

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kafi Clark	:	
	:	
v.	:	C-2024-3051478
	:	
PECO Energy Company	:	

ORDER
GRANTING PRELIMINARY OBJECTION AND
DIRECTING COMPLAINANT TO FILE AN AMENDED COMPLAINT

On September 16, 2024, Kafi Clark (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 billing errors and omissions contained in the application for the service pertaining to her address. More specifically, the Complainant states as follows,

I have a concern about billing errors and omission on my PECO utilities account. One error I am aware of is the application was endorsed in blank. Another error is the address. It should be the assignee bank.

Complaint ¶ 5.

She further asserts that she needs certain provisions under the Americans with Disabilities Act (ADA) due to an inability to practice law and asks that her coupons made to the IRS be credited to her account. More specifically, she states,

I have been sending my coupons to the IRS directly to receive the credits but I'd like to ask for your

assistance in getting the full benefit of the coupons in the form of a monthly allowance sent to me directly. I have a disability of practicing law and also inability to pay.

Complaint ¶ 5.

On October 22, 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 \$2,175.75, which represents an accumulation of unpaid monthly bills as Complainant's last payment was made in March 2023. 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 October 22, 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 Internal Revenue Service (IRS) are outside of the capacity and jurisdiction of the Commission. See Preliminary Objection ¶¶ 16-17. The Preliminary Objections seeks to dismiss the Complaint on the ground that 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 November 7, 2024, the Complainant submitted via facsimile addressed to Secretary Rosemary Chiavetta her Answer to the Preliminary Objection. In it, the Complainant avers that PECO: 1) has engaged in unfair business practices in violation of 66 Pa.C.S. 2201; 2) has committed deceptive acts in violation of PA Unfair Trade Practices and Consumer Protection Law at 73 P.S. 201-2; and 3) has engaged in theft through deception in violation of 18 Pa.C.S. 4904.

Complainant proceeded to cite to *Smith v. Jones*, 123 A.2d 456 (Pa. 1957) and *Doe v. Roe*, 456 Pa. 789 (Pa. 1985), neither one of which are real citations to adjudicated cases.

By Motion Judge Assignment Notice dated November 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 Intervenors 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. § 4904, or Title 26 of the United States Code (the Internal Revenue Code of 1986 or IRC). 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 Therefore, the portions of the Complaint raising claims under 73 P.S. § 201-1, 18 Pa.C.S. § 4904, or Title 26 of the United States Code are dismissed for lack of jurisdiction.²

In addition, to the extent that the Complainant intends the reference to IRC 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).

² Complainant seems to agree. In her Answer to PECO’s Preliminary Objection, the Complainant states,

The Pennsylvania Public Utility Commission (PUC) lacks jurisdiction over this matter, as it functions as a nisi prius court according to Black Law Dictionary (5th Ed) a nisi prius court is a court where cases are first heard and decided by a judge and jury. This aligns with Pennsylvania Rules of Civil Procedure (PA R.C.P. 1007), which stipulates that such courts handle initial trials and rulings. **Therefore, the PUC does not possess the authority to adjudicate this issue.**

Answer to Preliminary Objection, p. 4. (Emphasis added).

Finally, in her Answer to the Preliminary Objection Complainant claims that PECO has engaged in unfair business practices in violation of 66 Pa.C.S. § 2201. Chapter 22 of the Pennsylvania Public Utility Code concerns Natural Gas Competition in Pennsylvania and PECO is an electric and gas distribution company. However, the pleadings filed by the Complaint do not provide any additional detail or information on this claim. A complaint must contain sufficient specificity and information to enable a respondent to understand the charges or allegations against it and conduct a meaningful investigation of the allegations, and to offer an appropriate response thereto. *Orlando Antonio Acosta v. PECO Energy Co.*, Docket No. F-2020-3015309 (Order entered Sep. 10, 2020). The Commission has held that a complaint filed with the Commission is adequate if it gives the respondent notice and an opportunity to defend; it need not be drawn with technical accuracy. *Green Cab Co. v. Hajducho*, 50 Pa. P.U.C. 745 (1977).

Viewing the Complaint in the light most favorable to the Complainant and accepting all of the factual assertions in the Complaint as true for the purposes of disposing of the Preliminary Objections, I find that Respondent has not been provided with the opportunity to provide an Answer or prepare a defense to the claims concerning Chapter 22. It is not clear based on a reading of the Complaint what action or omission PECO has committed that led to the filing of the Complaint. The relief requested in the Complaint is also unclear. In summary, based on a reading of the Complaint, I am unable to understand the material facts of the Complaint or the allegations against PECO. Given the unclear nature of the Complaint, Complainant will be directed to file an Amended Complaint in this proceeding.

Therefore, PECO's Preliminary Objection concerning lack of jurisdiction over claims arising claims under 73 P.S. § 201-1, 18 Pa.C.S. § 4904, or Title 26 of the United States Code is granted. Ms. Clark will be directed to file an Amended Complaint within twenty days of service of this Order. The Complainant is instructed 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. If an Amended Complaint is not filed within twenty days of service of this Order, the Complaint

will be dismissed.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by PECO Energy Company in the matter of Kafi Clark v. PECO Energy Company at Docket No. C-2024-3051478 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. § 4904, or Title 26 of the United States Code is granted are dismissed for lack of jurisdiction.
3. That the portions of the Complaint raising claims under the Americans with Disabilities Act of 1990 are dismissed for lack of jurisdiction.
4. That Kafi Clark is directed to file an Amended Complaint at Docket No. C-2024-3051478 within twenty days of service of this Order.

Date: January 15, 2025

_____/s/
Eranda Vero
Administrative Law Judge

C-2024-3051478 - KAFI CLARK v. PECO ENERGY COMPANY

KAFI CLARK



Served via eService on January 15, 2025

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