

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael Sell	:	
	:	
v.	:	C-2025-3057580
	:	
FirstEnergy Pennsylvania Electric Company	:	

**INTERIM ORDER
GRANTING IN PART AND DENYING IN PART
RESPONDENT’S PRELIMINARY OBJECTIONS**

On September 22, 2025, Michael Sell (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against FirstEnergy Pennsylvania Electric Company (Respondent or FirstEnergy) using the Formal Complaint form. Regarding the reason for the Complaint, he indicated he was having a reliability, safety, or quality problem with his utility service. He also checked the “Other” box, writing, in part, as follows:

On July 29, 2025, my home dropped its neutral (grounding). I was home and immediately called the electrician after I was shocked on a handle. Of note, at this time my wife was days away from delivering our second child, and I had a 5-year-old in the house.

Electrician came within 60 minutes and determined that it was a West Penn Power problem and that it was a serious situation. While placing his hand on the backup generator, he was also shocked in a violent manner...

Damages: Approximately \$40,000 in monetary damages (full list available at request) from this incident. Unavoidable emotional distress about what could have happened to our 5-year-old or pregnant wife, from all of us. Physical shock to myself and electrician...

Complaint ¶ 4. As relief, the Complainant indicated he wanted “reimbursement for damages and time and suffering.” Complaint ¶ 5.

On October 14, 2025, Respondent filed an Answer to the Complaint. In its Answer, Respondent denied there is a reliability or quality problem with Complainant’s electric service. Respondent asserted that on July 29, 2025, a voltage problem was reported by Complainant’s electrician. Respondent stated its technician responded to the service address and found the direct bury underground cable had suddenly failed. Respondent further indicated that power was temporarily restored, and the underground service entrance cable was replaced on August 15, 2025. Respondent averred that Complainant was provided with adequate and reasonable service and denied that Complainant is entitled to the relief requested. Respondent requested the Complaint be dismissed with prejudice or denied. Alternatively, Respondent requested the matter be referred to the Office of Administrative Law Judge’s Mediation Unit.

Also on October 14, 2025, Respondent filed Preliminary Objections. In the Preliminary Objections, Respondent stated that Complainant seeks monetary damages, and an award of monetary damages is impermissible under the law. Respondent asked that the request for monetary damages be stricken from the Complaint for lack of subject matter jurisdiction. Respondent further requested that Complainant be prohibited from introducing testimony or exhibits at any evidentiary hearing regarding alleged damages. Respondent’s Preliminary Objections included a Notice to Plead pursuant to 52 Pa. Code §5.63.

On November 14, 2025, the Commission issued a Motion Judge Assignment assigning this matter to me for resolution of the Preliminary Objections.

It is now appropriate to rule on the Preliminary Objections.

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 as follows:

§ 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 a 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, 1108 (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, 707 (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, 1314 (Pa.Cmwlth. 1997).

A preliminary objection can be granted only if recovery or relief is not possible after all of 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, Respondent asserts that the Commission lacks jurisdiction regarding Complainant's request for damages. Respondent requests that the Preliminary Objections be granted, that the Commission strike Complainant's request for damages and that any introduction by Complainant of evidence regarding alleged damages is prohibited.

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, 375 (Pa. 1980); *Feingold v. Bell of Pa.*, 383 A.2d 791, 794 (Pa. 1978) (*Feingold*); *see Nagy v. Bell Tel Co. of PA.*, 436 A.2d 701, 704 (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.

Complainant seeks approximately \$40,000 in monetary damages in relation to an equipment failure and a shock he reports he sustained in his home as a result. Complaint ¶ 4. Complainant requests "reimbursement for damages and time and suffering." Complaint ¶ 5.

The undersigned simply does not have authority to award monetary damages to a complainant regardless of the circumstances. Respondent's Preliminary Objections are therefore granted with regard to Complainant's request for monetary damages. Complainant's request for monetary damages is struck from the Complaint.

Although Complainant requested relief in the form of monetary damages, he also made allegations of reliability, safety, or quality issues with his utility service. Therefore, while Respondent's Preliminary Objections regarding the portion of the Complaint that requests damages are granted, the remainder of the Complaint still must be addressed. The remaining claims raised in the Complaint are appropriate to move forward at this stage of the litigation, and this matter will be referred to the Mediation Unit as requested.

Respondent requested Complainant be prohibited from presenting evidence "regarding alleged damages" at any evidentiary hearing. While the Commission does not have jurisdiction to award monetary damages, a blanket prohibition against certain evidence is premature at this juncture. However, Respondent is not precluded from raising objections in the future in an evidentiary hearing, and any objections will be ruled on by the presiding officer.

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objections filed by FirstEnergy against the Formal Complaint filed by Michael Sell at Docket Number C-2025-3057580 are granted, insofar as the requests for monetary damages and reimbursements in the Formal Complaint are struck from the Complaint.

2. That FirstEnergy Pennsylvania Electric Company's request to exclude evidence "regarding alleged damages" is denied at this juncture.

3. That the matter shall be referred to the Mediation Unit for further action.

Date: November 20, 2025

_____/s/
Ann Quimby
Administrative Law Judge

C-2025-3057580 - MICHAEL SELL v. FIRSTENERGY PENNSYLVANIA ELECTRIC COMPANY

MICHAEL SELL
737 EKASTOWN ROAD
SARVER PA 16055
412.877.7070

mhsell@gmail.com

Served via eService - **Served 11/20/2025**

MARGARET A MORRIS ESQUIRE
REGER RIZZO & DARNALL LLP
CIRA CENTRE 13TH FL
2929 ARCH STREET
PHILADELPHIA PA 19104

215.495.6524

215.870.5785

mmorris@regerlaw.com

Served via eService - **Served 11/20/2025**

(Counsel for FirstEnergy Pennsylvania Electric Company)