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February 16, 2017

VIA E-FILING

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

Re: Mitchell L. Maloskey v. Pennsylvania Electric Company
Docket No. C-2017-2585956

Dear Secretary Chiavetta:

Attached please find the Preliminary Objection of Pennsylvania Electric Company in the above-referenced matter. This document has been served on the Complainant as shown in the Certificate of Service.

Please contact me if you have any questions.

Very truly yours,



Teresa Schmittberger

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Enclosures

c: As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MITCHELL L. MALOSKEY	:	
	:	
v.	:	Docket No. C-2017-2585956
	:	
PENNSYLVANIA ELECTRIC COMPANY	:	

NOTICE TO PLEAD

TO: Mitchell L. Maloskey

Pursuant to 52 Pa. Code § 5.101 you are hereby notified that if you do not file a reply to the enclosed Preliminary Objection of Pennsylvania Electric Company within ten (10) days from service of this notice, the facts set forth by Pennsylvania Electric Company in the Preliminary Objection may be deemed to be admitted, thereby requiring no other proof. All pleadings, such as a Reply to Objection, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy service 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
P.O. Box 3265
Harrisburg, PA 17105-3265

With a copy to:

Teresa Schmittberger
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, Pennsylvania 19612-6001

Date: February 16, 2017



Teresa Schmittberger

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MITCHELL L. MALOSKEY	:	
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**PRELIMINARY OBJECTION TO THE FORMAL COMPLAINT OF
MITCHELL L. MALOSKEY**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, Pennsylvania Electric Company ("Penelec" or the "Company"), by and through its counsel, Teresa Schmittberger, files this Preliminary Objection pursuant to Section 5.101(a) of Pennsylvania Public Utility Commission ("Commission") regulations, 52 Pa. Code § 5.101(a), and in support thereof, avers as follows:

I. Introduction

1. In his Formal Complaint, Mitchell L. Maloskey ("Complainant") alleges he sustained property damage at 230 Kendrick Lane, Flinton, Pennsylvania 16640 ("Service Location") by a Company meter reader. (Compl. ¶ 4.) The Complainant requests that the Commission direct Penelec to financially reimburse him for alleged property losses. (Compl. ¶ 5.)

2. As explained below, the Commission does not have the power and legal authority to award monetary damages. 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 monetary damages; (ii) expressly prohibit the Complainant from introducing any testimony or exhibits at any evidentiary hearing regarding alleged damages; (iii) dismiss the Formal Complaint

in its entirety with prejudice; and (iv) grant the Company such other relief as may be just and reasonable under the circumstances.

II. Background

3. Penelec is an electric distribution company certificated as a public utility permitted to operate within the Commonwealth in Pennsylvania.

4. On or about January 23, 2017, the Complainant filed a Formal Complaint with the Commission against Penelec at the above-captioned docket requesting, as a sole form of relief, that the Commission direct the Company to reimburse the Complainant for specific property losses allegedly sustained as a result of actions by a meter reader. (Compl. ¶¶ 4, 5.)

5. On or about January 27, 2017, the Formal Complaint was electronically served on Penelec.

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

III. Argument

7. 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.

8. The Commission's procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transp. Intervenors v. Equitable Gas Co.*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994). Where the facts set forth in the non-moving party's pleading are accepted as true, preliminary objections should be granted where the moving party would still prevail as a matter of law. *See id.*; *see also Cty. of Allegheny v. Pa.*, 490 A.2d 402 (Pa. 1985); *Pa. v. The Bell Tele. Co. of Pa.*, 551 A.2d 602 (Pa. Commw. Ct. 1988).

9. In his Formal Complaint, the Complainant states the following as his sole request for relief:

I want Penelec to pay for all repairs that they caused to my carport.

Please see enclosed correspondence and pictures.

Please note: I sent you the Penelec response at the informal step.

(Compl. ¶ 5.)

11. The only relief sought through the Formal Complaint is an award of monetary damages from the Company.

12. It is well-established under Pennsylvania law that the Commission does not have jurisdiction to award money damages. The Commission's jurisdiction is limited to the authority established in the Public Utility Code, which does not include the authority to order monetary damages. 66 Pa.C.S. § 501, *et seq.*; *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 also Nagy v. Bell Tel. Co. of Pa.*, 436 A.2d 701 (Pa. Super. Ct. 1981).

13. In *Feingold*, the Pennsylvania Supreme Court holds as follows:

. . . 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. Pursuant to 52 Pa. Code § 5.101(a)(1), the Company's preliminary objection is appropriate as the Commission does not have jurisdiction to provide the only form of relief requested within the Formal Complaint of monetary damages.

15. The Company specifically denies causing damage to the Complainant's property; however, even where assuming all facts within the Formal Complaint as true, the Company still prevails as a matter of law as the Commission does not have the jurisdiction to grant the sole form of relief requested.

16. Therefore, in accordance with Pennsylvania law, the Company's preliminary objection should be granted and dismissal of the Formal Complaint is appropriate.

IV. Conclusion

WHEREFORE, for the foregoing reasons, Pennsylvania Electric Company respectfully requests that the Commission: (1) grant its Preliminary Objections and strike the Complainant's request for monetary damages; (2) expressly prohibit the Complainant from introducing any

testimony or exhibits at any evidentiary hearing regarding alleged damages; (3) dismiss the Formal Complaint in its entirety with prejudice; and (4) grant the Company such other relief as may be just and reasonable under the circumstances.

Respectfully submitted,



Dated: February 16, 2017

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(610) 921-6783
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Counsel for Pennsylvania Electric Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MITCHELL L. MALOSKEY

v.

PENNSYLVANIA ELECTRIC COMPANY

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Docket No. C-2017-2585956

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Preliminary Objections of Pennsylvania Electric Company to the Formal Complaint of Mitchell L. Maloskey upon the individual listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by First Class Mail, postage prepaid, as follows:

Mitchell L. Maloskey
2223 Longs Road
Homer City, PA 15748

Dated: February 16, 2017



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2800 Pottsville Pike
P.O. Box 16001
Reading, Pennsylvania 19612-6001
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