

April 26, 2017

Via Electronic Filing

Rosemary Chiavetta, Esquire
Secretary
PA Public Utility Commission
Commonwealth Keystone Building, 2 North
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Docket No. C-2017-2597461
Rick Iadeluca v. Pennsylvania Electric Company
Preliminary Objection of Penelec**

Dear Secretary Chiavetta:

Attached for filing is the Preliminary Objection of Respondent, Pennsylvania Electric Company (Penelec), to the Formal Complaint of Rick Iadeluca (Complainant).

A copy of the Preliminary Objection has been forwarded to the Complainant in the manner indicated on the attached Certificate of Service.

If there are any questions, please contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

MAM/jmm
Attachment

cc: Teresa Schmittberger, Esquire, FirstEnergy Service Company [w/enc.]
Rick Iadeluca [w/enc.]

**Re: Docket No. C-2017-2597461
Rick Iadeluca v. Pennsylvania Electric Company
Preliminary Objection of Penelec**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following person(s), in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Via First Class Mail

Rick Iadeluca
4104 Bonica Circle
Erie, PA 16506

Dated: April 26, 2017



Margaret A. Morris, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

RICK IADELUCA

v.

PENNSYLVANIA ELECTRIC COMPANY

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:
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:
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Docket No. C-2017-2597461

NOTICE TO PLEAD

Pursuant to 52 Pa.Code § 5.101, you are hereby notified that if you do not file a written response answering the enclosed Preliminary Objections of Pennsylvania Electric Company within **ten (10) days** from service of this notice, the facts set forth by Pennsylvania Electric Company in the Preliminary Objections may be deemed to be true, whereby requiring no other proof. All pleadings, such as a Reply to Preliminary Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Pennsylvania Electric Company, Margaret A. Morris, Esq., and where applicable, the Administrative Law Judge presiding over the issue.

File with:

Rosemary Chiavetta, Esq.
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building – 2 North
P.O. Box 3265
Harrisburg, PA 17105

With a copy to:

Margaret A. Morris, Esq.
Reger Rizzo & Darnall LLP
Cira Centre, 13th Floor
2929 Arch Street
Philadelphia, PA 19104

Date: April 26, 2017



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Counsel for Pennsylvania Electric Company

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RICK IADELUCA	:	
	:	
v.	:	Docket No. C-2017-2597461
	:	
PENNSYLVANIA ELECTRIC COMPANY	:	

**PRELIMINARY OBJECTIONS OF PENNSYLVANIA ELECTRIC COMPANY
TO THE COMPLAINT OF RICK IADELUCA**

Pennsylvania Electric Company (Respondent or Penelec), by and through its attorneys, Reger Rizzo & Darnall LLP, pursuant to 52 Pa. Code § 5.101, hereby submits its Preliminary Objections to the Complaint filed by Rick Iadeluca (Complainant) requesting reimbursement of all costs and attorney fees. The Commission lacks subject matter jurisdiction to award costs or attorney fees.

In support of its preliminary objections, Penelec states as follows:

I. Procedural Background

1. Penelec is an electric distribution company certificated as a public utility permitted to operate within the Commonwealth in Pennsylvania and provides service to the Complainant under Account No. 100031108374.

2. The Respondent provides residential electric service to Complainant at 4104 Bonica Circle, Erie, Pennsylvania (Service Location).

3. On March 27, 2017, Complainant filed the present Complaint seeking: (1) reimbursement of all fees and costs;¹ and (2) requesting the Commission and/or Office of Attorney General institute a “complete and thorough criminal investigation” of the civil and criminal violations of Chapters 33 of the Code and Chapter 39 of the Crimes Code.²

3. In its Answer and New Matter being served contemporaneously with this Preliminary Objection, Penelec denied the material allegations in the present Complaint and averred that the Commission, at Docket No. F-2015-2482361, dismissed the issues on the merits in the *2015 Complaint Order*³ and a Certificate of Satisfaction was filed by counsel for the Complainant.

4. Penelec objects to the requested relief set forth in the present Complaint on the grounds that the Commission lacks jurisdiction to award costs and attorney fees.

II. Argument

5. 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.

¹ The Complainant does not state an amount and also seeks mileage and attorney fees.

² 18 Pa.C.S.A. § 101 *et seq.*

³ Opinion and Order entered September 15, 2016.

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

7. In the instant Formal Complaint, the Complainant seeks to relitigate the issues dismissed in the *2015 Complaint Order* (Compl. ¶4).

8. The relief sought through the present Complaint is a request for compensation for attorney fees and costs from the Company. (Compl. ¶ 5).

A. Impertinent Matter

9. 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).

10. It is well-established under Pennsylvania law that the enforcement powers of the Commission do not include the power to award costs or attorney fees. *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). Therefore, the statutory authority of the Commission does not include the power to award attorney fees or costs.

11. A prayer for costs and attorney fees, 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)).

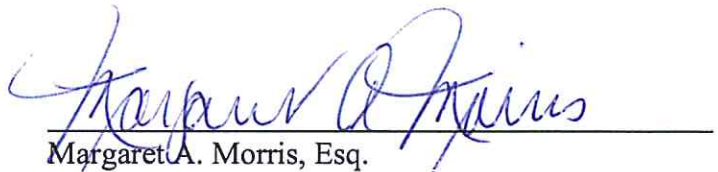
12. The Complainant's requested relief of costs and attorney fees is irrelevant to the instant cause of action and therefore an "impertinent matter"

13. Therefore, in accordance with Pennsylvania law, this Commission does not have the power to award costs or attorney fees, and the Complainant's request for such is an impertinent matter that must be stricken within the use and meaning of Commission regulation at 52 Pa. Code § 5.101(a)(2).

WHEREFORE, Respondent, Pennsylvania Electric Company, requests that the requested relief for costs and attorney fees set forth in the Formal Complaint filed by Rick Iadeluca be stricken since the Commission lacks subject matter jurisdiction to award costs and attorney fees.

Respectfully submitted,

Dated: April 26, 2017



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