referred for mediation.

As New Matter, the Respondent averred that to the extent that the Complainant seeks an award of damages caused to its property, such relief is beyond the power of the Commission to order. The Respondent requested that any request regarding damages should be denied pursuant to 52 Pa.Code § 5.101(a)(1). The Respondent endorsed its Answer and New Matter with a Notice to Plead advising that a response was due within twenty (20) days of service of the Answer and New Matter. The Complainant’s response to PECO’s New Matter

was due on or before May 20, 2024.¹ The Complainant did not file a reply to PECO's New Matter.

Also on April 30, 2024, the Respondent filed a Preliminary Objection to the Complaint. The Respondent again averred that to the extent that the Complainant is requesting a monetary award for costs, the Complainant is not entitled to relief under the law. PECO again maintained that the Commission lacks jurisdiction to award damages pursuant to 52 Pa.Code § 5.101(a)(1). PECO endorsed its Preliminary Objection with a Notice to Plead. The Complainant's response to PECO's Preliminary Objection was due on or before May 10, 2024.² The Complainant did not file a reply to PECO's Preliminary Objection.

By Motion Judge Assignment Notice dated June 4, 2024, PECO's Preliminary Objection was assigned to me for disposition.

For the reasons discussed below, PECO's Preliminary Objection is sustained, and the remaining issues in this matter will be referred to the Commission's Mediation unit for the Commission's mediation review process.

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).

¹ 55 Pa. Code § 5.63(a)

² 55 Pa. Code § 5.101(f).

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.Cmwlt. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa.Cmwlt. 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.Cmwlt. 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.Cmwlt. 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 alleged that PECO caused damage to its sewer lines while installing electric cables on the Complainant's property. As relief, the Complainant has requested reimbursement from PECO for the \$16,144 cost of repairing this damage to the sewer lines.

In its Answer, the Respondent denied all material allegations of fact in the Complaint. In both its New Matter and its Preliminary Objection, the Respondent averred that the Commission lacks jurisdiction to award damages pursuant to 52 Pa.Code § 5.101(a)(1).

As a creature of legislation, the Commission possesses only the authority the State Legislature has specifically granted to it in the Public Utility Code (the "Code"), 66 Pa. C.S. §§ 101, *et seq.* Its jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. *Feingold v. Bell of Pa.*, 383 A.2d 1191 (Pa. 1977); *Allegheny County Port Authority v. Pa. P.U.C.*, 237 A.2d 602 (Pa. 1967). *Behrend v. Bell of PA*, 390 A.2d 233 (Pa. Super. 1978); *Pa. Department of Highways v. Pa. P.U.C.*, 182 A.2d 267 (Pa. Super. 1962); *City of Erie v. Pa. Electric Co.*, 383 A.2d 575 (Pa.Cmwlth. 1978).

Nothing in the Code confers jurisdiction upon the Commission to award monetary damages. *See, DeFrancesco v. Western Pennsylvania Water Company*, 453 A.2d 595 (Pa. 1982); *Elkin v. Bell of Pa.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1977); *Poorbaugh v. Pa. PUC*, 666 A.2d 744 (Pa.Cmwlth. 1995).

However, while the Commission does not have jurisdiction to award damages, it does not follow that the Commission lacks jurisdiction to hear a complaint that seeks damages. If such a complaint alleges a violation of the Public Utility Code, and if the allegations are established by the evidence presented at a hearing, an Administrative Law Judge and the Commission might

conclude that the utility violated 66 Pa. C.S. § 1501 by failing to provide safe and adequate service. Although the Commission would not be able to award damages, it may decide to impose a fine or other penalty upon the utility. See, *Seidel v. Ralph G. Smith, Inc.*, 49 Pa. PUC 557, 1975 Pa. PUC LEXIS 7 (1975); *Robert Attianese and Michele Attianese v. Santoro Enterprises, Inc., t/d/b/a Thomas Gerrity Movers and Storage and Paul Arpin Van Lines, Inc.*, Docket Number A-00113019C0203 (October 14, 2003), Opinion and Order adopted March 4, 2004, entered March 11, 2004, 2004 Pa. PUC LEXIS 19.

Additionally, in a complaint against a public utility that seeks monetary damages arising from a failure to provide safe, adequate, reasonable, or efficient service, the Supreme Court has approved of a bifurcated procedure.

The question of the PUC's jurisdiction was before us recently in *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383, A.2d 791 (1977) and *Elkin v. Bell Telephone Co. of Pennsylvania*, 491 Pa. 123, 420 A.2d 371 (1980). In *Feingold*, we held that the courts of common pleas have original jurisdiction to hear suits against public utilities for damages arising from failure to provide adequate service. 477 Pa. at 10, 383 A.2d at 795. See also, *Elkin*, 491 Pa. at 130, 420 A.2d at 375. In *Elkin* we further defined the parameters of our holding in *Feingold*. *Elkin* involved an action challenging the adequacy of a complainant's telephone service, and this Court there approved of a bifurcated procedure for certain situations, whereby the issue of liability is decided initially by the PUC, after which the court of common pleas considers the issue of damages where appropriate. *Elkin*, 491 Pa. at 134, 420 A.2d at 377.

De Francesco v. Western Pennsylvania Water Co., 453 A.2d 595 (Pa. 1982).

Thus, service issues are first decided by the Commission, and then a court of common pleas may consider the issue of damages. *DeFrancesco v. Western Pa. Water Co.*, 453 A.2d 595 (Pa. 1982). The Commission clearly has jurisdiction to determine whether the Respondent rendered reasonable and adequate service to the Complainant.

Accordingly, since the Commission lacks jurisdiction to award damages, I shall grant the Respondent's Preliminary Objection and dismiss the portion of the Complaint

requesting damages pursuant to 52 Pa.Code § 5.101(a)(1). However, the remaining issue regarding whether the Respondent provided the Complainant with reasonable and adequate service must still be addressed.

It is the policy of the Commission to encourage settlements. 52 Pa.Code § 5.231. Also, it is Commission policy to encourage mediation during which the parties may attempt to resolve the case with the aid of a mediator. 52 Pa.Code §§ 69.391– 69.397. The mediator, a neutral staff member within the Mediation Unit of the Commission’s Office of Administrative Law Judge, does not give advice, represent any party, evaluate, or make a decision. Instead, the mediator assists the parties in their efforts to come to an agreement thereby avoiding the time, expense, and uncertainty of litigation. Mediation is an informal process where the parties can discuss a full range of settlement options beyond those which can be ordered by the Commission in the formal adjudication process. Accordingly, the remaining issues in this matter will be referred to the Commission’s Mediation unit for the Commission’s mediation review process.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by PECO Energy Company in the matter of Sigma Management Co v. PECO Energy Company at Docket No. C-2024-3048336 is sustained;

2. That the Complainant's request for relief in the form of monetary damages is stricken from the Complaint as impertinent matter; and

3. That the remaining issues in this matter be, and are hereby referred to, the Commission's Mediation unit for the Commission's mediation review process.

Date: June 28, 2024

_____/s/
Christopher P. Pell
Deputy Chief Administrative Law Judge

C-2024-3048336 - SIGMA MANAGEMENT CO v. PECO ENERGY COMPANY

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