

Tori L. Giesler, Esq.
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December 11, 2017

VIA UPS OVERNIGHT DELIVERY

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

Re: Marilyn S. Curler v. West Penn Power Company
Docket No. C-2017-2634653

Dear Secretary Chiavetta:

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

Please contact me if you have any questions.

Very truly yours,


Tori L. Giesler

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Enclosures

c: As per Certificate of Service

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DEC 11 2017

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MARILYN S. CURLER

v.

WEST PENN POWER COMPANY

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Docket No. C-2017-2634653

NOTICE TO PLEAD

TO: Marilyn S. Curler

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 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
Teresa Harrold
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, Pennsylvania 19612-6001

Dated: December 11, 2017



Tori L. Giesler
Teresa Harrold

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MARILYN S. CURLER

v.

WEST PENN POWER COMPANY

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Docket No. C-2017-2634653

**PRELIMINARY OBJECTION TO THE COMPLAINT OF
MARILYN S. CURLER**

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 and Teresa Harrold, 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 her recently filed Formal Complaint, Marilyn S. Curler ("Complainant") alleges she sustained damages to personal property located at 11 Mill Street, Millsboro, Pennsylvania 15348 ("Service Location") as a result of an electric power outage experienced on September 11, 2017. (Compl. ¶ 4.) The Complainant requests that the Commission direct West Penn to financially reimburse her 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 Complainant 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 November 13, 2017, the Complainant 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 Complainant for specific personal property losses allegedly sustained during an outage experienced on September 11, 2017. (Compl. ¶ 5.)

5. On or about November 20, 2017, 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).

A. Preliminary Objection Regarding Impertinent Matters Pursuant to 52 Pa. Code § 5.101(a)(2).

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 § 5.101(a)(2).

10. In her Formal Complaint, the Complainant states the following as her sole request for relief:

Reimbursed for the loss of my items listed below:
Samsung 6 Series – UN55MU6300F – 55" LED Smart TV – 4K
Ultra HD
Purchased – 12/2016 – Christmas Present from mom
\$654.99
+ 39.30 tax
\$694.29 (free shipping)

I pay electric bill at this address for my grandson who cannot afford to replace this TV at this time.

Observer Reporter – Washington, PA – Newspaper article attached

(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 Complainant’s request for money damages is an impertinent matter that must be stricken.

B. Preliminary Objection Regarding Insufficiency of a Pleading Pursuant to 52 Pa. Code § 5.101(a)(4).

16. The Complainant verified subject to the penalties of 18 Pa.C.S. § 4904 that the Complainant has “spoken to a utility or company representative about this complaint.”

17. The Company has no record that any representative of the Complainant has contacted the Company on the Account at this Service Location regarding the Formal Complaint.

18. The Formal Complaint of the Complainant should be dismissed with prejudice for failure to contact the Company prior to the filing of the Formal Complaint in violation of 66 Pa.C.S. § 1410(1).

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 Complainant 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: December 11, 2017



Tori L. Giesler
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Teresa Harrold
Attorney No. 311082
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P.O. Box 16001
Reading, Pennsylvania 19612-6001
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Counsel for West Penn Power Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MARILYN S. CURLER

v.

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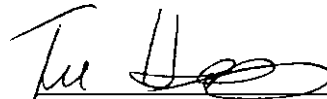
CERTIFICATE OF SERVICE

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 Marilyn S. Curler upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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

Marilyn S. Curler
107 Morton Street
P.O. Box 315
Millsboro, PA 15348

Dated: December 11, 2017



Tori L. Giesler
Teresa Harrold
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, Pennsylvania 19612-6001
(610) 921-6658
(610) 921-6783
tgiesler@firstenergycorp.com
tharrold@firstenergycorp.com

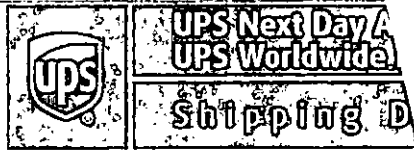
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PA Public Utility Commission
400 North St
Harrisburg PA 17120

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