

**RYAN, RUSSELL, OGDEN & SELTZER**  
A PROFESSIONAL CORPORATION

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July 6, 2010

WYOMISSING OFFICE  
SUITE 210  
1150 BERKSHIRE BOULEVARD  
WYOMISSING, PENNSYLVANIA  
19610-1208  
TELEPHONE: 610-372-4761  
FACSIMILE: 610-372-4177

VIA E-FILING

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

Re: Raymond A. Clapper

v.

Metropolitan Edison Company, Docket No. C-2010-2181919

Dear Secretary Chiavetta:

Attached is the Preliminary Objections of Metropolitan Edison Company to the Complaint of Raymond A. Clapper in the above-captioned proceeding. Copies have been served in accordance with the attached Certificate of Service.

Very truly yours,



Matthew A. Totino

Enclosures

MAT:ck

c: Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RAYMOND A. CLAPPER :  
 :  
 v. : Docket No. C-2010-2181919  
 :  
 METROPOLITAN EDISON COMPANY :

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**NOTICE TO PLEAD**

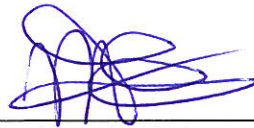
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**TO:** Raymond A. Clapper  
754 Briar Drive  
Morgantown, Pennsylvania 19543

You are hereby notified that Metropolitan Edison Company has filed Preliminary Objections to the above-captioned Complaint. Pursuant to 52 Pa. Code §§ 5.61 and 5.101, you are hereby notified if you do not file a written response to the enclosed Preliminary Objections within ten (10) days from service of this notice, the objections may be granted, thereby dismissing your Complaint, in whole or in part.

All pleadings such as an Answer to Preliminary Objections or an Amended Complaint must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served on the undersigned counsel.

Dated: July 6, 2010



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Matthew A. Totino  
RYAN, RUSSELL, OGDEN & SELTZER P.C.  
800 North Third Street, Suite 101  
Harrisburg, Pennsylvania 17102-2025  
(717) 236-7714

Attorneys for Metropolitan Edison Company

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RAYMOND A. CLAPPER	:	
	:	
v.	:	Docket No. C-2010-2181919
	:	
METROPOLITAN EDISON COMPANY	:	

**PRELIMINARY OBJECTIONS OF METROPOLITAN EDISON COMPANY  
TO DISMISS THE COMPLAINT OF RAYMOND A. CLAPPER**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, Metropolitan Edison Company (“Met-Ed” or the “Company”), by and through its counsel, Matthew A. Totino, John F. Povilaitis and Ryan, Russell, Ogden and Seltzer P.C., files these Preliminary Objections to the above-captioned Formal Complaint. Met-Ed files these Preliminary Objections pursuant to Section 5.101 of the Pennsylvania Public Utility Commission’s (the “Commission”) regulations, 52 Pa. Code § 5.101. In support thereof, Met-Ed avers as follows:

**I. Introduction**

The Complaint should be dismissed, first, because the Commission does not have subject matter jurisdiction over the alleged acts/omissions serving as the basis of the Complaint. Specifically, the Commission does not have jurisdiction over what is a private property dispute between a public utility and an individual that does not involve the provision of utility service or the rates for that service. The Complaint should also be dismissed because the Commission does not have the authority to grant the monetary relief requested by Complainant, which is the sole prayer for relief requested in the Complaint.

## **II. Background**

1. On or about June 10, 2010, Complainant Raymond A. Clapper filed a Formal Complaint with the Commission against Met-Ed at the above docket. A copy of the Complaint is attached as **Exhibit A**. The sole act complained of in the Complaint is that Complainant was over charged by Met-Ed for repairs to a Company transformer located on Complainant's property that was damaged by Complainant.<sup>1</sup> Mr. Clapper's sole prayer for relief is a refund request related solely to money that he paid to repair the Met-Ed property that he damaged.

