

April 8, 2026

**Via Electronic Filing**

Mathew Homsher, Esquire  
Secretary  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: Docket No. C-2026-3061165  
Nicholas Pociask v. FirstEnergy Pennsylvania Electric Company  
Preliminary Objection of FE PA (West Penn Rate District)**

Dear Secretary Homsher:

Attached for filing is the Preliminary Objection of FirstEnergy Pennsylvania Electric Company (West Penn Rate District) to the Complaint of Nicholas Pociask (Complainant) in the above-referenced proceeding.

A copy of the Preliminary Objection has been provided to Complainant's Counsel in the manner indicated on the attached Certificate of Service.

If there are any questions, please do not hesitate to contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

MAM/co  
Enclosures

cc: Tori Giesler, Esquire, FirstEnergy Service Company [w/encls.]  
Samantha K. Smith, Esquire [w/encls.]

**Re: Docket No. C-2026-3061165  
Nicholas Pociask v. FirstEnergy Pennsylvania Electric Company  
Preliminary Objection of FE PA (West Penn Rate District)**

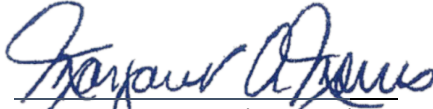
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served upon the following person(s), in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

**Via Electronic Mail**

Samantha K. Smith, Esquire  
[ssmith@morellabencsics.com](mailto:ssmith@morellabencsics.com)

Dated: April 8, 2026

  
Margaret A. Morris, Esquire

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

NICHOLAS POCIASK	:	
	:	
v.	:	Docket No. C-2026-3061165
	:	
FIRSTENERGY PENNSYLVANIA	:	
ELECTRIC COMPANY	:	

**NOTICE TO PLEAD**

Pursuant to 52 Pa. Code § 5.63, you are hereby notified that if you do not file a written response answering the enclosed Preliminary Objection of FirstEnergy Pennsylvania Electric Company within ten (10) days from service of this notice, the facts set forth by FirstEnergy Pennsylvania Electric Company in the Preliminary Objection may be deemed to be true, whereby requiring no other proof. All pleadings, such as a Reply to Preliminary Objection, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for FirstEnergy Pennsylvania Electric Company, Margaret A. Morris, Esq., and where applicable, the Administrative Law Judge presiding over the issue.

**File by Mail or e-filing with:**

Matthew Homsher, Esquire  
Secretary  
Pennsylvania Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**With a copy to:**

Margaret A. Morris, Esquire  
Reger Rizzo & Darnall LLP  
Cira Centre, 13<sup>th</sup> Floor  
2929 Arch Street  
Philadelphia, PA 19104  
[mmorris@regerlaw.com](mailto:mmorris@regerlaw.com)

Date: April 8, 2026



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*Counsel for FirstEnergy Pennsylvania Electric  
Company (West Penn Rate District)*

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

NICHOLAS POCIASK :  
 :  
 v. : Docket No. C-2026-3061165  
 :  
 FIRSTENERGY PENNSYLVANIA :  
 ELECTRIC COMPANY :

**PRELIMINARY OBJECTION OF FIRSTENERGY PENNSYLVANIA ELECTRIC  
COMPANY TO THE COMPLAINT OF NICHOLAS POCIASK**

FirstEnergy Pennsylvania Electric Company, West Penn Rate District, (Respondent or Company), by and through its attorneys, Reger Rizzo & Darnall LLP, pursuant to 52 Pa. Code § 5.101, hereby files its Preliminary Objection to the Formal Complaint of Nicholas Pociask (Complainant) filed in the above-captioned proceeding.

