

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joshua Dahman	:	
	:	
v.	:	C-2024-3051287
	:	
FirstEnergy Pennsylvania Electric Company	:	

**INTERIM ORDER
GRANTING FE PA’S MOTION TO FILE ANSWER AND NEW MATTER *NUNC PRO
TUNC*, GRANTING FE PA’S PRELIMINARY OBJECTION,
AND TRANSFERRING MATTER TO MEDIATION**

On September 20, 2024, Joshua Dahman (Complainant or Mr. Dahman) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission), against the Penn Power Rate District of FirstEnergy Pennsylvania Electric Company (FE PA, Company, or Respondent) regarding service at 3 Ball Hill Road, Greenville, PA (service location). Complainant checked the box on the Formal Complaint form indicating he was having reliability, safety, or quality problems with his service. He also checked the box averring the utility’s meter “shorted out”, causing his house to catch fire and damage to his other appliances. As relief, Complainant requested that he be reimbursed for lost wages, damage to his house and appliances, and compensation for the gas he used to run his generator while the power was out. Regarding service by the Commission, Complainant selected service by eService, checking the box next to this option.

On October 10, 2024, FE PA filed a Preliminary Objection, arguing that the Commission lacks the authority to award monetary damages and requesting that Complainant’s claims for reimbursement be struck from the Complaint.

The Preliminary Objection included a Notice to Plead, advising Complainant of her right to file a response within ten days of service.

Complainant did not file a response to the Preliminary Objection.

On November 20, 2024, the Company filed a Motion to file an Answer and New Matter *nunc pro tunc*, as well as the Answer and New Matter. In its Motion, FE PA explains that its Answer and New Matter were due to be filed on or before October 10, 2024. It served Complainant with the Answer and New Matter on October 10, 2024, and attempted to file it with the Commission's Secretary's Bureau, but it was rejected due to an incorrect docket number on the filing. FE PA notes that a corrected Answer and New Matter were not immediately re-filed due to an administrative oversight.

In its Answer, FE PA denies that Complainant is experiencing a reliability, safety or quality problem with the electric service at the service location. Additionally, the Company avers that at all times relevant to this proceeding, the Company's actions have been reasonable and performed in accordance with all applicable laws, as well as the Company's Commission-approved tariffs, the Pennsylvania Public Utility Code, Commission regulations and orders.

The Company further explains that on August 27, 2024, Complainant contacted the Company and advised that there was a fire at the service location and inquired about getting new conduit as well as getting the service reconnected as service had to be disconnected due to the fire. Complainant also indicated that he wanted to initiate a claim for damages with the Company. FE PA avers that, to date, the claim submitted to the Company has not yet been accepted or denied as the Company is still awaiting additional information.

In its New Matter, FE PA argues that Rule 21 of the Company's Commission-approved Tariff states, in pertinent part, that "[t]he Company shall not be liable for any damages due to accident, strike, storm, lightning, riot, fire, flood, legal process, state or municipal interference, or any other cause beyond the Company's control." *FirstEnergy Pennsylvania Electric Company Retail Electric Service Tariff*, Electric Pa. PUC No. 1, p. 59, issued December 22, 2023, effective January 1, 2024.

FE PA further argues that pursuant to Section 1501 of the Code, 66 Pa.C.S. § 1501, the Company is mandated to provide reasonable and adequate service, not perfect service. The Company avers that at all times, it has provided adequate and reasonable service to the Complainant consistent with the Code and Commission regulations and orders.

There was a Notice to Plead attached to the New Matter, directing Complainant to file a response within 20 days.

Complainant did not file a response to the New Matter.

On January 6, 2025, the Commission issued a Motion Judge Assignment assigning this matter to me for resolution of the Motion and Preliminary Objection.

It is now appropriate to rule on the Motion and Preliminary Objection.

Discussion

Regarding the Motion to file an Answer and New Matter *nunc pro tunc*, I note that pursuant to 52 Pa. Code § 5.61, the Company's Answer to the Formal Complaint was due for filing on or before October 10, 2024. On October 10, 2024, the Company electronically filed its Preliminary Objection, as well as an Answer and New Matter to the Formal Complaint. On October 10, 2024, Complainant was electronically served with the Company's Answer and New Matter and Preliminary Objections. The Answer and New Matter was not accepted for filing until November 20, 2024, due to clerical error and administrative oversight on the part of FE PA.

