

Buchanan Ingersoll & Rooney PC

Brian C. Wauhop

717 237 4975
brian.wauhop@bipc.com

409 North Second Street, Suite 500
Harrisburg, PA 17101

T 717 237 4800
F 717 233 0852

www.buchananingersoll.com

April 2, 2015

VIA E-FILING

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

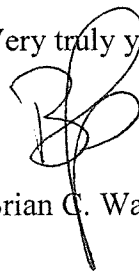
Re: Aurelia K. Gibson v. Pennsylvania Electric Company
Docket No. C-2015-2471736

Dear Secretary Chiavetta:

On behalf of Pennsylvania Electric Company, I have enclosed for electronic filing the Preliminary Objections of Pennsylvania Electric Company to the Formal Complaint of Aurelia K. Gibson in the above-captioned matter.

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

Very truly yours,



Brian C. Wauhop

BCW/tlg
Enclosure

cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

AURELIA K. GIBSON

v.

PENNSYLVANIA ELECTRIC COMPANY

:
:
:
:
:

Docket No. C-2015-2471736

NOTICE TO PLEAD

TO: Aurelia K. Gibson
263 Laurel Avenue
Johnstown, PA 15906-2123

Pursuant to 52 Pa. Code § 5.101(b), you are hereby notified that, if you do not file a written response to the enclosed Preliminary Objections of Pennsylvania Electric Company to the Formal Complaint of Aurelia K. Gibson within **ten (10) days** from service of this Notice, the Preliminary Objections may be granted. All pleadings must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Pennsylvania Electric Company, and where applicable, the Administrative Law Judge presiding over the case.

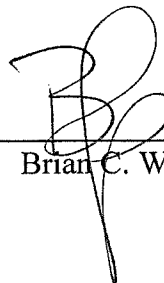
File with:

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

With a copy to:

Brian C. Wauhop
Buchanan Ingersoll & Rooney, PC
409 North Second Street
Suite 500
Harrisburg, PA 17101

Dated: April 2, 2015



Brian C. Wauhop, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

AURELIA K. GIBSON :
 :
 v. : **Docket No. C-2015-2471736**
 :
PENNSYLVANIA ELECTRIC COMPANY :

**PRELIMINARY OBJECTION OF PENNSYLVANIA ELECTRIC COMPANY
TO THE COMPLAINT OF AURELIA K. GIBSON**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, Pennsylvania Electric Company (“Penelec” or the “Company”), by and through its counsel, Brian C. Wauhop, Alan Michael Seltzer, and Buchanan Ingersoll & Rooney PC, files this Preliminary Objection pursuant to Sections 5.101(a)(1) and (2) of the Pennsylvania Public Utility Commission (“Commission”) regulations, 52 Pa. Code § 5.101(a), and in support thereof avers as follows:

I. Introduction

1. In her recently filed Formal Complaint, Aurelia K. Gibson (“Complainant”) alleges a power surge on the Company’s electric distribution system damaged the gas range electronic control panel at her property located 263 Laurel Avenue, Johnstown, Pennsylvania 15906 (“Service Location”). (Compl. ¶ 4(A).) The Complainant requests the Commission direct Penelec to reimburse her for the cost repair to the control panel. (Id. ¶ 5.)

2. As explained in greater detail below, the Commission does not have the power and legal authority to award money damages. Moreover, the Commission does not have subject matter jurisdiction over negligence claims. As a result, the Company requests that this Preliminary Objection be granted and that the Commission: (i) strike all allegations in the Formal Complaint regarding money damages; (ii) prohibit the Complainant from introducing at hearing

any evidence purporting to address money damages; (iii) dismiss the Complainant's negligence claims; and (iv) grant the Company any other relief as may be just and reasonable under the circumstances.

II. Background

3. Penelec is an electric distribution company that is certificated as a public utility in Pennsylvania.

4. On or about February 23, 2015, the Complainant filed a Formal Complaint with the Commission against Penelec at the above-captioned docket claiming that on August 19-20, 2014, a power surge occurred at the Service Location causing damage to her gas range electronic control panel. (Compl. ¶ 4(A).)

