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April 29, 2026

Via Electronic Filing

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

Re: Daniel Brudy v. Consolidated Communications of Pennsylvania Company, LLC d/b/a
Fidium; Docket No. C-2026-3061372

Dear Secretary Homsher:

Enclosed for electronic filing please find the Preliminary Objections of Consolidated Communications of Pennsylvania Company, LLC d/b/a Fidium, with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

Bryce R. Beard
Bryce R. Beard

BRB/red
Enclosure

cc: Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of Consolidated Communications of Pennsylvania Company, LLC d/b/a Fidium **Preliminary Objections** upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email

Daniel Brudy
5801 State Road
Gibsonia, PA 15044
dbrudy@zoominternet.net

Date: April 29, 2026

/s/ Bryce R. Beard

Bryce R. Beard, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Daniel Brudy,	:	
Complainant,	:	
	:	
v.	:	Docket No. C-2026-3061372
	:	
Consolidated Communications of	:	
Pennsylvania Company, LLC d/b/a Fidium,	:	
Respondent.	:	

NOTICE TO PLEAD

To: Daniel Brudy
5801 State Road
Gibsonia, PA 15044
dbrudy@zoominternet.net

You are hereby notified that a reply to the **Preliminary Objections** of Consolidated Communications of Pennsylvania Company, LLC d/b/a Fidium must be filed within 10 days of the date of service. All pleadings, such as a reply to Preliminary Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission with a copy served to counsel for Consolidated Communications of Pennsylvania Company, LLC d/b/a Fidium, and, where applicable, the Administrative Law Judge (“ALJ”) presiding over this proceeding.

File with:

Matthew Homsher, Secretary
Pennsylvania Public Utility
Commission
400 North Street
Harrisburg, PA 17120
<https://efiling.puc.pa.gov/Login>

With a copy to:

Bryce R. Beard, Esquire
Stephen M. Pemberton, Esquire
Eckert Seamans Cherin & Mellott, LLC
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Bryce R. Beard, Esquire

*Counsel for Consolidated Communications of
Pennsylvania Company, LLC d/b/a Fidium*

Date: April 29, 2026

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Daniel Brudy,	:	
Complainant,	:	
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v.	:	Docket No. C-2026-3061372
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Pennsylvania Company, LLC d/b/a	:	
Fidium,	:	
	:	
Respondent.		

**CONSOLIDATED COMMUNICATIONS OF
PENNSYLVANIA COMPANY, LLC D/B/A FIDIUM'S
PRELIMINARY OBJECTION *NUNC PRO TUNC* TO
COMPLAINT**

Pursuant to 52 Pa. Code § 5.101, Consolidated Communications of Pennsylvania Company, LLC d/b/a Fidium (“Fidium”) submits the following Preliminary Objections *nunc pro tunc* to the Complaint of Daniel Brudy (“Complainant” or “Mr. Brudy”). Pursuant to 52 Pa. Code §§ 5.61, 5.62, Fidium is also filing an Answer and New Matter to the Complaint.

As discussed in Fidium’s Answer and New Matter, this complaint involves Fidium’s replacement of utility poles along Bakerstown Road which Fidium completed at the request of Duquesne Light Company in February 2020. As discussed in Fidium’s New Matter, the location of the pole was required due to the safety of underground natural gas facilities. Fidium has explained this to Mr. Brudy repeatedly. Ultimately, as discussed herein, Fidium has no responsibility or authority to relocate or pay for the relocation of his private electric service connection, which Duquesne Light Company has advised Mr. Brudy is his responsibility. It is also not Fidium’s responsibility to ensure Mr. Brudy’s private property is in compliance with Duquesne Light Company’s service standards to receive electric service.

As discussed herein, the subject matter and relief requested by Mr. Brudy is, as a matter of fact and law, beyond the Commission's jurisdiction. Mr. Brudy's entire complaint involves matters of property law, tort, damages, and warranties that do not fall within the Public Utility Code or the Commission's regulations. As such, his complaint must be dismissed.

In support of these Preliminary Objections, Fidium avers as follows:

I. PRELIMINARY OBJECTIONS

A. Applicable Legal Standards

1. The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections. 52 Pa. Code § 5.101(a).

2. Under Section 5.101(a) of the Commission's regulations, 52 Pa. Code § 5.101(a)(1)–(7), preliminary objections must specifically state 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; and
- (7) Standing of a party to participate in the proceeding.