2. On June 16, 2010, the Complaint was served on Met-Ed via First Class Mail.

3. Met-Ed has filed its Answer and New Matter contemporaneously with these Preliminary Objections.

## **III. Argument**

**A. The Commission does not have jurisdiction over what is a private property dispute between a public utility and an individual that does not involve the provision of utility service.**

4. It is fundamental that the Commission must act within and cannot exceed its jurisdiction. City of Pittsburgh v. Pa. Public Utility Commission, 43 A.2d 348 (Pa. Super. 1945). Jurisdiction refers to the area of litigation in which a tribunal has authority to render adjudications. Bell Telephone Co. of Pa. v. Philadelphia Warwick Co., 50 A.2d 684 (Pa. Cmwlt. 1947). Thus, the Commission must have subject-matter jurisdiction in order to exercise its power and decide a case.

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<sup>1</sup> The damaged to the transformer was caused by an individual that was snow plowing Mr. Clapper's driveway at Mr. Clapper's request/on behalf of Mr. Clapper.

5. In Pennsylvania, the Commission's subject matter jurisdiction is limited to the reasonableness of the rates, terms, and conditions of public utility service. See 66 Pa. C.S. § 1501; see also Duquesne Light Company v. Borough of Monroeville, 298 A.2d 252, 449 Pa. 573 (1972), citing Duquesne Light Co. v. Upper St. Clair, 377 Pa. 323, 105 A. 2d 287 (1954). The Commission's subject matter jurisdiction does not include jurisdiction over purely private rights such as private property disputes (real or personal) that are not related in any way to the provision of utility service. See Edward Boczar v. PPL Electric Utilities Corporation, Docket No. C-20016332 (Order entered February 6, 2003); see also Snyder v. Pennsylvania Public Utility Commission, 144 A.2d 468 (Pa. Super. 1956).

6. Here, the sole act complained of in the Complaint is that Mr. Clapper was over charged by Met-Ed for damage to a Company transformer located on Complainant's property caused by an individual acting on Complainant's behalf. In other words, the allegations in the Complaint relate exclusively to a private property dispute between Met-Ed and a property owner that does not implicate the rates, terms, or conditions of Met-Ed's electric service provided to the Complainant. As such, the allegations are outside the scope of the Commission's jurisdiction.

7. Mr. Clapper alleges in the attachment to paragraph 4 of the Complaint that Met-Ed over charged him for what he characterizes was a facilities upgrade. Even if this allegation is true, the Commission does not have jurisdiction over the Complaint, as the charge that is the subject of the Complaint relates to a private property dispute and is not, in any way, related to the provision of utility service by Met-Ed. Such an allegation is a dispute about the amount of the damages claim and not the rates, terms, or conditions of

any Met-Ed service. As such, the issue is outside the scope of the Commission's jurisdiction.

**B. Complainant's claim for monetary relief that is not related to the provision of utility service should be dismissed because the Commission does not have authority to award money damages.**

8. Pursuant to the attachment to paragraph 5 of the Complaint, Complainant seeks monetary reimbursement from Met-Ed for allegedly being over charged to repair damage to Met-Ed facilities located on Complainant's property caused by an individual acting on behalf of Complainant.

9. 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, 491 Pa. 123, 420 A.2d 371 (1980); Feingold v. Bell of Pennsylvania, 477 Pa. 1, 383 A.2d 791 (1978); see Nagy v. Bell Tel. Co., 436 A.2d 701 (Pa. Super. 1981).

10. 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 such 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.

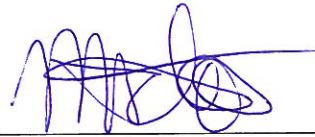
11. As a request for an adjustment of a damages claim that is not related to the provision of utility service, Complainant's prayer for relief is outside the scope of the Commission's authority.

12. Therefore, in accordance with Pennsylvania law, this Commission does not have subject matter jurisdiction over what is a private property dispute and does not have authority to award Complainant's sole prayer for relief, which is an adjustment to a damages claim paid that is not related to the provision of utility service.

**IV. Conclusion**

WHEREFORE, pursuant to the Commission's regulations at 52 Pa. Code § 5.101, Met-Ed requests that the Commission dismiss the above claim due to lack of jurisdiction over what is a property damage dispute unrelated to the provision of utility service for which the sole prayer for relief is monetary.

