

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|                     |   |                |
|---------------------|---|----------------|
| Bill Whelan         | : |                |
|                     | : |                |
| v.                  | : | C-2025-3055566 |
|                     | : |                |
| PECO Energy Company | : |                |

**INTERIM ORDER  
GRANTING IN PART AND DENYING IN PART  
RESPONDENT’S PRELIMINARY OBJECTIONS**

On June 4, 2025, Bill Whelan (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission), using the Formal Complaint form. Regarding the reason for his complaint, he checked the “Other” box, writing,

PECO is supplying my neighbor with gas via my gas line and my property. PECO admits that the line is on my property, but they deny that the line is spliced over to neighbor’s *[sic]* gas meter. There is no paperwork for an easement and no paperwork for eminent domain....

Complaint ¶ 4. As relief, the Complainant indicated he wanted PECO Energy Company (PECO or Respondent) to disconnect a spliced section of gas hose that reportedly serves his neighbor’s property, to remove a section of line from his property, to install a new line to his neighbor, and to reimburse him for the reported improper use of his land by Respondent. Mr. Whelan asserted in his Complaint that he wanted to be served by the Commission via email using the email address provided in the Complaint. Complaint ¶ 9.

On June 19, 2025, Respondent filed an Answer to the Complaint. In its Answer, Respondent denied that the Complainant’s property had a spliced or split gas line and asserted that the three-year statute of limitations under which to bring a claim under 66 Pa. C.S. §3314(a) had expired.

Also on June 19, 2025, Respondent filed a Preliminary Objection. In the Preliminary Objection, PECO averred the Complainant seeks monetary damages, and that an award of monetary damages is impermissible under the law. Further, PECO asserted the Complainant's claim for reimbursement for the reported use of his property by PECO going back to 2007 is time-barred under the Commission's three-year statute of limitations. Respondent's Preliminary Objection included a Notice to Plead pursuant to 52 Pa. Code §5.101.

On June 27, 2025, Complainant filed documents he described as "documents in support" of his Complaint with the Commission. These "documents in support" included a copy of an apparent email from the Complainant to both Respondent's Counsel and another individual, Amy Botak. The email states "[h]ere are my responses to your response" and asserts the Complainant's neighbors receive gas service from a gas line on his property, and that no easement paperwork exists regarding the use of his property. The "documents in support" also included documents and photographs marked "Underground Detective" and "Utility Locate Scan." These items purport to be a report obtained by the Complainant from a "utility line detection company" and purport to raise a possibility that the Complainant's "neighbor's service comes off of his service."

On July 14, 2025, the Commission issued a Motion Judge Assignment assigning this matter to me for resolution of the Preliminary Objection.

It is now appropriate to rule on the Preliminary Objection.

### 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 as follows:

**§ 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, 1108 (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, 707 (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, 1314 (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.

In the present case, PECO asserts that the Commission lacks jurisdiction, and PECO raises two arguments in its Preliminary Objections: (1) that the Complainant seeks impermissible monetary damages and (2) that the Complainant's reimbursement claim is time-barred.

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., Co. of Pa. PA.*, 420 A.2d 371, 375 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791, 794 (Pa. 1978) (*Feingold*); *see Nagy v. Bell Tel Co. of PA.*, 436 A.2d 701, 704 (Pa. Super. 1981).

In *Feingold*, the Pennsylvania Supreme Court explained:

...the statutory array of PUC remedial and enforcement powers does not include the power to award damages to a private litigant for breach of contract by a public utility. Nor can we find an express grant of power from which the power to award damages can be fairly implied. Thus, it can be concluded that the Legislature did not intend for the PUC to have such a power.

*Feingold*, 383 A.2d at 794.

The Complainant seeks compensation for the use of his property. Based on the foregoing, Respondent's Preliminary Objection is granted with regard to the Complainant's request for monetary damages. Complainant's request for monetary damages is struck from the Complaint.

Respondent also asserts the Complainant's request for damages is barred by the statute of limitations. Pennsylvania law generally provides that no action for recovery of penalties or forfeitures or prosecution shall be maintained unless brought within three years from the date the liability arose. 66 Pa.C.S. § 3314. The Complainant indicates PECO has been

“using our land for the neighbor’s line” for the past 17 years, although there is some indication in correspondence submitted with the Complaint that the Complainant may have become aware of the use in April of 2025 (but the correspondence is not fully clear.) As no damages can be awarded and the request for monetary damages is already being struck from the Complaint, whether the request is timely is of little import. Respondent’s Preliminary Objection that the Complaint includes claims that are time-barred under the applicable statute of limitations is denied. I will not limit or restrict Complainant’s ability to present his case at this time.

Although the Complainant requested relief in the form of monetary damages, he also made allegations indicating PECO may have failed to provide reasonable and adequate service. Therefore, while PECO’s Preliminary Objection regarding the portion of the Complaint that requests damages is granted, the remaining issues raised still must be addressed.

The remaining claims raised in the Complaint are appropriate to move forward at this stage of the litigation, and this matter will be set for an evidentiary hearing. At the hearing, Complainant will have the burden of presenting substantial evidence that PECO violated a regulation, statute, tariff provision or order over which the Commission has authority. If the Commission finds that PECO did violate a statute, regulation, order or tariff provision, per Commission regulations, the Commission may impose a fine, but that fine would be payable to the Commission, not Complainant.

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by PECO against the Formal Complaint filed by Bill Whelan at Docket Number C-2025-3055566 is granted in part and denied in part.

2. That the requests for monetary damages and reimbursements in the Formal Complaint filed by Bill Whelan at Docket Number C-2025-3055566 are struck from the Complaint.

3. That the matter shall be scheduled for an evidentiary hearing.

Date: July 23, 2025

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/s/  
Ann Quimby  
Administrative Law Judge

**C-2025-3055566 - BILL WHELAN v. PECO ENERGY COMPANY**

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