

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Frances and Sandy Stauffer	:	
	:	
v.	:	C-2025-3056386
	:	
PECO Energy Company Electric	:	

**INTERIM ORDER SUSTAINING RESPONDENT'S
PRELIMINARY OBJECTION**

On July 17, 2025, Frances and Sandy Stauffer (Complainants) filed a Formal Complaint against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed a checkmark in the boxes marked “I am having a reliability, safety or quality problem with my utility service,” and “[o]ther,” next to which the Complainants referenced a power outage at their home that ruined their refrigerator. As relief, the Complainants requested that the Commission order PECO to pay for their new refrigerator, which costs approximately \$2,499, as well as the lost contents from their old refrigerator, which the Complainants estimated to be approximately \$350.

On August 11, 2025, the Respondent filed an Answer denying that there is a reliability, safety or quality issue with the electric service provided to the service address and denied that the Commission can award compensation for the alleged damage to personal property. The Respondent further answered: that the service address experienced an outage on September 14, 2024, that lasted 57 minutes; that the outage was due to equipment failure and impacted 2,200 customers; and that PECO denied the Complainants’ claim since the outage was not due to any negligence on the part of PECO or its employees.

Also on August 11, 2025, the Respondent filed a Preliminary Objection requesting that the Complainants’ request for monetary damages be stricken from the Formal

Complaint for lack of subject matter jurisdiction. The Respondent endorsed its Preliminary Objection with a Notice to Plead advising the Complainants that they had 10 days to file a written response to PECO's Preliminary Objection.

On August 21, 2025, the Complainants filed a response to the Respondent's Preliminary Objection. In the Response, the Complainants indicated that they "want financial compensation for complete loss of refrigerator."

By Initial Telephonic Hearing Notice dated September 5, 2025, an initial call-in telephonic hearing was scheduled for November 10, 2025, and the matter, including PECO's Preliminary Objection, was assigned to me.

For the reasons set forth below, the Respondent's Preliminary Objection is sustained, and the portion of the Complainants' Complaint seeking monetary damages will be stricken from the Complaint.

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 Complainants alleged that a power outage caused by PECO ruined their refrigerator. As relief, the Complainants requested the Commission to order

PECO to reimburse them for the cost of their new refrigerator as well as for the lost contents of their damaged refrigerator.

In its Answer, the Respondent denied that there is a reliability, safety or quality issue with the electric service provided to the service address and denied that the Commission can award compensation for the alleged damage to personal property. In its Preliminary Objection, the Respondent argued that the Commission does not have the power to award monetary damages, and that the Complainants' request for monetary damages is an impertinent matter that must be stricken within the use and meaning of the Commission's regulation at 52 Pa.Code § 5.101(a)(1)(2).

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 Complainants requested relief in the form of monetary damages, they also alleged that the Respondent's service caused the problems they experienced, namely, a ruined refrigerator. 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

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