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October 8, 2024

VIA E-FILING

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

RE: Wanda Walker v. PECO Energy Company
Docket No. C-2024-3051234

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, appearing to read "Khadijah Scott".

Khadijah Scott, Esquire
Assistant General Counsel, PECO Energy Company

Encl.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

WANDA WALKER	:	
Complainant	:	
	:	
v.	:	DOCKET NO. C-2024-3051234
	:	
PECO ENERGY COMPANY	:	
Respondent	:	

NOTICE TO PLEAD

Pursuant to 52 Pa. Code §§ 5.101 and 5.62(c), 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 20 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



Dated: October 8, 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**

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

Respondent, PECO Energy Company (“PECO”), pursuant to 52 Pa. Code §§5.101(a)(1) and (a)(4), respectfully petitions this Honorable Commission to dismiss the instant Complaint as legally insufficient and outside of the Commission’s jurisdiction.

1. On September 18, 2024, PECO was served with a formal complaint filed by Wanda Walker (hereafter “Complainant”). *See*, Complainant’s Complaint.
2. In the Complaint, the Complainant alleges she “won” the “first part” of a Complaint filed with the Public Utility Commission, in the amount of \$4,000.00 and that her attorney failed to file timely Exceptions on her behalf. *Id.*
3. The Complainant further attempts to relitigate the issues of previously adjudicated complaints by stating that PECO is threatening to shut off her service or has shut off her service and that there are incorrect balance transfer charges on her bills relating to her rental property payments stemming from 2018. *Id.*
4. The Complainant’s claims were previously dismissed *with prejudice* by the Commission. 66 Pa. C.S. § 316. *See also*, Final Order and Statement of Vice Chair Kimberly Barrow, issued January 18, 2024. (*emphasis added*).

5. To the extent the Complainant seeks the court to review billing and payment issues which began in 2018, the Complainant is also beyond the three (3) year statute of limitations in which to bring a claim. 66 Pa.C.S. §3314(a).

6. PECO simultaneously filed an Answer and the instant Preliminary Objections.

7. Pursuant to 52 Pa. Code §5.101, preliminary objections may be filed against a complaint and dismissed for lack of Commission jurisdiction. 52 Pa. Code § 5.101(a)(1).

8. Pursuant to 52 Pa. Code §5.101, preliminary objections may be filed against a complaint and dismissed for legal insufficiency. 52 Pa. Code §5.101(a)(4).

9. Commission procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil procedure. Equitable Small Transportation Intervenor. v. Equitable Gas Co., 1994 Pa.PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

10. 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).

11. 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”).

12. 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).

13. 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.

14. 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.

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

16. In December 2020, the Complainant filed a formal complaint docketed at C-2020-3023220. *See*, 2020 Formal Complaint.

17. On June 16, 2022, the Complainant’s Exceptions were denied.

18. In the present Complaint, the Complainant attempts to mischaracterize the facts and alleges that she “won” the “first part” of a Complaint filed with the Public Utility Commission, in the amount of \$4,000.00 and that her attorney failed to file Exceptions on her behalf.

19. This is the Complainant’s third¹ formal complaint against PECO Energy in which the Complainant seeks to relitigate identical issues, *i.e.*, that PECO is threatening to shut off her service or has shut off her service and that there are incorrect charges on her bill relating to her rental property balance transfer payments stemming from 2018.

¹ The Complainant filed four (4) complaints under docket numbers C-2024-3051234; C-2024-3051237; C-2024-3051343 and C-2024-3051344. On October 4, 2024, all complaints were consolidated under the present docket number C-2024-3051234.

20. On February 28, 2022, an Initial Decision was issued granting the Complainant's Complaint, in part, and denying the Complaint, in part. *See*, Initial Decision (ID).

21. The Initial Decision granted the Complaint with "respect to \$1,777.34 transferred to the Complainant's Glenside Account." *See*, ID at 21.

22. The ID further held:

That within 30 days of the date of the final order, PECO will review the charges transferred to the Complainant from 6801 17th Street, 3 MID 7, Philadelphia, Pennsylvania totaling \$2,391.03 to determine whether the amounts transferred were incurred by the tenants or the Complainant as a customer or resident of the service addresses and, if necessary, adjust the Complainant's balance in accordance with this decision.

Id. (emphasis added)

23. ALJ Heep held that "all other claims are denied and dismissed." *Id.*

24. Contrary to the Complainant's allegations, on March 16, 2022, the Complainant filed Exceptions via her counsel, George Gossett, Jr. Esquire. *See*, Complainant's Exceptions.

25. On March 21, 2022, PECO filed Exceptions in which PECO requested that the Commission reverse the ALJ's conclusion that the Company improperly transferred the \$1,777.34 balance to the Complainant's Glenside account. *See*, PECO's Exceptions.

