



Direct Dial: 267.533.1830
khadijah.scott@exeloncorp.com

August 15, 2024

VIA E-FILING

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

RE: Johnathan DiBello v. PECO Energy Company
Docket No. C-2024-3050533

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 that reads "Khadijah Scott".

Khadijah Scott, Esquire
Assistant General Counsel, PECO Energy Company

Encl.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

JOHNATHAN DIBELLO :
 Complainant :
 v. : **DOCKET NO. C-2024-3050533**
 :
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: August 15, 2024



Khadijah Scott
Counsel for PECO Energy Company
2301 Market Street S-23
Philadelphia, PA 19103
(267) 533-1830
Khadijah.scott@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JOHNATHAN DIBELLO	:	
Complainant	:	
v.	:	DOCKET NO. C-2024-3050533
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

**PRELIMINARY OBJECTION OF RESPONDENT,
PECO ENERGY COMPANY**

Respondent, PECO Energy Company (“PECO”), pursuant to 52 Pa. Code §5.101(a)(1), respectfully petitions this Honorable Commission to dismiss the instant Complaint as lack of Commission jurisdiction.

1. On August 2, 2024, PECO Energy Company ("PECO Energy") was served with a formal complaint filed by Jonathan Dibello (hereafter “Complainant”) in the above captioned docket. *See*, Complainant’s Complaint.

2. On August 15, 2023, PECO Energy simultaneously filed an Answer to the Complainant’s Complaint. *See*, Respondent’s Answer.

3. In the Complaint, the Complainant requests that the Public Utility Commission (“PUC”) stay termination of his services during a pending appeal in the Commonwealth Court of Pennsylvania.

4. In the Complaint, the Complainant also requests that the PUC issue a payment arrangement.

5. On September 22, 2022, the Complainant filed for Chapter 13 Bankruptcy in the Eastern District of Pennsylvania under docket number 22-12547.

6. The Complainant has an active Chapter 13 Bankruptcy petition pending.
7. Accordingly, the Commission does not have jurisdiction over the Complainant's request for a payment agreement.
8. Moreover, on December 7, 2023, the Public Utility Commission denied the Exceptions of the Complainant to the Initial Decision issued on September 23, 2023, which denied his request for a payment agreement while in an active Chapter 13 bankruptcy. *See*, docket at C-2023-3041825.
9. PECO Energy therefore files the instant Preliminary Objections.
10. Pursuant to 52 Pa. Code §5.101, preliminary objections may be filed against a complaint and dismissed lack of Commission jurisdiction. 52 Pa. Code §5.101(a)(1).
11. 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).
12. 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).
13. 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”).

14. 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).

15. 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.

16. 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.

17. 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. Commw. Ct. 2003), petition for allowance of appeal denied, 836 A.2d 123 (Pa. 2003).

18. 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.

I. Lack of Commission Jurisdiction – The PUC does not have Jurisdiction to Stay Termination Pending Appeal or Issue a Payment Agreement for a Customer with an Active Chapter 13 Bankruptcy.

1. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

2. As a matter of law, the Complainant must show that PECO Energy is responsible or accountable for the problem described in the Complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990).

3. “Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

4. The offense alleged must be a violation of the Public Utility Code, the Commission’s regulations, or an outstanding order of the Commission. *See*, 66 Pa.C.S. §701.

5. The PUC has jurisdiction over the Public Utility Code, the Commission’s regulations, or an outstanding order of the Commission.

6. The PUC does not have jurisdiction over the Commonwealth Court of Pennsylvania. Pa. R.A.P. §1701(a).

7. It is also important to note that the Complainant’s appeal does not even involve termination of services, but his ability to obtain a payment agreement, while in Chapter 13 bankruptcy.

8. On September 22, 2022, the Complainant filed for Chapter 13 Bankruptcy in the Eastern District of Pennsylvania under docket number 22-12547. *See*, Exhibit “2.”

