

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Timothy Guinher & Valerie Patterson	:	
	:	
v.	:	C-2024-3050663
	:	
PECO Energy Company	:	

ORDER
GRANTING PRELIMINARY OBJECTIONS AND
REFERRING PROCEEDING TO MEDIATION

On August 12, 2024, Timothy Guinher and Valerie Petterson (Complainants) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO or Company). In their Formal Complaint, Complainants state that they are having a reliability, safety or quality problem with their utility service. Specifically, Complainants state that four damaging power surges since 2020 have caused substantial material losses to systems and mechanicals in their homes. As relief, Complainants request that the Commission require PECO to: improve, repair, and remediate the issues causing surges; reimburse consumers and insurance companies for their costs since 2020 related to the surges; have insurance companies remove claims from homeowners' records; take responsibility for the surges by noting responsibility in the CLUE database of insurance claims; and communicate to the affected parties the Company's efforts to remedy the issue.

On August 30, 2024, PECO filed an answer and new matter to the Formal Complaint. PECO's answer states that it denies all material allegations of fact. PECO's new matter, which included a notice to plead, avers that, to the extent that the Complainants seek an award of monetary damages against PECO for damage caused to their property, such relief is beyond the power of the Commission to order and should be denied. No response to PECO's new matter has been filed.

Also on August 30, 2024, PECO filed preliminary objections to the Formal Complaint. In its preliminary objections, which included a notice to plead, PECO asserts that, to the extent Complainants are requesting a monetary award for costs, the Complainants are not entitled to relief under the law. Specifically, PECO avers that the Commission lacks jurisdiction to award damages pursuant to 52 Pa. Code § 5.101(a)(1), and the portion of the Formal Complaint that seeks monetary reimbursement from PECO should be denied.

On October 9, 2024, the Commission issued a motion judge assignment notice, assigning me to this proceeding.

No response to the preliminary objections has been received.

PECO's preliminary objections are now ready for disposition, and they will be granted as stated below. The request for money damages will be stricken from the Formal Complaint. Further, Complainants will be prohibited from introducing at an evidentiary hearing any testimony or exhibits for the purpose of recouping alleged monetary damages.

Section 5.101 of the Commission's Rules of Administrative Practice and Procedure provides for the filing of preliminary objections. 52 Pa. Code § 5.101. Commission preliminary objection practice is comparable to Pennsylvania civil practice respecting the filing of preliminary objections. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994) (*Equitable*). Section 5.101(a) provides:

(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 a proceeding.

52 Pa. Code § 5.101(a)(1)-(7).

For purposes of disposing of preliminary objections, the Commission must accept as true all well pleaded, material facts of the nonmoving party, as well as every reasonable inference from those facts. *Cnty. of Allegheny v. Commw. of Pa.*, 490 A.2d 402 (Pa. 1985); *Commw. of Pa. v. Bell Telephone Co. of Pa.*, 551 A.2d 602 (Pa. Cmwlth. 1988). The Commission must view the complaint in this case in the light most favorable to Complainants and should dismiss the complaint only if it appears that Complainants would not be entitled to relief under any circumstances as a matter of law. *Equitable, supra*; *see also, Interstate Traveler Services, Inc. v. Commw., Dept. of Env't Res.*, 406 A.2d 1020 (Pa. 1979).

In this case, Complainants request that PECO reimburse consumers and insurance companies for their costs since 2020 related to the surges. PECO's Preliminary Objections will be granted because, even when accepting as true all well pleaded material facts, as well as every reasonable inference from those facts, and viewing the Formal Complaint in the light most favorable to Complainants, it is clear that the Commission lacks jurisdiction to award monetary damages.

