

December 9, 2013

Via Electronic Filing

Rosemary Chiavetta, Esquire
Secretary
PA Public Utility Commission
Commonwealth Keystone Building, 2 North
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Docket No. C-2013-2393169
Jason T. Perry v. West Penn Power
Preliminary Objections of West Penn Power Company**

Dear Secretary Chiavetta:


Enclosed for filing is the Preliminary Objections of West Penn Power Company to the Complaint filed by Jason T. Perry in the above captioned proceeding. **Please note that Respondent requests this matter be sent to OALJ, Mediation Unit.**

A copy of the Preliminary Objections has been provided to the Complainant in the manner indicated on the attached Certificate of Service.

If there are any questions, please do not hesitate to contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

MAM/jmm
Enclosure

cc: Jason T. Perry [w/enc.]
John L. Munsch, Esquire, FirstEnergy Service Company [w/enc.]
OALJ, Mediation Unit [w/enc.]

Docket No. C-2013-2393169
Jason T. Perry v. West Penn Power
Preliminary Objections of West Penn Power Company

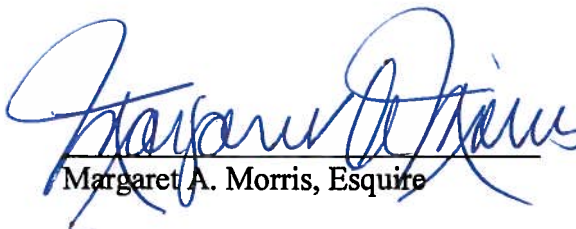
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following person, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

Via First Class and E-Mail

Jason T. Perry
416 W. New Castle Street
Apt. 1
Butler, PA 16001
Perryjason04@yahoo.com

Dated: December 9, 2013


Margaret A. Morris, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JASON T. PERRY

v.

WEST PENN POWER COMPANY

:
:
:
:
:

Docket No. C-2013-2393169

NOTICE TO PLEAD

Pursuant to 52 Pa.Code § 5.63, you are hereby notified that if you do not file a written response answering the enclosed Preliminary Objections of West Penn Power Company 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, whereby requiring no other proof. 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 West Penn Power Company, Margaret A. Morris, Esq., and where applicable, the Administrative Law Judge presiding over the issue.

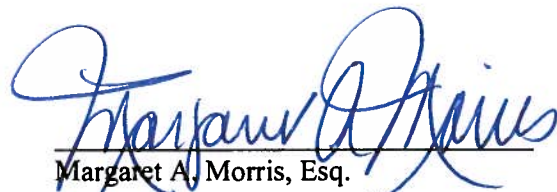
File with:

Rosemary Chiavetta, Esq.
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building – 2 North
P.O. Box 3265
Harrisburg, PA 17105

With a copy to:

Margaret A. Morris, Esq.
Reger Rizzo & Darnall LLP
Cira Centre, 13th Floor
2929 Arch Street
Philadelphia, PA 19104

Date: December 9, 2013



Margaret A. Morris, Esq.
Reger Rizzo & Darnall LLP
Cira Centre, 13th Floor
2929 Arch Street
Philadelphia, PA 19104
(215) 495-6524 tel.
(215) 495-6600 fax
mmorris@regerlaw.com

Counsel for West Penn Power Company

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JASON T. PERRY :
 :
 v. : Docket No. C-2013-2393169
 :
 WEST PENN POWER COMPANY :

PRELIMINARY OBJECTIONS OF WEST PENN POWER COMPANY

West Penn Power Company (Respondent or Company), by and through its attorneys, Reger Rizzo & Darnall LLP, pursuant to 52 Pa. Code § 5.101, hereby submits its Preliminary Objections to Formal Complaint filed by Jason T. Perry (Complainant). In response thereto, Respondent avers and represents as follows:

1. On November 18, 2013 the Complainant filed a Formal Complaint seeking, *inter alia*, access to another customer's account and damages for charges paid under both his account and the other customer's name because there was a shared meter situation. The Complainant alleges he is not responsible for any charge while there was a shared meter situation. A copy of the Formal Complaint is provided as Attachment 1.

2. The Complainant was not the ratepayer of record or an authorized contact while service was in the name of Brittaney Barrerra. Service was established in the Complainant's name on June 5, 2012.