The Respondent avers that the subject of the Formal Complaint is beyond the jurisdiction of the Pennsylvania Public Utility Commission (Commission) who is without authorization to grant the Complainant’s request for damages. The Formal Complaint includes an impertinent matter in its requested relief. Therefore, the Company requests that this Preliminary Objection be granted and that the Commission: (1) grant its Preliminary Objection and strike the Complainant’s requests for monetary damages; (2) expressly prohibit the Complainant from introducing any testimony or exhibits at any evidentiary hearing regarding alleged damages; and (3) grant the Company such other relief as may be just and reasonable under the circumstances.

In support of its preliminary objection, the Respondent states as follows:

## **I. Procedural Background**

1. The Company is an electric distribution company certificated as a public utility permitted to operate within the Commonwealth in Pennsylvania and provides residential electric service in the Complainant's name to 2070 Constitution Blvd., McKeesport, Pennsylvania (Service Location) under Account No. 100111523401 (Account).

2. On March 19, 2026, the Complainant filed a Formal Complaint averring that the Company had removed trees at the Service Location and requests damages in the amount of \$90,000.00. Complaint at ¶ 5.

3. In its Answer and New Matter being served contemporaneously with this Preliminary Objection, the Respondent denied that the Company's actions were unlawful and the performed vegetation maintenance was consistent with the three recorded rights-of-way (ROWs) which cross the Complainant's property. The Respondent specifically 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 tariff, the Pennsylvania Public Utility Code (Code), Commission regulations and orders.

4. Pursuant to 52 Pa. Code § 5.101, the Company objects to the Formal Complaint on the grounds that the Commission lacks jurisdiction to award monetary damages. The Complainant requests monetary damages, in the amount of \$90,000.00. Complaint at ¶ 5.

## **II. Argument**

5. The Commission's Rules of Practice and Procedure permit parties to file preliminary objections. The grounds for preliminary objections are limited to those set forth in 52 Pa. Code § 5.101(a) 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.

6. Commission's procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994).

7. The Complainant requests reimbursement in the amount of \$90,000.00 for the removal of the alleged damaged and replacement of his trees.

8. Clearly, that requested relief sought through the Formal Complaint is an award of monetary damages from the Company

A. Impertinent Matter

9. The Commission's procedural regulations allow a party to object to pleadings that fail to comply with the rules of administrative practice or that include scandalous or impertinent matters. *See* 52 Pa. Code § 5.102(a)(2).

10. 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); see *Nagy v. Bell Tel. Co. of PA.*, 436 A.2d 701 (Pa. Super. 1981).

11. 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 such 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.

12. The Court of Common Pleas retains original jurisdiction over suits for monetary damages. *Behrend, supra*.

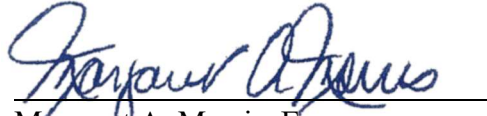
13. A prayer for damages, which are not legally recoverable in the cause of action, is “impertinent matter” in the sense that it is irrelevant to that cause of action and is correctly challenged through a motion to strike the requested relief as impertinent matter. *Third Avenue Realty Limited Partners v. Pennsylvania-American Water Co.*, Docket No. C-2010-2167286 (Final Order entered September 30, 2010) (citing *Hudock v. Donegal Mut. Ins. Co.*, 264 A.2d 668 (Pa. 1970)).

14. The Complainant’s requested relief for monetary damages is irrelevant to the instant cause of action and therefore an “impertinent matter.”

15. Therefore, in accordance with Pennsylvania law, this Commission does not have the power to award monetary damages and the Complainant’s request for money damages is an impertinent matter that must be stricken within the use and meaning of Commission regulation at 52 Pa. Code § 5.101(a)(2).

**WHEREFORE**, Respondent, FirstEnergy Pennsylvania Electric Company, respectfully requests that the relief for monetary damages be stricken from the Formal Complaint filed by Nicholas Pociask for lack of subject matter jurisdiction.

Respectfully submitted,



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Date: April 8, 2026

*Counsel for FirstEnergy Pennsylvania Electric  
Company (West Penn Rate District)*