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May 23, 2018

VIA E-FILING

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


Re: William Roll v. Pennsylvania Electric Company
Docket No. C-2018-3001668

Dear Secretary Chiavetta:

Attached please find the Preliminary Objections 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 Harrold

Enclosures

c: As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

WILLIAM ROLL

v.

PENNSYLVANIA ELECTRIC COMPANY

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Docket No. C-2018-3001668

NOTICE TO PLEAD

TO: William Roll

Pursuant to 52 Pa. Code § 5.101 you are hereby notified that if you do not file a reply to 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 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 Harrold
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, Pennsylvania 19612-6001

Date: May 23, 2018



Teresa Harrold

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

WILLIAM ROLL	:	
	:	
v.	:	Docket No. C-2018-3001668
	:	
PENNSYLVANIA ELECTRIC COMPANY	:	

**PRELIMINARY OBJECTIONS TO THE FORMAL COMPLAINT OF
WILLIAM ROLL**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, Pennsylvania Electric Company ("Penelec" or the "Company"), by and through its counsel, Teresa Harrold, files these Preliminary Objections 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, William Roll ("Complainant") alleges he sustained damage to his personal property at 1007 North Second Street, Altoona, Pennsylvania 16601 ("Service Location") as a result of a lawful discontinuance of service. (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 or legal authority to award monetary damages. As a result, the Company requests that its Preliminary Objections 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 of Pennsylvania.

4. On or about May 4, 2018, 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 provide monetary compensation to the Complainant for personal property losses allegedly sustained as a result of a lawful discontinuance of service. (Compl. ¶ 5.)

5. On or about May 4, 2018, the Formal Complaint was electronically served on Penelec.

6. Penelec is timely filing its Answer and New Matter contemporaneously with these Preliminary Objections.

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. 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 § 5.101(a)(2).

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

I would like my house to be restored to the condition it was in before the radiators froze & broke causing extensive damage to an original home in beautiful shape..

(Formal Complaint ¶ 5.)

11. Clearly, 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 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 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. 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)).

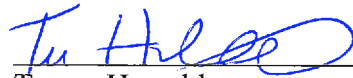
16. Therefore, in accordance with Pennsylvania law, this Commission does not have the power to award monetary damages, and the Complainant's request for money damages is an impertinent matter that must be stricken.

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 and claims on behalf of other individuals; (2) dismiss the Formal Complaint in its entirety with prejudice; and (3) grant the Company such other relief as may be just and reasonable under the circumstances.

Respectfully submitted,

Dated: May 23, 2018



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Counsel for Pennsylvania Electric Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

WILLIAM ROLL

v.

PENNSYLVANIA ELECTRIC COMPANY

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Docket No. C-2018-3001668

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 William Roll 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:

William Roll
2524 Highland Avenue
Huntingdon, PA 16652

Dated: May 23, 2018



Teresa Harrold
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2800 Pottsville Pike
P.O. Box 16001
Reading, Pennsylvania 19612-6001
(610) 921-6783
tharrold@firstenergycorp.com