

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

JAN 19 2011

DAYTON CROOK

v.

PENNSYLVANIA ELECTRIC COMPANY:

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU
Docket No. C-2010-2217577

PRELIMINARY OBJECTIONS TO THE COMPLAINT OF DAYTON CROOK

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pennsylvania Electric Company ("Penelec" or the "Company") by and through its counsel Bridgid M. Good, Jeffrey A. Franklin, and Buchanan Ingersoll & Rooney PC, pursuant to Section 5.101 of this Commission's regulations, 52 Pa. Code § 5.101, requests that the Commission dismiss the Complaint of Dayton Crook, and in support of its Preliminary Objections ("Motion") states as follows:

I. Introduction

1. This Motion requests the dismissal of the Complaint of Dayton Crook ("Complainant") because the Pennsylvania Public Utility Commission ("Commission") lacks jurisdiction to award monetary compensation. Since money damages are the only relief requested by the Complainant in his above-referenced Formal Complaint, it should be dismissed.

2. In the event the Commission does not grant the relief requested in paragraph 1 of this Motion, Penelec requests, in the alternative, that, at a minimum, the Complainant be precluded from introducing any evidence at the hearing related to his claim for damages.

I. Factual Background

3. The Complainant is a residential customer receiving electric service from Penelec at 703 S. Main Street, Cherry Tree, PA ("Service Location").

4. The Complainant filed a formal complaint with the Commission at Docket No. C-2010-2217577 alleging that he experienced power surges at his Service Location from August 2010 through December 2010, with particular emphasis on a power surge that allegedly occurred on November 14, 2010 ("Formal Complaint"). Formal Complaint, ¶ 4. In the "Prayer for Relief", section of the Formal Complaint, the Complainant states that he wants the Company to reimburse him for damages in the amount of \$2,519.54. Formal Complaint, ¶ 5.

5. In an Answer and New Matter being served contemporaneously with this Motion, Penelec has denied the material allegations in the Formal Complaint.

III. The Commission Lacks Authority to Award Money Damages

6. It is well settled that the Commission has only the powers, and can only consider such matters, as are expressly, or by necessary implication, given it by the legislature. Behrend v. Bell Telephone Co., 363 A.2d 1152 (Pa. Super 1976); Brockway Glass Company, Inc. v. West Penn Power Co., 54 Pa. P.U.C. 509 (1980); Bones v. Bates Taxi, Inc. 51 Pa. P.U.C. 346 (1977). The Public Utility Code, 66 Pa. C.S. § 101, et seq. (the "Code"), gives the Commission supervisory and regulatory power over the rates, service and facilities of public utilities. Brockway Glass Company, Inc. at 514.

7. 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). Thus, the Code does not give the Commission jurisdiction over claims for money damages. Behrend v. Bell Telephone Co., 363 A.2d 1152 (Pa. Super 1976); Brockway Glass Company, Inc. v. West Penn Power Co., 54 Pa. P.U.C. 509 (1980); Bones v. Bates Taxi, Inc., 51 Pa. P.U.C. 346 (1977).

8. Indeed, the Courts of Common Pleas retain original jurisdiction over suits for damages. Behrend v. Bell Telephone Co., 363 A.2d at 1158.


9. The Complainant in this case is clearly seeking damages. Indeed, the only relief requested by the Complainant is compensation for his allegedly damaged items. Formal Complaint, ¶5.

10. Since the Formal Complaint seeks only monetary compensation, the Commission does not have jurisdiction over it and/or the relief requested therein. The proper forum for the adjudication of the issues raised in the Formal Complaint is the Courts of Common Pleas, not this Commission. Therefore, the Formal Complaint should be dismissed, with prejudice.

IV. Conclusion

WHEREFORE, Pennsylvania Electric Company requests that the Commission (i) dismiss the Formal Complaint of Dayton Crook with prejudice because the Commission has no jurisdiction over claims for monetary damages or, in the alternative, (ii) issue an order advising that the Complainant cannot introduce any evidence at the hearing regarding his claims for money damages.

Respectfully submitted,



Dated: January 19, 2011

Bridgid M. Good, Esquire
Jeffrey A. Franklin, Esquire
BUCHANAN INGERSOLL & ROONEY PC
1150 Berkshire Boulevard, Suite 210
Wyomissing, Pennsylvania 19610-1208
(610) 372-4761

Attorneys for
Pennsylvania Electric Company

UPS CampusShip: View/Print Label

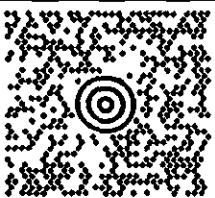
1. **Print the label(s):** Select the Print button on the print dialog box that appears. Note: If your browser does not support this function select Print from the File menu to print the label.
2. **Fold the printed label at the solid line below.** Place the label in a UPS Shipping Pouch. If you do not have a pouch, affix the folded label using clear plastic shipping tape over the entire label.
3. **GETTING YOUR SHIPMENT TO UPS Customers without a Daily Pickup**
Schedule a same day or future day Pickup to have a UPS driver pickup all your CampusShip packages.
Hand the package to any UPS driver in your area.
Take your package to any location of The UPS Store®, UPS Drop Box, UPS Customer Center, UPS Alliances (Office Depot® or Staples®) or Authorized Shipping Outlet near you. Items sent via UPS Return ServicesSM (including via Ground) are also accepted at Drop Boxes.
To find the location nearest you, please visit the Resources area of CampusShip and select UPS Locations.

Customers with a Daily Pickup
Your driver will pickup your shipment(s) as usual.

FOLD HERE

STEWART LAURA D. 0.0 LBS LTR 1 OF 1
(610) 372-4761 4761
BUCHANAN INGERSOLL & ROONEY PC
ONE SOUTH MARKET SQUARE
HARRISBURG PA 17101

SHIP TO:
ROSEMARY CHIAVETTA, SECRETARY
PA PUBLIC UTILITY COMMISSION
SECOND FLOOR
400 NORTH STREET
COMMONWEALTH KEYSTONE BUILDING
HARRISBURG PA 17120-0093



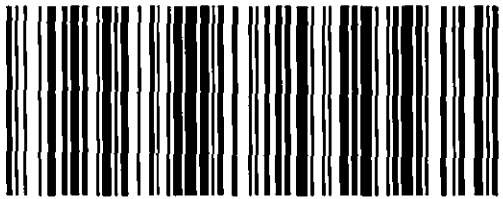
PA 171 9-20



UPS NEXT DAY AIR

1

TRACKING #: 1Z VE5 478 01 9847 9890



BILLING: P/P

Timekeeper Name: B. Good
C/M #: 0078978-000017

CS 13.0.20. WNTIE70 09.0A 10/2010

