

November 25, 2019

**Via Electronic Filing**

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

**Re: Docket No. C-2019-3014033  
Robert R. Lunz v. Pennsylvania Power Company  
Preliminary Objections of Penn Power**

Dear Secretary Chiavetta:

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

A copy of the Preliminary Objections has been provided to Robert Lunz 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 R. Lunz [w/encl.]

**Re: Docket No. C-2019-3014033  
Robert R. Lunz v. Pennsylvania Power Company  
Preliminary Objections of Penn Power**

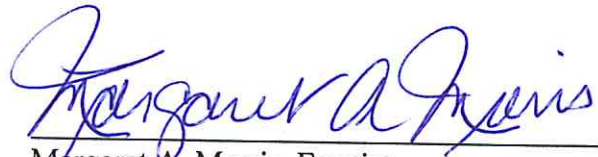
**CERTIFICATE OF SERVICE**

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 First Class Mail**

Robert R. Lunz  
405 Santa Rosa Lane  
Pittsburgh, PA 15237

Dated: November 25, 2019

  
Margaret A. Morris, Esquire

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ROBERT R. LUNZ

v.

PENNSYLVANIA POWER COMPANY

:  
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:  
:  
:

Docket No. C-2019-3014033

**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.

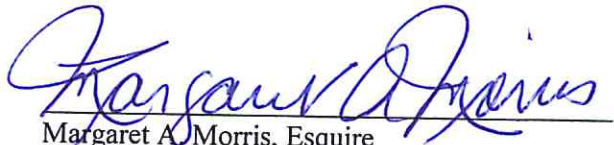
**File with:**

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, 13<sup>th</sup> Floor  
2929 Arch Street  
Philadelphia, PA 19104

Date: November 25, 2019



Margaret A. Morris, Esquire  
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*Counsel for Pennsylvania Power Company*

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ROBERT R. LUNZ	:	
	:	
v.	:	Docket No. C-2019-3014033
	:	
PENNSYLVANIA POWER COMPANY	:	

**PRELIMINARY OBJECTIONS TO THE  
FORMAL COMPLAINT OF ROBERT R. LUNZ**

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 R. Lunz (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. 11000629858.

2. The Complainant resides at 405 Santa Rosa Lane, Pittsburgh, Pennsylvania (Service Location). He filed a Formal Complaint alleging a power surge caused damage to his personal property. Compl. at ¶ 4.

3. In its Answer and New Matter being served contemporaneously with this Preliminary Objection, Penn Power avers the Complainant was notified by letter that claim was denied consistent with its Commission-approved Tariff Rule 21.

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.
- (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 "payment for T.V. replacement." Compl. at ¶ 5.

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)).

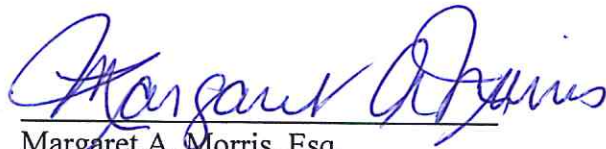
14. The Complainant’s requested relief of damages is irrelevant to the instant cause of action and therefore an “impertinent matter.”

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).

16. 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 Power Company, requests that the Formal Complaint filed by Robert R. Lunz be dismissed with prejudice or denied in its entirety for lack of subject matter jurisdiction.

Respectfully submitted,



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Date: November 25, 2019

*Counsel for Pennsylvania Power Company*