

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Sean Dancy	:	
	:	
v.	:	C-2025-3057829
	:	
PECO Energy Company	:	

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

On October 6, 2025, Sean Dancy (Complainant) 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 box marked “[o]ther.” The Complainant explained that during a rain and windstorm that occurred on June 30, 2025, a tree branch located outside of his property fell onto his power lines and disrupted power to his home. The Complainant averred that it is PECO’s “responsibility to inspect and maintain its electrical infrastructure, overhead wires, and the vegetation that interferes with it.” The Complainant further averred that the damage to his property was preventable by PECO. As relief, the Complainant requested to be reimbursed for the \$4,200 that he spent to replace a pole and ground wires damaged by the storm and on the cleanup that followed. The Complainant further requested that PECO be directed to reduce the size of the trees located directly behind his backyard and to regularly maintain them so that they do not interfere with the power lines that serve his property.

On October 27, 2025, the Respondent filed an Answer denying all material allegations of fact in the Complaint. The Respondent maintained that the vegetation event at issue was not due to any delay in maintenance on PECO’s part and was instead an act outside of its control. PECO further maintained that there are no unreasonable service reliability issues at the Complainant’s premises due to any failure on the company’s part.

Also on October 27, 2025, the Respondent filed a Preliminary Objection requesting that the Complainants' request for monetary damages be dismissed pursuant to 52 Pa.Code § 5.101(a)(1) because the Commission lacks jurisdiction to award damages. The Respondent endorsed its Preliminary Objection with a Notice to Plead advising the Complainant that he had 10 days to file a written response to PECO's Preliminary Objection. The Complainant did not file a written response to PECO's Preliminary Objection.

By Motion Judge Assignment Notice dated November 7, 2025, PECO's Preliminary Objection was assigned to me for disposition.

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 dismissed.

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 Complainants alleged that during a storm a tree branch located outside of his property fell onto his power lines, disrupting power to his home. As relief, the Complainant requested to be reimbursed the \$4,200 he spent to replace a pole and ground wires damaged by a storm and on the cleanup that followed. The Complainant further requested

that PECO be directed to reduce the size of the trees located directly behind his backyard and to regularly maintain them so that they do not interfere with the power lines that serve his property.

In its Answer, the Respondent denied that there is a reliability, safety or quality issue with the electric service provided to the service address. 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 should be dismissed 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 vegetation management caused the problem incurred. 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 are within the Commission's jurisdiction and must still be addressed.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by PECO Energy Company in the matter of Sean Dancy v. PECO Energy Company at Docket No. C-2025-3057829 is sustained;

2. That the portion of the Complaint requesting relief in the form of monetary damages is dismissed; and

3. That the Office of Administrative Law Judge Scheduling Unit schedule a hearing to address the remaining issues in the Complaint.

Date: November 20, 2025

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

C-2025-3057829 - SEAN DANCY v. PECO ENERGY COMPANY-ELECTRIC

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