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February 21, 2012

VIA UPS OVERNIGHT DELIVERY

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

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FEB 21 2012


PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Reagle Dodge v. Metropolitan Edison Company
Docket No. C-2012-2286104

Dear Secretary Chiavetta:

On behalf of Metropolitan Edison Company, I have enclosed for filing the original and three (3) copies of the Preliminary Objection of Metropolitan Edison Company to the Formal Complaint of Reagle Dodge in the above-captioned matter. Copies have been served on all parties as indicated in the attached certificate of service.

Very truly yours,


Lauren M. Lepkoski

LML/kra
Enclosure
cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

REAGLE DODGE

v.

METROPOLITAN EDISON COMPANY

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:
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Docket No. C-2012-2286104

NOTICE TO PLEAD

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FEB 21 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

TO: Reagle Dodge
c/o Justin Ott
1223 Blue Valley Drive
Pen Argyl, Pennsylvania 18072

Pursuant to 52 Pa. Code § 5.62(b), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Preliminary Objection of Metropolitan Edison Company to the Formal Complaint of Reagle Dodge within **ten (10) days** from service of this Notice, the facts set forth by Metropolitan Edison Company in the Preliminary Objection may be deemed to be true, thereby requiring no other proof. All pleadings, such as a Reply to Preliminary Objection, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Metropolitan Edison Company, and where applicable, the Administrative Law Judge presiding over the case.

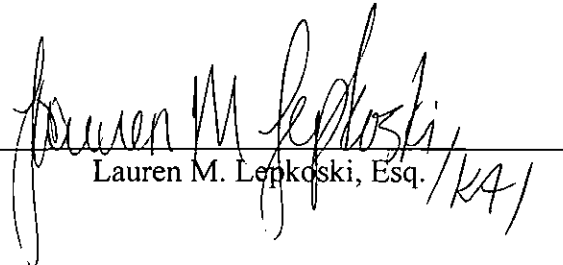
File with:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

With a copy to:

Lauren M. Lepkoski, Esq.
Buchanan Ingersoll & Rooney PC
17 North Second Street, 15th Floor
Harrisburg, PA 17101-1503

Dated: February 21, 2012



Lauren M. Lepkoski, Esq. /KA/

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

REAGLE DODGE :
 :
 v. : Docket No. C-2012-2286104
 :
 METROPOLITAN EDISON COMPANY :

**PRELIMINARY OBJECTIONS TO THE COMPLAINT OF
REAGLE DODGE**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Metropolitan Edison Company ("Met-Ed" or the "Company"), by and through its counsel, Lauren M. Lepkoski, Alan Michael Seltzer, and Buchanan Ingersoll & Rooney PC, files Preliminary Objections to the Formal Complaint of Reagle Dodge ("Formal Complaint"), pursuant to Sections 5.101(a)(3) and Section 5.101(a)(5) of the Commission's regulations, 52 Pa. Code §§ 5.101(a)(3) and 5.101(a)(5), and in support thereof avers as follows:

I. Introduction

1. Through this Preliminary Objection, Met-Ed seeks the dismissal of a Formal Complaint filed by Reagle Dodge the alleged complainant ("Complainant"). The Complainant alleged that Met-Ed is responsible for a one hour and thirty-eight minute electric outage that occurred on December 2, 2011 at 1223 Blue Valley Drive, Pen Argyl, Pennsylvania 18072 in connection with account no. 100019596624 ("Service Location"). Met-Ed's customer of record for the Service Location is Joseph Reagle not Reagle Dodge nor Justin Ott the individual who signed and filed a Formal Complaint against Met-Ed at the above-captioned docket. The Commission lacks jurisdiction to determine disputes when the complainant does not have standing to file a complaint. Moreover, applicable

law expressly states that the complainant must have substantial, direct and immediate interest to file a complaint and that if the complainant cannot show that the Company committed an act or omission in violation of a Commission statute, regulation or order, or violated its tariff, the complaint must be dismissed with prejudice.

