

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Brad Nickerson	:	
	:	
v.	:	C-2025-3058726
	:	
PECO Energy Company	:	

ORDER
GRANTING PECO ENERGY COMPANY’S
PRELIMINARY OBJECTION

This Order grants the preliminary objection of PECO Energy Company (PECO or Company). Because the Pennsylvania Public Utility Commission (Commission) does not have the authority to award monetary damages as a remedy that portion of the Formal Complaint (Complaint) will be dismissed. However, this Order also directs that a hearing will be scheduled and held on the claims raised in the Formal Complaint.

History of the Proceeding

On November 19, 2025, Brad Nickerson (Mr. Nickerson or Complainant) filed a Complaint against the Company.¹ Mr. Nickerson checked two boxes: (1) he is having a reliability, safety or quality problem with his utility service; and, (2) “other” as the reasons for his Complaint. Mr. Nickerson explained:

Excessive outages, lack of professionalism. According to Peco from April 2025 to August 2025 I have lost power 5 times , and from January 2025 till the 7/24/2025 incident quite a lot more outages. on 7/24/2025 my family and I left our home at approx 5pm with full power on we returned 7/28/2025 approx 7pm to no power at all . the hugest problem with this all is Peco KNOWS when

¹ The Secretary’s Bureau served the Complaint on November 20, 2025.

the power is not at the meter, you can call the recording and it will tell you and now Peco has fixed their issues with their app so now you can check the app . THEY KNEW I HAD NO POWER AND DID NOTHING TILL I CALLED

Complaint ¶ 4.

As relief, the Complainant wants the Commission, “to find Peco guilty of Dereliction of duty and order them to reimburse me for the \$500.00 of food items the [sic] were ruined in both my fridge/freezers.” Complaint ¶ 5.

On December 10, 2025, PECO filed an Answer with New Matter and Preliminary Objection. In its Answer, PECO denied the material allegations of the Complaint. Answer ¶ 4.

In its Preliminary Objection, the Company requests that the portion of the Complaint pertaining to a request for monetary damages—i.e., the reimbursement of \$500.00 the Complainant allegedly incurred for spoiled food, be stricken from the Complaint. PECO avers that under Section 5.101(a)(2) of the Commission’s regulations, a request for damages constitutes impertinent matter which should be stricken because the Commission does not have the authority to award monetary damages. *See* 52 Pa. Code § 5.101(a)(2).

Mr. Nickerson did not file an answer to PECO’s Preliminary Objection.

On January 12, 2025, a Motion Judge Assignment Notice was issued informing the parties that I was assigned as the Presiding Officer responsible to resolve any issues which may arise during the preliminary phase of the proceeding. PECO’s Preliminary Objection is now ready for disposition.

Discussion

The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections and provides:

§ 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(a) (emphasis added).

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 v. SERS*, 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' Ret. Bd.*, 690 A.2d 1312 (Pa. Cmwlth. 1997). Therefore, the primary focus is on whether, based on well-pleaded factual averments of the complainant, recovery or relief is possible. *Id.*

Additionally, as a matter of law, to establish a legally sufficient claim, a complainant must show that the named utility company is responsible or accountable for the problem described in the complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. P.U.C. 196 (1990). The offense must be a violation of the Pennsylvania Public Utility Code (Code), a Commission regulation or order or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701. A finding of a violation of a Commission Order, regulation, or statute, by the public utility may result in the imposition of a civil penalty on the public utility company, consistent with Section 3301, 66 Pa.C.S. § 3301, or other provisions of the Code.

In the instant case, Mr. Bethea alleges in his Complaint that PGW incorrectly and unreasonably charged him a restoration fee and payment arrangement fee, which PGW disputes. These claims of incorrect billing and unreasonable service are cognizable under the Code and Commission Regulations.² Therefore, since there is a factual dispute as to these allegations, the Complainant should be afforded the opportunity to present evidence on his claims and prove them by a preponderance of the evidence. *See Carlock v. United Tel. Co. of Pa.*, Docket No. F-00163617 (Order entered July 14, 1993) (*Carlock*) (holding that, in general, a *pro se* complainant may find it difficult to navigate through pre-hearing motions and should be given the chance to orally describe his basic issue and supporting facts).

However, even *assuming arguendo* that Mr. Nickerson proves that the Company violated the Code, Commission regulation or order or a violation of its Commission-approved tariff, the Commission cannot award Mr. Nickerson monetary compensation as relief. Although

² For example, *see* 66 Pa.C.S. § 1501 (providing that every public utility must provide reasonable service); *Horn v. Pa. American Water Co.*, Docket No. C-2024-3046231 (Opinion and Order entered Apr. 24, 2025); *Harpster v. PPL Elec. Util. Corp.*, Docket No. C-2024-3052644 (Opinion and Order entered Jan. 7, 2026).

this Commission has general jurisdiction over the rates and services of public utilities operating in Pennsylvania, the Commission only has the powers and authority granted to it by the General Assembly in the Code. Nothing in the Code confers jurisdiction upon the Commission to award monetary damages. *Feingold v. Bell*, 383 A.2d 791 (Pa. 1977) (*Feingold*); *DeFrancesco v. Western Pa. Water Co.*, 453 A.2d 595 (Pa. 1982); *Elkin v. Bell of Pa.*, 420 A.2d 371 (Pa. 1980).

Rather, monetary damage payments must be pursued and ordered by a court of competent jurisdiction, such as a county court of common pleas or magisterial district justice, not the Commission. *Feingold*. A finding, if any, that PECO violated a Commission Order, regulation or statute, may result in the imposition of a civil penalty, but does not require it, consistent with Section 3301 or other provision of the Code. Further, it should be noted that a fine, if any, that is imposed on PECO is payable to the Commonwealth of Pennsylvania, not the customer—Mr. Nickerson, in this instance.

Therefore, to the extent that Mr. Nickerson seeks compensatory damages for reimbursement in the amount of \$500.00 for spoiled food items. PECO's preliminary objection will be sustained because the Commission does not have the authority to award monetary damages.

However, viewing the Complaint in the light most favorable to Mr. Nickerson as the non-moving party and accepting as true every well-pleaded material fact in the Complaint, as well as every reasonable inference from those facts, Mr. Nickerson raised issues of fact as to the reliability, safety or quality of utility service provided by PECO. I find that there is a sufficient basis to proceed to a hearing where Mr. Nickerson will have the opportunity to provide testimony and evidence, as he must, to carry his burden of proof in support of his position. *See Carlock*. These issues lie within the jurisdiction of the Commission and will not be dismissed on preliminary objections but will proceed forward for adjudication.

Thus, a hearing will be scheduled by a separate Hearing Notice on the claims raised in the Complaint and over which remedies the Commission does have authority. 66 Pa.C.S. §§ 102, 1501.

C-2025-3058726 - BRAD NICKERSON v. PECO ENERGY COMPANY

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