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November 25, 2013

VIA E-FILING

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

Re: John R. Joseph v. West Penn Power Company
Docket No. C-2013-2391046

Dear Secretary Chiavetta:

On behalf of West Penn Power Company, I have enclosed for electronic filing the Preliminary Objections of West Penn Power Company to the Formal Complaint of John R. Joseph 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
Enclosure
cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JOHN R. JOSEPH

v.

WEST PENN POWERCOMPANY

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Docket No. C-2013-2391046

NOTICE TO PLEAD

TO: John R. Joseph
47 Heritage Hills Road
Uniontown, Pennsylvania 15401

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 West Penn Power Company to the Formal Complaint of John R. Joseph within **ten (10) days** from service of this Notice, the facts set forth by West Penn Power 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 West Penn Power 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: November 25, 2013



Brian C. Wauhop, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JOHN R. JOSEPH

v.

WEST PENN POWER COMPANY

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Docket No. C-2013-2391046

**PRELIMINARY OBJECTION OF WEST PENN POWER COMPANY
TO THE COMPLAINT OF JOHN R. JOSEPH**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, West Penn Power Company (“West Penn” 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 Sections 5.101(a)(2) of the Pennsylvania Public Utility Commission (“Commission”) regulations, 52 Pa. Code § 5.101(a), and in support thereof, avers as follows:

I. Introduction

1. In his recently filed Formal Complaint, John R. Joseph (“Complainant”) alleges he sustained damage to his property located at 47 Heritage Hills Road, Uniontown, Pennsylvania, 15401 (“Service Location”). (Compl. ¶ 4.) The Complainant demands West Penn compensate him for the value of his property he claims was destroyed due to a “surge” that allegedly occurred on July 4, 2013. (*Id.* ¶ 5.)

2. As explained in greater detail below, the Commission does not have the power and legal authority to award money damages. 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 money damages; (ii) prohibit the Complainant from introducing at hearing

any evidence purporting to address money damages, and (iii) grant the Company any other relief as may be just and reasonable under the circumstances.

II. Background

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

4. On or about October 15, 2013, the Complainant filed a Formal Complaint with the Commission against West Penn at the above-captioned docket requesting that West Penn compensate him for the cost of household appliances he alleges were damaged by a power “surge.” (Compl. ¶¶ 4(B)(1).)

5. On or about November 4, 2013, the Formal Complaint was served on West Penn via electronic mail.

6. West Penn 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.

8. The Commission may dismiss a complaint without hearing if it determines that a hearing is not necessary or in the public interest. 66 Pa.C.S. § 703(b); 25 Pa. Code § 5.21(d).

9. While the Commission generally refrains from dismissing complaints filed by *pro se* complainants without allowing them an opportunity to develop an evidentiary record, an administrative law judge has the discretion to dismiss a complaint on preliminary motion if that dismissal is neither arbitrary nor capricious, and is otherwise in accordance with the law. *Guesman v. Columbia Gas of Pennsylvania, Inc.*, Docket No. C-2012-2326301 (Final Order entered January 4, 2013) (citing *Graham v. Philadelphia Suburban Water Company and Bell-Atlantic Pennsylvania, Inc.*, Docket No. C-00957557 (Order entered June 12, 1996).

10. 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).

11. In paragraph 5 of the Formal Complaint, the Complainant demands the following: "full restitution for expenses and any other compensation due to inconvenience my wife and I incurred . . . Total: \$1,477.45." (Compl. ¶ 5.) Clearly, the Formal Complaint is seeking monetary damages from the Company for the value of property the Complainant alleges was damaged at the Service Location.

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 Limited Partners v. Pennsylvania-American Water Co.*, Docket No. C-2010-2167286 (Final Order entered September 30, 2010) (citing *Hudock v. Donegal Mut. Ins. Co.*, 264 A.2d 668 (Pa. 1970)).

15. Therefore, in accordance with Pennsylvania law, this Commission does not have the power to award monetary damages, and the Complainant’s request for money damages is an impertinent matter that must be stricken.

IV. Conclusion

WHEREFORE, for the foregoing reasons, West Penn Power Company respectfully requests that the Commission: (1) grant its Preliminary Objection and strike the Complainant's request for money damages; (2) expressly prohibit the Complainant from introducing any testimony or exhibits at the evidentiary hearing regarding any alleged damages; and (3) grant the Company such other relief as may be just and reasonable under the circumstances.

Respectfully submitted,



Dated: November 25, 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
Metropolitan Edison Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JOHN R. JOSEPH

v.

WEST PENN POWER COMPANY

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Docket No. C-2013-2391046

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

John R. Joseph
47 Heritage Hills Road
Uniontown, Pennsylvania 15401

Dated this 25th day of November, 2013.



Brian C. Wauhop, Esq.