

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nicholas Pociask	:	
	:	
v.	:	C-2026-3061165
	:	
FirstEnergy Pennsylvania Electric Co.	:	

**INTERIM ORDER
GRANTING RESPONDENT’S PRELIMINARY OBJECTION**

On March 17, 2026, Nicholas Pociask (Mr. Pociask or Complainant), through counsel, filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against First Energy Pennsylvania Electric Company (FirstEnergy or Respondent) using the Formal Complaint form. Regarding the reason for the Complaint, Mr. Pociask checked the “Other” box, indicating as follows:

In May 2025, Mr. Pociask received [*sic*] notice from FirstEnergy Corp. that tree branches on his property would be cut in October or November of 2025. On August 6, 2025, a tree company acting at the direction of WestPenn Power entered Mr. Pociask’s properties and side trimmed multiple pine, maple, and peach trees in a manner that has left them severely disfigured and likely to die. It is clear that the tree cutting which occurred on August 6, 2025 went beyond the scope of what was required in order for WestPenn Power to replace the poles and wires which are located on or near the properties.

Complaint ¶ 4. Regarding how he wants the Complaint to be resolved, Complainant indicated he “demands payment in the amount of \$90,000” which includes the costs to remove and replace damaged trees. Complaint ¶ 5. Mr. Pociask asserted in his Complaint that he wanted to receive documents from the Commission via eFiling. Complaint ¶ 9.

On April 8, 2026, Respondent filed a Preliminary Objection and Answer to the Complaint and New Matter. In its Answer, Respondent admitted it performed vegetation management consistent with recorded rights-of-way which cross Complainant's property. Answer ¶ 4. Respondent averred that at all times its actions were reasonable and lawful. *Id.* Respondent requested that the Complaint be dismissed with prejudice or denied in its entirety. Alternatively, Respondent requested that the matter be referred to the Mediation Unit of the Office of Administrative Law Judge.

In its Preliminary Objection, Respondent averred Complainant seeks monetary damages, and that the Commission does not have jurisdiction to award damages. Preliminary Objection ¶¶ 8 and 10. Respondent requested that the Commission sustain the Preliminary Objection and strike the request for monetary damages from the Complaint due to a lack of subject matter jurisdiction. Respondent's Preliminary Objection included a Notice to Plead.

On April 20, 2026, Complainant filed an Answer to the Preliminary Objection, asserting that the Preliminary Objection contains legal conclusions to which no response is required, and denying the allegations to the extent responses are required.

On April 27, 2026, the Commission issued a Motion Judge Assignment assigning this matter to me for resolution of the Preliminary Objection.

On April 28, 2026, Complainant filed an Answer to New Matter, asserting that the New Matter contains legal conclusions and denying Respondent's allegations. Complainant requested judgment be entered against Respondent. Alternatively, Complainant requested the matter be referred to the Mediation Unit of the Office of Administrative Law Judge.

It is now appropriate to rule on the Preliminary Objection.

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 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 over Complainant's request for monetary damages. 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 monetary compensation in the amount of \$90,000. Based on the foregoing, Respondent's Preliminary Objection is granted with regard to Complainant's request for monetary damages. Complainant's request for monetary damages is struck from the Complaint.

This matter will be referred to the Mediation Unit.

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by FirstEnergy Pennsylvania Electric Company is granted, and the requests for monetary damages in the Formal Complaint filed by Nicholas Pociask at Docket Number C-2026-3061165 are struck from the Complaint.
2. That the matter shall be referred to the Mediation Unit for further action.

Date: May 11, 2026

Ann Quimby
Administrative Law Judge

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