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March 6, 2018

VIA ELECTRONIC FILING

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

Re: Carole Tomecsko v. West Penn Power Company
Docket No. C-2018-2647463

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 contact me if you have any questions.

Very truly yours,



Tori L. Giesler

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Enclosures

c: As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CAROLE TOMECSKO

v.

WEST PENN POWER COMPANY

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Docket No. C-2018-2647463

NOTICE TO PLEAD

TO: Carole Tomecsko

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: March 6, 2018



Tori L. Giesler
Teresa Harrold

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CAROLE TOMECSKO	:	
	:	
v.	:	Docket No. C-2018-2647463
	:	
WEST PENN POWER COMPANY	:	

**PRELIMINARY OBJECTION TO THE COMPLAINT OF
CAROLE TOMECSKO**

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, Carole Tomecsko ("Complainant") alleges she sustained damages to personal property located at 1756 Route 519, Canonsburg, Pennsylvania 15317 ("Service Location") as a result of electric power outages. (Attachment to Formal Complaint.) The Complainant requests that West Penn to financially reimburse her for alleged personal property losses. (Attachment to Formal Complaint.)

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 February 8, 2018, the Complainant filed a Formal Complaint with the Commission against West Penn at the above-captioned docket requesting that the Commission direct the Company to financially reimburse the Complainant for specific personal property losses allegedly sustained during an outage. (Compl. ¶ 5.)

5. On or about February 14, 2018, 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).

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:

I have exterior repair protection. About 1 ½ years ago the power went out & when power came back on – it blew out the power bars & TV. Once power bars are blown they are no longer good – you have to buy new ones. WPP said it was an Act of God – a tree fell on the lines so I ate the cost of replacement.

Then June 2017 a transformer went & they had to replace lines (you probably could get repair invoices for this) linemen told neighbor to file a complaint w/ WPP I did & they told me it was denied so I called PUC & they said it was not up to them re this claim – so I contacted Att Gen & they contacted WPP at NO satisfaction – I would like to be reimbursed for TV – power bars – food from frig that spoiled – also contacted Gov Wolf & they again did not help – referred back to PUC so here I am again – all receipts in letter.

Just last week another power outage (last week of Jan 18 – another power bar and now an apt sized refrig!!!

(Attachment to Formal Complaint.)

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.

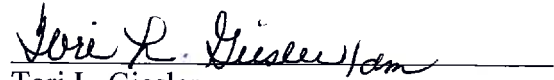
IV. Conclusion

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: March 6, 2018



Tori L. Giesler

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Counsel for West Penn Power Company

**BEFORE THE
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CAROLE TOMECSKO

v.

WEST PENN POWER COMPANY

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Docket No. C-2018-2647463


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 Carole Tomecsko 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:

Carole Tomecsko
1756 Route 519
Canonsburg, PA 15317

Dated: March 6, 2018



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