

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Perry Katz

v.

PECO Energy Company

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C-2025-3053490

**INTERIM ORDER GRANTING PRELIMINARY OBJECTION
AND REFERRING PROCEEDING TO MEDIATION**

On or about February 17, 2025, Perry Katz (Complainant) filed with the Pennsylvania Public Utility Commission (Commission) a Formal Complaint (Complaint) against PECO Energy Company (PECO or Company). In the Complaint, the Complainant states that PECO's subcontractor caused damage to his landscaping and driveway, underground power supply cables and internet cable and electric meter box, and ongoing electric problems in his garage which prevent automatic garage doors from opening. By way of relief, the Complainant is asking PECO to pay for re-pavement of the driveway and also reimburse him for the costs he paid to have an electrician restore power (\$800 plus interest) and replace garage door openers (\$1,135). The Complaint was served on PECO on February 20, 2025.

On March 12, 2025, PECO timely filed an answer and new matter to the 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 Complainant seeks an award of monetary damages against PECO for damage caused to his 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 March 12, 2025, PECO filed a preliminary objection to the Complaint. In its preliminary objection, which included a notice to plead, PECO asserts that, to the extent

the Complainant is requesting a monetary award for costs, the Complainant is 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 Complaint that seeks monetary reimbursement from PECO should be denied.

The Complainant did not file a response to PECO's preliminary objection.

By Motion Judge Assignment Notice dated April 10, 2025, the matter was assigned to me.

PECO's preliminary objection is now ready for disposition, and it will be granted as stated below. The request for money damages will be stricken from the Complaint. The Complaint will proceed solely to address any issues raised by the Complaint that are under the Commission's jurisdiction. This may include whether PECO is furnishing and maintaining adequate and reasonable service.

DISCUSSION

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 Transp. Intervenors v. Equitable Gas Co.*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994).

Preliminary objections are limited to the following grounds:

§ 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)(1-7).

In deciding preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the complainant, recovery or relief is possible. *Department of Auditor General, et al v. SERS, et al.*, 836 A.2d 1053 (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).

Here, the Complainant requests that PECO reimburse him for his costs related to the alleged damage done by the Company's subcontractor. It is well settled, however, 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); *Feingold v. Bell of PA*, 383 A.2d 791 (Pa. 1977) (*Feingold*); *Loma, Inc. v. Pa. Pub. Util. Comm'n*, 682 A.2d 425 (Pa. Cmwlth. 1996) (*Loma*).

One measure of relief that the Commission is not authorized to grant is an award of monetary damages. *Feingold; Loma; see also Elkin v. Bell*, 420 A.2d 371 (Pa. 1980); *Poorbaugh v. Pa. Pub. Util. Comm'n*, 666 A.2d 744 (Pa. Cmwlth. 1995). As a result, even when accepting as true all well pleaded material facts, as well as every reasonable inference from those facts, and viewing the Complaint in the light most favorable to the Complainant, Mr. Katz is not entitled to relief from this Commission in the form of monetary damages as a matter of law.

Accordingly, while such a claim may be appropriate for a Court of Common Pleas, the request for monetary damages will be stricken from Mr. Katz's Complaint in the instant proceeding because it is an impertinent matter. 52 Pa. Code § 5.101(a)(2). Because the Complainant's request for monetary damages has been stricken, to the extent the Complainant intends 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, Mr. Katz is 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, the Company may be subject to a civil penalty.¹ Therefore, the Complaint filed by Mr. Katz may proceed to a hearing for the adjudication of issues raised in the Complaint over which the Commission does have jurisdiction to hear.

Mr. Katz is advised that to sustain his burden of proof at hearing, he 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.² In addition, all

¹ The Complainant is cautioned that even if he is able to prove inadequate service, any fine or other penalty that the Commission assesses against PECO will be payable directly to the Commonwealth of Pennsylvania General Fund. 66 Pa.C.S. § 3315. No monetary award or reimbursement will be given to the Complainant.

² For the Complainant to prevail ultimately, there must be a statute, regulation or order which the Commission is authorized to enforce. The Complaint must set forth anything done or omitted to be done by the Company in violation of any law which the Commission has jurisdiction to administer. 66 Pa.C.S. § 701; 52 Pa. Code § 5.21(a).

orders of the Commission must be supported by substantial evidence. This is a different standard than that used in addressing PECO's preliminary objection.

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 review.

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by PECO Energy Company in the case captioned Perry Katz v. PECO Energy Company at Docket No. C-2024-3052708 is granted.
2. That the request for monetary damages contained in the Formal Complaint filed by Perry Katz at Docket Number C-2024-3052708 is stricken.
3. That, at an evidentiary hearing, introduction of testimony or exhibits for the purpose of recouping alleged monetary damages is prohibited.
4. That the Formal Complaint of Perry Katz v. PECO Energy Company at Docket No. C-2024-3052708 will be referred to the mediation unit in the Office of Administrative Law Judge for review.

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 Perry Katz v. PECO Energy Company at Docket No. C-2024-3052708 over which the Commission has jurisdiction will proceed to a hearing.

Dated: May 12, 2025

_____/s/
Erin L. Gannon
Administrative Law Judge

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PERRY KATZ
414 RIGHTERS MILL ROAD
PENN VALLEY PA 19072

412.977.3887

psk1155@yahoo.com

Served via eService May 12, 2025

KHADIJAH SCOTT ASSOCIATE GENERAL COUNSEL
PECO ENERGY COMPANY
2301 MARKET STREET - S23-1
PHILADELPHIA PA 19103

267-533-1830

khadijah.scott@exeloncorp.com

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