

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Timothy Guiner and Valerie Patterson	:	C-2024-3050663
Jesse Darlington	:	C-2024-3050779
Matthew Rooke	:	C-2024-3050912
Heather Sekiguchi	:	C-2024-3050923
Marc Blucas	:	C-2024-3050949
Kathleen Ronning	:	C-2024-3050975
Charles Brickman	:	C-2024-3050976
Erin Durnin	:	C-2024-3050979
Carol Spiewak	:	C-2024-3050985
Matthew and Elizabeth Kurteson	:	C-2024-3051002
	:	
	:	
v.	:	
	:	
PECO Energy Company	:	

**ORDER
CONSOLIDATING PROCEEDINGS
GRANTING PRELIMINARY OBJECTIONS AND
REFERRING TO MEDIATION**

The above-captioned proceedings all concern Complainants who filed Formal Complaints against PECO Energy Company (PECO) concerning the reliability of their electric service. Formal Complaints were filed at each of the above-captioned proceedings on the following dates: August 12, 2024 for C-2024-3050663; August 16, 2024 for C-2024-3050779; August 26, 2024 for C-2024-3050912; August 27, 2024 for C-2024-3050923; August 28, 2024 for C-2024-3050949; August 30, 2024 for C-2024-3050975; August 29, 2024 for C-2024-3050976; August 30, 2024 for C-2024-3050979; August 30, 2024 for C-2024-3050985; and August 29, 2024 for C-2024-3051002.

PECO filed an answer and new matter, as well as preliminary objections, at each of the above-captioned proceedings on the following dates: August 30, 2024 for C-2024-3050663; September 6, 2024 for C-2024-3050779; September 16, 2024 for C-2024-3050912; September 16, 2024 for C-2024-3050923; September 18, 2024 for C-2024-3050949;

September 23, 2024 for C-2024-3050975; September 23, 2024 for C-2024-3050976; September 23, 2024 for C-2024-3050979; September 23, 2024 for C-2024-3050985; and September 24, 2024 for C-2024-3051002. No replies to PECO's new matters or preliminary objections have been received.

On October 9, 2024, the Commission issued a motion judge assignment notice, assigning the matter at C-2024-3050663 to me to resolve any issues which may arise during the preliminary phase of this proceeding.

On October 22, 2024, PECO filed at each above-captioned docket a motion to consolidate all of the above-captioned proceedings. No replies to PECO's motion to consolidate have been received.

On November 5, 2024, I issued an order, granting PECO's preliminary objections at C-2024-3050663, and referring the proceeding to mediation.

On November 13, 2024, the Commission issued a motion judge assignment notice, assigning the matters at C-2024-3050779, C-2024-3050912, C-2024-3050923, C-2024-3050949, C-2024-3050975, C-2024-3050976, C-2024-3050979, C-2024-3050985, and C-2024-3051002 to me to resolve any issues which may arise during the preliminary phase of those proceedings.

For the reasons discussed below, the above-captioned proceedings will be consolidated, PECO's preliminary objections will be granted, and the consolidated proceeding will be referred to mediation.¹

¹ The proceeding at C-2024-3050663 is omitted from the ordering paragraphs below regarding preliminary objections and referral to mediation because, as discussed above, PECO's preliminary objections at C-2024-3050663 were already granted and the proceeding at C-2024-3050663 was referred to mediation by order issued November 5, 2024.

Consolidation

The Commission's regulations pertaining to consolidation appear at 52 Pa. Code § 5.81, and state in relevant part:

§ 5.81. Consolidation.

(a) The Commission or presiding officer, with or without motion, may order proceedings involving a common question of law or fact to be consolidated. The Commission or presiding officer may make orders concerning the conduct of the proceeding as may avoid unnecessary costs or delay.

In its motion to consolidate, PECO avers that consolidation is appropriate because each complaint relates to the reliability and property damage experienced as a result of electrical surges involving the same circuit in Solebury Township. PECO also avers that Complainants request similar relief, e.g., Complainants request that PECO improve its reliability in their area, Solebury Township. No responses to PECO's motion to consolidate have been filed.

I agree with PECO that the Formal Complaints concern a common question of law or fact that merit consolidation of the above-captioned proceedings; specifically, whether PECO is providing adequate service to customers in proximity to each other who are served by the same circuit. Other considerations also favor consolidation of the above-captioned proceedings. From review of the pleadings, it does not appear that Complainants' will present additional issues that would cloud determination of the common issues. Consolidation will very likely result in some reduced costs for the parties and the Commission if the Formal Complaints are considered together, e.g., there will likely only be a single evidentiary hearing, rather than ten separate evidentiary hearings. As explained above, the above-captioned proceedings do present a common issue of law and fact, and therefore, the issues in one proceeding go to the heart of an issue in the other proceedings, do not involve different statutory and legal issues, and the supporting data in both proceedings is likely to be repetitive. In all proceedings, Formal Complainants carry the burden of proof to show by a preponderance of the evidence that Respondents have violated the Public Utility Code, a Commission order or regulation or a

Commission-approved tariff. Therefore, after reviewing the above considerations, the unopposed motion to consolidate will be granted.

Preliminary Objections

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 complaints in this case in the light most favorable to Complainants and should dismiss the complaints 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, among other relief, Complaints seek monetary reimbursement. 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 Complaints, as well as every reasonable inference from those facts, and viewing the Formal Complaints 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 Complaints 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 Complaints, 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 Complaints filed by Complainants may proceed to a hearing for the adjudication of issues raised in the Formal Complaints 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.

Mediation

In its answers to the Formal Complaints, PECO requests that an interim mediation order be issued in these matters. 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 consolidated proceeding will be referred to the Commission's Mediation Unit for the Commission's mediation review process.

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaints at C-2024-3050663, C-2024-3050779, C-2024-3050912, C-2024-3050923, C-2024-3050949, C-2024-3050975, C-2024-3050976, C-2024-3050979, C-2024-3050985, and C-2024-3051002 are consolidated;

2. That the Preliminary Objections filed by PECO Energy Company at C-2024-3050779, C-2024-3050912, C-2024-3050923, C-2024-3050949, C-2024-3050975, C-2024-3050976, C-2024-3050979, C-2024-3050985, and C-2024-3051002 are hereby granted;

3. That the request for monetary damages contained in the Formal Complaints at C-2024-3050779, C-2024-3050912, C-2024-3050923, C-2024-3050949, C-2024-3050975, C-2024-3050976, C-2024-3050979, C-2024-3050985, and C-2024-3051002 is stricken;

4. That, at an evidentiary hearing, introduction of testimony or exhibits for the purpose of recouping alleged monetary damages is prohibited;

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

6. 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 Complaints at C-2024-3050663, C-2024-3050779, C-2024-3050912, C-2024-3050923, C-2024-3050949, C-2024-3050975, C-2024-3050976, C-2024-3050979, C-2024-3050985, and C-2024-3051002 over which the Commission has jurisdiction will proceed to a hearing.

Date: November 20, 2024

/s/
John M. Coogan
Administrative Law Judge

C-2024-3050663, C-2024-3050779, C-2024-3050912, C-2024-3050923, C-2024-3050949, C-2024-3050976, C-2024-3050975, C-2024-3050985, C-2024-3050979, C-2024-3051002 - IN RE: COMPLAINTS AGAINST PECO ENERGY: COMPANY'S RELIABILITY IN SOLEBURY: TOWNSHIP

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