2. The Complainant also requests reimbursement for an emissions machine, compressor, and printer that was allegedly damaged during the electric outage at the Service Location on December 2, 2011. Formal Complaint, ¶ 5. Because the Commission does not have the legal authority to award damages, the Company requests that this Preliminary Objection be granted and all allegations regarding damages in the Formal Complaint be dismissed with prejudice.

II. Background

3. Met-Ed is an electric distribution company that is certificated as a public utility within the Commonwealth of Pennsylvania.

4. On or about January 27, 2012, the Complainant filed the Formal Complaint with the Commission against Met-Ed at the above-captioned docket alleging that: (i) Met-Ed is responsible for a one hour and thirty-eight minute electric outage that occurred on December 2, 2011 at the Service Location; and (ii) Met-Ed is responsible for reimbursing the Complainant for the costs of replacing an emissions machine, compressor, and a printer that were allegedly damaged when the Complainant experienced an electric service outage at the Service Location. Formal Complaint, ¶¶ 4 and 5.

5. On or about February 1, 2012, the Formal Complaint was served on Met-Ed via First Class Mail.

6. Met-Ed is timely filing its Answer and New Matter contemporaneously with this Preliminary Objection.

III. Argument

A. Standing

7. The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections. Specifically, the Commission's regulation at 52 Pa. Code § 5.101 permits a party to file a preliminary objection when a party lacks the capacity to sue. 52 Pa. Code § 5.101(a)(5). In addition, Section 703 of the Public Utility Code allows the Commission to dismiss a Complaint if a hearing is not needed. 66 Pa.C.S. § 703(b).

8. The Commission has found that preliminary objections permitted by 52 Pa. Code § 5.101 are comparable to a demurrer in a civil case, which is authorized by Rule 107(b) of the Pennsylvania Rules of Civil Procedure. *Application of Main Line Transit Service, Inc.*, Docket No. A-00116172 (Order entered October 3, 2010).

9. In order to bring a complaint before a tribunal, a complainant must first demonstrate that she/he has standing to maintain the action. *Nye v. Erie Insurance Exchange*, 470 A.2d 98, 100 (Pa. 1983). Standing requires that a party have an interest in the matter that is substantial, direct and immediate. *William Penn Parking Garage, Inc., et al. v. City of Pittsburgh*, 346 A.2d 269 (Pa. 1975). These criteria are defined as follows:

A 'substantial' interest is an interest in the outcome of the litigation which surpasses the common interest of all citizens in procuring obedience to the law. A 'direct' interest requires a showing that the matter complained of caused harm to the party's

interest. An 'immediate' interest involves the nature of the causal connection between the action complained of and the injury to the party challenging it and is shown where the interest the party seeks to protect is within the zone of interests sought to be protected by the statute or the constitutional guarantee in question.

George v. Pa. P.U.C., 735 A.2d 1282, 1286 (Pa. Cmwlth. 1999). The standard set by *William Penn Parking Garage* for standing is applicable to the Commission cases. See, *Courier Express, Inc. v. F.L. Shaffer Co., Inc.*, Order entered August 30, 1990 at Docket No. C-892462, petition for reconsideration denied December 3, 1990.

10. Upon information and belief, the name "Reagle Dodge" is a fictitious name registered to Joseph C. Reagle Inc. with the Corporation Bureau of the Pennsylvania Department of State.

11. Neither Reagle Dodge, Joseph C. Reagle Inc. nor Justin Ott, the individual who signed and filed a Formal Complaint against Met-Ed at the above-captioned docket, is the customer of record for electric service provided by the Company to the Service Location.

12. Neither Reagle Dodge, Joseph C. Reagle Inc. nor Justin Ott, the individual who signed and filed a Formal Complaint against Met-Ed at the above-captioned docket, has standing to file or prosecute the Formal Complaint against Met-Ed in this proceeding.

13. Reagle Dodge, the Complainant, is not the Met-Ed ratepayer of record for the account in question at the Service Location. The Complainant has not demonstrated any interest in this matter that justifies standing to initiate or prosecute this Formal Complaint.