Standing

3. The Complainant seeks an audit of the account in his name and that of Ms. Barerra. The Complainant is not authorized on Ms. Barerra's account; the fact that he may have resided at the Service Location does not give him "rights" to Ms. Barerra's account information. The Complainant has not demonstrated any immediate interest in this matter that justifies standing to initiate or prosecute this Formal Complaint predicated upon the request for a full or partial refund of an electric service bill from Ms. Barerra's account. As such, the Complainant does not have standing to bring an action against the Company as he does not have demonstrated any interest in the matter that is substantial, direct and immediate.

4. In order to bring a complaint before a tribunal, a complainant must first demonstrate that she/he has standing to maintain the action. Nye v. Erie Insurance Exchange, 470 A.2d 98, 100 (Pa. 1983). Standing requires that a party have an interest in the matter that is substantial, direct and immediate. William Penn Parking Garage, Inc., et al. v. City of Pittsburgh, 346 A.2d 269 (Pa. 1975). These criteria are defined as follows:

A 'substantial' interest is an interest in the outcome of the litigation which surpasses the common interest of all citizens in procuring obedience to the law. A 'direct' interest requires a showing that the matter complained of caused harm to the party's interest. An 'immediate' interest involves the nature of the causal connection between the action complained of and the injury to the party challenging it and is shown where the interest the party seeks to protect is within the zone of interests sought to be protected by the statute or the constitutional guarantee in question.

George v. Pa. PUC, 735 A.2d 1282, 1286 (Pa. Cmwlt. 1999). The standard set by William Penn Parking Garage for standing is applicable to the Commission cases. *See*, Courier Express, Inc. v. F.L. Shaffer Co., Inc., Order entered August 30, 1990 at Docket No. C-892462.

Subject Matter Jurisdiction

5. The Complainant is also seeking damages to reimburse him for payments made on his account and the account of Ms. Barerra for the period that the shared meter existed; he alleges these charges are “frivolous/illegal.”

6. As a creature of legislation, the Commission possesses only the authority the State Legislature has specifically granted to it in the Public Utility Code (the Code), 66 Pa.C.S. §§ 101, *et seq.*

7. The Commission’s jurisdiction must arise from the express language of the pertinent enabling legislation or by strong and necessary implication therefrom. Feingold v. Bell of Pa., 477 Pa. 1, 383 A.2d 791 (1977); Allegheny County Port Authority v. Pa. P.U.C., 427 Pa. 562, 237 A.2d 602 (1967); Behrend v. Bell of Pa., 257 Pa. Superior Ct. 35, 390 A.2d 233 (1978); Harrisburg Taxicab & Baggage Co. v. Pa. P.U.C., 786 A.2d 288 (Pa. Cmwlt. 2001); and City of Erie v. Pa. Electric Co., 383 A.2d 575 (Pa. Cmwlt. 1978).

8. Parties to an action may not confer jurisdiction upon a tribunal where none exists. Roberts v. Martorano, 427 Pa. 581, 235 A.2d 602 (1967).

9. A challenge to subject matter jurisdiction is never waived; this jurisdictional question may be raised at any stage of the judicial process. Commonwealth v. Atlantic & Gulf Coast Stevedores, Inc., 422 Pa. 442, 221 A.2d 128 (1966).

10. The mere fact that a party to an action qualifies as a regulated utility does not automatically confer subject matter jurisdiction upon the Commission. DeFrancesco v. Western Pennsylvania Water Co., 499 Pa. 374, 453 A.2d 595 (1982).

11. As directed by Section 501 of the Code, 66 Pa.C.S. § 501, the Commission must “enforce, execute and carry out, by its regulations, orders or otherwise” all the provisions of the Code.

12. Section 701 of the Code, 66 Pa.C.S. § 701, allows any person, having an interest in the subject matter, to file a formal complaint in writing with the Commission setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the Commission has jurisdiction to administer. *See also*, 52 Pa. Code § 5.21(a).