26. On June 16, 2022, the Commission held:

1. That the Exceptions filed by Wanda Walker on March 16, 2022, are denied.
2. That the Exceptions filed by PECO Energy Company on March 21, 2022, are granted.
- ...
4. That the Formal Complaint in the matter of *Wanda Walker v. PECO Energy Company*, at Docket No. C-2021-3023220, is denied.

See, Opinion and Order dated June 16, 2022.

27. It was also Ordered that:

“within thirty days of the entry date of this Opinion and Order, PECO Energy Company **shall review** the charges transferred to Wanda Walker from 6801 17th Street, 3 MID 7, Philadelphia, Pennsylvania totaling \$2,391.03 to determine whether Wanda Walker was the account holder at the time any of the charges were incurred and, **if necessary**, adjust Wanda Walker’s account balance accordingly. Within the same thirty-day time period, PECO shall also file with this Commission, and serve a copy on the Commission’s Bureau of Consumer Services, a written summary of the results of the Company’s review of the billings for the \$2,391.03 amount that it transferred to Wanda Walker.”

Id. (emphasis added)

28. On July 13, 2022, PECO filed its Status Report Letter as required by the Opinion.

29. On July 13, 2022, the Complainant’s 452 Twickenham Rd., Glenside, PA was credited in the amount of \$92.67.

30. Pursuant to the Opinion, “upon PECO’s compliance with Ordering Paragraph Nos. 5 and 6, above, this matter shall be marked closed.” *See*, Opinion.

31. Accordingly, this matter is closed as stated in the Opinion.

32. On August 15, 2023, the Complainant filed a second formal complaint under docket number, C-2023-3042220, restating the previously litigated claims.

33. On November 17, 2023, the Complainant’s complaint was dismissed ***with prejudice*** as being previously adjudicated.

34. On January 18, 2024, a Final Order and Statement of Vice Chair Kimberly Barrow were issued, dismissing the Complaint’s second formal complaint ***with prejudice***.

35. The Complainant’s allegations in the current Formal Complaint should be dismissed on the grounds of res judicata.

36. 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).

37. In the present case all four elements of res judicata are met. Clearly, the parties are identical in each complaint. The thing sued upon is identical in all of the complaints. The current formal complaint and the 2020 and 2023 complaints relate to the same issues: transferred balances and not crediting payments stemming back to 2018.

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

39. Because the present complaint asserts an identical factual and legal basis for relief as the dismissed **with prejudice** in the 2023 complaint, the Complainant is estopped from attempting to re-assert her claims here.

40. Accordingly, the Complainant's allegations should be dismissed pursuant to the doctrine of res judicata.

41. By way of further response, the Complainant's complaint is stale.

42. It is well settled that "no action for the recovery of any penalties or forfeitures incurred under the provisions of this part, and no prosecutions on account of any matter or thing mentioned in this part, shall be maintained unless brought within three years from the date at which the liability therefor arose, except as otherwise provided in this part." 66

Pa.C.S. §3314(a). (*emphasis added*)

43. The Complainant asserts in her complaint that her concerns stem from payments made in 2018 and 2009 in some cases. This is clearly beyond the Statue of Limitations, as the present matter was filed in September 2024.

44. Thus, the Complainant's outstanding balances continues to grow as the Complainant continues to use the PUC administrative process to avoid paying her electric service.

45. PUC Commissioner Pamela A. Witmer warned PECO about this very issue in the Daniel Vermeychuk v. PECO matter at Docket No. C-2013-2388323 (November 5, 2015).

Commissioner Witmer stated that "the Complainant was not only ignoring his obligation to pay his bills but was actively employing various strategies to avoid paying in a timely manner." Commissioner Witmer pointed out:

...It is critically important to the customers, who are ultimately left footing the bills for such abuses, that our utilities act vigilantly to prevent them, continue to take steps to identify them, and mitigate their effects as quickly as possible. I remind PECO and all of our regulated utilities of this responsibility.

46. This is clearly what is happening in the present case with the filing of a formal complaint that is identical to the previously litigated complaint. While PECO is able to

identify this abuse, the company is unable to mitigate this issue while the Complainant uses the PUC complaint process to prevent paying her bill.

47. The Complainant's allegations were dismissed in the 2020 Formal complaint by the Commission in 2022.

48. The Complainant's allegations were dismissed in the 2023 Formal complaint by the Commission in 2024, *with prejudice*.

49. Thus, the Complainant is barred from contesting her bills due to the three-year statute of limitations and res judicata.

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.

Respectfully submitted,



Khadijah Scott
Counsel for PECO Energy Company
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Philadelphia, PA 19103
(267) 533-1830
Fax: 215.568.3389
Khadijah.scott@exeloncorp.com

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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: October 8, 2024



Khadijah Scott

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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:

WANDA WALKER
P.O. Box 502
Glenside, PA 19038
Via Email: wandaleolady@aol.com

Dated: October 8, 2024



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