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March 27, 2019

VIA ELECTRONIC FILING

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


Re: Heidi Fiedler v. Metropolitan Edison Company
Docket No. C-2018-3003642

Dear Secretary Chiavetta:

Attached please find the Preliminary Objections of Metropolitan Edison 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,


Tori L. Giesler

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Enclosures

c: As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|------------------------------------|---|----------------------------------|
| HEIDI FIEDLER | : | |
| | : | |
| v. | : | Docket No. C-2018-3003642 |
| | : | |
| METROPOLITAN EDISON COMPANY | : | |

NOTICE TO PLEAD

TO: Heidi Fiedler

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 Metropolitan Edison Company within ten (10) days from service of this notice, the facts set forth by Metropolitan Edison 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 to counsel for Metropolitan Edison Company, and where applicable, the Administrative Law Judge presiding over the case.

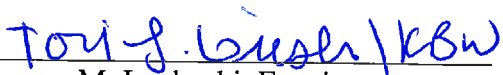
File with:

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

With a copy to:

Tori L. Giesler
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, Pennsylvania 19612-6001

Dated: March 27, 2019



Lauren M. Lepkoski, Esquire
Tori L. Giesler, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

HEIDI FIEDLER

v.

METROPOLITAN EDISON COMPANY

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Docket No. C-2018-3003642

**PRELIMINARY OBJECTION TO THE SECOND AMENDED COMPLAINT OF
HEIDI FIEDLER**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, Metropolitan Edison Company ("Met-Ed" or the "Company"), by and through its counsel, Lauren M. Lepkoski and Tori L. Giesler, files this Preliminary Objection pursuant to Section 5.101(a) of Pennsylvania Public Utility Commission ("Commission") regulations, 52 Pa. Code § 5.101(a)(1), and in support thereof, avers as follows:

I. Introduction

1. In her recently filed Second Amended Complaint, Heidi Fiedler ("Complainant") alleges she sustained damages to her property located at 432 East Wesner Road, Blandon, Pennsylvania 19510 ("Service Location") as a result of the Company's equipment utilized during replacement of a pole located at the Service Location. (Second Amended Complaint ¶¶ 15-22.) The Complainant requests that Met-Ed financially compensate her for damage she allegedly incurred as a result of Company's equipment utilized during replacement of a pole located at the Service Location. (Second Amended Complaint ¶ 25.)

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) grant its Preliminary Objections and strike the Complainant's request for monetary damages; (ii) expressly prohibit the Complainant from introducing any testimony or exhibits at any evidentiary hearing regarding alleged damages; (iii) dismiss the Second Amended 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. Met-Ed is an electric distribution company certificated as a public utility permitted to operate within the Commonwealth in Pennsylvania.

4. The Complainant filed a Second Amended Complaint with the Commission against Met-Ed at the above-captioned docket requesting that the Commission direct the Company to pay \$7,469.78 to the Complainant to "cover the cost of repairs to her property caused by the Company's contractor." (Second Amended Complaint ¶ 25.)

5. On or about March 7, 2019, the Second Amended Complaint was electronically served on Met-Ed.

6. Met-Ed 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 Transportation Intervenors v. Equitable Gas Company*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994).

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 her Second Amended Complaint, the Complainant states the following as one of her requests for relief:

Complainant respectfully requests the Commission to order Company to pay \$7,469.78 to Complainant to cover the cost of repairs to her property caused by Company's contractors.

(Second Amended Complaint ¶ 5.)

11. Clearly, a portion of the relief sought through the Second Amended 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 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)).

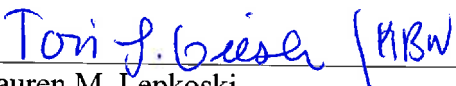
15. Therefore, in accordance with Pennsylvania law, this Commission does not have the power to award monetary damages, and the Complainant’s request for money damages is an impertinent matter that must be stricken.

IV. Conclusion

WHEREFORE, for the foregoing reasons, Metropolitan Edison 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 Second Amended 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: March 27, 2019


Lauren M. Lepkoski
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Attorney No. 207742
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Counsel for Metropolitan Edison Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

HEIDI FIEDLER :
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 v. : **Docket No. C-2018-3003642**
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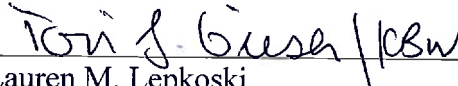
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Preliminary Objections of Metropolitan Edison Company to the Second Amended Complaint of Heidi Fiedler upon the individuals 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:

Heidi Fiedler
432 East Wesner Road
Blandon, PA 19510

Dated: March 27, 2019



Lauren M. Lepkoski
Tori L. Giesler
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, Pennsylvania 19612-6001
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