Respectfully submitted,



Dated: July 6, 2010

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Matthew A. Totino  
John F. Povilaitis  
RYAN, RUSSELL, OGDEN AND SELTZER P.C.  
800 North Third Street, Suite 101  
Harrisburg, Pennsylvania 17102-2025  
(717) 236-7714

Attorneys for Metropolitan Edison Company

# **EXHIBIT A**



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

**DATE SERVED: June 16, 2010**

C-2010-2181919

METROPOLITAN EDISON COMPANY  
C/O LEILA L VESPOLI  
SR VICE PRESIDENT AND GENERAL COUNSEL  
FIRSTENERGY CORPORATION  
76 S MAIN ST  
AKRON OH 44308-1890

Dear Ms. Vespoli:

A complaint has been filed against you before the Pennsylvania Public Utility Commission by RAYMOND A. CLAPPER. To defend yourself against the claims stated in the following pages, you must act within twenty (20) days by filing in writing with the Commission, either personally or through your attorney, your defenses or objections to the claims stated against you. Or, you may satisfy the complaint by settling the matter with the Complainant and submitting proof of settlement to the Commission within twenty (20) days.

IF YOU FAIL TO RESPOND WITHIN TWENTY (20) DAYS, THE CASE MAY GO FORWARD IN YOUR ABSENCE AND A JUDGEMENT MAY BE ENTERED AGAINST YOU BY THE COMMISSION WITHOUT FURTHER NOTICE.

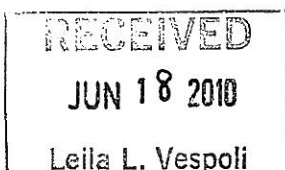
**CUSTOMER OF A UTILITY**

A payment schedule may be prescribed or a termination of utility services may be authorized. You may lose money or property or other rights important to you.

**COMPANY/UTILITY**

An Administrative Law Judge may revoke or suspend any certificate or permit held by you, or impose a fine, or any other appropriate penalty or remedy authorized by the Public Utility Code. You may lose money or property or other rights important to you.

Detailed instructions on how to proceed are contained in the attached pages. You are advised to read them carefully.



June 16, 2010

Unless you are a corporation or other organization, you may proceed without a lawyer. However, if you want a lawyer and do not have one or cannot afford one, the office listed below can tell you where you can get legal help:

Pennsylvania Lawyer Referral Service  
Pennsylvania Bar Association  
P.O. Box 186  
Harrisburg, PA 17108  
(800) 692-7375

Very truly yours,

A handwritten signature in cursive script, appearing to read "Rosemary Chiavetta".

Rosemary Chiavetta  
Secretary

ane

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**DATE SERVED: June 16, 2010**

**RAYMOND A. CLAPPER**  
Complainant

v.

**METROPOLITAN EDISON COMPANY**  
Respondent

Complaint Docket  
No: **C-2010-2181919**

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**FORMAL COMPLAINT NOTICE TO RESPONDENT TO ANSWER OR SATISFY**

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**TO: METROPOLITAN EDISON COMPANY**

**TAKE NOTICE:**

That a complaint in the above entitled matter, of which the attached is a true and correct copy, has been presented and filed of record with the Pennsylvania Public Utility Commission. Section 702 of the Public Utility Code, 66 Pa. C.S. Section 702, requires the Commission to serve on each party named in a complaint a copy of the complaint and notice calling upon each party to satisfy the complaint, or to answer the same in writing within a specified time; THEREFORE,

1. You have twenty (20) days from the date on which this complaint is served to either satisfy this complaint or to file with the **Secretary of the Pennsylvania Public Utility Commission, P. O. Box 3265, Harrisburg, PA 17105-3265**, an answer (original and three copies), in writing, under oath, which, as required by Section 5.61 of the Commission's Rules of Practice and Procedure, 52 Pa. Code Section 5.61, either affirms or specifically denies the allegations in this complaint. You must also serve a copy of the answer upon the complainant. The date of service is the mailing date as indicated by the date at the top of this Notice. Section 1.56(a) of the Commission's Rules of Practice and Procedure, 52 Pa. Code Section 1.56(a).

