

Tori L. Giesler, Esq.
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September 17, 2015

VIA UNITED PARCEL SERVICE

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

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SEP 17 2015

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

Re: Donald and Marylou Fox v. West Penn Power Company
Docket No. C-2015-2500826

Dear Secretary Chiavetta:

Attached please find the Preliminary Objections of West Penn Power Company in the above-referenced matter. Please date stamp the extra copy and return it to me in the postage-prepaid envelope provided. This document has been served on the Complainants as shown in the Certificate of Service.

Please contact me if you have any questions.

Very truly yours,


Tori L. Giesler

dln
Enclosures

c: As per Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DONALD AND MARYLOU FOX

v.

WEST PENN POWER COMPANY

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Docket No. C-2015-2500826

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

NOTICE TO PLEAD

TO: Donald and Marylou Fox

Pursuant to 52 Pa. Code § 5.101 you are hereby notified that if you do not file a reply to 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 admitted, thereby requiring no other proof. All pleadings, such as a Reply to Objection, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy service 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
P.O. Box 3265
Harrisburg, PA 17105-3265

With a copy to:

Tori L. Giesler
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, Pennsylvania 19612-6001

Dated: September 17, 2015


Tori L. Giesler

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DONALD AND MARYLOU FOX

v.

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**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

**PRELIMINARY OBJECTION TO THE COMPLAINT OF
DONALD AND MARYLOU FOX**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, West Penn Power Company ("West Penn" or the "Company"), by and through its counsel, Tori L. Giesler, files this Preliminary Objection pursuant to Section 5.101(a) of Pennsylvania Public Utility Commission ("Commission") regulations, 52 Pa. Code § 5.101(a)(1), and in support thereof, avers as follows:

I. Introduction

1. In their recently filed Formal Complaint, Donald Fox and Marylou Fox ("Complainants") allege they sustained damages to personal property located at 216 Good Street, Waynesburg, Pennsylvania 15370 ("Service Location") as a result of an electric power outage experienced on May 25, 2015. (Compl. ¶¶ 4, 5.) The Complainants request that the Commission direct West Penn to financially reimburse them for alleged personal property losses. (Compl. ¶ 5.)

2. As explained below, the Commission does not have the power and legal authority to award monetary 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 monetary damages; (ii) expressly prohibit the Complainants from introducing any testimony or exhibits at any evidentiary hearing regarding alleged damages; (iii) dismiss the Formal Complaint

in its entirety with prejudice; and (iv) grant the Company such other relief as may be just and reasonable under the circumstances.

II. Background

3. West Penn is an electric distribution company certificated as a public utility permitted to operate within the Commonwealth in Pennsylvania.

4. On or about August 28, 2015, the Complainants filed a Formal Complaint with the Commission against West Penn at the above-captioned docket solely requesting that the Commission direct the Company to financially reimburse the Complainants for specific personal property losses allegedly sustained during an outage experienced on May 25, 2015. (Compl. ¶¶ 4, 5.)

5. On or about August 28, 2015, the Formal Complaint was electronically served on West Penn.

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

III. Argument

7. 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.

(7) Standing of a party to participate in the proceeding.

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

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 their Formal Complaint, the Complainants state the following as their sole request for relief:

Pay for replacement of products damages
Washer, computer + surge protector

(Compl. ¶ 5.)

11. Clearly, the only relief sought through the Formal Complaint is an award of monetary damages from the Company.

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 Complainants’ 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 Objections and strike the Complainant’s request for monetary damages; (2) expressly prohibit the Complainants from introducing any testimony or exhibits at any evidentiary hearing regarding alleged damages; (3) dismiss the Formal Complaint in its entirety with prejudice; and (4) grant the Company such other relief as may be just and reasonable under the circumstances.

Respectfully submitted,

Dated: September 17, 2015



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Counsel for West Penn Power Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DONALD AND MARYLOU FOX :
 :
 v. : **Docket No. C-2015-2500826**
 :
WEST PENN POWER COMPANY :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Preliminary Objections of West Penn Power Company to the Formal Complaint of Donald and Marylou Fox upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 5.61 (relating to service by a participant).

Service by First Class Mail, postage prepaid, as follows:

Donald and Marylou Fox
216 Good Street
Waynesburg, PA 15370

RECEIVED

SEP 17 2015

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

Dated: September 17, 2015


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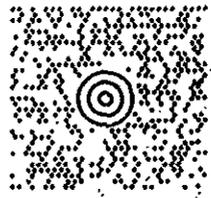
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