

June 28, 2016

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-2016-2549859
Mark Fetsko v. West Penn Power Company
Preliminary Objections of West Penn Power**

Dear Secretary Chiavetta:

Attached for filing is the Preliminary Objection of West Penn Power Company (Respondent) to the Complaint of Mark Fetsko (Complainant) in the above-captioned proceeding.

As indicated on the attached Certificate of Service, a copy of the Preliminary Objection has been provided to the Complainant in the manner indicated.

If there are any questions, please do not hesitate to 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.]
Mark J. Fetsko [w/enc.]

**Re: Docket No. C-2016-2549859
Mark Fetsko v. West Penn Power Company
Answer and New Matter 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 following person listed below, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

Via First Class Mail

Mark Fetsko
107 Ross Road
Ligonier, PA 15658

Dated: June 28, 2016


Margaret A. Morris, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MARK FETSKO

v.

WEST PENN POWER COMPANY

:
:
:
:
:

Docket No. C-2016-2549859

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.

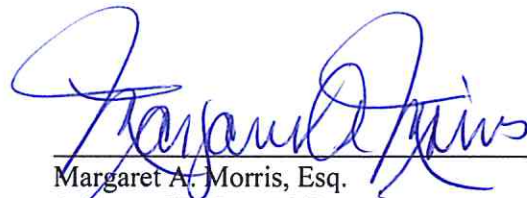
File with:

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: 6/28/2016



Margaret A. Morris, Esq.
Attorney ID No. 75048
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Counsel for West Penn Power Company

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MARK J. FETSKO	:	
	:	
v.	:	Docket No. C-2016-2549859
	:	
WEST PENN POWER COMPANY	:	

**PRELIMINARY OBJECTIONS OF WEST PENN POWER TO THE
FORMAL COMPLAINT OF MARK J. FETSKO**

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 Mark J. Fetsko (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) which is without authorization to grant the Complainant’s request for compensation for the cost incurred to establish new residential service. 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 seeking reimbursement for costs of “two 3 inch diameter galvanized steel posts” required before the Company would establish new

residential service to his mobile home at 107 Ross Road, Ligonier, Pennsylvania (Service Location).

2. In the Answer and New Matter being served contemporaneously with this Preliminary Objection, West Penn has denied the material allegations in the Formal Complaint and asserted that the Company was following its Commission-approved Tariff Rule 7 and its Customer Guide for Electric Service – PA.

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 supplies to comply with the service requirements before the Company would establish service at 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, 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 Mark J. Fetsko be dismissed with prejudice or denied in its entirety

for lack of subject matter jurisdiction.

Respectfully submitted,

Date: June 28, 2016



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Counsel for West Penn Power Company

Docket No. C-2016-2549859
Mark Fetsko v. West Penn Power Company

Attachment 1

Formal Complaint

PUC case # 3417864

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. It is your responsibility to update the Commission with any changes to your address and to where you want documents mailed to you.

Name Mark J. Fetsko

Street/P.O. Box 107 Ross Rd. Apt #

City Ligonier State PA. Zip 15658

County Westmoreland

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

(724) 550-7494 (home) () (mobile)

E-mail Address (optional):

Utility Account Number (from your bill) 100118103777

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 Company

RECEIVED 2016 MAY 17 AM 9:29 PA PUC SECRETARY'S BUREAU

PUC case# 3417864

3. Type of Utility Service

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

- ELECTRIC WASTEWATER/SEWER
 GAS TELEPHONE/TELECOMMUNICATIONS (local, long distance)
 WATER MOTOR CARRIER (e.g. taxi, moving company, limousine)
 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. I would want West Penn Power to reimburse me for the cost of two 3 inch diameter galvanized steel posts that I was forced to purchase in order to mount the electric meter box. (\$260) (over) →

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). West Penn Power is putting an additional burden on new residential customers by dictating a "one size fits all" for the construction of the electric meter pedestal. I disagree with this dictate.

I already had two 2 1/4 inch galvanized steel posts to place in the ground for the mounting of the electric meter box, which I felt would be sufficient for the residential location setting of this structure. I let the field engineer - Brad Herington - know that I wanted to utilize the two 2 1/4" posts that I already had but he told me that his bosses would not budge on what "they" deemed sufficient. IF the West Penn Power Company, or any public utility company for that matter, has their own standard for construction/materials, then I see it as their responsibility to construct, provide, or supply said materials to design or place structures or facilities for public use.

PUC case #341786A

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.

All I want is to be reimbursed \$260 for the additional cost I had to incur on the purchase of two 3 in. diameter, 10 ft length galvanized steel posts, and caps.

I already had two 2½ in galvanized steel posts ten ft. length to be used.

This electric meter pedestal was built the week of April 11-15 2016 in order to service the new residence on the property, 107 Ross Rd. Ligonier, PA., which I own, It is now in service.

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 (PFA)

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 From 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~~ I believe so, not sure, An informal complaint has been on the record for some time now.
NO *NO BCS decision issued and two months now.*

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 Bradley Herington, Field representative for West Penn Power
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.

PUC case #341786A

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

This matter was brought to the attention of West Penn Power. They basically informed me that there is no flexibility on using anything other than the 3 inch diameter steel posts and that this specification pertains to All new customers that need to place the pedestal.

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 already 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.

PUC case # 341786A

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.

Verification:

I Mark J. Fetsko hereby state that the facts above set forth are true and correct (or are true and correct to the best of my knowledge, information and belief) and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Mark J. Fetsko (Signature of Complainant) 5-9-16 (Date)

Title of authorized employee or officer (only applicable to corporations, associations, partnerships, limited liability companies or political subdivisions)

Note: If the Complainant is a corporation, association, partnership, limited liability company or political subdivision, the verification must be signed by an authorized officer or authorized employee. If the Formal Complaint is not signed by one of these individuals, the PUC will not accept it.

10. Two Ways to File Your Formal Complaint

Electronically. You must create an account on the PUC's eFiling system, which may be accessed at <http://www.puc.pa.gov/efiling/default.aspx>.

Note: If you are appealing your Bureau of Consumer Services (BCS) decision, you must file your formal complaint by mail.

Mail. Mail the completed form with your original signature and any attachments, by certified mail, first class mail, or overnight delivery to this address:

Secretary
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, Pennsylvania 17120

RECEIVED
2016 MAY 17 AM 9:29
PA PUC
SECRETARY'S BUREAU

Note: Formal Complaints sent by fax or e-mail will not be accepted.

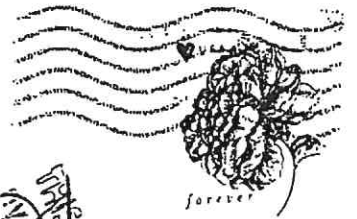
If you have any questions about filling out this form, please contact the Secretary's Bureau at 717-772-7777.

Keep a copy of your Formal Complaint for your records.

EF Mark Fetsko
107 Ross Rd
Ligonier, PA 15658-3556

JOHNSTOWN PA 159

13 MAY 2016 PM 2 L



THIS MAIL HAS BEEN RECEIVED
BY THE POSTAGE SERVICE
AT HARRISBURG, PA 17120

Secretary
Pennsylvania Public Utility Commission
400 North St.
Harrisburg, PA. 17120

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