

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Shasta-Patrice Brown	:	
	:	
v.	:	C-2024-3050759
	:	
PECO Energy Company	:	

INTERIM ORDER ON RESPONDENT’S PRELIMINARY OBJECTIONS

On July 30, 2024, Shasta-Patrice Brown (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO, Company, or Respondent) alleging that there are errors and omissions contained in the application for the service pertaining to her address. She further asserts that she needs certain provisions under the Americans with Disabilities Act (ADA) due to her inability to practice law and her inability to pay. More specifically, the Complainant states as follows,

There are errors and omissions contained in the application for service pertaining to the address and the endorsement we are approved we were approached harshly and signed in blank we have a disability and need the provisions under the ADA as our disability pertain to the inability to practice law and we have the inability to pay according to public law 70-30 and HJR 192.

Complaint ¶ 4.

As relief, the Complainant asks that her account be assigned to PGW; that her account be closed and that she be issued a refund. More specifically, she states,

The resolution we require is that the address be updated to the assignee of PGW the designation needs to be updated as creditors not consumers we would like access to the custodial account and would like to surrender the application for full performance and have all dividends loaded onto an

access device with visa features we have not abandoned our interest in the contract and wish to receive a return or on our interest as we know the application had declared value the signature gave the value yet the value was not returned we request the set off settlement and closure of the account we operate under the maxims of equity created equally by Elohim God.

Complaint ¶ 5.

On September 3, 2024, PECO filed an Answer denying all material allegations of fact and conclusions of law in the Complaint. In its Answer, PECO averred that it has billed the Complainant based on actual monthly usage. The Complainant's outstanding balance with PECO is \$2,22.32, which represents an accumulation of unpaid monthly bills. Moreover, PECO avers that the Company only accepts cash, certified checks, money orders, and valid bank checks in payment of utility accounts. PECO will not apply as credit to any customer account non-negotiable documents, sight drafts, 1040 Forms, Acceptance for Value, UCC Certified Tender of Payments, Promissory Notes or other UCC documents. Answer ¶ 4.

Also on September 3, 2024, PECO filed a Preliminary Objection in which it averred that the Complainant's Complaint with regard to any issues associated with the ADA are outside of the Commission's jurisdiction. In addition, PECO argued that the Complainant's Complaint with regard to any issues associated with assigning a PECO account of PGW is outside of the capacity and Commission jurisdiction. See Preliminary Objection ¶¶ 17-18. The Preliminary Objections seeks to dismiss the Complaint on the ground that should be dismissed as it fails to set forth any violation by PECO of either the Public Utility Code, the regulations of the Commission or PECO's Electric Service Tariff as required by **52 Pa. Code §5.22(a)(4)**.

On September 9, 2024, the Complainant filed an Answer to the Preliminary Objection. In it, the Complainant avers that: 1) PECO engaged in material misrepresentation regarding the assignment of credits in violation of 73 P.S. § 201-1; 2) PECO engaged in theft by deception in violation of 18 Pa.C.S.A. § 3922; 3) PECO engaged in malfeasance; 4) PECO's contracts contain misleading information in violation of 33 Pa.C.S.A § 203; 5) PECO committed "Fraud in Factum" because it deceived the Complainant into believing credits were properly

assigned when they were not; 6) PECO's actions resulted in unjust enrichment; and 7) PECO's actions violated federal law governing deprivations of rights under 18 U.S.C. §§ 241, 242 and 42 U.S.C. § 1983. See Answer to Preliminary Objection ¶¶ 1-5 and 10. Complainant proceeded to cite to *TSC Industries, Inc. v Northway, Inc.*, 426 U.S. 438 (1976); *Herring v. United States*, 555 U.S. 135 (2009); *Speidel v. Sheehan*, 122 F3d 126 (3d Cir. 1997); and *United States v. Tweel*, 550 F2d 297 (5th Cir. 1977) as caselaw relevant to this matter. See Answer to Preliminary Objection ¶¶ 6-9.

By Corrected Motion Judge Assignment Notice dated September 19, 2024, the Preliminary Objection was assigned to me for disposition.

