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July 31, 2012

**VIA E-FILE**

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

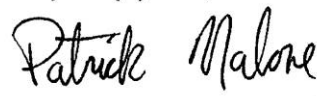
Re: Timothy R. Stump v. Metropolitan Edison Company  
Docket No. C-2012-2313345

Dear Secretary Chiavetta:

On behalf of Metropolitan Edison Company, I have enclosed for electronic filing the Preliminary Objections and Notice to Plead of Metropolitan Edison Company to the Formal Complaint of Timothy R. Stump in the above-captioned matter. Please note that Metropolitan Edison Company is requesting that this matter be set for mediation.

Copies have been served on all parties as indicated in the attached certificate of service.

Very truly yours,

  
Patrick Malone (BCW)

PM/ljs  
Enclosure  
cc: Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**TIMOTHY R. STUMP** :  
 :  
 **v.** : **Docket No. C-2012-2313345**  
 :  
 **METROPOLITAN EDISON COMPANY** :

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**NOTICE TO PLEAD**

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TO: Timothy R. Stump  
#8 Antietam Road  
Temple, PA 19560

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 Objections of Metropolitan Edison Company to the Formal Complaint of Timothy R. Stump within **ten (10) days** from service of this Notice, the facts set forth by Metropolitan Edison Company in the Preliminary Objections may be deemed to be true, thereby requiring no other proof. All pleadings, such as a Reply to the Preliminary Objections, 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:**

Patrick Malone  
Alan Michael Seltzer  
Buchanan Ingersoll & Rooney, PC  
One Oxford Centre  
301 Grant Street, 16th Floor  
Pittsburgh, PA 15219-1410

Dated: July 31, 2012

  
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Patrick Malone, Esq. (BCW)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>TIMOTHY R. STUMP</b>	:	
	:	
v.	:	<b>Docket No. C-2012-2313345</b>
	:	
<b>METROPOLITAN EDISON COMPANY</b>	:	

**PRELIMINARY OBJECTIONS TO THE COMPLAINT OF  
TIMOTHY R. STUMP**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Metropolitan Edison Company (“Met-Ed” or the “Company”) by and through its counsel Patrick R. Malone, Alan Michael Seltzer, and Buchanan Ingersoll & Rooney PC, files these Preliminary Objections, pursuant to Section 5.101(a)(3) of this Commission’s regulations, 52 Pa. Code §5.101(a), and in support thereof, avers as follows:

**I. Introduction**

1. Timothy R. Stump (“Complainant”) alleges that Met-Ed placed him in “Willful Endangerment” when the Company terminated electric service to his residence in June 2012. Formal Complaint, ¶ 4.B. For relief, Complainant requests the “menial sum of \$100,000” (Formal Complaint, ¶4.B) and “to be compensated monetarily.” Formal Complaint, ¶ 5. Because the Commission does not have jurisdiction to grant the relief requested (i.e. money damages), these Preliminary Objections should be granted and all allegations in the Formal Complaint regarding damages should be dismissed with prejudice.

## **II. Background**

2. Met-Ed is an Electric Distribution Company that is certificated as a public utility in Pennsylvania.

3. On or about June 26, 2012, the Complainant filed a Formal Complaint with the Commission against Met-Ed at the above docket. The Complainant requests, among other things, that Met-Ed monetarily compensate him for the hardships he allegedly endured due to the termination of electric service at his residence. Formal Complaint, ¶ 5.

4. On July 11, 2012, the Formal Complaint was served on Met-Ed via electronic service.

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

## **III. Argument**

6. In paragraph 5 of the Formal Complaint, the Complainant states his desire to be compensated monetarily for the alleged hardship he endured as a result of the Company terminating electric service to his residence.

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).

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 prayer 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 Company*, 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)).<sup>1</sup>

10. 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 impertinent matter which should be stricken.

#### **IV. Conclusion**


WHEREFORE, for the foregoing reasons, Metropolitan Edison Company, respectfully requests that the Commission grant its Preliminary Objections, strike all references to the Complainant's request for money damages from the Formal Complaint; prohibit at hearing any testimony, exhibits, etc., from the Complainant or his representatives regarding any alleged money damages; and grant to the Company such other relief as is just and reasonable under the circumstances.

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

Respectfully submitted,

Dated: July 31, 2012



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(610) 372-4761

Attorneys for  
Metropolitan Edison Company

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**TIMOTHY R. STUMP**

v.

**METROPOLITAN EDISON COMPANY**

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**Docket No. C-2012-2313345**


**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**

Timothy R. Stump  
#8 Antietam Road  
Temple, PA 19560

Dated this 31st day of July, 2012.

  
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Patrick Malone, Esq.      (BCW)