3. The moving party may not rely on its own factual assertions but must accept for the purposes of disposition of the preliminary objection, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts.¹ However, the Commission

¹ *Cty. of Allegheny v. Commw. of Pa.*, 490 A.2d 402 (Pa. 1985).

need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations or expressions of opinion.²

4. In deciding the preliminary objections, the Commission must determine whether, based on the well-pleaded factual averments of the party, recovery or relief is possible.³

B. Dismissal Based on Lack of Commission Jurisdiction over the Complaint, 52 Pa. Code § 5.101(a)(1) – The relief sought in the Complaint cannot be granted under the Public Utility Code or Commission regulation.

5. Mr. Brudy’s complaint seeks relief related to property, tort, warranty and damages - all of which are matters outside the Commission’s jurisdiction. None of his requested remedies fall within the Commission’s authority to grant relief.

6. As a matter of law and fact, Fidium is not responsible for maintaining, moving, or reinstalling Mr. Brudy’s private electric service drop. Nor is Duquesne Light Company required to do so. In-fact, Mr. Brudy is responsible for the maintenance of his own property and must comply with Duquesne Light Company’s service terms and conditions in order to continue to receive electric public utility service from Duquesne Light Company.

7. Additionally, to the extent Mr. Brudy is requesting compensation or damages for the payment of relocating his private service connections in the utility right of way, such matters of property law are not within the Commission’s jurisdiction.⁴

² *Stanton-Negley Drug Co. v. Dep’t of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Commw. Ct. 2007).

³ *Dept. of Auditor General, et al. v. SERS, et al.*, 836 A.2d 1053, 1064 (Pa. Commw. Ct. 2003); *P.J.S. v. Pa. State Ethics Comm’n*, 669 A.2d 1105 (Pa. Commw. Ct. 1996).

⁴ In *Fairview Water Co. v. Pa. Pub. Util. Comm’n*, 502 A.2d 162 (Pa. 1985), the Pennsylvania Supreme Court held that the Commission does not have jurisdiction to determine the scope and validity of an easement. Various Commission decisions reiterate this principle. See *Lasko v. Windstream PA, LLC*, Docket No. C-2010-2217869 (Final Order dated Apr. 1, 2011); *Perrige v. Metro. Edison Co.*, Docket No. C00004110 (Order entered July 3, 2003); *Fiorillo v. PECO Energy Co.*, Docket No. C-00971088 (Order entered Sept. 15, 1999); *Baker and Blume v. SPLP*, Docket No. C-2020-3022169 (Initial Decision entered Dec. 8, 2020), at 10–11.

8. As each of these matters are beyond the Commission’s jurisdiction, granting preliminary objections when there is no reason for going to hearing conserves valuable administrative resources and promotes judicial economy.

C. Dismissal Based on Legal Insufficiency of a pleading of the Complaint, 52 Pa. Code § 5.101(a)(4).

9. Mr. Brudy’s complaint is legally insufficient because it fails to state any law or regulation for which the complaint is based and fails to set forth a valid cause of action against under the Public Utility Code, Commission’s regulations, or any Commission order.

10. As stated above, Mr. Brudy asks the Commission to Order Fidium to “move [his] existing underground service to the new pole to put [him] back into compliance [with Duquesne Light Company’s terms and service requirements].” Complaint at 5.

11. It is fundamental that the Commission lacks the statutory authority to hear claims on or award damages for such items.⁵ Pennsylvania law has long held that damages are a question for the trial courts.⁶ The Commission has consistently dismissed claims for alleged monetary damages and compensation for lack of jurisdiction.⁷ Here, that is exactly what Mr. Brudy seeks – for Fidium to be ordered to pay for the alleged damages he suffered or will suffer from the need to relocate his private service drop.

12. Additionally, the Commission has no jurisdiction or authority to require Fidium to guarantee the serviceability or quality of an unrelated utility service, here electric service provided by Duquesne Light Company. There exists no provision in the Public Utility Code to

⁵ *Byer v. Peoples Nat. Gas Co.*, 380 A.2d 383 (Pa. Super. Ct. 1977); *Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1977); *DeFrancesco v. W. Pa. Water Co.*, 453 A.2d 595 (Pa. 1982); *Elkin v. Bell of Pa.*, 420 A.2d 371 (Pa. 1980).

