

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kevin Knapp	:	
	:	
v.	:	C-2024-3052668
	:	
FirstEnergy Pennsylvania Electric Company	:	

**INTERIM ORDER SUSTAINING PRELIMINARY OBJECTION**

On December 13, 2024, Kevin Knapp (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against FirstEnergy Pennsylvania Electric Company (FirstEnergy, Respondent or Company). In the Complaint, the Complainant alleged that several trees outside the recorded easements held by the Company were cut down. The Complainant seeks to have the trees replaced or reimbursement for their equivalent value.

On January 13, 2025, the Respondent filed an Answer and New Matter along with a Notice to Plead. In its Answer, FirstEnergy admits in part and denies in part the averments in the Complaint. Specifically, the Respondent denied that FirstEnergy is responsible for the damages claimed by the Complainant. In its New Matter, FirstEnergy avers that the Complainant has failed to state a claim upon which relief may be granted because to the extent that the Complainant seeks an award of monetary damages against FirstEnergy, such relief is beyond the jurisdiction of the Commission.

The Complainant's Answer to FirstEnergy's New Matter was due within twenty days of the date of service of the Answer with New Matter. 52 Pa. Code § 5.63(a). The Complainant did not file an Answer to FirstEnergy's New Matter.

Also on January 13, 2025, the Respondent filed a Preliminary Objection to the Complaint along with a Notice to Plead. In its Preliminary Objection, the Respondent seeks dismissal of the portions of the Complaint seeking reimbursement for damages based on the argument that the Commission lacks authority to award damages.

The Complainant's Answer to FirstEnergy's Preliminary Objection was due within ten days of the date of service of the Preliminary Objection. 52 Pa. Code § 5.101. The Complainant did not file an Answer to FirstEnergy's Preliminary Objection.

By Initial Call-In Telephonic Hearing Notice dated February 24, 2025, a telephonic hearing was scheduled for May 13, 2025, at 10:00 a.m., and the matter was assigned to me.

For the reasons set forth below, FirstEnergy's Preliminary Objection will be granted and any portion of the Complaint seeking damages will be stricken from the Complaint as impertinent matter. The hearing scheduled for May 13, 2025, shall proceed solely to address whether FirstEnergy provided reasonable service.

### DISCUSSION

Commission regulations permit the filing of preliminary objections. 52 Pa.Code §§ 5.101(a)(1)-(7). 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).

Commission regulations provide:

#### **§ 5.101. Preliminary objections.**

(a) *Grounds.* Preliminary objections are available to parties and may be filed in response to a pleading except motions and

prior preliminary objections. Preliminary objections must be accompanied by a notice to plead, must state specifically the legal and factual grounds relied upon and be limited to the following:

- (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.

52 Pa.Code § 5.101.

In deciding preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the complainant, recovery or relief is possible. *Dep't of Auditor General, et al v. SERS, et al.*, 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, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Employees' Retirement Bd.*, 690 A.2d 1312 (Pa. Cmwlth. 1997).

A preliminary objection can be granted only if recovery or relief is not possible after all of the Complainant's averments in the complaint are viewed as true for purposes of deciding the preliminary objection, using only those facts specifically admitted.

In the present case, as relief, the Complainant seeks the replacement of trees or reimbursement for their equivalent value. In its Preliminary Objection, the Respondent argues that the Commission lacks authority to award such damages and requests that these portions of the Complaint be dismissed.

As a creature of legislation, the Commission possesses only the authority the State Legislature has specifically granted to it in the Public Utility Code (the “Code”), 66 Pa. C.S. §§ 101, *et seq.* Its jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. *Feingold v. Bell of Pa.*, 383 A.2d 1191 (Pa. 1977); *Allegheny County Port Authority v. Pa. P.U.C.*, 237 A.2d 602 (Pa. 1967); *Behrend v. Bell of PA*, 390 A.2d 233 (Pa. Super. 1978); *Pa. Department of Highways v. Pa. P.U.C.*, 182 A.2d 267 (Pa. Super. 1962); *City of Erie v. Pa. Electric Co.*, 383 A.2d 575 (Pa. Cmwlt. 1978).

