

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Merritt Bishop	:	
	:	
v.	:	C-2026-3060053
	:	
FirstEnergy Pennsylvania Electric Company	:	

INTERIM ORDER ON RESPONDENT’S PRELIMINARY OBJECTION

On January 27, 2026, Merritt Bishop (“Complainant”) filed a Formal Complaint (“Complaint”) against FirstEnergy Pennsylvania Electric Company (“FirstEnergy,” “FE,” “the Company” or “Respondent”) with the Pennsylvania Public Utility Commission (“Commission”). In this Complaint, Complainant avers that on December 19, 2025, a tree fell on the electrical service lines for his home as well as four or five neighboring homes. According to the Complainant, service lines from the pole to these homes lie on the ground or on people's porches and within reach of people, children and pets. In addition, his home and that of a neighbor have a broken neutral on the service line from the pole to the house. Complainant explains that the Company refused to remove the fallen trees and claimed that the downed lines are cable and communication lines.

As relief, the Complainant requests that the Company repair his service line and compensate him for the \$3,500 spent on a private tree service. In addition, Complainant requests that the Commission assess a fine against the Company “for not dealing with this unsafe condition in a timely manner.” Complaint ¶ 5.

On February 17, 2026, the Respondent filed an Answer with New Matter along with a Notice to Plead.

Also on February 17, 2026, the Respondent filed a Preliminary Objection to the Complaint arguing that the Commission lacks jurisdiction to award monetary damages and requesting that the Commission: (1) grant its Preliminary Objections 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. The Respondent's Preliminary Objection was endorsed with a Notice to Plead, advising the Complainant that he had 10 days to file a written answer to the objection.¹ The Complainant did not file a response to FE's Preliminary Objection.

By Motion Judge Assignment Notice dated March 18, 2026, FE's Preliminary Objection was assigned to me for disposition.

For the reasons set forth below, FE's Preliminary Objection will be granted in part, and the portion of the Complainant's Complaint seeking damages will be stricken from the Complaint as impertinent matter. In addition, the Company's Preliminary Objection is denied in part, to the extent it requests that Merritt Bishop be prohibited from introducing any testimony or exhibits regarding alleged damages at any evidentiary hearing. The matter will be set for an evidentiary hearing to address whether FE provided reasonable, safe and adequate service to the Complainant.

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).

¹ 52 Pa.Code § 5.101(f)(1) provides that "[a]n answer to a preliminary objection may be filed within 10 days of date of service."

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 Complainants, recovery or relief is possible. *Dep't of Auditor General, et al v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa.Cmwlt. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa.Cmwlt. 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.Cmwlt. 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.Cmwlt. 1997).

A preliminary objection can be granted only if recovery or relief is not possible after all of the Complainants' 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, the Complainant alleges that on December 19, 2025, a tree fell on the electrical service lines serving his home as well as four or five others neighboring homes. According to the Complainant, service lines from the pole to these homes lie on the ground or on people's porches and within reach of people, children and pets. In addition, his home and that of a neighbor have a broken neutral on the service line from the pole to the house. Complainant explains that the Company refused to remove the fallen trees and claimed that the downed lines are cable and communication lines. As relief, the Complainant requests that the Company repair his service line and compensate him for the \$3,500 spent on a private tree service. In addition, Complainant requests that the Commission assess a fine against the Company “for not dealing with this unsafe condition in a timely manner.” Complaint ¶ 5.

In response, the Respondent denied any wrongdoing related to the issues experienced by the Complainant at the Service Location. In its Preliminary Objection, the Respondent argues that the Commission lacks jurisdiction to award monetary damages and requests that the Commission: (1) grant its Preliminary Objections 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.

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.Cmwlth. 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.Cmwlth. 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.

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). The Commission clearly has jurisdiction to determine whether the Respondent rendered reasonable and adequate service to the Complainant.

Although the Complainant requested relief in the form of monetary damages, he also requested that the Commission assess a fine against the Company “for not dealing with this unsafe condition in a timely manner.” Furthermore, Complainant alleged that the Respondent’s service caused the problems they experienced, namely, the downed service lines and the broken neutral in the service lines. Therefore, I shall grant the Respondent’s Preliminary Objection, in part, and deny it, in part. More specifically, FE’s Preliminary Objection will be granted to the extent that Complainant’s requests for monetary damages will be stricken as impertinent matter. However, FE’s Preliminary Objection will be denied to the extent it requests that the Complainant be prohibited from introducing any testimony or exhibits regarding alleged damages at any evidentiary hearing. I find that testimony and exhibits regarding the alleged damages are relevant in a proceeding involving alleged violations of the Public Utility Code. See, 52 Pa. Code § 69.1201. The matter will be set for an evidentiary hearing to address whether FE provided reasonable, safe and adequate service to the Complainant.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by FirstEnergy Pennsylvania Electric Company in the matter of Merritt Bishop v. FirstEnergy Pennsylvania Electric Company at Docket No. C-2026-3060053 is granted, in part, and denied, in part.

2. That FirstEnergy Pennsylvania Electric Company's Preliminary Objection is granted to the extent that Merritt Bishop's request for monetary damages is stricken from the Complaint as impertinent matter.

3. That FirstEnergy Pennsylvania Electric Company's Preliminary Objection is denied to the extent it requests that Merritt Bishop be prohibited from introducing any testimony or exhibits regarding alleged damages at any evidentiary hearing.

4. That this matter shall be set for a hearing to address whether FirstEnergy Pennsylvania Electric Company provided reasonable, safe and adequate service to Merritt Bishop.

Date: April 28, 2026

/s/
Eranda Vero
Administrative Law Judge

C-2026-3060053 - MERRITT BISHOP v. FIRSTENERGY PENNSYLVANIA ELECTRIC COMPANY

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