

November 1, 2017

Via Electronic Filing

Rosemary Chiavetta, Esquire
Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Docket No. C-2017-2628811
Dielectric Solutions, LLC v. West Penn Power Company
Preliminary Objection of West Penn Power**

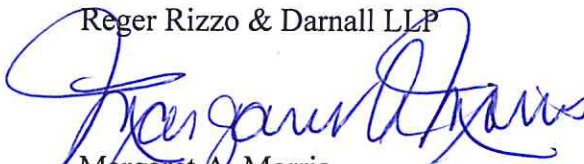
Dear Secretary Chiavetta:

Attached for filing is the Preliminary Objection of West Penn Power Company (West Penn) to the Complaint of Dielectric Solutions LLC (Complainant).

A copy of the enclosed Preliminary Objection has been forwarded to the Complainant and his counsel 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
Attachment

cc: John L. Munsch, Esquire, FirstEnergy Service Company [w/enc.]
Todd Kadar, Dielectric Solutions, LLC [w/enc.]
Alan Silko, Esquire, Silko & Associates, PC [w/enc.]

**Re: Docket No. C-2017-2628811
Dielectric Solutions, LLC 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 following person(s), in the manner indicated, in accordance with the requirements of 52 PA Code § 1.54 (relating to service by a participant).

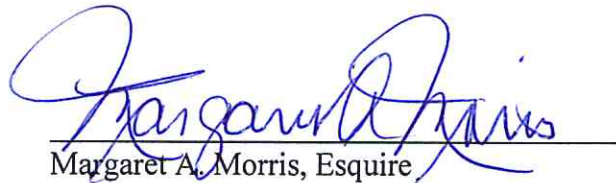
Via Electronic and First Class Mail

Dielectric Solutions LLC
Attn: Todd Kadar
1655 Orr Avenue
Kittanning, PA 16201
tkadar@dielectricsolutions.com

Via First Class Mail

Alan Silko, Esquire
Silko & Associates PC
80 Emerson Lane, Suite 1305
Bridgeville, PA 15107

Dated: November 1, 2017


Margaret A. Morris, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DIELECTRIC SOLUTIONS LLC

v.

WEST PENN POWER COMPANY

:
:
:
:
:

Docket No. C-2017-2628811

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 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 the Preliminary Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy to counsel for West Penn Power Company, Margaret A. Morris, Esq., and where applicable, the Administrative Law Judge presiding over the issue.

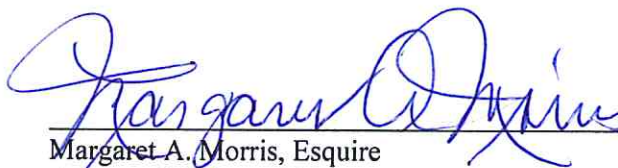
File with:

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

With a copy to:

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

Date: November 1, 2017



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Counsel for West Penn Power Company

=BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DIELECTRIC SOLUTIONS LLC	:	
	:	
v.	:	Docket No. C-2017-2628811
	:	
WEST PENN POWER COMPANY	:	

**PRELIMINARY OBJECTION OF WEST PENN POWER COMPANY
TO THE COMPLAINT OF DIELECTRIC SOLUTIONS LLC**

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 Todd Kadar (Complainant) on behalf of Dielectric Solutions LLC (Customer)¹ 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 the alleged damages sustained by the Customer. The Formal Complaint includes impertinent matter in its requested relief. Therefore, West Penn requests that this Preliminary Objection be granted and that the Commission: (1) grant its Preliminary Objections and strike the requests for damages; (2) expressly prohibit the Complainant/Customer from introducing any testimony or exhibits at any evidentiary hearing regarding the alleged damages; (3) dismiss that portion of the Formal Complaint; and (4) grant the Company such other relief as may be just and reasonable under the circumstances.

¹ The required Entry of Appearance for the Customer’s counsel was not received at the time of the filing.

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

I. Procedural Background

1. West Penn is an electric distribution company certificated as a public utility permitted to operate within the Commonwealth in Pennsylvania and provides General Power Service, Rate Schedule 35,² to the Customer under Account No. 100093413555.

2. The Customer receives non-residential service at 1655 Orr Avenue, Kittanning, Pennsylvania (Service Location). The Complainant filed a Formal Complaint alleging that West Penn was negligent in its restoration practice and the Customer should be compensated for alleged damages.

3. In its Answer and New Matter being served contemporaneously with this Preliminary Objection, West Penn denied the material allegations in the Formal Complaint and averred that the outage experienced by the Customer on August 4, 2017 was beyond the Company's control and the restoration of service was accomplished as safely and efficiently as possible.

4. Pursuant to 52 Pa. Code § 5.101, West Penn objects to that portion of the Formal Complaint on the grounds that the Commission lacks jurisdiction to award damages. The Complainant seeks "compensation for damages." Complaint at ¶ 5.

² Electric Pa. P.U.C. No. 40 (Supp.26), Fourth Revised Page 73, issued January 25, 2017; effective January 27, 2017.

II. Argument

5. 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.

6. 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).

7. In the instant Formal Complaint, the Complainant states the following as his sole request for relief "compensation for damages caused by negligence." (Compl. ¶ 5.)

8. Clearly, this sole relief sought through the Formal Complaint is an award of monetary damages from the Company.

A. Impertinent Matter

9. The Commission's procedural regulations allow a party to object to pleadings which fail to comply with the rules of administrative practice or which include scandalous or impertinent matters. *See* 52 Pa. Code § 5.102(a)(2).

10. 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). Therefore, the statutory authority of the Commission does not include the power to award attorney fees or monetary value of the real property.

11. 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.

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

13. 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)).

14. The Complainant’s requested relief of damages is irrelevant to the instant cause of action and therefore an “impertinent matter”.

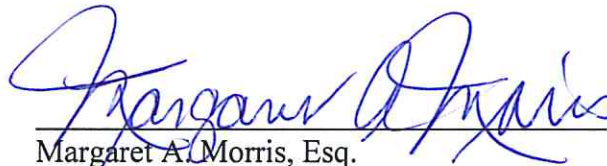
15. Therefore, in accordance with Pennsylvania law, this Commission does not have the power to award monetary damages and the Complainant’s request on behalf of the Customer

for money damages is an impertinent matter that must be stricken within the use and meaning of Commission regulation at 52 Pa. Code § 5.101(a)(2).

WHEREFORE, Respondent, West Penn Power Company, requests that the relief for damages in the Formal Complaint filed by Todd Kadar, on behalf of Dielectric Solutions LLC, be dismissed with prejudice or denied in its entirety for lack of subject matter jurisdiction. The Respondent also requests, to the extent relevant, that no testimony or exhibits at any evidentiary hearing regarding alleged damages be permitted.

Respectfully submitted,

Date: November 1, 2017



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