

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Clarence Gottschall III & Tonya Shaner	:	
	:	
v.	:	C-2025-3054884
	:	
FirstEnergy Pennsylvania Electric Company	:	

**ORDER GRANTING PRELIMINARY OBJECTION OF  
FIRSTENERGY PENNSYLVANIA ELECTRIC COMPANY**

This Order grants the Preliminary Objection of FirstEnergy Pennsylvania Electric Company (“Respondent”) because the Pennsylvania Public Utility Commission (“Commission”) does not have the authority to award monetary damages as a remedy. Therefore, that portion of the Formal Complaint (“Complaint”) will be dismissed.

History of the Proceeding

On April 30, 2025, Clarence Gottschall III and Tonya Shaner (“Complainants”) filed a Complaint against Respondent and checked the box “other” as the reason for the Complaint. Complainants averred that Respondent came to repair electric lines, which resulted in Respondent damaging concrete connected to a waterfall/pond on the property while cutting down trees. (Complaint ¶ 4). As relief, Complainants request that Respondent pay to fix the damage. (Complaint ¶ 5).

On May 21, 2025, Respondent filed a timely Answer and a Preliminary Objection (“PO”). In its Answer, Respondent admitted to performing vegetation management work at the location but denied causing any damage to the pond. (Answer ¶ 4).

In its PO, Respondent argues that Complainants’ request for relief in the form of requesting that Respondent pay to fix alleged damage is a request for monetary damages.

Respondent argues that the portion of the Complaint pertaining to a request for monetary damages should be stricken as impertinent. Specifically, Respondent avers that under Section 5.101(a)(2) of the Commission's regulations, a request for damages constitutes impertinent matter which should be dismissed because the Commission does not have the authority to award monetary damages. *See*, 52 Pa. Code § 5.101(a)(2). The PO included a notice to plead that notified Complainants they had ten days to file a reply to the PO.

Complainants did not file a response or otherwise plead to the PO.

On June 20, 2025, the Commission issued an Initial Call-In Telephonic Hearing Notice and a Prehearing Order scheduling this matter for an evidentiary hearing on August 19, 2025 at 10:00 a.m.

Respondent's preliminary objection is now ready for disposition.

### Legal Standards

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 Transp. Intervenor v. Equitable Gas Co.*, Docket No. C-00935435 (Opinion and Order entered 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(a).

In deciding the preliminary objection, the Commission must determine whether, based on well-pleaded factual averments of the Complainant, recovery or relief is possible. *Dept. of Auditor Gen. v. State Emp's. Ret. Sys.*, 836 A.2d 1053 (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 PO. *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002). All the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the PO, and only those facts specifically admitted may be considered against the non-moving party. *Ridge v. State Emp's. Ret. Bd.*, 690 A.2d 1312 (Pa. Cmwlth. 1997). The POs can be granted only if recovery or relief is not possible after all the Complainant's averments in the complaint are viewed as true for purposes of deciding the PO, using only those facts specifically admitted. *Roc v. Flaherty*, 527 A.2d 211 (Pa. Cmwlth. 1985).

Therefore, the primary focus is on whether, based on well-pleaded factual averments of the Complainants, recovery or relief is possible. *Id.*

### Disposition

As a matter of law, to establish a legally sufficient claim, a complainant must show that the named utility company is responsible or accountable for the problem described in the complaint to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. P.U.C. 196 (1990). The

offense must be a violation of the Pennsylvania Public Utility Code (“Code”), a Commission regulation or order or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701. A finding of a violation of a Commission Order, regulation, or statute, by the public utility may result in the imposition of a civil penalty on the public utility company, consistent with 66 Pa.C.S. § 3301 or other provisions of the Code.

In this case, Complainants allege that Respondent damaged concrete that was part of a waterfall/pond while performing vegetation maintenance on their property. This allegation qualifies as a claim for reasonable service under 66 Pa.C.S. § 1501. As relief, Complainant requests that Respondent be made to pay to fix the concrete on the pond. Respondent’s PO asserts that the portion of the Complaint requesting repair or payment for repair is equivalent to a request for monetary damages and it should be summarily dismissed as impertinent matter under 52 Pa. Code § 5.101(a)(2) because the Commission lacks authority to award damages.

It is well-settled that the Commission lacks jurisdiction to award damages. *Elkin v. Bell of Pa.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1977). A finding, if any, that Respondent violated a Commission Order, regulation or statute, may result in the imposition of a civil penalty consistent with 66 Pa.C.S. § 3301 or other provision of the Code. Further, it should be noted that a penalty, if any, that is imposed on Respondent is payable to the Commonwealth of Pennsylvania, not the Complainants. However, a finding that Respondent violated a Commission Order, regulation or statute may potentially result in the Commission ordering Respondent to repair damage. *Williams v. Pittsburgh Water and Sewer Authority*, Docket No. C-2020-3019223 (Opinion and Order entered November 18, 2021). Thus, to the extent Complainants request that the Commission award monetary damages, such a claim may be appropriate for a Court of Common Pleas but is not pertinent to Commission

proceedings. *Snyder v. West Penn Power Company*, Docket No. C-2024-2451483, 2015 WL 1754585 (Pa.P.U.C.) (April 7, 2015).

Thus, Respondent's Preliminary Objection will be granted, Complainants' request for monetary damages will be stricken/dismissed and Complainants shall be precluded from introducing any evidence related to a monetary or compensatory claim for damages.

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by FirstEnergy Pennsylvania Electric Company at Docket No. C-2025-3054884, which argues that the Complainants' request for monetary damages be stricken/summarily dismissed from the Formal Complaint pursuant to 52 Pa. Code § 5.101(a)(2) is granted.
2. That the telephonic evidentiary hearing scheduled for August 19, 2025 at 10:00 a.m. on the claims raised by Complainants in the Formal Complaint at Docket No. C-2025-3054884 shall be held as scheduled.

Date: June 25, 2025

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/s/  
Chad L. Allensworth  
Administrative Law Judge

**C-2025-3054884 - CLARENCE GOTTSCHALL III AND TONYA SCHANER v.  
FIRSTENERGY PENNSYLVANIA ELECTRIC COMPANY**

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