

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kurt Minio	:	
	:	
v.	:	C-2025-3054430
	:	
PECO Energy Company	:	

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

On April 4, 2025, Kurt Minio (Complainant or Mr. Minio) filed a Formal Complaint (Complaint) against PECO Energy Company (Respondent or PECO) with the Pennsylvania Public Utility Commission (PUC or Commission). In the Complaint, the Complainant placed a checkmark in the box marked “[o]ther” and provided a type-written statement indicating that PECO’s equipment had exploded “causing a power surge throughout our neighborhood causing [sic] massive loss to neighbors.” Under the “[r]equested relief” section of the Complaint, the Complainant stated he wanted PECO to “cover [the] loss of household goods.”

On April 24, 2025, the Respondent filed an Answer and New Matter to the Complaint. In the Answer, the Respondent denied the material allegations of the Complaint and stated that it is actively investigating the Complainant’s concerns. In its New Matter, the Respondent averred that the Complainant has failed to state a claim upon which relief may be granted because the Commission lacks jurisdiction to award monetary damages. Respondent’s New Matter was endorsed with a Notice to Plead advising the Complainant he had 20 days to file a written response to PECO’s New Matter. The Complainant did not file a response to PECO’s New Matter.

Also on April 24, 2025, the Respondent filed a Preliminary Objection to dismiss the Complaint on the grounds that the Commission lacks jurisdiction to order the relief sought.

Respondent's Preliminary Objection was endorsed with a Notice to Plead advising the Complainant he had 10 days to file a written response to PECO's Preliminary Objection. The Complainant did not file a response to PECO's Preliminary Objection.

By Motion Judge Assignment Notice dated May 30, 2025, PECO's Preliminary Objection was assigned to me for disposition.

For the reasons set forth below, the Respondent's Preliminary Objection is sustained, the portion of Mr. Minio's Complaint seeking damages will be stricken from the Complaint, and this matter will be referred to the Office of Administrative Law Judge's Mediation Unit for the Commission's mediation review process.

#### 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 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.Cmwlt. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa.Cmwlt. 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.Cmwlt. 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.Cmwlt. 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.

In the present case, the Complainant alleged that the Respondent's equipment exploded, leading to a power surge and subsequent damage to the Complainant's property. As relief, the Complainant requested the Commission to order the Respondent to pay for such damages.

In its Answer, the Respondent denied all allegations regarding damages to Complainant's property. In its Preliminary Objection, the Respondent argued that the

Commission lacks the authority to order a public utility to pay damages and requested that the Complaint be dismissed with prejudice with regard to damages pursuant to 52 Pa.Code § 5.101(a)(1).

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 Code confers jurisdiction upon the Commission to award monetary damages. *See, DeFrancesco v. Western Pennsylvania Water Company*, 453 A.2d 595 (Pa. 1982); *Elkin v. Bell of Pa.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1977); *Poorbaugh v. Pa. PUC*, 666 A.2d 744 (Pa.Cmwlth. 1995).

However, while the Commission does not have jurisdiction to award damages, it does not follow that the Commission lacks jurisdiction to hear a complaint that seeks damages. If such a complaint alleges a violation of the Public Utility Code, and if the allegations are established by the evidence presented at a hearing, an Administrative Law Judge and the Commission might conclude that the utility violated 66 Pa. C.S. § 1501 by failing to provide safe and adequate service. Although the Commission would not be able to award damages, it may decide to impose a fine or other penalty upon the utility. *See, Seidel v. Ralph G. Smith, Inc.*, 49 Pa. PUC 557, 1975 Pa. PUC LEXIS 7 (1975); *Robert Attianese and Michele Attianese v. Santoro Enterprises, Inc., t/d/b/a Thomas Gerrity Movers and Storage and Paul Arpin Van Lines, Inc.*, Docket Number A-00113019C0203 (October 14, 2003), Opinion and Order adopted March 4, 2004, entered March 11, 2004, 2004 Pa. PUC LEXIS 19.

Additionally, in a complaint against a public utility that seeks monetary damages

arising from a failure to provide safe, adequate, reasonable, or efficient service, the Supreme Court has approved of a bifurcated procedure.

The question of the PUC's jurisdiction was before us recently in *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383, A.2d 791 (1977) and *Elkin v. Bell Telephone Co. of Pennsylvania*, 491 Pa. 123, 420 A.2d 371 (1980). In *Feingold*, we held that the courts of common pleas have original jurisdiction to hear suits against public utilities for damages arising from failure to provide adequate service. 477 Pa. at 10, 383 A.2d at 795. *See also, Elkin*, 491 Pa. at 130, 420 A.2d at 375. In *Elkin* we further defined the parameters of our holding in *Feingold*. *Elkin* involved an action challenging the adequacy of a complainant's telephone service, and this Court there approved of a bifurcated procedure for certain situations, whereby the issue of liability is decided initially by the PUC, after which the court of common pleas considers the issue of damages where appropriate. *Elkin*, 491 Pa. at 134, 420 A.2d at 377.

*De Francesco v. Western Pennsylvania Water Co.*, 453 A.2d 595 (Pa. 1982).

Thus, service issues are first decided by the Commission, and then a court of common pleas may consider the issue of damages. *DeFrancesco v. Western Pa. Water Co.*, 453 A.2d 595 (Pa. 1982). The Commission has jurisdiction here to determine whether the Respondent rendered reasonable and adequate service to the Complainant.

Although the Complainant requested relief in the form of monetary damages, he also alleged that the Respondent's service caused the problems he experienced, namely, damaged or broken household goods. Therefore, I shall sustain the Respondent's Preliminary Objection and dismiss the portion of the Complaint requesting damages pursuant to 52 Pa.Code § 5.101(a)(1) as the Commission lacks jurisdiction to award damages. However, the remaining issues regarding whether the Respondent provided the Complainant with reasonable and adequate service must still be addressed.

It is the policy of the Commission to encourage settlements. 52 Pa.Code § 5.231. Also, it is Commission policy to encourage mediation during which the parties may attempt to resolve the case with the aid of a mediator. 52 Pa.Code §§ 69.391– 69.397. The mediator, a

neutral staff member within the Mediation Unit of the Commission's Office of Administrative Law Judge, does not give advice, represent any party, evaluate, or make a decision. Instead, the mediator assists the parties in their efforts to come to an agreement thereby avoiding the time, expense, and uncertainty of litigation. Mediation is an informal process where the parties can discuss a full range of settlement options beyond those which can be ordered by the Commission in the formal adjudication process. Accordingly, the remaining issues in this matter will be referred to the Commission's Mediation unit for the Commission's mediation review process.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by PECO Energy Company in the matter of Kurt Minio v. PECO Energy Company at Docket No. C-2025-3054430 is sustained;
2. That the portion of the Complaint requesting relief in the form of monetary damages is dismissed; and
3. That the remaining issues in this matter be, and are hereby referred to, the Commission's Mediation Unit for the Commission's mediation review process.

Date: June 27, 2025

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Christopher P. Pell  
Deputy Chief Administrative Law Judge

**C-2025-3054430 - KURT MINIO v. PECO ENERGY COMPANY**

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