5. On or about March 13, 2014, the Formal Complaint was served via electronic mail on Penelec.

6. Penelec is timely filing its Answer contemporaneously with this Preliminary Objection.

III. Argument

7. The Commission's procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transportation Interveners v. Equitable Gas Company*, Docket No. C-00935435 (July 18, 1994).

8. The Commission's Rules of Practice and Procedure permit parties to file preliminary objections. The grounds for preliminary objections are limited to those set forth in 52 Pa. Code § 5.101(a) as follows:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.

- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

9. The Commission's procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transportation Interveners*, Docket No. C-00935435 (July 18, 1994).

A. Preliminary Objections to Complainant's Request for Damages Pursuant to 52 Pa. Code § 5.102(a)(1) and (2).

10. The Commission's procedural regulations allow a party to object to pleadings that fail to comply with the rules of administrative practice or that include scandalous or impertinent matters. *See* 52 Pa. Code § 5.102(a)(2).

11. In the Formal Complaint, the Complainant discusses the damage claim she sent to the Company and requests an answer to the following question: "I want to know who is responsible for this outage?" (Compl. ¶ 5). This is essentially a request to the Company for monetary damages for property allegedly damaged during the service outage.

12. 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 Tel. Co. of PA.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1978); *see Nagy v. Bell Tel. Co. of PA.*, 436 A.2d 701 (Pa. Super. 1981).

13. 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.

14. A prayer for damages which are not legally recoverable in the cause of action 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. *Third Avenue Realty Limited Partners v. Pennsylvania-American Water Co.*, Docket No. C-2010-2167286 (Final Order entered September 30, 2010) (citing *Hudock v. Donegal Mut. Ins. Co.*, 264 A.2d 668 (Pa. 1970)).

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

16. Likewise, the Commission’s procedural regulations allow a party to object to pleadings that contain claims that are beyond the Commission’s jurisdiction to consider. *See* 52 Pa. Code § 5.102(a)(1).

17. The Commission does not have jurisdiction over actions alleging a utility caused harm to a customer’s property. “Actions for damages are properly claimed in a court of common pleas, which has proper jurisdiction over negligence and other tort claims.” *Horowitz v. PECO Energy Company*, Docket No. C-2013-2382740 (Final Order entered February 6, 2014); *see also Poorbaugh v. Pennsylvania Public Utility Commission*, 666 A.2d 744 (Pa. Cmwlth. 1995).

18. Therefore, under Pennsylvania law, this Commission does not have the jurisdiction to hear and award money damages and, accordingly, the Formal Complaint seeking such relief must be dismissed.

IV. Conclusion

WHEREFORE, for the foregoing reasons, Pennsylvania Electric Company respectfully requests that the Commission: (1) grant its Preliminary Objection and strike the Complainant's request for money damages from the Formal Complaint; (2) expressly prohibit the Complainant from introducing any testimony or exhibits at the evidentiary hearing regarding any alleged damages; and (3) grant the Company such other relief as may be just and reasonable under the circumstances.

Respectfully submitted,



Dated: April 2, 2015

Brian C. Wauhop, Esquire
Alan Michael Seltzer, Esquire
Buchanan Ingersoll & Rooney P.C.
409 North Second Street, Suite 500
Harrisburg, PA 17101-1357
(717) 237-4975

Attorneys for
Pennsylvania Electric Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

AURELIA K. GIBSON

v.

PENNSYLVANIA ELECTRIC COMPANY

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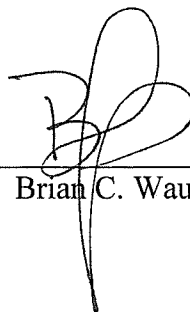
CERTIFICATE OF SERVICE

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).

First Class Mail

Aurelia K. Gibson
263 Laurel Avenue
Johnstown, PA 15906-2123

Dated this 2nd day of April, 2015.



Brian C. Wauhop, Esq.