9. The Complainant has an active Chapter 13 Bankruptcy petition pending. *Id.*

10. Accordingly, the Commission does not have jurisdiction over the Complainant’s request for a payment agreement.

11. Federal bankruptcy law provides that the filing of a bankruptcy petition . . .

operates as a stay, applicable to all entities, of . . . the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title. 11 U.S.C. §362(a)(1).

12. The U.S. Bankruptcy courts have jurisdiction over the Complainant's assets. All claims against a debtor, including claims arising subsequent to the filing of a petition, are to be adjusted and paid in accordance with the plan required by Chapter 13. Thus, the Complainant's filing a petition for personal bankruptcy has pre-empted the Commission from establishing any payment schedule with respect to amounts owed by the Complainant to PECO Energy. *See*, 28 U.S.C. § 1334; *Michelle Chavous v. PECO Energy Company*, Docket No. F 2010-2215689 (Final Order entered Dec. 20, 2011)(holding "the Commission lacks jurisdiction to direct a payment arrangement for Complainant, who is a debtor with an active Chapter 13 bankruptcy proceeding, even where the subject of the payment arrangement is a post-petition arrearage.")

13. Moreover, on December 7, 2023, the Public Utility Commission denied the Exceptions of the Complainant to the Initial Decision issued on September 23, 2023, denying his ability obtain a payment agreement while in an active Chapter 13 bankruptcy. *See*, docket at C-2023-3041825.

14. The Complainant's payment agreement request should be dismissed for lack of subject matter jurisdiction.

15. The Complainant's request for a payment agreement in the current formal complaint should be dismissed on the grounds of res judicata.

16. The doctrine of res judicata reflects the refusal of the law to tolerate the re-litigation of a matter decided by a court of competent jurisdiction. For the doctrine to prevail four conditions must be met:

- (1) Identity of issues;
- (2) Identity of causes of action;
- (3) Identity of persons and parties to the action; and
- (4) Identity of the quality and capacity of the parties suing or sued.

Day v. Volkswagenwerk Aktiengesellschaft, 318 Pa. Superior Ct. 255, 474 A.2d 1313, 1316, 1317 (1983).

17. In the present case, all four elements of res judicata are met. Clearly, the parties are identical in all of the Complaints. The thing sued upon is identical in all Complaints. The current formal Complaint and the prior formal complaint relate to the same issue: request for a payment agreement.

18. The cause of action is identical. Finally, the quality and capacity of the parties is identical in all Complaints. The Complainant is the electric customer in all Complaints, and PECO is the public utility providing service to the Complainant.

19. Because the present Complaint asserts the same factual and legal basis for relief as the dismissed prior Complaints, the Complainant is estopped from attempting to re-assert his request for a payment agreement.

20. Res judicata also requires the parties to the instant action be the same or stand in

privity to the parties of the original action. Hopewell Estates, Inc. v. Kent, 435 Pa. Superior Ct. 471. 476,646 A.2d 1192 (1994). The parties in the most recent action are the same as the previous Complaints and appeals, which were denied.

21. 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 of, in its opinion, a hearing is not necessary to the public interest.

22. Here, the issue presented has been litigated previously and dismissed. Therefore, PECO Energy is entitled to judgment as a matter of law with respect to all of the allegations in the Complaint.

23. The Complainant must seek relief from the bankruptcy courts.

24. Moreover, even the Commission has determined that a customer must pay the current bills that are not in dispute within a formal complaint. 66 Pa. C.S. §1410.

25. The Complainant's last payment was made on July 18, 2023.

26. 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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JOHNATHAN DIBELLO	:	
Complainant	:	
v.	:	DOCKET NO. C-2024-3050533
	:	
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: August 15, 2024



Khadijah Scott

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JOHNATHAN DIBELLO	:	
Complainant	:	
v.	:	DOCKET NO. C-2024-3050533
	:	
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 Objection in the above matter upon all interested parties by *E-mailing* a copy to:

JONATHAN DIBELLO
813 LAFAYETTE AVE
APT 1B
PROSPECT PARK PA 19076
Via Email: jonathandibello1984@gmail.com

Dated: August 15, 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