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June 4, 2012

VIA E-FILING

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

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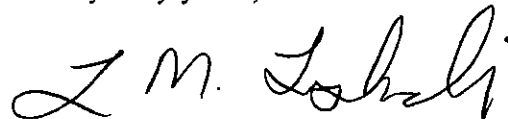
**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

Re: Dr. Richard Collins v. Pennsylvania Power Company
Docket No. C-2012-2304286

Dear Secretary Chiavetta:

On behalf of Pennsylvania Power Company, I have enclosed for electronic filing the Preliminary Objection of Pennsylvania Power Company to the Formal Complaint of Dr. Richard Collins in the above-captioned matter. Please be advised that Pennsylvania Power Company has requested mediation of this Formal Complaint. 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: Herbert Nurick, Mediator (via email only)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DR. RICHARD COLLINS

v.

PENNSYLVANIA POWER COMPANY

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Docket No. C-2012-2304286

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

NOTICE TO PLEAD

TO: Dr. Richard Collins
440 Monmouth Drive
Cranberry Township, PA 16066-5756

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 Pennsylvania Power Company to the Formal Complaint of Dr. Richard Collins within **ten (10) days** from service of this Notice, the facts set forth by Pennsylvania Power 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 Pennsylvania Power Company, and where applicable, the Administrative Law Judge presiding over the case.

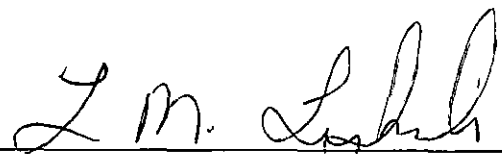
File with:

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: June 4, 2012



Lauren M. Lepkoski, Esq.

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

DR. RICHARD COLLINS

v.

PENNSYLVANIA POWER COMPANY

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Docket No. C-2012-2304286

PRELIMINARY OBJECTION TO THE COMPLAINT OF
DR. RICHARD COLLINS

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pennsylvania Power Company ("Penn Power" or the "Company"), by and through its counsel, Lauren M. Lepkoski, Alan Michael Seltzer, and Buchanan Ingersoll & Rooney PC, files this Preliminary Objection to the Formal Complaint of Dr. Richard Collins ("Formal Complaint"), pursuant to Section 5.101(a)(1) of this Commission's regulations, 52 Pa. Code § 5.101(a)(1), and in support thereof avers as follows:

I. Introduction

1. In the Formal Complaint, Dr. Richard Collins ("Complainant") claims that an electrical surge at 440 Monmouth Drive, Cranberry Township, Pennsylvania 16066-5756 ("Service Location") caused damage to his air conditioning unit. The Complainant requests that he be reimbursed for the replacement of his heating and air conditioning systems. Formal Complaint, ¶ 4.A. There is no indication in the Complaint that the Complainant is seeking any findings or conclusions other than Penn Power's responsibility to pay damages. 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

2. Penn Power is an electric distribution company that is certificated as a public utility within the Commonwealth of Pennsylvania.

3. On or about May 13, 2012, the Complainant filed the Formal Complaint at the above-captioned docket alleging that Penn Power was negligent and caused interruptions of power to the Service Location which allegedly shorted out his air conditioning unit. Formal Complaint, ¶¶ 4.A. and 4.B.

4. On or about May 14, 2012, the Formal Complaint was served on Penn Power via Secretarial Letter.

5. Penn Power is timely filing its Answer and New Matter contemporaneously with this Preliminary Objection.

III. Argument

6. In paragraph 4.A. of the Formal Complaint, the Complainant states the following:

I want reimbursement for the replacement of my central air conditioning unit due to a power surge reported on May 8, 2012. The windings on the compressor of the A/C unit shorted and the unit was replaced finally on May 13, 2012 by TUDI Mechanical Systems at a cost to me of \$2584.- Had this electrical surge no occurred, I would not also have replaced my furnace, due to the incompatible differences in the coil fluids (R22 vs 410) resulting from the regulations imposed by the Montreal Treat on Global Warming restrictions.

7. 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).

8. 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.

9. A claim for damages which is 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

10. Moreover, Rule 13 of Penn Power's electric tariff states that the Company shall not be liable for damages which the customer may sustain by reason of the failure of the supply or variation in service characteristics or phase reversals, nor shall the Company be liable for damage that may be incurred by the use of electrical appliances, or the presence of the Company's property on customer's premises.²

11. Therefore, in accordance with Pennsylvania law, this Commission does not have jurisdiction to award monetary damages.

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.

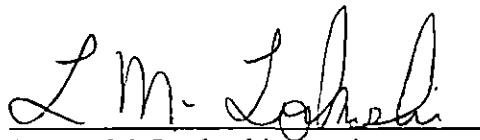
² Pennsylvania Power Company Tariff, Electric Pa. P.U.C. No. 35, Original Sheet No. 20, Effective January 1, 1999.

IV. Conclusion

WHEREFORE, for the foregoing reasons, Pennsylvania Power Company respectfully requests that the Commission: 1) grant this Preliminary Objection; 2) strike the Complainant's request for money damages; 3) expressly prohibit the introduction of any testimony or evidence with respect to alleged damages in this proceeding; and 4) grant the Company such other relief as may be just and reasonable under the circumstances.

Respectfully submitted,

Dated: June 4, 2012



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Attorneys for
Pennsylvania Power Company

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**BEFORE THE
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Docket No. C-2012-2304286

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 U.S. Mail

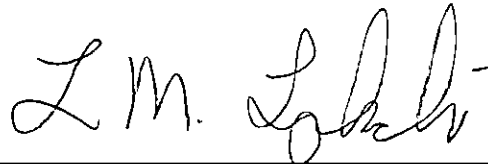
Richard Collins
440 Monmouth Drive
Cranberry Township, PA 16066

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**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

Dated this 4th day of June, 2012.



Lauren M. Lepkoski, Esq.