

February 5, 2024

Via Electronic Filing

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

**Re: Docket No. C-2024-3045453
Bonnie L. Conklin v. Pennsylvania Electric Company
Preliminary Objections of FirstEnergy Pennsylvania Electric Company
(Penelec Rate District)**

Dear Secretary Chiavetta:

Attached for filing is the Preliminary Objections of FirstEnergy Pennsylvania Electric Company (Penelec Rate District) to the Complaint filed by Bonnie L. Conklin (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.]
Bonnie L. Conklin [w/encls.]

**Re: Docket No. C-2024-3045453
Bonnie L. Conklin v. Pennsylvania Electric Company
Preliminary Objections of FirstEnergy Pennsylvania Electric Company
(Penelec Rate District)**

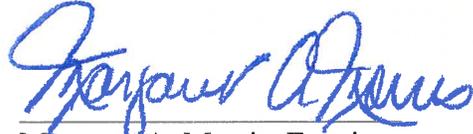
CERTIFICATE OF SERVICE

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

Bonnie L. Conklin
337 Harrisburg Run
Bradford, PA 16701

Dated: February 5, 2024


Margaret A. Morris, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

BONNIE L. CONKLIN :
 :
 v. : Docket No. C-2024-3045453
 :
 :
 PENNSYLVANIA ELECTRIC COMPANY :

NOTICE TO PLEAD

Pursuant to 52 Pa. Code § 5.63, you are hereby notified that if you do not file a written response answering the enclosed Preliminary Objections of FirstEnergy Pennsylvania Electric Company within ten (10) days from service of this notice, the facts set forth by FirstEnergy 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 Preliminary Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for FirstEnergy Pennsylvania Electric Company, Margaret A. Morris, Esq., and where applicable, the Administrative Law Judge presiding over the issue.

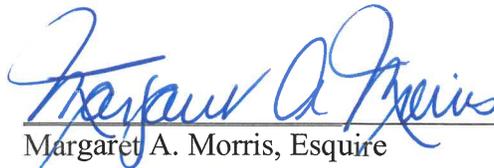
File by Mail or e-filing with:

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

With a copy to:

Margaret A. Morris, Esquire
Reger Rizzo & Darnall LLP
Cira Centre, 13th Floor
2929 Arch Street
Philadelphia, PA 19104
mmorris@regerlaw.com

Date: February 5, 2024



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*Counsel for FirstEnergy Pennsylvania Electric
Company (Penelec Rate District)*

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

BONNIE L. CONKLIN :
v. : Docket No. C-2024-3045453
PENNSYLVANIA ELECTRIC COMPANY :

**PRELIMINARY OBJECTIONS OF FIRSTENERGY PENNSYLVANIA ELECTRIC
COMPANY TO THE COMPLAINT OF BONNIE L. CONKLIN**

Pennsylvania Electric Company, now FirstEnergy Pennsylvania Electric Company,¹ (Respondent, FE PA, 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 Bonnie L. Conklin (Complainant) filed in the above-captioned proceeding.

The Respondent avers that 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 an impertinent matter in its requested relief. Therefore, the Company 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.

¹ On January 1, 2024, FirstEnergy's Pennsylvania operating companies (i.e., Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company) merged into FirstEnergy Pennsylvania Electric Company. Due to the merger transaction, the affected operating companies' tariffs were consolidated into a single tariff, with each former operating company's rates becoming its own rate district. As such, the customers of the former Pennsylvania Electric Company have their own separate and distinct rate district under FirstEnergy Pennsylvania Electric Company’s tariff.

In support of its preliminary objections, the Respondent states as follows:

I. Procedural Background

1. The Company is an electric distribution company certificated as a public utility permitted to operate within the Commonwealth in Pennsylvania and provides residential electric service in the name of Gerald M. Conklin under Account No. 100006298978 (Residential Account) and non-residential service in the Customer's name to Harrisburg Run Road, Bradford, Pennsylvania, under Account No. 100006299125 (Non-residential Account).

2. The Company provides service to Harrisburg Run, Bradford, Pennsylvania (Service Location). The Complainant filed a Formal Complaint alleging damage to personal property and seeks compensation for damages. Complaint at ¶ 4 & 5.

3. In its Answer and New Matter being served contemporaneously with this Preliminary Objection, the Company averred that the events experienced at the Service Location on December 3, 2023, and March 25, 2023, were outside the Company's control and denied that the alleged damages were due to any improper conduct of the Company or its employees.

4. Pursuant to 52. Pa. Code § 5.101, the Company objects to the Formal Complaint on the grounds that the Commission lacks jurisdiction to award monetary damages. The Complainant seeks to have the Company compensate her for personal property alleged to have been damaged by the actions of the Company.

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 compensated for damages to her personal property allegedly as a result of the Company's actions.

8. Clearly, that requested relief sought through the Formal Complaint is an award of unspecified 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*.

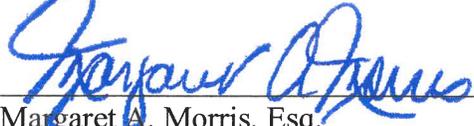
13. A prayer for damages, which are not legally recoverable in the cause of action, is “impertinent matter” in the sense that it is irrelevant to that cause of action, and is correctly challenged through a motion to strike the requested relief as impertinent matter. *Third Avenue Realty Limited Partners 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 for 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, FirstEnergy Pennsylvania Electric Company, respectfully requests that the request for monetary damages be stricken from the Formal Complaint filed by Bonnie L. Conklin for lack of subject matter jurisdiction.

Respectfully submitted,



Date: February 5, 2024

Margaret A. Morris, Esq.

Attorney ID No. 75048

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