

September 6, 2018

Via Electronic Filing

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

**Re: Docket No. C-2018-3004085
Tara and Richard Croyle v. West Penn Power Company
Preliminary Objection of West Penn Power**

Dear Secretary Chiavetta:

Attached for filing is the Preliminary Objection of Respondent, West Penn Power Company (West Penn), to the Formal Complaint of Tara and Richard Croyle (Complainants).

A copy of the Preliminary Objection has been forwarded to the Complainants in the manner indicated on the attached Certificate of Service.

If there are any questions, please contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

MAM/jmm
Attachment

cc: John L. Munsch, Esquire, FirstEnergy Service Company
Tara Croyle

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TARA and RICHARD CROYLE	:	
	:	
v.	:	Docket No. C-2018-3004085
	:	
WEST PENN POWER COMPANY	:	

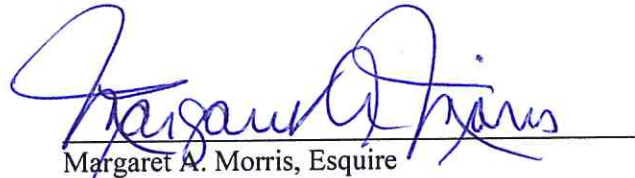
NOTICE TO PLEAD

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: September 6, 2018



Margaret A. Morris, Esquire
Attorney ID No. 75048
Reger Rizzo & Darnall LLP
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Philadelphia, PA 19104
(215) 495-6524 tel.
(215) 495-6600 fax
mmorris@regerlaw.com

Counsel for West Penn Power Company

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

TARA and RICHARD CROYLE	:	
	:	
v.	:	Docket No. C-2018-3004085
	:	
WEST PENN POWER COMPANY	:	

**PRELIMINARY OBJECTION OF WEST PENN POWER COMPANY
TO THE COMPLAINT OF TARA AND RICHARD CROYLE**

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 filed by Tara and Richard Croyle, 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 requested relief for damages. Therefore, West Penn requests that this Preliminary Objection be granted and that the Commission: (1) strike the Complainants' request for damages; and (2) grant the Company such other relief as may be just and reasonable under the circumstances.

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 service under Account No. 100119364949 (Account).

2. The Complainants reside at 439 Chestnut Street, Rimersburg, Pennsylvania (Service Location). They filed a Formal Complaint requesting compensation for damages to personal property at the Service Location as a result of Company's service.

3. In an Answer and New Matter being served contemporaneously with this Preliminary Objection, West Penn has denied the material allegations in the Formal Complaint.

4. Pursuant to 52 Pa. Code §§ 5.101, West Penn objects to the Formal Complaint on the grounds that the Commission lacks jurisdiction to award damages.

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).

A. Impertinent Matter

7. In the instant Formal Complaint, the Complainants' request compensation of \$5,000. (Compl. ¶ 5.)

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

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 § 5.102(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 damages.

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)).

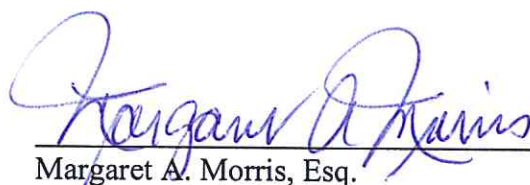
14. The Complainants’ requested relief of damages is irrelevant to the instant cause of action and therefore an “impertinent matter”

15. Therefore, in accordance with Pennsylvania law, this Commission does not have the power to award monetary damages, and the Complainants’ request for such 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 Tara and Richard Croyle be stricken 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: September 6, 2018



Margaret A. Morris, Esq.
Attorney ID No. 75048
Reger Rizzo & Darnall LLP
Cira Centre, 13th Floor
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Philadelphia, PA 19104
(215) 495-6524 tel.
mmorris@regerlaw.com

Counsel for West Penn Power Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TARA AND RICHARD CROYLE	:	
Complainant	:	
	:	
v.	:	Docket No. C-2018-3004085
	:	
WEST PENN POWER COMPANY:	:	
Respondent	:	

VERIFICATION

I, Denise Holmes, hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief and that I expect Pennsylvania Electric Company 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.

9-6-18
Date

Denise Holmes
MANAGER, WPP CLAIMS.

**Re: Docket No. C-2018-3004085
Tara and Richard Croyle v. West Penn Power Company
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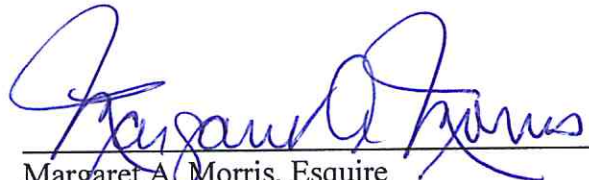
CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following person(s) listed below, 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

Tara Croyle
Richard Croyle
439 Chestnut Street
Rimersburg, PA 16248
tcroyle439@comcast.net

Dated: September 6, 2018


Margaret A. Morris, Esquire