

**BEFORE THE PENNSYLVANIA
PUBLIC UTILITY COMMISSION**

Barbara DiStefano	:	
	:	
v.	:	C-2024-3048791
	:	
PECO Energy Company	:	

ORDER DENYING PRELIMINARY OBJECTIONS

On May 1, 2024, Barbara DiStefano (Complainant or Ms. DiStefano) filed a formal Complaint against PECO Energy Company (Respondent or PECO or Company) alleging that there were issues with the LIURP audit and maintenance that occurred at her residence. The Complainant requested PECO come out and check the work of the contractor.

The Commission's Secretary served the Complaint electronically on May 1, 2024.

On May 20, 2024, PECO filed its Answer and New Matter, which denied the material allegations of the Complaint.

On May 20, 2024, PECO filed Preliminary Objections. PECO alleges that the Complaint is without merit and the Complainant has not established that there is any dispute of facts in this matter.

The Complainant did not file any response to the New Matter or Preliminary Objections in this case.

Via Motion Judge Assignment dated June 24, 2024, the matter was assigned to me as the presiding officer. This matter is now ripe for a determination.

DISCUSSION

Commission preliminary objection practice is similar to Pennsylvania civil practice. *Equitable Small Transportation Interveners v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, PUC Docket No. C-000935435 (July 18, 1994). When considering the preliminary objection, the Commission must determine “whether the law says with certainty, based on well-pleaded factual averments . . . that no recovery or relief is possible. *P. J. S. v. Pa. State Ethics Commission*, 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).” *Dept. of Auditor General, et al. v. State Employees’ Retirement System, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003). 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 Board*, 690 A.2d 1312 (Pa. Cmwlth. 1997).

The regulation reads as follows:

§ 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).

On May 1, 2024, the Complainant filed a Formal Complaint which indicated that there were issues with maintenance that was performed at her residence under the LIURP program and that she wished to have another contractor come to the residence to check the work that was done in this case.

The Pennsylvania Public Utility Code requires each public utility to comply with the following:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, . . . Such service and facilities shall be in conformity with the regulations and orders of the commission.

66 Pa.C.S. § 1501.

The statutory definition of “service” is to be broadly construed. *Kim Betchy v. West Penn Power Co.*, Docket No. C-2018-3000257 (Opinion and Order entered Oct. 8, 2020) (citing *Country Place Waste Treatment Co., Inc. v. Pa. Pub. Util. Comm’n*, 654 A.2d 72 (Pa. Cmwlth. 1995)). As defined in the Code:

“Service.” Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them . . .

66 Pa.C.S. § 102.

On May 20, 2024, PECO filed its Preliminary Objections which indicated that there was no factual dispute involved in this matter and therefore it should be dismissed.

It is clear that the Complainant is disputing the service that was provided to her through the LIURP program. The Complainant indicates that she is requesting that another contractor come to her residence to review the work that was previously done at her home. She also alleged that she believes that there was some sort of fraud involved in this matter. PECO does not dispute that it sent a LIURP contractor to the Complainant's residence to perform work there, simply that the contractor that was sent was licensed and certified to perform such work. There is clearly a dispute between the parties regarding the quality of the work that was provided by PECO's contractor and as such the matter warrants a hearing to be held on the merits of this case. Therefore, the Preliminary Objections filed by PECO are denied.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objections of PECO Energy Company filed in the case captioned *Barbara DiStefano v. PECO Energy Company*, Docket No. C-2024-3048791, are denied.

2. That the matter of *Barbara DiStefano v. PECO Energy Company*, Docket No. C-2024-3048791, should be scheduled for a hearing on the merits of the Complaint.

Dated: July 30, 2024

/s/
Marta Guhl
Administrative Law Judge

**C-2024-3048791 - BARBARA DISTEFANO v. PECO ENERGY COMPANY-ELECTRIC
& GAS**

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