

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kathleen J. Barnes	:	
	:	
v.	:	C-2025-3056373
	:	
FirstEnergy Pennsylvania Company	:	

ORDER
GRANTING PRELIMINARY OBJECTION

On July 18, 2025, Kathleen J. Barnes (“Ms. Barnes”) filed a Formal Complaint against FirstEnergy Pennsylvania Electric Company, Met-Ed Rate District (“FE PA”) with the Pennsylvania Public Utility Commission (“Commission”). In her Complaint, Ms. Barnes checked the box “Other” and alleged that FE PA is not properly maintaining its facilities by not trimming the trees around the lines. Complaint ¶ 4. For relief, Ms. Barnes requests FE PA replace her central air conditioning system and well pump as well as reimburse the cost of the electrician and HVAC technician service calls. Complaint ¶ 5.

On August 7, 2025, FE PA filed an Answer with New Matter to the Complaint. In its Answer, FE PA stated that on June 24, 2025, Complainant reported partial power at her residence. FE PA attempted to reach Complainant later that day regarding the inquiry with no success and on June 25, 2025, a damage claim was filed by Complainant seeking compensation for an HVAC/AC unit and well pump. On June 30, 2025, FE PA sent a denial letter to Complainant indicating that the incident affecting her property on June 24, 2025, was the result of a non-preventable, sudden and unforeseeable failure of equipment/broken cutout that may have been caused by voltage variations and an outage in her area. In addition, FA PA argued that it is not required to provide

customers with an uninterruptible power supply and does not accept responsibility for damages or losses by sudden and unforeseen occurrences that are out of the company's control. Answer ¶ 4. *See Tariff Rule 21. Electric Pa P.U.C. No. 1*

Further, FE PA averred the vegetation maintenance on Circuit 00090-3 is performed on a 4-year cycle and the vegetation maintenance was completed in 2021 and will be completed in 2025. Additionally, two trees were identified for removal in August 2025 and neither tree posed an imminent threat or evidence of mechanical strain causing no obstruction or clearance issue at the Complainant's residence. Answer ¶ 4.

In its New Matter, FE PA asserted that to the extent that Ms. Barnes seeks an award of damages against FE PA for her claim to replace her central air conditioning system and well pump, such relief is beyond the power of the Commission to order. FE PA concluded its Answer with New Matter by requesting dismissal of the Complaint with prejudice or denied in its entirety.

Also on August 7, 2025, FE PA filed a Preliminary Objection to the Complaint. In its Preliminary Objection, FE PA seeks dismissal of the Complaint's claims for damages, pursuant to 52 Pa. Code § 5.101(a)(1), arguing that the Commission lacks authority to award damages. In this case, FE PA's Preliminary Objection failed to include a Notice to Plead, which advised Complainant that she had ten (10) days from the date of service to answer the Preliminary Objection. 52 Pa. Code § 5.101(b). As of the date of this Order, Ms. Barnes has not filed an answer to FE PA's Preliminary Objection. However, the lack of the Notice to Plead does not change the outcome of the Order.

On August 19, 2025, the Commission issued a Motion Judge Assignment Notice, assigning me as Presiding Officer over this proceeding.

FE PA's Preliminary Objection is procedurally ready to be ruled upon. For the reasons discussed below, the Preliminary Objection will be granted.

DISCUSSION

FE PA in this matter filed a Preliminary Objection to the Formal Complaint. The Commission's regulations provide that preliminary objections are available to parties and may be filed in response to a pleading. 52 Pa. Code § 5.101(a). The grounds for preliminary objections are limited to those set forth 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.

52 Pa. Code § 5.101(a).

Commission procedure regarding the disposition of preliminary objections is similar to the procedure utilized in Pennsylvania civil practice. A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. *Pennsylvania State Lodge, Fraternal Order of Police v. Dept. of Conservation & Natural Resources*, 909 A.2d 413 (Pa. Cmwlth. 2006), *aff'd*, 592 Pa. 304, 924 A.2d 1203 (2007).

The Commission may not rely upon the factual assertions of the moving party but must accept as true for purposes of disposing of the motion all well pleaded, material facts of the nonmoving party, as well as every inference from those facts. *County of Allegheny v. Commonwealth of Pennsylvania*, 490 A. 2d 402 (Pa. 1985); *Commonwealth of Pennsylvania v. Bell Telephone Co. of Pa.*, 551 A.2d 602 (Pa. Cmwlth. 1988). The Commission must view the complaint in this case in the light most favorable to the Complainant and should dismiss the complaint only if it appears that the Complainant would not be entitled to relief under any circumstances as a matter of law. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994). FE PA asserts that the Commission does not have jurisdiction over damages claims pursuant to 52 Pa. Code § 5.101(a)(1) and the Complainant's request for damages is an "impertinent matter" pursuant to 52 Pa. Code § 5.101(a)(2). The law supports the position of FE PA.

The Commission, as a creation of the General Assembly, has only the powers and authority granted to it by the General Assembly contained in the Public Utility Code. *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937 (Opinion and Order entered May 28, 2008); *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977). (Pa. 1993). 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). The Commission cannot award the reimbursement sought by Ms. Barnes here. *See Morrow v. Bell Telephone Co. of Pa.*, 330 Pa.Super. 276, 479 A.2d 548 (1984); *West Penn Power Co. v. Pa. Pub. Util. Comm'n*, 104 Pa.Cmwlth. 21, 521 A.2d 75 (1987); *Ostrov v. I.F.T., Inc.*, 402 Pa.Super. 87, 586 A.2d 409 (1991). A request for monetary damages must be pursued before a Magisterial District Justice or a Court of Common Pleas.

Given that the Commission does not have power to award monetary damages jurisdiction over damages claims, the Preliminary Objection will be granted, and the portions of the Complaint seeking monetary damages will be dismissed. This

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ELECTRIC COMPANY**

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