

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Marsha Firman	:	
	:	
v.	:	C-2025-3054740
	:	
PECO Energy Company	:	

**INTERIM ORDER
DENYING PRELIMINARY OBJECTION**

On April 18, 2025, Marsha Firman (Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO or Respondent). The Complainant placed a checkmark in the box marked “[o]ther,” next to which she provided the following statement:

I live at Park At Westminster Apts. There are six buildings with 60 apts. in each. My average electric bill is around \$150. This month me and many residents have received bills of between \$500 – over \$700. Our electric company is PECO but Banyan Utility reads the meters and does the billing. We have questioned Banyan and our apt. managers and we have gotten so many different answers. This is a huge burden financially and it involves much of the apartment complex. We are getting conflicting answers from the utility and staff and no longer have faith in finding out the truth of the problem. We need an independent audit from PUC to solve this problem.

As relief, the Complainant requested the following:

I want an independent third party evaluation, not Banyan. We are not getting transparency on the issue. We need that. We want transparency in billing. They are telling us we were underbilled in previous months. I have my bills for 6 months. There was no underbilling. Also audit/inspection of meters. Audit of kWh usage. Hire another third billing co. Get rid of Banyan.

On May 14, 2025, the Respondent filed an Answer and New Matter to the Complaint. In its Answer, the Respondent denied the material allegations of fact and Conclusions of Law in the Complaint. As New Matter, the Respondent averred that the Complainant is not PECO's customer of Record at 600 Valley Rd., Warrington, PA 5, and does not have an account in her name with PECO. Instead, the Respondent averred that PECO's customer of record at 600 Valley Rd., Warrington, PA is The Park At Westminster T A Lindy Property Management. The Respondent further averred: that it has not sent the Complainant a bill for service at 600 Valley Rd., Warrington, PA; that it has not requested payment from Complainant for billing at this address; that the Complainant lacks standing to participate in the Formal Complaint proceedings on behalf of The Park At Westminster T A Lindy Property Management; that the Complainant has not asserted that she is an authorized agent of The Park At Westminster T A Lindy Property Management; and that the Complainant has not been aggrieved by PECO as PECO has not addressed any billing to her attention and she is not PECO's customer of record. PECO requested that the Commission dismiss the Complainant's Complaint. PECO endorsed its New Matter with a Notice to Plead informing the Complainant that a responsive pleading was due within 20 days from the date of service of the New Matter. The Complainant did not file a response to PECO's New Matter.

Also on May 14, 2025,¹ PECO filed a Preliminary Objection to the Complaint. In the Preliminary Objection, the Respondent repeated the argument raised in New Matter that the Complainant lacks standing to participate in formal complaint proceedings on behalf of The Park At Westminster T A Lindy Property Management. PECO requested that the Complainant's Formal Complaint be denied pursuant to 52 Pa.Code §§ 5.101(a)(4) and (a)(7). PECO Endorsed its Preliminary Objection with a Notice to Plead informing the Complainant that a responsive pleading was due within 10 days from the date of service of the Preliminary Objection. The Complainant did not file a response to PECO's Preliminary Objection.

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

¹ PECO filed its Preliminary Objection twice on May 14, 2025.

For the reasons set forth below, the Respondent's Preliminary Objection is denied.

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.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.

In the present case, the Complainant alleged that she is being overbilled for electric service. While acknowledging that a third party reads PECO's meters and issues bills for service, the Complainant specifically averred that PECO is her electric company. As relief, the Complainant requested a review of her bills, an inspection of her meters, and a new third-party company to read meters and issue bills.

In its Answer, the Respondent denied all allegations of fact and conclusions of law in the Complaint. In its New Matter and in its Preliminary Objection, the Respondent averred that the Complainant is not PECO's customer of record and, as such, lacks standing in this matter.

PECO's Preliminary Objection will be denied. Unlike a motion for summary judgment or a motion to dismiss, only the facts alleged in the Complaint are considered in resolving preliminary objections. *E.g., Stilp v. Commonwealth*, 910 A.2d 775, 791 (Pa. Cmwlth. 2006).

The facts supporting PECO's Preliminary Objection are premised on PECO's averments in its New Matter. Although the Complainant mentioned a third-party meter reader/billing agent, she specifically referred to PECO as her electric company. There is nothing in the Complainant's Complaint upon which I can conclude that she is not a PECO customer. For purposes of PECO's preliminary objection, that factual averment must be viewed as true. If the Complainant is able to prove at a hearing that she is a PECO electric customer, the Commission may be able to grant relief to her. Accordingly, PECO's Preliminary Objection will be denied. This denial is without prejudice against PECO to file an appropriate motion.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by PECO Energy Company in the matter of Marsha Firman v. PECO Energy Company at Docket No. C-2025-3054740 is denied;
2. That PECO Energy Company may file a properly supported dispositive motion on or before August 29, 2025.
3. That if no motion is filed, this matter shall be scheduled for a hearing.

Date: July 30, 2025

/s/
Christopher P. Pell
Deputy Chief Administrative Law Judge

C-2025-3054740 - MARSHA FIRMAN v. PECO ENERGY COMPANY-ELECTRIC

MARSHA FIRMAN
600 VALLEY ROAD
APT C64
WARRINGTON PA 18976
215.350.9420
marshafirman4@gmail.com
Served via USPS First-class mail July 30, 2025

KHADIJAH SCOTT ESQUIRE
PECO ENERGY COMPANY
2301 MARKET STREET - S23-1
PHILADELPHIA PA 19103
267-533-1830
khadijah.scott@exeloncorp.com
Served via eService July 30, 2025