

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lexington Land Developers Corporation	:	
	:	
v.	:	C-2024-3052541
	:	
FirstEnergy Pennsylvania Electric Company	:	

PREHEARING ORDER #2
*Granting in Part and Denying in Part
Complainant’s Motion for Sanctions*

On December 16, 2024, Lexington Land Developers Corporation (Lexington or Complainant) filed a Formal Complaint against FirstEnergy Pennsylvania Electric Company – Met-Ed Rate District (FE PA or Respondent), alleging that Lexington cannot get electric from FE PA for a development project. As relief, Lexington requests that the Commission order FE PA provide a date when the ILS study will be completed; when the plans will be completed; and when installation will be completed. If FE PA cannot provide these dates, Lexington requests that FE PA sell off territory to another provider that is able to provide electric service in a timely manner.

On January 6, 2025, FE PA filed an Answer and New Matter. FE PA’s New Matter included a notice to plead. FE PA denied it has not timely processed Complainant’s request for new service. In its New Matter, FE PA requested that this matter be referred to the Office of Administrative Law Judge’s Mediation Unit (OALJ Mediation Unit).

On January 22, 2025, Lexington filed a Reply to New Matter. In its Reply, Lexington agreed with the request that this matter be referred to the OALJ Mediation Unit.

On January 30, 2025, an Interim Order Setting Resolution Conference was issued.

On October 24, 2025, Lexington filed an Amended Formal Complaint. The Amended Formal Complaint was served on FE PA on October 28, 2025. Lexington states that it is in the process of developing Morgan's Crossing, a residential community within FE PA's service territory that, when built out, will consist of more than 100 homes in Carlisle, PA. Lexington avers that FE PA issued an initial load study estimating costs in excess of \$270,000 and informed Lexington that, as a precondition of extending a supply line and alleged system changes or improvements engendered by the request to serve Morgan's Crossing, Lexington must bear all of FE PA's costs; all land developers requesting service to developments within FE PA's service territory must bear all of FE PA's costs associated with a line extension and alleged upgrades to FE PA's system; and FE PA has no obligation to incur any costs of the line extension and alleged system changes. Lexington avers that FE PA's attempt to shift all costs of line extensions and system upgrades to Lexington is unlawful, unreasonable, and discriminatory in violation of the Public Utility Code (Code) and the Commission's regulations. As relief, Lexington requests that the Commission issue a declaratory order that FE PA's actions violated the Code and Commission regulations, and impose civil penalties.

On November 17, 2025, FE PA filed an Answer to Lexington's Amended Formal Complaint. FE PA denied that it violated the Code, Commission regulations or its Commission-approved tariff regarding the request of Complainant for new underground service to its development. FE PA also denied that its tariff violates the Code or Commission regulations.

On December 5, 2025, the Commission issued a Telephonic Prehearing Conference Notice, setting this proceeding for a Prehearing Conference on January 30, 2026 at 10:00 a.m. Also on December 5, 2025, and in accordance with the provisions of 66 Pa.C.S. §333 and 52 Pa. Code §§5.221-5.223, a Prehearing Conference Order was issued outlining various procedural matters to be addressed at the Prehearing Conference scheduled for January 30, 2026.

On January 16, 2026, Lexington issued a Notice of Deposition of James B. Ensminger. No objections to the Notice of Deposition were received.

On January 27, 2026, parties submitted prehearing memoranda outlining their respective positions on various procedural matters. The Prehearing Conference convened on January 30, 2026, as scheduled. George A. Bibikos, Esquire, appeared for Lexington, and Margaret A. Morris, Esquire, appeared for FE PA.

On February 2, 2026, I issued a Scheduling Order, setting forth the procedural matters addressed during the Prehearing Conference.

On February 25, 2026, Lexington and FE PA filed a Joint Motion for Protective Order.

On February 27, 2026, I issued a Protective Order.

On April 27, 2026, Lexington filed a Combined Motion to Compel Responses to Discovery Requests and For Sanctions (Combined Motion).

On May 7, 2026, I issued Prehearing Order # 1, granting in part and denying in part Lexington's Combined Motion.

On May 13, 2026, Lexington filed a Motion for Sanctions (Sanctions Motion).

On May 19, 2026, FE PA filed an Answer to the Sanctions Motion.

DISCUSSION

52 Pa. Code §§ 5.321-5.372 governs discovery before the Commission. 52 Pa. Code §§ 5.371-5.372 provides for sanctions under certain circumstances. The general provisions for sanctions provide, in relevant part:

(a) The Commission or the presiding officer may, on motion, make an appropriate order if one of the following occurs:

(1) A party fails to appear, answer, file sufficient answers, file objections, make a designation or otherwise respond to discovery requests, as required under this subchapter.

