

Sandy Thompson
24 Dire Drive
Hickory, PA 15340

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PA PUC
SECRETARY'S BUREAU

12/20/2017

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

Re: Sandy Thompson vs West Penn Power Company, Docket No. C-2017-2630956

Dear Secretary Chiavetta:

Enclosed for filing is the Reply to Answer and New Matter on behalf of myself, Sandy Thompson in the above-referenced matter. Copies have been set to Tori L. Giesler, First Energy Service Company, 2800 Pottsville Pike, P.O. Box 16001, Reading, PA 19612-6001.

REPLY TO NEW MATTER:

11. Paragraphs 1-10 of this Answer are incorporated by reference as if fully set forth herein.

A. Admitted

12. An outage occurred on May 5, 2017 which affected the Service Location.

A. Admitted. It is admitted that an outage occurred on May 5, 2017 which affected the Service Location.

13. On May 8, 2017, the Complainant contacted the Company to file a damage claim for personal property allegedly damaged as a result of the May 5, 2017 outage.

A. Admitted. It is admitted that I contacted West Penn Power Company and filed a damage claim on May 8, 2017 as a result of May 5, 2017 power outage.

14. In response to the damage claim submitted Claim no WP073767, the company sent a letter to complainant on May 17, 2017 denying the claim on the basis that a tree caused the outage on May 5, 2017 which was unforeseen, unplanned and outside the Company's control.

A. Admitted in part and denied in part. It is admitted that West Penn sent a letter denying my claim. It is denied that a tree caused the outage. West Penn first alleged that a 60 foot pine tree fell on the line on Dire Drive, when I asked where and who removed it, I was told they would further investigate. I called back and was told after further investigation; the tree fell near Wagner Nursery then I was later told the tree fell somewhere near Burgettstown.

15. The Company's investigation of the incident did not yield any evidence to suggest that there was any negligence on behalf of the Company.

A. Denied. It was while the crew was repairing the line that the power surge/overvoltage occurred causing the circuit box to catch on fire, ending in damages totaling \$5,394.00 of which \$2,500 was out of pocket (deductible after insurance claim).

16. Section 1501 of the Code requires all public utilities to furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and to make all repairs, changes, ... to its service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons, employees, and public. Sect 1501 also provides that such service shall be reasonable continuous and without unreasonable interruptions or delay.

A. Admitted.

17. What is required from the utility is adequate, efficient, safe and reasonable service and facilities, not perfect service"...

A. Admitted

18. The Code does not mandate perfect service nor must a utility provide the best possible service. A public utility, such as the Company, is not a guarantor of either perfect service or the best possible service....Electric Pa. PUC No. 40..., issued May 1, 2015...

A. Admitted in part and denied in part. It is admitted that a public utility is not perfect but it is denied that a company not provide the best possible service. All companies should provide outstanding service in all aspects.

19. Rule 21 of the Company's Commission-approved Tariff states, in pertinent part, that the Company shall not be liable for any damages due to accident, strike, storm, lighting, riot, fire, flood, legal process, state or municipal interference, or any other cause beyond the Company's control.

A. Admitted in part and denied in part. I admit to Rule 21 but deny Company's control.

20. At all times relevant to this Formal Complaint, West Penn has provided and continues to provide adequate, reliable service to the Service Location in accordance with the Pa Public Utility Code, the Commission's regulations, and the Company's Commission-approved tariff.

A. Admitted.

NEW MATTER-IMPERTINENT MATTER

21. Paragraphs 1-20 of this Answer and New Matter are incorporated by reference as if fully set forth herein.

A. Admitted

22. The only relief sought through the Formal Complaint is an award of monetary damages from the Company.

A. Admitted.

23. It is well-established under Pennsylvania law that the enforcement powers of the Commission do not include the power to award money damages. *Elkin vs Bell Tel.co...* (PA 1980); *Feingold v. Bell of Pa*, (Pa. 1978); see *Nagy v. Bell Tel. Co. Of Pa.*, (Pa. Super. 1981)

A. Admitted in part and denied in part. I admit to Pennsylvania law but I deny knowing any current law. It is interesting to note that these are three very old cases.

24. 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.

A. Admitted

25. 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 Ave. Realty Limited Partners v Pa-Water Co....*

A. Denied. According to the PUC, A formal complaint can be filed, "we encourage you to consider mediation as a way to resolve your problem. Mediation is a voluntary, confidential and non-binding process through which a neutral third party, the mediator, assists the parties in reaching a mutually acceptable settlement of their disputes."

26. Therefore, in accordance with Pa. Law, this Commission does not have the power to award monetary damages or enforce a judgment from another jurisdiction which is currently subject to active litigation, and the Complaint's request for money damages is an impertinent matter that must be stricken.

A. Admitted in part and denied in part. I admit PUC can not award monetary damages but deny that my request for money damages is an impertinent matter. As stated above a mediator can assist in reaching a settlement.

WHEREFORE, I, Sandy Thompson request that the Commission proceed with my complaint.

Respectfully submitted,



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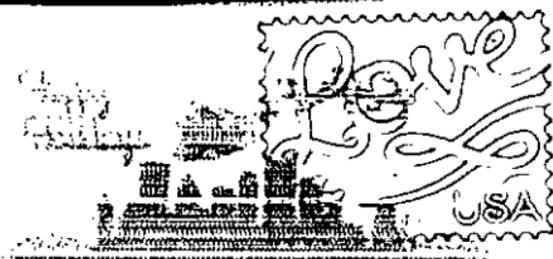
CC - Tori L. Giesler, First Energy



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