PECO's Preliminary Objection is ready for disposition.

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 Intervenor 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 complainant, recovery or relief is possible. *Dep't of Auditor General, et al v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa.Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa.Cmwlth. 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.Cmwlth. 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.Cmwlth. 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.

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 Public Utility Code confers jurisdiction upon the Commission to adjudicate claims arising under 73 P.S. § 201-1, 18 Pa.C.S.A. § 3922, 33 Pa.C.S.A § 203, 18 U.S.C. §§ 241, 242 and 42 U.S.C. § 1983. Similarly, while the Commission must comply with the Americans with Disability Act of 1990 (ADA), Title 42 of the United States Code (The Public Health and Welfare), Chapter 126 (Equal Opportunity for Individuals with Disabilities), nothing in the Public Utility Code confers jurisdiction upon the Commission to adjudicate claims arising under the ADA.¹ In addition, the Commission has no authority to order the assignment of one utility’s account upon another utility. In view of the above, the portions of the Complaint raising claims under 73 P.S. § 201-1, 18 Pa.C.S.A. § 3922, 33 Pa.C.S.A § 203, 18 U.S.C. §§ 241, 242 and 42 U.S.C. § 1983 are dismissed for lack of jurisdiction. The same applies to claims arising from ADA, as well as any issues associated with assigning a PECO account to PGW.

In addition, to the extent that the Complainant intends the reference to HJR 192 to allege an attempt to pay for utility services PECO by non-negotiable documents, sight drafts, 1040 Forms, Acceptance for Value, UCC Certified Tender of Payments, Promissory Notes or other UCC documents, the Complainant is instructed that this issue has already been decided in *Coppedge v. PECO*, Docket No. F-2014-2406180 (Order entered Jul. 29, 2014) (*Coppadge*), where the Commission determined that “even accepting as true the Complainant’s contentions, nothing in either PECO’s tariff or [Commission] Regulations requires PECO to accept all forms of payment.” Answer at 2, citing *Coppage* at 9.

¹ One’s “inability to practice law” or pay is not within the definition of disability with respect to an individual. Pursuant to 42 U.S. Code § 12102 - Definition of disability, the term “disability” means, with respect to an individual—

- (A) **a physical or mental impairment** that substantially limits one or more major life activities of such individual;
- (B) a record of such an impairment; or
- (C) being regarded as having such an impairment (as described in paragraph (3)).

42 U.S. Code § 12102 (1). (Emphasis added).

In *Carlock v. The United Telephone Company of Pennsylvania*, Docket No. F 00163617 (Order entered July 14, 1993), the Commission held that, in the normal course, the Commission would not dismiss a complaint of a self-represented person without first providing a hearing during which the self-represented complainant could further explain their position and the factual basis for their complaint. The Commission expressed the concern that, in general, complainants may find it difficult to navigate through pre-hearing motions and should be given the chance to orally describe their basic issues and supporting facts. On this vein, it would be inappropriate to dismiss the Complainant's Complaint in its entirety without giving her a chance to orally describe her remaining issues.

Therefore, the case will be set for an evidentiary hearing on all the remaining issues. The Complainant is instructed to come to the hearing prepared to articulate her grievances within the boundaries of the Public Utility Code, 66 Pa.C.S §§ 101 *et seq*, and Commission regulations at 52 Pa. Code §§ 1.1 *et seq*. 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.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by PECO Energy Company in the matter of Shasta-Patrice Brown v. PECO Energy Company at Docket No. C-2024-3050759 is granted, in part, and denied, in part.
2. That the portions of the Complaint raising claims under 73 P.S. § 201-1, 18 Pa.C.S.A. § 3922, 33 Pa.C.S.A § 203, 18 U.S.C. §§ 241, 242 and 42 U.S.C. § 1983 are dismissed for lack of jurisdiction.

3. That the portions of the Complaint raising claims under the Americans with Disabilities Act of 1990, as well as any issues associated with assigning a PECO account to PGW are dismissed for lack of jurisdiction.

4. That matter shall be set for a hearing to address any remaining issues.

Date: October 15, 2024

_____/s/_____
Eranda Vero
Administrative Law Judge

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