

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Peter and Martha Green	:	
	:	
v.	:	C-2024-3048862
	:	
PECO Energy Company	:	

INTERIM ORDER ON RESPONDENT’S PRELIMINARY OBJECTION

On May 6, 2024, Peter and Martha Green (Complainants) filed a Formal Complaint (Complaint) against PECO Energy Company (PECO, Respondent or Company) with the Pennsylvania Public Utility Commission (Commission). In the present Complaint, the Complainants allege that they experienced repetitive dimming and flickering lights between November 2023 and March 2024. According to the Complainants, PECO ignored their reports and calls until their electrician contacted the utility and threatened PECO with a lawsuit. As relief, the Complainants requests reimbursement for the \$3,300.00 they incurred in electrician bills for repairs done to the connection of electricity to their home.

On May 24, 2024, the Respondent filed an Answer and New Matter along with a Notice to Plead.

Also on May 24, 2024, the Respondent filed a Preliminary Objection to the Complaint. The Respondent seeks dismissal of the Formal Complaint because the Complainants is seeking damages which the Commission lacks authority to award. The Respondent’s Preliminary Objection was endorsed with a Notice to Plead, advising the Complainants they had 10 days to file a written answer to the objection.¹ The Complainants did not file a response to PECO’s Preliminary Objection.

¹ 52 Pa.Code § 5.101(f)(1) provides that “[a]n answer to a preliminary objection may be filed within 10 days of date of service.”

By Motion Judge Assignment Notice dated June 25, 2024, PECO's Preliminary Objection was assigned to me for disposition.

For the reasons set forth below, PECO's Preliminary Objection will be granted in part, and the portion of the Complainants' Complaint seeking damages will be stricken from the Complaint as impertinent matter. However, the matter will be set for an evidentiary hearing to address whether PECO provided reasonable service to the Complainants.

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 Complainants, 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 Complainants' 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 Complainants allege that they experienced repetitive dimming and flickering lights between November 2023 and March 2024. According to the Complainants, PECO ignored their reports and calls until their electrician contacted the utility and threatened PECO with a lawsuit. As relief, the Complainants requests reimbursement for the \$3,300.00 they incurred in electrician bills for repairs done to the connection of electricity to their home.

In response, the Respondent denied any wrongdoing related to the issue experienced by the Complainants at their residence. In its Preliminary Objection, the Respondent seeks

dismissal of the Formal Complaint because the Commission does not have the authority to order a public utility to pay damages.

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 Complainants'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 Complainants.

Although the Complainants requested relief in the form of monetary damages, they also alleged that the Respondent's service caused the problems they experienced, namely, dimming and flickering lights. Therefore, I shall grant the Respondent's Preliminary Objection and dismiss the portion of the Complaint requesting damages as impertinent matter under 52 Pa.Code § 5.101(a)(2). However, the remaining issues regarding whether the Respondent provided the Complainants with reasonable and adequate service must still be addressed.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by PECO Energy Company in the matter of Peter and Martha Green v. PECO Energy Company at Docket No. C-2024-3048862 is granted, in part, and denied, in part;

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

3. That matter shall be set for a hearing to address whether PECO provided reasonable service to the Complainants.

Date: July 19, 2024

_____/s/_____
Eranda Vero
Administrative Law Judge

C-2024-3048862 – PETER AND MARTHA GREEN v. PECO ENERGY COMPANY

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