13. The Code does not confer jurisdiction upon the Commission to award monetary damages. The Commission possesses no jurisdiction to consider any implied

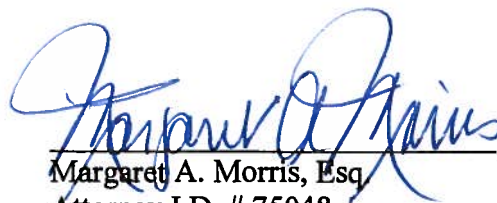
request for reimbursement for damages. *See, DeFrancesco v. Western Pennsylvania Water Company, supra; Elkin v. Bell of Pa.*, 491 Pa. 123, 420 A.2d 371 (1980); *Feingold v. Bell of Pa., supra.*

14. Issues between a tenant and a landlord are not within the Commission's jurisdiction but the Court of Common Pleas. *Ace Check Cashing, Inc. v. Philadelphia Gas Works*, Docket No. C-2008-2056428, Opinion and Order entered May 21, 2010.

WHEREFORE, Respondent, West Penn Power Company, respectfully requests that the Formal Complaint of Jason T. Perry, which seeks access to another customer's account information, be dismissed for lack of standing and the request for reimbursement for payment made on his account and the account of another customer as a result of the shared meter be dismissed for lack of subject matter jurisdiction.

Respectfully submitted,

Dated: December 9, 2013



Margaret A. Morris, Esq.
Attorney I.D. # 75048
Cira Centre, 13th Floor
2929 Arch Street
Philadelphia, PA 19104
(215) 495-6524 (voice)
(215) 495-6600 (fax)
mmorris@regerlaw.com

Counsel for West Penn Power Company

Pennsylvania Public Utility Commission;
Re: Jason Perry v. West Penn Power Company; Docket No. C-2013-2393169

VERIFICATION

Pamela T. Jordan states that she is Advanced Business Analyst for FirstEnergy Service Co., that she is authorized to make this verification on its behalf, and that the facts set forth in the attached Answer are true and correct to the best of her knowledge, information and belief. She understands that the statements herein are made subject to the penalties of 18 Pa. C.S. §4904 (relating to unsworn falsification to authorities).

Date: December 9, 2013



PAMELA T. JORDAN

Docket No. C-2013-2393169
Jason T. Perry v. West Penn Power

Attachment 1

Formal Complaint

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Formal Complaint

**Filing this form begins a legal proceeding and you will be a party to the case.
If you do not wish to be a party to the case, consider filing an informal complaint.**

To complete this form, please type or print legibly in ink.

1. Customer (Complainant) Information

Provide your name, mailing address, county, telephone number(s), e-mail address and utility account number:

Name Jason Perry

Street/P.O. Box 416 W. New Castle St. Apt # 1

City Butler State PA Zip 16001

County Butler

Telephone Number(s) Where We Can Contact You During the Day:

(724) 487 4997 (home) () (mobile)

E-mail Address (optional): perryjason04@yahoo.com

Utility Account Number (from your bill) 100 100 360 872

If your complaint involves utility service provided to a different address or in a different name than your mailing address, please list this information below.

Name _____

Street/P.O. Box _____

City _____ State _____ Zip _____

2. Name of Utility or Company (Respondent)

Provide the full name of the utility or company about which you are complaining. The name of your utility or company is on your bill.

West Penn Power

RECEIVED
2013 NOV 18 AM 10:36
PA P.U.C.
SECRETARY'S BUREAU

3. Type of Utility Service

Check the box listing the type of utility service that is the subject of your complaint (check only one):

- | | |
|--|---|
| <input checked="" type="checkbox"/> ELECTRIC | <input type="checkbox"/> WASTEWATER/SEWER |
| <input type="checkbox"/> GAS | <input type="checkbox"/> TELEPHONE/TELECOMMUNICATIONS (local, long distance) |
| <input type="checkbox"/> WATER | <input type="checkbox"/> MOTOR CARRIER (e.g. taxi, moving company, limousine) |
| <input type="checkbox"/> STEAM HEAT | |

4. Reason for Complaint

What kind of problem are you having with the utility or company? Check all boxes below that apply and state the reason for your complaint. Explain specifically what you believe the utility or company has done wrong. Provide relevant details including dates, times and places and any other information that may be important. If the complaint is about billing, tell us the amount you believe is not correct. Use additional paper if you need more space. Your complaint may be dismissed without a hearing if you do not provide specific information.

- The utility is threatening to shut off my service or has already shut off my service.

- I would like a payment agreement.

