

October 22, 2019

Via Electronic Filing

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

**Re: Docket No. C-2019-3013282
Robert Guckert v. Pennsylvania Power Company
Preliminary Objections of Pennsylvania Power Company**

Dear Secretary Chiavetta:

Attached for filing is the Preliminary Objections of Pennsylvania Power Company to the Complaint filed by Robert Guckert, in the above captioned proceedings.

A copy of the Preliminary Objections has been provided to Robert Guckert 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: Lauren Lepkoski, Esquire, FirstEnergy Service Company [w/encl.]
Robert Guckert [w/encl.]

**Re: Docket No. C-2019-3013282
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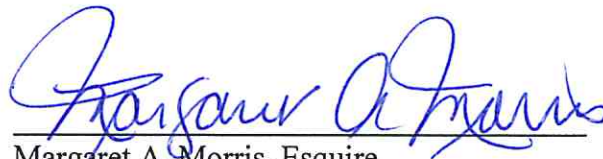
CERTIFICATE OF SERVICE

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

Via Electronic and First Class Mail

Robert Guckert
370 Inwood Road
Pittsburgh, PA 15237
RGSmoney@comcast.net

Dated: October 22, 2019



Margaret A. Morris, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ROBERT GUCKERT

v.

PENNSYLVANIA POWER COMPANY

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:
:
:
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Docket No. C-2019-3013282

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: October 22, 2019



Margaret A. Morris, Esquire
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Counsel for Pennsylvania Power Company

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ROBERT GUCKERT	:	
v.	:	Docket No. C-2019-3013282
	:	
PENNSYLVANIA POWER COMPANY	:	

**PRELIMINARY OBJECTIONS TO THE
FORMAL COMPLAINT OF ROBERT GUCKERT**

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 Objections to the Formal Complaint of Robert Guckert (Complainant) filed 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) who is without authorization to grant the Complainant's request for damages. The Formal Complaint includes impertinent matter in its requested relief. Therefore, Penn Power requests that this Preliminary Objection be granted and that the Commission: (1) grant its Preliminary Objections and strike the Complainant's requests for monetary damages; (2) expressly prohibit the Complainant from introducing any testimony or exhibits at any evidentiary hearing regarding alleged damages; and (3) 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:

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 residential electric service to the Complainant under Account No. 110006214636.

2. The Complainant resides at 370 Inwood Road, Pittsburgh, Pennsylvania (Service Location). He filed a Formal Complaint alleging a power surge occurred during the restoration process on July 22, 2019 and caused damage to personal property. He seeks compensatory damages for the alleged loss in the amount of \$1,331.18.¹ Compl. at ¶ 4.

3. In its Answer and New Matter being served contemporaneously with this Preliminary Objection, Penn Power denied that the equipment failure was the result of poor workmanship.

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 monetary damages. The Complainant seeks to have Penn Power pay for the alleged damages to his property.

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.

¹ \$831.18 for new freezer + \$500 of contents = \$1,331.18.

- (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).

7. In the instant Formal Complaint, the Complainant requests to be reimbursed for the damaged personal property.

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

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 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).

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 money damages 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, Metropolitan Edison Company, requests that the Formal Complaint filed by Robert Guckert be dismissed with prejudice or denied in its entirety for lack of subject matter jurisdiction.

Respectfully submitted,



Date: October 22, 2019

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