(2) A party deponent or an officer or managing agent of a party refuses to obey or induces another to refuse to obey an order of a presiding officer respecting discovery, or induces another not to appear.

(b) A motion for sanctions may be answered within 5 days of service or, in the alternative, the motion may be answered orally at a hearing if a timely hearing has been scheduled within the same 5-day period.

(c) The presiding officer will rule on the motion as soon as practicable. The motion should be decided within 20 days of its presentation.

52 Pa. Code § 5.371(a)-(c).

Further, Commission regulations provide for the following types of sanctions:

(a) The presiding officer, when acting under § 5.371 (relating to sanctions—general) may make one of the following:

(1) An order that the matters regarding which the questions were asked, the character or description of the thing or land, the contents of the paper, or other designated fact shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order.

(2) An order refusing to allow the disobedient party to support or oppose designated claims or defenses, or prohibiting the party from introducing in evidence designated documents, things or testimony.

(3) An order striking out pleadings or parts thereof, staying further proceedings until the order is obeyed, or entering a judgment against the disobedient party or individual advising the disobedience.

(4) An order with regard to the failure to make discovery as is just.

(b) In addition to the sanctions described in subsection (a), in rate proceedings, when a party fails to answer discovery requests on the date due, the presiding officer may issue an order that the hearing schedule be modified, that the deadline for the filing of other parties' written testimony be extended, or that provides other relief that will allow the other parties a sufficient and reasonable opportunity to prepare their cases.

(c) A witness whose identity has not been revealed as provided in this chapter will not be permitted to testify on behalf of the defaulting party at hearing on the action. If the failure to disclose the identity of the witness is the result of extenuating circumstances beyond the control of the defaulting party, the presiding officer may grant a continuance or other appropriate relief.

52 Pa. Code § 5.372.

Section 5.483 of the Commission's regulations provides presiding officers with the authority to regulate the course of proceedings. 52 Pa.Code § 5.483(a). Presiding officers are required to conduct fair and impartial hearings and maintain order. 52 Pa.Code § 5.485(a).

In Prehearing Order # 1, I ordered FE PA to answer Lexington's Interrogatories Nos. 7, 8, 9, 10, 11, 12, 13, 19, 26, 33 and Request for Production of Documents Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 22, 23, 24, 25, 26, 27, 28, 29 by no later than May 11, 2026.

Lexington's Sanctions Motion avers that FE PA did not provide any responses by May 11, 2026. In its Sanctions Motions, Lexington argues that (1) the Presiding Officer should order that all the facts identified in the Amended Formal Complaint and Discovery Requests be taken as established in Lexington's favor for all purposes in this matter as a result of FE PA's pattern of misconduct and misrepresentation (including to the Presiding Officer) that has caused Lexington prejudice and prevented Lexington from proceeding with its case; (2) the Presiding Officer should strike FE PA's defenses and refuse to allow FE PA as the disobedient party to support any defenses to Lexington's claims; and (3) the Presiding Officer would be well within

his right to enter judgment against FE PA and in favor of Lexington to resolve this case because FE PA has demonstrated repeated bad faith, including backing out of a settlement; a repeated indifference to the Commission's regulations; misrepresentations to Lexington and the Presiding Officer; and now a blatant disregard for the Presiding Officer's order compelling discovery responses. Sanctions Motion, ¶¶ 17-19.

Lexington further avers that, assuming the Presiding Officer does not enter judgment against FE PA or the case otherwise proceeds, the Presiding Officer should suspend the current schedule and order a status conference to discuss new case-management deadlines because FE PA's misrepresentations (including to the Presiding Officer) and ensuing delays have caused significant prejudice to Lexington, including the need to cancel an in-person deposition scheduled for May 13, 2026, and will prevent Lexington from complying with other case-management deadlines, including direct testimony by June 4, 2026. Sanctions Motion, ¶¶ 20.

FE PA filed its Answer to the Sanctions Motion on May 19, 2026. Before discussing the substance of FE PA's Answer, I first note that FE PA's Answer was filed late. FE PA's Answer to the Sanctions Motion was due on May 18, 2026. 52 Pa. Code § 5.371(b). Counsel for FE PA's paralegal contacted the undersigned and counsel for Lexington at 4:45 p.m. on May 18, 2026, to state that counsel for FE PA is in jury duty, and that the Answer would be submitted to the Commission on May 18, 2026, via overnight mail. Consistent with the discussion below regarding the standards for *nunc pro tunc* relief, I do not believe jury duty is an extraordinary circumstance outside of counsel's control to validly excuse late-filing of its Answer. However, even had FE PA's Answer been timely filed, I do not find any merit in its explanation why FE PA did not comply with Prehearing Order # 1. Therefore, I will discuss FE PA's Answer to provide context to my decision to grant in part and deny in part Lexington's Sanction Motion.