It is well settled that the Commission may not exceed its jurisdiction and must act within it. *City of Pittsburgh v. Pa. Pub. Util. Comm'n.*, 43 A.2d 348 (Pa. Super 1945). Jurisdiction may not be conferred by the parties where none exists. *Roberts v. Martorano*, 235 A.2d 602 (Pa. 1967). Subject matter jurisdiction is a prerequisite to the exercise of the power to

decide a controversy. *Hughes v. Pa. State Police*, 619 A.2d 390 (Pa. Cmwlth 1992). As a creation of the legislature, the Commission possesses only the authority that the state legislature has specifically granted to it in the Public Utility 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*, 383 A.2d 791 (Pa. 1977). The statutory array of Commission remedial and enforcement powers does not include the power to award damages to a private litigant for breach of contract by a public utility. *Id.* at 794.

As a result, to the extent Complainants requests that the Commission award monetary damages, such a claim may be appropriate for a Court of Common Pleas but is impertinent to this proceeding. PECO's preliminary objections will be granted regarding Complainants request for monetary damages. When accepting as true all well pleaded material facts in the Formal Complaint, as well as every reasonable inference from those facts, and viewing the Formal Complaint in this case in the light most favorable to Complainants, it is clear that Complainants are not entitled to monetary damages from this Commission under any circumstances as a matter of law. Complainants request for monetary damages will be stricken from the Formal Complaint because it is an impertinent matter. 52 Pa. Code § 5.101(a)(2).

Because Complainants' request for monetary damages has been stricken from the Formal Complaint, to the extent Complainants intend to introduce at an evidentiary hearing testimony or exhibits for the purpose of recouping alleged monetary damages, such testimony or exhibits will be prohibited. However, Complainants are not prohibited from introducing testimony or exhibits if introduced only for the purpose of addressing any issues that are under the Commission's jurisdiction. This could include the issue of whether PECO is furnishing and maintaining adequate, efficient, safe, and reasonable service and facilities. If it is found that PECO is not meeting such obligations, they may be subject to a civil penalty. Therefore, the Formal Complaint filed by Complainants may proceed to a hearing for the adjudication of issues raised in the Formal Complaint over which the Commission does have jurisdiction to hear.

However, as set forth in this Order, Complainants will be precluded from raising any arguments during a hearing that the Commission does not have jurisdiction over, e.g.,

monetary damages, and under no circumstances will any possible remedy include monetary damages to be awarded to Complainants. Additionally, Complainants advised that to sustain their burden of proof at hearing, they must demonstrate by a preponderance of the evidence that PECO has violated the Public Utility Code, a Commission order or regulation or a Commission-approved Company tariff. In addition, all orders of the Commission must be supported by substantial evidence. This is a different standard than that used in addressing PECO's preliminary objections.

In its answer, PECO requests that an Interim Mediation Order be issued in this matter. The Commission's mediation process is a flexible program designed to informally help parties resolve disputes. *See* 52 Pa. Code §§ 69.391-69.397. Therefore, before proceeding to a hearing, this case will be referred to the Commission's Mediation Unit for the Commission's mediation review process.¹

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objections filed by PECO Energy Company at Docket Number C-2024-3050663 on August 30, 2024 are hereby granted;
2. That the request for monetary damages contained in the Formal Complaint filed by Timothy Guinher and Valerie Petterson at Docket Number C-2024-3050663 is stricken;
3. That, at an evidentiary hearing, introduction of testimony or exhibits for the purpose of recouping alleged monetary damages is prohibited;

¹ On October 22, 2024, PECO filed a motion to consolidate this proceeding with nine other proceedings. This case will not be formally referred to mediation until an order is issued regarding PECO's motion to consolidate.

4. That this proceeding is referred to the Commission's Mediation Unit for the Commission's mediation review process;

5. That, in the event the parties are unable to resolve this matter with the assistance of a mediator, the remaining issues raised in the Formal Complaint filed by Timothy Guinher and Valerie Petterson at Docket Number C-2024-3050663 over which the Commission has jurisdiction will proceed to a hearing.

Date: November 5, 2024

/s/
John M. Coogan
Administrative Law Judge

C-2024-3050663 - TIMOTHY GUINHER AND VALERIE PATTERSON v. PECO ENERGY COMPANY

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