14. Therefore, the Complainant should be dismissed because the Commission lacks subject matter jurisdiction to adjudicate the claims stated in the Formal Complaint.

B. Damages

15. In paragraph 5 of the Formal Complaint, the Complainant states the following:

We are asking that Met Ed pay for the equipment (emissions machine, compressor, printer) that was damaged during the brown out.

Part of the relief sought in this proceeding is for money damages associated with the Complainant's allegation that Met-Ed is responsible for an electric service outage at the Service Location.

16. It is well-established under Pennsylvania law that the enforcement powers of the Commission do not include the power to award money damages. *See Elkin v. Bell*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1978); *Nagy v. Bell Tel. Co.*, 436 A.2d 701 (Pa. Super. 1981).

17. 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.

18. A claim for damages which are not legally recoverable in the cause of action pleaded is “impertinent matter” in the sense that it is irrelevant to that cause of action, and is correctly challenged through a motion to strike the requested relief as

impertinent matter. *E.g., Third Avenue Realty Limited Partners v. Pennsylvania-American Water Co.*, Docket No. C-2010-2167286 (Initial Decision issued August 16, 2010), slip op. at 8 (citing *Hudock v. Donegal Mut. Ins. Co.*, 264 A.2d 668 (Pa.1970)).¹

19. Therefore, in accordance with Pennsylvania law, this Commission does not have jurisdiction to award monetary damages, and the Complainant's request for money damages is an impertinent matter that must be stricken.

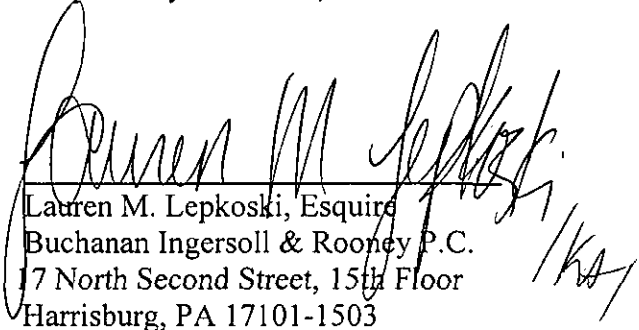
¹ By operation of law, the Initial Decision at Docket No. C-2010-2167286 became a Final Order of the Commission on September 30, 2010.

IV. Conclusion

WHEREFORE, for the foregoing reasons, Metropolitan Edison Company respectfully requests that the Commission: 1) grant its Preliminary Objections; 2) dismiss the Formal Complaint of Reagle Dodge with prejudice due to lack of standing; 3) strike the Complainant's request for money damages; 4) expressly prohibit the introduction of any testimony or evidence with respect to alleged damages in this proceeding; and 5) grant the Company such other relief as may be just and reasonable under the circumstances.

Respectfully submitted,

Dated: February 21, 2012


Lauren M. Lepkoski, Esquire
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Harrisburg, PA 17101-1503
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**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

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(610) 372-4761

Attorneys for
Metropolitan Edison Company

BEFORE THE
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REAGLE DODGE

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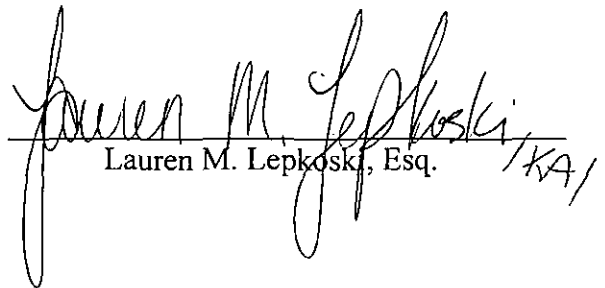
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

Via First Class Mail

Reagle Dodge
c/o Justin Ott
1223 Blue Valley Drive
Pen Argyl, Pennsylvania 18072

Dated this 21st day of February, 2012.


Lauren M. Lepkoski, Esq. /KA/

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