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May 9, 2013

VIA UPS OVERNIGHT DELIVERY

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

RECEIVED

MAY 9 2013

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU


Re: Jerry Cass v. Pennsylvania Electric Company
Docket No. C-2013-2358512

Dear Secretary Chiavetta:

On behalf of Pennsylvania Electric Company, I have enclosed for filing the Preliminary Objections of Pennsylvania Electric Company to the Formal Complaint of Jerry Cass in the above-captioned matter.

Copies have been served on all parties as indicated in the attached certificate of service.

Very truly yours,



Brian C. Wauhop

BCW/tlg
Enclosures
cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JERRY CASS

v.

PENNSYLVANIA ELECTRIC COMPANY

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:
:
:
:

Docket No. C-2013-2358512

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MAY 9 2013

NOTICE TO PLEAD

TO: Jerry Cass
4376 Depot Road
Erie, Pennsylvania 16510

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Pursuant to 52 Pa. Code § 5.101(b), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Preliminary Objections of Pennsylvania Electric Company to the Formal Complaint of Jerry Cass within **ten (10) days** from service of this Notice, the facts set forth by Pennsylvania Electric Company in the Preliminary Objections may be deemed to be true, thereby requiring no other proof. All pleadings, such as a Reply to Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for Pennsylvania Electric Company, and where applicable, the Administrative Law Judge presiding over the case.

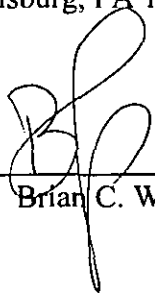
File with:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

With a copy to:

Brian C. Wauhop
Buchanan Ingersoll & Rooney, PC
409 North Second Street
Suite 500
Harrisburg, PA 17101

Dated: May 9, 2013



Brian C. Wauhop, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JERRY CASS	:	
	:	
v.	:	Docket No. C-2013-2358512
	:	
PENNSYLVANIA ELECTRIC COMPANY	:	

**PRELIMINARY OBJECTION OF PENNSYLVANIA ELECTRIC COMPANY
TO THE COMPLAINT OF JERRY CASS**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, Pennsylvania Electric Company (“Penelec” or the “Company”), by and through its counsel, Brian C. Wauhop, Alan Michael Seltzer, and Buchanan Ingersoll & Rooney PC, files this Preliminary Objection pursuant to Section 5.101(a)(2) of this Commission’s regulations, 52 Pa. Code § 5.101(a), and in support thereof, avers as follows:

I. Introduction

1. In his recently filed Formal Complaint, Jerry Cass (“Complainant”) alleges that the Company intends to charge him for extending and providing electric service to five lots he plans to develop in a certain residential subdivision he planned to build along Backus Road in Harbor Creek Township (“Subdivision”). (Compl. ¶ 4(A)(1).) Among other things, the Complainant demands Penelec be directed to pay his attorney fees. (*Id.* ¶ 5.)

2. As explained in greater detail below, the Commission does not have the power or legal authority to recompense alleged losses not associated with electric service rates. The power to award compensatory damages, whether related to attorney’s fees or to the alleged value of the Complainant’s time spent litigating his dispute, is outside the purview of the Commission’s scope of jurisdiction and instead lies within the jurisdiction of the Court of

Common Pleas. As a result, the Company requests that this Preliminary Objection be granted and that the Commission (i) strike all allegations in the Formal Complaint regarding attorney fees; and (ii) grant the Company any other relief as may be just and reasonable under the circumstances.

II. Background

3. Penelec is an electric distribution company that is certificated as a public utility in Pennsylvania.

4. On or about April 12, 2013, the Complainant filed a Formal Complaint with the Commission against Penelec at the above-captioned docket requesting that Penelec be directed to award him attorney fees and other compensation. (Compl. ¶ 5.)

5. On or about April 19, 2013, the Formal Complaint was served on Penelec via electronic mail.

6. Penelec is timely filing its Answer and New Matter contemporaneously with this Preliminary Objection.

III. Argument

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

8. 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.

A. Preliminary Objection Regarding Impertinent Matter Pursuant to 52 Pa. Code § 5.101(a)(2).

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. In paragraph 5 of the Formal Complaint, the Complainant demands the following: ". . . Payment of my attorney fees . . . Compensation for my time involved with this matter." (Compl. ¶ 5.) Clearly, the Formal Complaint is seeking compensation for attorney fees and other monetary relief.

11. It is well-established in the courts of this Commonwealth that legal fees are not generally recoverable except where permitted by statute or other recognized exception to this general rule. *Corace v. Balint*, 210 A.2d 882, 886-86, 418 Pa. 262, 271 (1965); *Becker v. Borough of Schuylkill Haven*, 189 A.2d 764, 767 (Pa. Super. Ct. 1963). The Commission does not have jurisdiction to award attorney fees and costs. *Third Avenue Realty Limited Partners v. Pennsylvania-American Water Company*, Docket No. C-2010-2167286 (Final Order entered September 30, 2010).

12. 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).

13. 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.

14. 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*, supra (citing *Hudock v. Donegal Mut. Ins. Co.*, 264 A.2d 668 (Pa. 1970)).

15. Applied here, the Complainant is asking the Commission to direct Penelec to pay Complainant’s attorney fees. The Commission does not have authority or jurisdiction to order Penelec to pay attorney fees or costs to the Complainant. *Third Avenue Realty*, supra. Similarly, the Complainant’s request for “compensation” for his “time involved with this matter” is a request for compensatory damages. The Commission does not have the power to award such damages. *Feingold*, supra.

16. Therefore, in accordance with Pennsylvania law, this Commission does not have the power to award attorney fees or costs, and the Complainant’s request for attorney fees is an impertinent matter that must be stricken.

IV. Conclusion

WHEREFORE, for the foregoing reasons, Pennsylvania Electric Company respectfully requests that the Commission: (1) grant its Preliminary Objection and strike the Complainant's request for money damages; and (2) grant the Company such other relief as may be just and reasonable under the circumstances.

Respectfully submitted,



Dated: May 9, 2013

Brian C. Wauhop, Esquire
Alan Michael Seltzer, Esquire
Buchanan Ingersoll & Rooney P.C.
409 North Second Street, Suite 500
Harrisburg, PA 17101-1357
(717) 237-4975

Attorneys for
Pennsylvania Electric Company

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BEFORE THE
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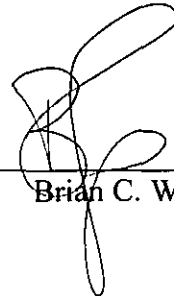
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

Via First Class Mail

Jerry Cass
4376 Depot Road
Erie, PA 16510

Dated this 9th day of May, 2013.



Brian C. Wauhop, Esq.

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MAY 9 2013

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SECRETARY'S BUREAU