⁶ *See Miller Oral Surgery, Inc. v. Dinello*, 611 A.2d 232 (Pa. Super. Ct. 1992) (finding award of lost profits as damages); *see also Delahanty v. First Pa. Bank, N.A.*, 464 A.2d 1243, 1261 (Pa. Super. Ct. 1983).

⁷ *See e.g. Carlson v. Equitable Gas Co.*, Docket No. C-20078025, (Opinion and Order entered June 10, 2008) (holding that complainant’s claims of lost income, property damage, and mental stress were “monetary damages” that the Commission lacks authority to award (*citing DeFrancesco*, 453 A.2d 595)).

support granting this relief or requiring Fidium, a telecommunication carrier, to upgrade, work on, move, or manipulate electric service facilities Mr. Brudy privately owns in order to receive continued service from Duquesne Light Company.

13. The Pennsylvania courts have explained that, while permissive, the test for a demurrer calls upon the Court to carefully scrutinize the adequacy of the plaintiff's pleading:

In ruling on a demurrer, the court may consider only such matters as arise out of the complaint itself; it cannot supply a fact missing in the complaint.

Where the complaint fails to set forth a valid cause of action, a preliminary objection in the nature of a demurrer is properly sustained. *Lerner v. Lerner*, 954 A.2d 1229, 1234–35 (Pa. Super. 2008) (emphasis in original) (internal citations omitted).

When analyzing a demurrer, the court “need not consider the pleader’s conclusions of law, unwarranted inferences from facts, opinions, or argumentative allegations.” *Wiernik v. PHH U.S. Mortg. Corp.*, 736 A.2d 616, 619 (Pa. Super. 1999), *appeal denied*, 561 Pa. 700, 751 A.2d 193 (2000). To determine if the trial court properly sustained preliminary objections, this Court examines the averments in the complaint and the documents attached to the complaint to evaluate the adequacy of the facts averred and to assess the legal sufficiency of the complaint. *Clemleddy Const., Inc. v. Yorston*, 810 A.2d 693, 696 (Pa. Super. 2002), *appeal denied*, 573 Pa. 682, 823 A.2d 143 (2003)...“Where the complaint fails to set forth a valid cause of action, a preliminary objection in the nature of a demurrer is properly sustained.” [*Soto v. Nabisco, Inc.*, 32 A.3d 787, 790 (Pa. Super. 2011)].

Am. Express Bank, FSB v. Martin, 200 A.3d 87, 93 (Pa. Super. Ct. 2018).

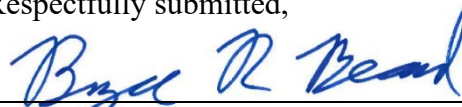
14. Complainant fails to set forth a cause of action against Fidium based on sufficient facts to adequately explain the nature of the claims as they relate to the Public Utility Code or the Commission’s regulations. Without such causes of action set forth based on the Public Utility Code and the Commission’s Regulations, the Complaint is legally insufficient.

15. Granting preliminary objections on legally insufficient claims when there is no reason for going to hearing conserves valuable administrative resources and promotes judicial economy. No reason exists for going to hearing when the Commission lacks jurisdiction to order Fidium to repair, replace, or compensate Mr. Brudy for the relocation of his private electric service connection or “bring [such connections] back into compliance” with Duquesne Light Company’s standards. Accordingly, the Complaint should be dismissed.

CONCLUSION

WHEREFORE, Consolidated Communications of Pennsylvania Company, LLC d/b/a Fidium, respectfully requests that the Commission: (a) grant these Preliminary Objections so as to dismiss the Complaint against Consolidated Communications of Pennsylvania Company, LLC d/b/a Fidium; and (b) grant any other relief deemed appropriate.

Respectfully submitted,



Bryce R. Beard, Esquire (I.D. 325837)
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Date: April 29, 2026

*Counsel Consolidated Communications of
Pennsylvania Company, LLC d/b/a Fidium*

Verification

I, Sarah Davis, am the Vice President Market Development for Consolidated Communications of Pennsylvania Company, LLC d/b/a Fidium and I hereby state that the facts set forth in the foregoing **Preliminary Objections** are true and correct to the best of my knowledge, information and belief and that I expect Fidium to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: April 29, 2026

/s/ Sarah Davis
Sarah Davis
Vice President Market Development
Consolidated Communications of Pennsylvania
Company, LLC d/b/a Fidium