

February 15, 2022

Via Electronic Filing

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

**Re: Docket No. C-2022-3030565
Beth Kraus v. Metropolitan Edison Company
Preliminary Objections of Met-Ed**

Dear Secretary Chiavetta:

Attached for filing is the Preliminary Objections of Metropolitan Edison Company to the Complaint of Beth Kraus (Complainant) in the above-captioned proceeding.

A copy of the Preliminary Objections 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/co
Enclosures

cc: Tori Giesler, Esquire, FirstEnergy Service Company [w/encls.]
Beth Kraus [w/encls.]

**Re: Docket No. C-2022-3030565
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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

Beth Kraus
1116 Red Fox Road
East Stroudsburg, PA 18301
Westrich64@icloud.com

Dated: February 15, 2022


Margaret A. Morris, Esquire

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

BETH KRAUS :
v. : Docket No. C-2022-3030565
METROPOLITAN EDISON COMPANY :

**PRELIMINARY OBJECTIONS OF METROPOLITAN EDISON COMPANY TO THE
FORMAL COMPLAINT OF BETH KRAUS**

Metropolitan Edison Company (Met-Ed 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 Beth Kraus (Complainant) filed in the above-captioned proceeding.

Met-Ed 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, Met-Ed 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, Met-Ed states as follows:

I. Procedural Background

1. Met-Ed 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. 100104563604.

2. The Complainant resides at 1116 Red Fox Road, East Stroudsburg, Pennsylvania (Service Location). She filed a Formal Complaint alleging a power surge caused damage to her personal property and seeks compensatory damages for the alleged loss in the amount of \$4,081.49. Compl. at ¶ 5.

3. In its Answer and New Matter being served contemporaneously with this Preliminary Objection, Met-Ed averred that the outage, experienced on October 27, 2021, due to an off right-of-way tree, was outside the Company's control or that the Company is responsible for the alleged damages.

4. Pursuant to 52. Pa. Code § 5.101, Met-Ed objects to the Formal Complaint on the grounds that the Commission lacks jurisdiction to award monetary damages. The Complainant seeks to have Met-Ed pay for the alleged damages to her 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 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 Beth Kraus 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: February 15, 2022

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