2. If you fail to either satisfy this complaint or to file answer or other responsive pleading within twenty (20) days, you will be deemed to have admitted all the allegations in this complaint in accordance with Section 5.61 of the Commission's Rules of Administrative Practice and Procedure, 52 Pa. Code Section 5.61. In that event, the Commission may, without hearing, enter an order which either revokes or suspends any certificate or permit held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C.S. Section 101, et seq.; and, if

you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. The Commission is not limited to the relief sought by the complainant in paragraph 4 of the attached complaint.

3. If you elect to satisfy this complaint you must file, within twenty (20) days from the date on which this complaint is served, affidavits executed by each complainant that this complaint has been satisfied. Such affidavits must describe the basis on which this complaint was satisfied; any settlement agreement between the parties must be reduced to writing and attached to the affidavit. Such affidavits are to be filed with the Secretary of the Commission at the address set forth in paragraph 1. Upon receipt of affidavits of satisfaction from all complainants, this complaint may be dismissed by the Commission in accordance with Section 703(a) of the Public Utility Code, 66 Pa. C.S. Section 703(a), unless the Commission determines that such dismissal would be contrary to the public interest, in which event the Commission may direct that hearings be held upon the complaint.

4. If you file an answer which admits the allegations in this complaint, or which fails to specifically deny the allegations in this complaint, the Commission may, without hearing, enter an order which either revokes or suspends any certificate held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C. S. Section 101, et seq.; and, if you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. The Commission is not limited to the relief sought by the complainant in paragraph 4 of the attached complaint.

5. If you file a timely answer which specifically denies the allegations in this complaint, or which raises material questions of law or fact, this matter shall be referred to the Office of Administrative Law Judge for hearing and decision. If, after hearing on the issues raised by that answer, you are found to have committed any of the violations alleged in the complaint, the Administrative Law Judge may render a decision which either revokes or suspends any certificate or permit held by you or which imposes a fine or any other appropriate penalty or remedy authorized by the Public Utility Code, 66 Pa. C. S. Section 101, et seq.; and, if you are a customer of a utility, an order may be entered which prescribes a payment schedule or which authorizes termination of utility services. In the imposition of a penalty after a hearing the Administrative Law Judge is not bound by the relief sought by the complainant in paragraph 4 of the attached complaint.



Rosemary Chiavetta  
Secretary

(SEAL)

Certified Mail  
Return Receipt Requested

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint Form

Please print in ink or type.

C-2010-2181919

COPY

1. CUSTOMER (COMPLAINANT) INFORMATION

Your name, mailing address, county, telephone number, utility account number and service address:

Name RAYMOND A. CLAPPER

Street/P.O. Box 754 BRIAR DRIVE Apt #

City MORGANTOWN State PA Zip 19543

County BERKS

Daytime Telephone Number Where We Can Contact You: (610) 286-2858

E-mail Address (optional): RCG21ST@DeJAZZD.com

Utility Account Number 10 00 15 640954 (from your bill)

If your complaint involves utility service provided to a different address than your mailing address, please list this information below.

Name

Street/P.O. Box

City State Zip

RECEIVED 2010 JUN 10 AM 0:58 PA.P.U.C. SECRETARY'S BUREAU

2. FULL NAME OF UTILITY COMPANY (RESPONDENT):

FIRST ENERGY (on behalf of: METROPOLITAN Edison Company)

3. TYPE OF UTILITY (check one)

- ELECTRIC (checked), GAS, WATER, TELEPHONE (local, long distance), STEAM HEAT, WASTE WATER, MOTOR CARRIER (e.g., taxi, moving company, limousine)

21885

4. **COMPLAINT** (check one)

A. **In general, what is your complaint?**

- I want to oppose the company's proposed rate increase.
- There are incorrect charges on my bill.
- There is a reliability, safety or quality problem with my utility service.
- I received a notice that my utility service is being terminated.
- I would like a payment agreement.
- Other (explain).

B. **State the facts of your complaint.**

Include any specific dates, times or places that may be important. If the complaint is about a bill, tell us about any charges that you believe are not correct. Use additional paper if you need more space. Provide copies of all relevant documents you believe will support your complaint. *(see attached)*

5. **RELIEF**

How do you want your complaint to be resolved? Use additional paper if you need more space. *(see below)*

On February 6, 2010, damage was caused by a snow plow, to the (cover only) on my underground electrical distribution box. Met Ed (First Energy) was called on February 8 to report the damage to the cover. Service was not interrupted.

