

August 19, 2019

Via Electronic Filing

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

**Re: Docket No. C-2019-3011824
Wayne L. Metz v. Pennsylvania Electric Company
Preliminary Objections of Penelec**

Dear Secretary Chiavetta:

Attached for filing is Pennsylvania Electric Company's Preliminary Objections to the Complaint filed by Wayne L. Metz, in the above captioned proceedings.

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

If there are any questions, please do not hesitate to contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

MAM/lam
Enclosure

cc: John L. Munsch, Esquire, FirstEnergy Service Company [w/enc.]
Wayne L. Metz [w/enc.]

**Re: Docket No. C-2019-3011824
Wayne L. Metz v. Pennsylvania Electric Company
Preliminary Objections of Penelec**


CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following persons on the attached service list, 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

Wayne L. Metz
20 Metz Lane
Lewistown, PA 17044

Dated: August 19, 2019


Margaret A. Morris, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

WAYNE L. METZ

v.

PENNSYLVANIA ELECTRIC COMPANY

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Docket No. C-2019-3011824

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 the Preliminary Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy 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, 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: August 19, 2019



Margaret A. Morris, Esquire
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Counsel for Pennsylvania Electric Company

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

WAYNE L. METZ :
 :
 v. : Docket No. C-2019-3011824
 :
 PENNSYLVANIA ELECTRIC COMPANY :

**PRELIMINARY OBJECTIONS TO
THE FORMAL COMPLAINT OF WAYNE L. METZ**

Pennsylvania Electric Company (Penelec 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 of Wayne L. Metz (Complainant) filed in the above-captioned proceeding. Penelec avers the subject of the Formal Complaint is beyond the jurisdiction of the Pennsylvania Public Utility Commission (Commission) who is without authorization to grant the Complainant’s request for damages. The Formal Complaint includes impertinent matter in its requested relief. Therefore, Penelec moves to have the Formal Complaint dismissed in its entirety or in the alternative to strike the Complainant’s request for compensation.

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

1. The Complainant filed a Formal Complaint averring that a failed overhead transformer caused damage to his heat pump. The Complainant seeks compensatory damages for the alleged loss caused at his residence located at 20 Metz Lane, Lewistown, Pennsylvania (Service Location) under Account No. 100010389037 (Account).

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

3. It is well settled that the commission has only the powers, and can only consider such matters, as are expressly, or by necessary implication given to it by the legislature. *Behrend v. Bell Telephone Co.*, 363 A.2d 1152 (Pa, Super 1976); *Brockway Glass Company, Inc. v. Penelec Power Co.*, 54 Pa P.U.C. 509 (1980); *Bones v. Bates Taxi, Inc.*, 51 Pa, P.U.C. 346 (1977). The Pennsylvania Public Utility Code, 66 Pa C.S. § 101, *et seq.* (the Code), gives the Commission supervisory and regulatory power over the rates, service and facilities of public utilities. *Brockway Glass* at 514.

4. Additionally, pursuant to 52. Pa. Code § 5.101, Penelec objects to the Formal Complaint on the grounds that the Commission lacks jurisdiction to award monetary damages. The Complainant seeks to have Penelec pay for damages to various personal items located in the Service Location.

5. Pennsylvania courts have long held that the enforcement powers of the Commission do not include the power to award monetary damages. *Elkin v. Bell*, 491 Pa. 123, 420 A. 2d 371 (1980); *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1978); see *Nagy v. Bell Tel. Co.*, 436 A.2d 701 (Pa, Super. 1981) Thus, the Code does not give the Commission jurisdiction over a claim for monetary damages. *Behrend* , *supra*; *Brockway Glass, supra*; *Bones v. Bates Taxi, Inc.*, 51 Pa. P.U.C. 346 (1977).

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

7. The sole requested relief by the Complainant, in the form of monetary compensation for damages, is not recoverable in the cause of action before this Commission as the Commission is without authorization to award compensation for damages. The request for relief is irrelevant to the instant cause of action and therefore an “impertinent matter” within the use and meaning of 52 Pa. Code §5.101 (a)(2).

8. Since the sole issue in the Formal Complaint is the request for monetary compensation for alleged damages, the Formal Complaint should be stricken in its entirety pursuant to Pa. Code §5.101(a)(2).

WHEREFORE, Respondent, Pennsylvania Electric Company, requests that the Formal Complaint filed by Wayne L. Metz be dismissed with prejudice or denied in its entirety for lack of subject matter jurisdiction.

Respectfully submitted,



Margaret A. Morris, Esq.
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Date: August 19, 2019

Counsel for Pennsylvania Electric Company