

January 11, 2016

Via Electronic Filing

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

**Re: Docket No. C-2015-2514330
Gerald Naylor v. West Penn Power Company
Preliminary Objection of West Penn Power**

Dear Secretary Chiavetta:

Attached for filing is the Preliminary Objection of Respondent, West Penn Power Company (West Penn), to the Formal Complaint of Gerald Naylor (Complainant).

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

If there are any questions, please contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

MAM/jmm
Attachment

cc: John L. Munsch, Esquire, FirstEnergy Service Company [w/enc.]
Gerald Bernard Naylor [w/enc.]

**Re: Docket No. C-2015-2514330
Gerald Naylor v. West Penn Power Company
Preliminary Objection of West Penn Power**

CERTIFICATE OF SERVICE

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

Via Electronic and First Class Mail

Gerald Naylor
14481 Ardara Road
North Huntingdon, PA 15642
rozypozy2@comcast.net

Dated: January 11, 2016


Margaret A. Morris, Esq.

BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

GERALD NAYLOR

v.

WEST PENN POWER COMPANY

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:
:
:

Docket No. C-2015-2514330

NOTICE TO PLEAD

Pursuant to 52 Pa. Code § 5.101, you are hereby notified that if you do not file a written response answering the enclosed Preliminary Objection 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 Objection may be deemed to be true, whereby requiring no other proof. All pleadings, such as a Reply to Preliminary Objection, 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.

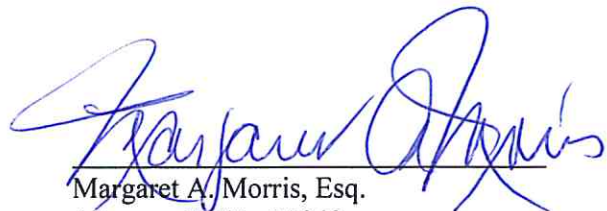
File with:

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: January 11, 2016



Margaret A. Morris, Esq.
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Counsel for West Penn Power Company

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

GERALD NAYLOR	:	
	:	
v.	:	Docket No. C-2015-2514330
	:	
WEST PENN POWER COMPANY	:	

**PRELIMINARY OBJECTIONS TO THE FORMAL COMPLAINT
OF GERALD NAYLOR**

West Penn Power Company (West Penn or Company), by and through its attorneys, Reger Rizzo & Darnall LLP, pursuant to 52 Pa. Code § 5.101, hereby files its Preliminary Objection to the Formal Complaint of Gerald Naylor (Complainant) filed in the above-captioned proceeding. West Penn avers the subject of the Formal Complaint is beyond the jurisdiction of the Pennsylvania Public Utility Commission (Commission) who is without authorization to grant the Complainant’s request for damages. The Formal Complaint includes impertinent matter in its requested relief. Therefore, West Penn moves to have the Formal Complaint dismissed in its entirety or in the alternative to strike the Complainant’s request for compensation.

In support of its preliminary objections, West Penn states as follows:

1. The Complainant filed a Formal Complaint averring that a power surge caused damage to a washer, furnace, surge protector, electric blanket control and battery charger for portable tools. The Complainant seeks compensatory damages for the alleged

loss caused to his residence located at 14481 Ardara Road, North Huntingdon, Pennsylvania (Service Location).

2. In an Answer and New Matter being served contemporaneously with this Preliminary Objection, West Penn has denied the material allegations in the Formal Complaint.

3. It is well-settled that the Commission has only the powers, and can only consider such matters, as are expressly, or by necessary implication given to it by the legislature. *Behrend v. Bell Telephone Co.*, 363 A.2d 1152 (Pa, Super 1976); *Brockway Glass Company, Inc. v. West Penn Power Co.*, 54 Pa P.U.C. 509 (1980); *Bones v. Bates Taxi, Inc.*, 51 Pa, P.U.C. 346 (1977). The Pennsylvania Public Utility Code, 66 Pa C.S. § 101, *et seq.* (the Code), gives the Commission supervisory and regulatory power over the rates, service and facilities of public utilities. *Brockway Glass* at 514.

4. Additionally, pursuant to 52. Pa. Code § 5.101, West Penn objects to the Formal Complaint on the grounds that the Commission lacks jurisdiction to award monetary damages. The Complainant seeks to have West Penn pay for damages to various personal items located in the Service Location.

5. Pennsylvania courts have long held that the enforcement powers of the Commission do not include the power to award monetary damages. *Elkin v. Bell*, 491 Pa. 123, 420 A. 2d 371 (1980); *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791

(1978); see *Nagy v. Bell Tel. Co.*, 436 A.2d 701 (Pa, Super. 1981). Thus, the Code does not give the Commission jurisdiction over a claim for monetary damages. *Behrend, supra*; *Brockway Glass, supra*; *Bones v. Bates Taxi, Inc.*, 51 Pa. P.U.C. 346 (1977).

6. The Court of Common Pleas retains original jurisdiction over suits for monetary damages. *Behrend, supra*.

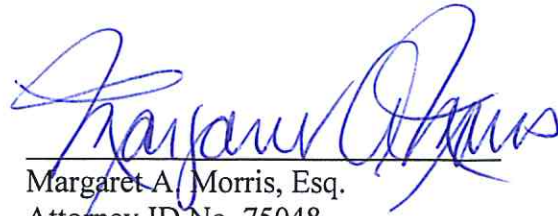
7. The sole requested relief by the Complainant, in the form of monetary compensation for damages, is not recoverable in the cause of action before this Commission as the Commission is without authorization to award compensation for damages. The request for relief is irrelevant to the instant cause of action and therefore an “impertinent matter” within the use and meaning of 52 Pa. Code §5.101 (a)(2).

8. Since the sole issue in the Formal Complaint is the request for monetary compensation for alleged damages, the Formal Complaint should be stricken in its entirety pursuant to Pa. Code §5.101(a)(2).

WHEREFORE, Respondent, West Penn Power Company, requests that the Formal Complaint filed by Gerald Bernard Naylor be dismissed with prejudice or

denied in its entirety for lack of subject matter jurisdiction.

Respectfully submitted,



Date: January 11, 2016

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