Commission regulations at 52 Pa. Code § 1.1 *et seq.* govern rules of administrative practice and procedure before the Public Utility Commission. The Commission's rules provide that the procedural rules shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which they are applicable. 52 Pa. Code § 1.2. Furthermore, the Pennsylvania Commonwealth Court has held that the Commission has authority to waive procedural defects when they do not affect the substantive rights of the

parties. *Info. Connections, Inc. v. Pennsylvania Public Utility Commission*, 630 A. 2d 498 (Pa. Cmwlth. 1993).

In this matter, the late filing of the Answer and New Matter was due to an administrative oversight. Importantly, Complainant was timely served with the Company's Answer and New Matter on October 10, 2024. Other than correcting the docket number on the Answer and New Matter, updating the dates of filing and service to the Complainant and reflecting the undersigned as Counsel for the Company, the Company's Answer and New Matter is substantively identical to what the Complainant previously received from the Company. Therefore, there is no substantive harm to Complainant by accepting the Answer and New Matter *nunc pro tunc*. Therefore, FE PA's motion is granted. The Answer and New Matter filed on November 20, 2024, shall be treated as if they were filed timely on October 10, 2024.

I will now consider FE PA's Preliminary Objection. Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the petitioners, recovery or relief is possible. *Dept. of Auditor General v. SERS*, 836 A.2d 1053, 1064 (Pa.Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa.Cmwlth. 1996). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Boyd v. Ward*, 802 A.2d 705 (Pa.Cmwlth. 2002). All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections. *County of Allegheny v. Commw. of Pa.*, 490 A.2d 402 (Pa. 1985); *Pennsylvania State Lodge, Fraternal Order of Police v. Dept. of Conservation and Natural Resources*, 909 A.2d 413 (Pa.Cmwlth. 2006), *aff'd per curiam*, 924 A.2d 1203 (Pa. 2007). Only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees' Retirement Board*, 690 A.2d 1312 (Pa.Cmwlth. 1997).

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., Co. of Pa. PA.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1978) (*Feingold*); see *Nagy v. Bell Tel Co. of PA.*, 436 A.2d 701 (Pa. Super. 1981).

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 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.

Therefore, FE PA's Preliminary Objection is granted and Complainant's requests for monetary damages are struck from the Complaint.

The remaining claims raised in the Complaint, including an allegation that the Commission violated Section 1501 of the Code, 66 Pa.C.S. § 1501, are appropriate to move forward. Under the circumstances, it is appropriate to transfer this matter to the Mediation Unit of the Office of Administrative Law Judge.

The parties should be advised, however, that if they do not reach a settlement and this matter proceeds to an evidentiary hearing, Complainant will bear the burden to present substantial evidence the Company violated a statute which the Commission has jurisdiction to administer, a tariff provision, or a regulation or order of the Commission. 52 Pa. Code § 5.12(a). If the Commission finds that FE PA did violate a statute, regulation, order, or tariff provision, per Commission regulations, the Commission may impose a fine, but that fine would be payable to the Commission, not Complainant.

THEREFORE,

IT IS ORDERED:

1. That the Motion of FirstEnergy Pennsylvania Electric Company to File the Answer and New Matter *nunc pro tunc* to the Formal Complaint filed by Joshua Dahman at C-2024-3051287, is granted.
2. That the Preliminary Objection filed by FirstEnergy Pennsylvania Electric Company to the Formal Complaint filed by Joshua Dahman at Docket Number C-2024-3051287 is granted.
3. That the requests for monetary damages and reimbursements in the Formal Complaint filed by Joshua Dahman at Docket Number C-2024-3051287 are struck from the Complaint.
4. That this matter be transferred to the Mediation Unit of the Office of Administrative Law Judge for further proceedings not inconsistent with this Order.

Date: January 10, 2025

/s/
Emily I. DeVoe
Administrative Law Judge

**C-2024-3051287 - JOSHUA DAHMAN v. FIRSTENERGY PENNSYLVANIA ELECTRIC
COMPANY - PENN POWER RATE DISTRICT**

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Served via eService January 10, 2025

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Served via eService January 10, 2025

*(Counsel for FirstEnergy Pennsylvania Electric
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