

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jonquil Waller	:	
	:	C-2024-3049222
v.	:	
	:	
PECO Energy Company	:	

RULING ON PECO PRELIMINARY OBJECTION

PECO has filed a Preliminary Objection seeking dismissal of this action under the statute of limitations found at 66 Pa.C.S. §3314(a) or 66 Pa.C.S. § 1312. The matter will not be dismissed due to the statute of limitations at this time.

This Complaint was filed on May 15, 2024 regarding PECO service provided to Jonquil Waller on W. Westmoreland Street in Philadelphia, Pennsylvania. On May 23, 2024, PECO was served with the Formal Complaint in this action. In the Complaint, Jonquil Waller states that his utility bill is incorrect and that he asked PECO, “during my time in the unit,” to check the meter. He further states that the landlord turned on his electricity without his knowledge.

In its Answer filed June 12, 2024, PECO denies all material allegations. PECO further states its records indicate that the Complainant initiated service at the service address as of February 7, 2017 and that the account was finalized on November 16, 2021 with an outstanding balance of \$1,710.85. Additionally, PECO stated that the claim was stale because under 66 Pa.C.S. § 1312(a), the Complainant is barred from obtaining a refund for the disputed charges beyond four years.

Also, on June 12, 2024, PECO filed a Preliminary Objection, arguing that to the extent the Complainant seeks the court to review billing issues which began in 2017, the

Complainant is beyond the three (3) year statute of limitations in which to bring a claim. 66 Pa.C.S. §3314(a). Any such claims, PECO avers, are beyond the four (4) year statute of limitations in which to request a refund. 66 Pa.C.S. §1312(a). PECO further states that a seven (7) year old billing claim is clearly beyond the three (3) year Statute of Limitations to which PECO Energy and the Court are bound. 66 Pa.C.S. §3314(a). PECO again states in the Preliminary Objection that the Complainant initiated service at the service address in February 2017 and disconnected service in November 2021.

Attached to the Preliminary Objection was a Notice to Plead that advised the Complainant that any written response denying or correcting the Preliminary Objection had to be filed within 10 days from service of the Preliminary Objections. To date, the Complainant has not filed a reply or response.

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).

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 objections. *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)).

The Commission must view the Complaint in this case in the light most favorable to Complainant and should dismiss the Complaint only if it appears that Complainant would not be entitled to relief under any circumstances as a matter of law. *Equitable Small Transp. Intervenors v. Equitable Gas Co.*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994); *see also, Interstate Traveler Servs., Inc. v. Pa. Dep't of Env't Res.*, 406 A.2d 1020 (Pa. 1979). All 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 Emps.' Ret. Bd.*, 690 A.2d 1312 (Pa. Cmwlth. 1997).

Any claims beyond the three-year statute of limitations are not within the jurisdiction of the Commission. *See Collins v Pa.-Am. Water Co.*, Docket No. F-2017-2628770 (Opinion and Order entered Aug. 29, 2019) at 17-18; *Pearson v. Duquesne Light Co.*, Docket No. C-2015-2465168 (Initial Decision and Order entered May 28, 2015, Final Order entered July 7, 2015) at 10-12. Additionally, under 66 Pa.C.S. § 1312(a), the Complainant is barred from obtaining a refund for the disputed charges incurred more than four years prior to the filing of the Complaint.

Here, the Complaint was filed on May 15, 2024. PECO asserts that the Complainant received service from PECO at the service address from February 2017 until November 16, 2021. Therefore, the Complaint was filed within three years of when the Complainant was last a customer of PECO at the service address.

As for the four-year statute of limitations for refunds under 66 Pa.C.S. § 1312, PECO is correct that even should he meet his burden of proof during a hearing, the Complainant could not under the circumstances presented receive a refund or credit for any charges outside of the four-year statute of limitations.

However, the record is not clear as to which period of time the Complainant is seeking redress and to what “unit” the Complainant is referring and for what time frame. Therefore, given that the pleadings must be read in the light favorable to the non-moving party, it is not appropriate to dismiss the Complaint under 66 Pa.C.S. §3314(a) or 66 Pa.C.S. § 1312 at this time.

THEREFORE,

IT IS ORDERED

1. That the Preliminary Objection of PECO Energy Company is overruled.
2. That this matter be sent to scheduling to set a hearing date.
3. That within 21 days of the date of this Order, the parties meet to discuss settlement of this matter.

Date: July 19, 2024

/s/

Darlene Heep
Administrative Law Judge

C-2024-3049222 - JONQUIL WALLER v. PECO ENERGY COMPANY

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