

September 10, 2018

Via UPS

Rosemary Chiavetta, Esquire
Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**Re: Docket No. C-2018-3004122
Jeffrey Scrim v. Pennsylvania Power Company
Preliminary Objection of Penn Power**

Dear Secretary Chiavetta:

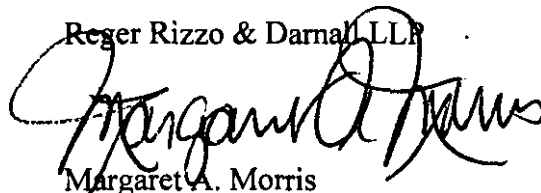
Enclosed for filing are the original and one copy of the Preliminary Objection of Respondent, Pennsylvania Power Company (Penn Power), to the Formal Complaint of Jeffrey Scrim (Complainant). Kindly file the original of record and return the date-stamped copy in the enclosed envelope.

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: Lauren Lepkoski, Esquire, FirstEnergy Service Company [w/enc.]
Jeffrey Scrim [w/enc.]

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JEFFREY SCRIM

v.

PENNSYLVANIA POWER COMPANY

Docket No. C-2018-3004122

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 Power Company within **ten (10) days** from service of this Notice, the facts set forth by Pennsylvania Power Company in the Preliminary Objections may be deemed to be true, whereby 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 to counsel for Pennsylvania Power Company, Margaret A. Morris, Esq., and where applicable, the Administrative Law Judge presiding over the issue.

File with:

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

With a copy to:

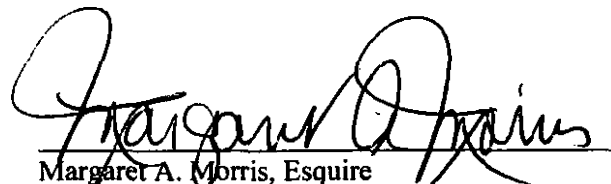
Margaret A. Morris, Esquire
Reger Rizzo & Darnall LLP
Cira Centre, 13th Floor
2929 Arch Street
Philadelphia, PA 19104

Date: September 10, 2018

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Margaret A. Morris, Esquire
Attorney ID No. 75048
Reger Rizzo & Darnall LLP
Cira Centre, 13th Floor
2929 Arch Street
Philadelphia, PA 19104
(215) 495-6524 tel.
mmorris@regerlaw.com

Counsel for Pennsylvania Power Company

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JEFFREY SCRIM

v.

PENNSYLVANIA POWER COMPANY

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Docket No. C-2018-3004122

**PRELIMINARY OBJECTION OF PENNSYLVANIA POWER COMPANY
TO THE COMPLAINT OF JEFFREY SCRIM**

Pennsylvania Power Company (Penn Power or Company), by and through its attorneys, Reger Rizzo & Darnall LLP, pursuant to 52 Pa. Code § 5.101, hereby files its Preliminary Objection to the Formal Complaint filed by Jeffrey Scrim, in the above-captioned proceeding.

Penn Power avers the subject of the Formal Complaint is beyond the jurisdiction of the Pennsylvania Public Utility Commission (Commission) which is without authorization to grant the requested relief for damages. Therefore, Penn Power requests that this Preliminary Objection be granted and that the Commission: (1) strike the Complainant's request for damages; and, (2) grant the Company such other relief as may be just and reasonable under the circumstances.

In support of its preliminary objections, Penn Power states as follows:

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I. Procedural Background

1. Penn Power is an electric distribution company certificated as a public utility permitted to operate within the Commonwealth in Pennsylvania and provides service in the Complainant's name to under Account No. 110004943384.

2. The Complainant resides at 419 Butz Street, New Castle, Pennsylvania (Service Location). He filed a Formal Complaint requesting the Commission "order Penn Power to pay the cost of the repair to rewire" the Service Location as a result of Company's failed equipment. (Compl. ¶ 5).

3. In an Answer and New Matter being served contemporaneously with this Preliminary Objection, Penn Power has denied the material allegations in the Formal Complaint.

4. Pursuant to 52 Pa. Code § 5.101, Penn Power objects to the Formal Complaint on the grounds that the Commission lacks jurisdiction to award damages.

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.

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).

A. Impertinent Matter

7. In the instant Formal Complaint, the Complainant requests compensation of \$9,200.00. (Compl. ¶¶ 4, 5).

8. Clearly, the relief sought through the Formal Complaint is an award of monetary damages from the Company.

9. The Commission's procedural regulations allow a party to object to pleading which fails 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 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). Therefore, the statutory authority of the Commission does not include the power to award damages.

11. 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.

12. The Court of Common Pleas retains original jurisdiction over suits for monetary damages. *Behrend, supra*.

13. 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)).

14. The Complainant’s requested relief of damages is irrelevant to the instant cause of action and therefore an “impertinent matter”

15. Therefore, in accordance with Pennsylvania law, this Commission does not have the power to award monetary damages, 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 Power Company, requests that the relief for damages in the Formal Complaint filed by Jeffrey Scrim be stricken or denied in its entirety for lack of subject matter jurisdiction. The Respondent also requests, to the extent

**BEFORE THE
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JEFFREY SCRIM

v.

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Docket No. C-2018-3004122

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File with:

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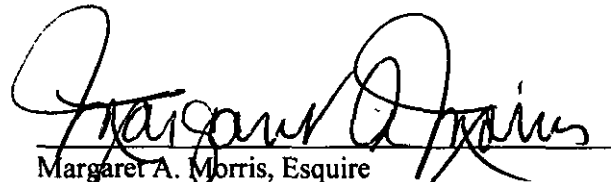
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mmorris@regerlaw.com

Counsel for Pennsylvania Power Company

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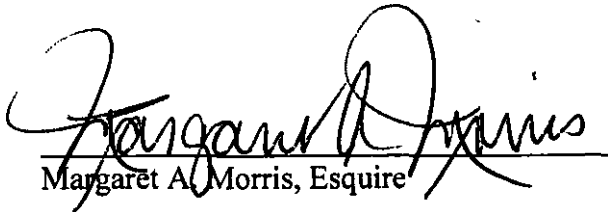
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following person(s) listed below, 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

Jeffrey Scrim
419 Butz Street
New Castle, PA 16101

Dated: September 10, 2018


Margaret A. Morris, Esquire

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

UPS CampusShip: View/Print Label



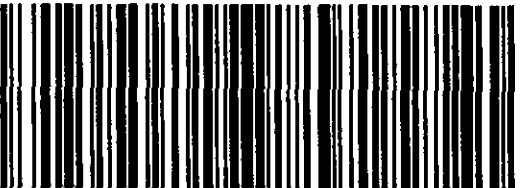
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