FE PA's Answer to the Sanctions Motions avers that, due to an administrative oversight, Prehearing Order # 1 went unseen by counsel for FE PA until after the May 11, 2026 due date had passed. Answer, ¶ 8. FE PA further avers that, on May 15, 2026, FE PA submitted full and complete answers to Complainant's discovery requests. Answer, ¶ 10. FE PA argues

that the relief requested by Lexington in its Sanctions Motion is punitive and overreaching. FE PA states that the lack of compliance with Prehearing Order # 1 was not done intentionally or in bad faith, and that the outstanding discovery was submitted on May 15, 2026. Answer, ¶ 12. FE PA agrees that the Motion to Compel is moot, and a status conference should be scheduled to determine what changes, if any, should be made to the litigation schedule. Answer, ¶¶ 13-14.

I agree with Lexington that sanctions are clearly merited in this instance.

Comparing the present situation with a request for *nunc pro tunc* relief, the Commission has summarized its standards for allowing filings after their due dates as follows:

Generally, *nunc pro tunc* relief is granted when a delay in filing a document is caused by extraordinary circumstances involving fraud or a breakdown in the operations of the court or administrative agency involved. See *Gloria Scarnati v. Pennsylvania-American Water Company*, Docket No. C-00015273 (Order entered January 10, 2002); 2002 WL 963419 (Pa. P.U.C.), citing *Cook v. Unemployment Comp. Bd. of Review*, 543 Pa. 381, 671 A.2d 1130 (1996) – addressing untimely filing of administrative appeal. Additionally, such relief may be granted when a delay in filing a document is caused by an unforeseeable and unavoidable event, but only if the document is, thereafter, filed as soon as possible and the opposing party is not thereby prejudiced. *Id. also, White Haven Borough v. Reading, Blue Mountain and Northern Railroad Company*, Docket No. C-00004204 (Order entered February 8, 2002); 2002 WL 34560328 (Pa. P.U.C.).

Knox Township v. Buffalo & Pittsburgh Railroad, Inc., Docket No. C-2019-3009358 (Order entered April 20, 2023).

I do not find that administrative oversight is a valid excuse for failing to comply with Prehearing Order # 1. An administrative oversight is not an extraordinary circumstance, and such oversight was only within FE PA's control. Additionally, such oversight clearly prejudices Lexington by further delaying Lexington's litigation preparation.¹

¹ Counsel for FE PA did send the undersigned and counsel for Lexington an e-mail on May 14, 2026, stating that failure to comply with Prehearing Order # 1 was due to an administrative oversight, and that responses to discovery would be served by the end of the day on May 14, 2026. However, this e-mail only served to

Although I agree sanctions are merited, I disagree in part with Lexington regarding what type of sanctions are merited. Specifically, at this time, I decline to order that all the facts identified in the Amended Formal Complaint and Discovery Requests be taken as established in Lexington's favor; strike FE PA's defenses and refuse to allow FE PA to support any defenses to Lexington's claims; and enter judgment against FE PA and in favor of Lexington. I agree with Lexington that I am conceivably empowered to take these actions. However, I do not believe that the cumulative circumstances in this proceeding are yet so extreme to merit these determinative actions. FE PA asserts it has produced the discovery required by Prehearing Order # 1 and it is my strong preference that this case be decided on its merits. Even if I were to grant Lexington's Sanctions Motion in full, that would not guarantee Lexington would receive the relief it seeks. Lexington has the burden of proof in this proceeding, and I am uncertain that accepting the facts as averred by Lexington would constitute substantial evidence, or that the Commission would agree that, at this time, granting the Sanctions Motion in full is merited without further opportunity to develop the record. However, again, I am conceivably empowered to provide the relief requested, and future circumstances could arise where it is necessary to re-examine whether the full type of sanctions sought by Lexington are merited.

I do agree with Lexington that the current procedural schedule should be suspended and a conference should be scheduled to set new litigation deadlines. Therefore, the Sanctions Motion will be granted in part, and a further prehearing conference will be scheduled to discuss establishment of new litigation deadlines. Additionally, parties should be prepared to discuss any outstanding discovery matters at this conference.

informally notify the undersigned and counsel for Lexington of the assertions later raised in its Answer. I also note that, as stated in FE PA's Answer, discovery responses were served on May 15, not May 14.

**C-2024-3052541 - LEXINGTON LAND DEVELOPERS CORP v. FIRSTENERGY
PENNSYLVANIA ELECTRIC COMPANY**

Revised February 27, 2026

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