

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Claudio Waller	:	
	:	
v.	:	C-2025-3053079
	:	
PECO Energy Company - Gas	:	

ORDER
GRANTING PRELIMINARY OBJECTIONS

HISTORY OF THE PROCEEDING

On January 24, 2025, Claudio Waller (“Mr. Waller”) filed a Formal Complaint against PECO Energy Company – Gas (“PECO”), with the Pennsylvania Public Utility Commission (“Commission”). In his Complaint, Mr. Waller accused PECO and Utility Line Services (ULS”) of damaging the security system at his home during gas meter work conducted at his property. For relief, Mr. Waller requests damages in the amount of \$6,000 to repair the security system.

On February 12, 2025, PECO filed an Answer with New Matter to the Complaint. In its Answer, PECO claimed that it notified Mr. Waller that it would be commencing a gas meter project at his property and that he was to mark and identify privately owned utilities prior to the project’s commencement. PECO asserted that Mr. Waller did not mark his security system. PECO further asserted that the service was drilled in on the opposite side of the property away from the security gate at issue. PECO noted that it denied Mr. Waller’s claim for damages to his security system because he did not mark his security system.

In its New Matter, properly endorsed with a Notice to Plead, PECO asserted that to the extent that Mr. Waller seeks an award of damages against PECO for damage done to his

property, such relief is beyond the power of the Commission to order. PECO concluded its Answer with New Matter by requesting dismissal of the Complaint.

Also on February 12, 2025, PECO filed Preliminary Objections to the Complaint, properly endorsed with a Notice to Plead. In its Preliminary Objections, PECO seeks dismissal of the Complaint's claims for damages, pursuant to 52 Pa. Code § 5.101(a)(1), arguing that the Commission lacks authority to award damages.

On February 24, 2025, Mr. Waller filed an Answer to the Preliminary Objections.¹ In his Answer, Mr. Waller stated that he is not seeking a monetary award for damages but is asking for PECO to repair the damage it and its subcontractor ULS caused to his property.

On February 26, 2025, the Commission issued a Motion Judge Assignment Notice, assigning me as Presiding Officer over this proceeding.

PECO's Preliminary Objections are procedurally ready to be ruled upon. For the reasons discussed below, the Preliminary Objections will be granted.

DISCUSSION

PECO in this matter filed Preliminary Objections to the Formal Complaint. The Commission's regulations provide that preliminary objections are available to parties and may be filed in response to a pleading. 52 Pa. Code § 5.101(a). The grounds for preliminary objections are limited to those set forth as follows:

(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.

¹ Mr. Waller's Answer to the Preliminary Objections also addresses the assertions PECO made in its Answer.

- (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).

Commission procedure regarding the disposition of preliminary objections is similar to the procedure utilized in Pennsylvania civil practice. A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. *Pennsylvania State Lodge, Fraternal Order of Police v. Dept. of Conservation & Natural Resources*, 909 A.2d 413 (Pa. Cmwlth. 2006), *aff'd*, 592 Pa. 304, 924 A.2d 1203 (2007).

The Commission may not rely upon the factual assertions of the moving party but must accept as true for purposes of disposing of the motion all well pleaded, material facts of the nonmoving party, as well as every inference from those facts. *County of Allegheny v. Commonwealth of Pennsylvania*, 490 A. 2d 402 (Pa. 1985); *Commonwealth of Pennsylvania 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 the Complainant and should dismiss the complaint only if it appears that the Complainant would not be entitled to relief under any circumstances as a matter of law. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

PECO asserts that the Commission does not have jurisdiction over damages claims pursuant to 52 Pa. Code § 5.101(a)(1). The law supports the position of PECO.

The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code. *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937 (Opinion and Order entered May 28, 2008); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977). The Commission must act within, and cannot exceed, its jurisdiction. *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 power to decide a controversy. *Hughes v. Pennsylvania State Police*, 619 A.2d 390 (Pa.Cmwlth. 1992) *alloc. denied* 637 A.2d 293 (Pa. 1993).

Although Mr. Waller asserts in his Answer to the Preliminary Objections that he is not seeking monetary damages, requesting payment from PECO to fix his security system is in fact a request for monetary damages. It is well-established under Pennsylvania law that the enforcement powers of the Commission do not include the power to award money damages. *Elkin v. Bell Tel. Co. of Pa.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1978). The Commission cannot award the reimbursement sought by Mr. Waller here. *See Morrow v. Bell Telephone Co. of Pa.*, 330 Pa.Super. 276, 479 A.2d 548 (1984); *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 104 Pa.Cmwlth. 21, 521 A.2d 75 (1987); *Ostrov v. I.F.T., Inc.*, 402 Pa.Super. 87, 586 A.2d 409 (1991). A request for monetary damages must be pursued before a Magisterial District Justice or a Court of Common Pleas.

Given that the Commission does not have jurisdiction over damages claims, Preliminary Objections will be granted, and the portions of the Complaint seeking monetary damages will be dismissed. This Order does not dismiss the Complaint in its entirety; therefore, a hearing will be held on the other matters raised in the Complaint.

ORDER

THEREFORE,

IT IS ORDERED:

1. That PECO Energy Company – Gas’s Preliminary Objections filed in the matter of Claudio Waller v. PECO Energy Company - Gas, Docket No. C-2025-3053079, are granted.
2. That the portions of the Formal Complaint seeking monetary damages are dismissed.

Date: March 5, 2025

_____/s/
Alphonso Arnold III
Administrative Law Judge

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