Nothing in the Code confers jurisdiction upon the Commission to award monetary damages. *See, DeFrancesco v. Western Pennsylvania Water Company*, 453 A.2d 595 (Pa. 1982); *Elkin v. Bell of Pa.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1977); *Poorbaugh v. Pa. PUC*, 666 A.2d 744 (Pa. Cmwlt. 1995).

However, while the Commission does not have jurisdiction to award damages, it does not follow that the Commission lacks jurisdiction to hear a complaint that seeks damages. If such a complaint alleges a violation of the Public Utility Code, and if the allegations are established by the evidence presented at a hearing, an Administrative Law Judge and the Commission might conclude that the utility violated 66 Pa. C.S. § 1501 by failing to provide safe and adequate service. Although the Commission would not be able to award damages, it may decide to impose a fine or other penalty upon the utility. *See Seidel v. Ralph G. Smith, Inc.*, 49 Pa. PUC 557, 1975 Pa. PUC LEXIS 7 (1975); *Robert Attianese and Michele Attianese v. Santoro Enterprises, Inc., t/d/b/a Thomas Gerrity Movers and Storage and Paul Arpin Van Lines, Inc.*, Docket Number A-00113019C0203 (October 14, 2003), Opinion and Order adopted March 4, 2004, entered March 11, 2004, 2004 Pa. PUC LEXIS 19.

Additionally, in a complaint against a public utility that seeks monetary damages arising from a failure to provide safe, adequate, reasonable, or efficient service, the Supreme Court has approved of a bifurcated procedure. In *De Francesco v. Western Pennsylvania Water Co.*, 453 A.2d 595 (Pa. 1982), the Supreme Court stated:

The question of the PUC's jurisdiction was before us recently in *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383, A.2d 791 (1977) and *Elkin v. Bell Telephone Co. of Pennsylvania*, 491 Pa. 123, 420 A.2d 371 (1980). In *Feingold*, we held that the courts of common pleas have original jurisdiction to hear suits against public utilities for damages arising from failure to provide adequate service. 477 Pa. at 10, 383 A.2d at 795. See also, *Elkin*, 491 Pa. at 130, 420 A.2d at 375. In *Elkin* we further defined the parameters of our holding in *Feingold*. *Elkin* involved an action challenging the adequacy of a complainant's telephone service, and this Court there approved of a bifurcated procedure for certain situations, whereby the issue of liability is decided initially by the PUC, after which the court of common pleas considers the issue of damages where appropriate. *Elkin*, 491 Pa. at 134, 420 A.2d at 377.

*De Francesco v. Western Pennsylvania Water Co.*, 453 A.2d 595 (Pa. 1982).

Thus, service issues are first decided by the Commission, and then a court of common pleas may consider the issue of damages. *DeFrancesco v. Western Pa. Water Co.*, 453 A.2d 595 (Pa. 1982). Consequently, the Commission retains jurisdiction to determine whether the Respondent rendered reasonable and adequate service to the Complainant.

Based on the foregoing, the Respondent's Preliminary Objection will be granted and any portion of the Complaint seeking damages and/or attorney fees will be stricken from the Complaint as impertinent matter under 52 Pa.Code § 5.101(a)(2). Accordingly, the hearing scheduled for May 13, 2025, shall proceed solely to address whether the Respondent provided reasonable service pursuant to 66 Pa. C.S. § 1501.

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by FirstEnergy Pennsylvania Electric Company, in the matter of Kevin Knapp v. FirstEnergy Pennsylvania Electric Company, at Docket No. C-2024-3052668, is sustained.

2. That any portion of the Complaint seeking damages is stricken from the Complaint as impertinent matter.

3. That the hearing scheduled for May 13, 2025, shall proceed solely to address whether FirstEnergy Pennsylvania Electric Company provided reasonable service to the Complainant.

Date: March 6, 2025

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/s/  
F. Joseph Brady  
Administrative Law Judge

**C-2024-3052668 - KEVIN KNAPP v. FIRSTENERGY PENNYSLVANIA ELECTRIC COMPANY**

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