Several days later Met Ed examined the box for damage, but no repairs were performed.

On March 22, 2010 Met Ed (First Energy), without my knowledge or consent, replaced the entire underground electrical distribution box with a new above ground electrical distribution box. Subsequently, I received a bill for \$2871.55, see attached. Clearly this was an upgrade of their 33 year old equipment, which was formerly underground.

Several calls were made to Lisa Panchari in the Met Ed claims department at First Energy. Her position was that Met Ed (First Energy) has the right to repair their equipment.

It is my position that this was not a repair, but an upgrade. Upon advice from my attorney, upgrades to Met Ed's equipment, cannot be charged to the property owner.

Due to Met Ed's threat to take legal action against me (see letter dated May 13, 2010), the bill for \$2871.55 was paid on May 23, 2010 by check.

Clearly, Met Ed (First Energy) owes me a refund for upgrades to their equipment, and labor charged to install those upgrades.

6. **PROTECTION FROM ABUSE**

Answer the following question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility **AND** your complaint is about a billing problem, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection from Abuse" order for your personal safety or welfare?

YES

NO

7. **PRIOR UTILITY CONTACT**

Answer the following question only if you are a residential customer and your complaint is against an electric distribution utility, natural gas distribution utility or a water distribution utility.

Have you spoken to a utility company representative about this complaint?

YES (includes appeals of BCS determinations)

NO

If you tried to, but could not speak to a utility company representative about your complaint, please explain why.

8. **LEGAL REPRESENTATION (IF ANY)**

If you are represented by a lawyer **in this matter** you must provide your lawyer's name, address, telephone number, and e-mail address, if known.

Lawyer's Name \_\_\_\_\_

Street \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Area Code/Phone Number \_\_\_\_\_

E-mail Address (If Known) \_\_\_\_\_

9. VERIFICATION AND SIGNATURE

You must print or type your name below on the line provided for the verification paragraph, and you must sign and date (in ink) this form on the lines provided.

Verification:

I RAYMOND CLAPPER, hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

X Raymond A. Clapper  
(Signature)

6/7/10  
(Date)

\_\_\_\_\_  
Title of authorized employee or officer

10. FILING

Please return the completed form to one of the addresses listed below:

If using U.S. Postal Service:

If using overnight delivery service:

Secretary Pennsylvania Public Utility Commission P.O. Box 3265 Harrisburg, PA 17105-3265	Secretary Pennsylvania Public Utility Commission 400 North Street Commonwealth Keystone Building, 2 <sup>nd</sup> Floor Harrisburg, Pennsylvania 17120
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Facsimiles and/or electronic filings of the complaint will not be accepted.

If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

Keep a copy of your complaint for your records.

RECEIVED  
2010 JUN 10 AM 10:58  
PA.P.U.C.  
SECRETARY'S BUREAU

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RAYMOND A. CLAPPER :  
 :  
 v. : Docket No. C-2010-2181919  
 :  
 METROPOLITAN EDISON COMPANY :

CERTIFICATE OF SERVICE

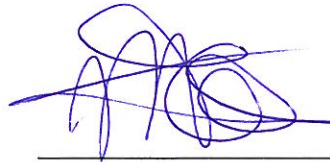
I hereby certify that I have this day served a true copy of the relevant document(s) on behalf of Metropolitan Edison Company upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by First Class Mail, postage prepaid, addressed as follows:

Raymond A. Clapper  
754 Briar Drive  
Morgantown, Pennsylvania 19543

Bradley A. Bingaman, Esquire  
Pennsylvania Electric Company  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, Pennsylvania 19612-6001

Dated: July 6, 2010



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Matthew A. Totino  
John F. Povilaitis  
RYAN, RUSSELL, OGDEN & SELTZER P.C.  
800 North Third Street, Suite 101  
Harrisburg, Pennsylvania 17102-2025  
(717) 236-7714

Attorneys for  
Metropolitan Edison Company