- Incorrect charges are on my bill. Provide dates that are important and an explanation about any amounts or charges that you believe are not correct. Attach a copy of the bill(s) in question if you have it/them.

- I am having a reliability, safety or quality problem with my utility service. Explain the problem, including dates, times or places and any other relevant details that may be important.

- Other (explain).

Note: If your complaint is only about removing or modifying a municipal lien filed by the City of Philadelphia, the Public Utility Commission (PUC) cannot address it. Only local courts in Philadelphia County can address this type of complaint. The PUC can address a complaint about service or incorrect billing even if that amount is subject to a lien.

In addition, the PUC generally does not handle complaints about cell phone or Internet service, but may be able to resolve a dispute regarding voice communications over the Internet (including the inability to make voice 911/E911 emergency calls) or concerns about high-speed access to Internet service.

5. Requested Relief

How do you want your complaint to be resolved? Explain what you want the PUC to order the utility or company to do. Use additional paper if you need more space.

Audit of both my electric accounts at my current address and reimbursement of frivolous/illegal charges.

Note: The PUC can decide that a customer was not billed correctly and can order billing refunds. The PUC can also fine a utility or company for not following rules and can order a utility or company to correct a problem with your service. Under state law, the PUC cannot decide whether a utility or company should pay customers for loss or damages. Damage claims may be sought in an appropriate civil court.

6. Protection from Abuse

Has a court granted a "Protection from Abuse" order that is currently in effect for your personal safety or welfare? The PUC needs this information to properly process your complaint so that your identity is not made public.

Note: You must answer this question if your complaint is against a natural gas distribution utility, an electric distribution utility or a water distribution utility AND your complaint is about a problem involving billing, a request to receive service, a security deposit request, termination of service or a request for a payment agreement.

Has a court granted a "Protection from Abuse" order for your personal safety or welfare?

YES

NO

If your answer to the above question is "yes," attach a copy of the current Protection for Abuse order to this Formal Complaint form.

7. Prior Utility Contact

a. Is this an appeal from a decision of the PUC's Bureau of Consumer Services (BCS)?

YES

NO

Note: If you answered yes, move to Section 8. No further contact with the utility or company is required. If you answered no, answer the question in Section 7 b. and answer the question in Section 7 c. if relevant.

b. If this is not an appeal from a BCS decision, have you spoken to a utility or company representative about this complaint?

YES

NO

Note: You must contact the utility first if (1) you are a residential customer, (2) your complaint is against a natural gas distribution utility, an electric distribution utility or a water utility AND (3) your complaint is about a billing problem, a service problem, a termination of service problem, or a request for a payment agreement.

- c. If you tried to speak to a utility company representative about your complaint but were not able to do so, please explain why.

Note: Even if you are not required to contact the utility or company, you should always try to speak to a utility or company representative about your problem before you file a Formal Complaint with the PUC.

8. Legal Representation

If you are filing a Formal Complaint as an individual on your own behalf, you are not required to have a lawyer. You may represent yourself at the hearing.

If you are represented by a lawyer in this matter, provide your lawyer's name, address, telephone number, and e-mail address, if known. Please make sure your lawyer is aware of your complaint. If represented by a lawyer, both you and your lawyer must be present at your hearing.

Lawyer's Name _____

Street/P.O. Box _____

City _____ State _____ Zip _____

Area Code/Phone Number _____

E-mail Address (if known) _____

Note: Corporations, associations, partnerships, limited liability companies and political subdivisions are required to have a lawyer represent them at a hearing and to file any motions, answers, briefs or other legal pleadings.

9. Verification and Signature

You must sign your complaint. Individuals filing a Formal Complaint must print or type their name on the line provided in the verification paragraph below and must sign and date this form in ink. If you do not sign the Formal Complaint, the PUC will not accept it.

416 w New Castle St Apt 1
Butler, PA 16001

RECEIVED
2013 NOV 18 AM 10:36
PA P.U.C.
SECRETARY'S BUREAU

Secretary
Pa PUC
PO Box 3265
Harrisburg, PA 17105-3265



1000



16001

U.S. POSTAGE
PAID
BUTLER, PA
16001
NOV 16, 13
AMOUNT
\$0.66
00052554-07

PA P.U.C. 17105-3265