

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

BENTWORTH SCHOOL DISTRICT,

Plaintiff,

v.

WEST PENN POWER COMPANY,

Defendant.

Docket No. C-2019-3010052

RESPONSE TO PRELIMINARY OBJECTIONS

Filed on behalf of: Plaintiff,
BENTWORTH SCHOOL DISTRICT

Counsel of Record for this Party:

Annemarie K. Harr, Esq.

Pa. I.D. #320764

aharr@wbklegal.com

Ira Weiss, Esq.

Pa. I.D. # 17408

iweiss@wbklegal.com

WEISS BURKARDT KRAMER LLC

445 Fort Pitt Boulevard, Suite 503

Pittsburgh, PA 15219

(412) 391-9890

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

BENTWORTH SCHOOL DISTRICT,	:	
	:	
Plaintiff,	:	
	:	Docket No. C-2019-3010052
v.	:	
	:	
WEST PENN POWER COMPANY,	:	
	:	
Defendant.	:	

RESPONSE TO PRELIMINARY OBJECTIONS

AND NOW comes the Plaintiff, Bentworth School District, by and through its attorneys, Annemarie K. Harr, Esquire, Ira Weiss, Esquire, and the law firm of Weiss Burkardt Kramer LLC, and files this response to Preliminary Objections filed by Interested Party, Hopewell School District.

I. Procedural Background

1. Admitted.
2. Admitted.
3. Admitted to the extent that the New Matter has denied allegations, however, the records of the School District indicate and show that contact has been made with West Penn Power regarding the issues experienced by the School District since 2017.
4. Bentworth School District (hereinafter "School District") filed a Formal Complaint with the Pennsylvania Utilities Commission requesting that the Commission Order West Penn Power to provide preventative measures in order to ensure that continued harm would not occur

to the Bentworth School District as a result of West Penn Power's inability to provide a reliable energy source in addition to providing redress for the harm already suffered.

II. Argument

5. Preliminary Objections have been improperly filed, as none of the available grounds are applicable in this matter. 52 Pa. Code §5.101(a).

6. The Commission's procedure regarding the dispositions of preliminary objections have been reviewed as similar to those utilized in Pennsylvania Civil Practice.

7. The preliminary objection that has been raised by Defendants in this matter argues that the sole requested relief is to be reimbursed for the damaged personal property. See Def. Prelim. Obj. at ¶¶ 7-8. This is a misrepresentation of the claim itself, which includes prayers for relief by way of requesting the PUC to order West Penn Power to take corrective action in order to ensure no further damage occurs, and no further outages or inconsistencies occur.

8. The claim that this is the *only* relief sought by the School District is false on its face.

A. Impertinent Matter

9. Defendant has argued that this constitutes impertinent matter under 52 Pa. Code § 5.101 (a)(2). Despite the fact that this is a misrepresentation of the claim itself, impertinent matter exists only when the allegations are immaterial and inappropriate to the proof of the cause of action. *Department of Environmental Resources v. Peggs Run Coal Company*, 55 Pa. Cmwlth. 312, 423 A.2d 765 (1980). The allegations of the monetary damages suffered by the Plaintiff due to the failures and negligence on the part of the Defendant cannot be seen to be immaterial or inappropriate, as they go directly to the basis of the complaint.

10. School District's Complaint and requested relief include the request for the Commission to Order West Penn Power to take preventative action in order to ensure that further damage will not occur. This type of relief has been requested of West Penn Power since 2017 when Assistant Superintendent George Lammay first reached out to West Penn Power regarding the reliability issues that the School District has been facing. The Commission has the authority to hear a broad range of subject matters in order to ensure the adequacy, efficiency, safety, and reasonableness of public utility services. The PUC is empowered to correct, by regulation or order, abuses in the provision of service. *Feingold v. Bell of Pa.* 383 A.2d 791 (Pa. 1978).

11. As stated above, *Feingold* also stated that the PUC is empowered to correct, by regulation or order, abuses in the provision of service. This is what the School District is requesting the PUC to do. *Feingold v. Bell of Pa.* 383 A.2d 791 (Pa. 1978).

12. The Plaintiff agrees that the Court of Common Pleas retains original jurisdiction over suits for money damages, however, the District is required to first exhaust its administrative remedies. However, jurisdiction over matters involving, among other things, service, rules of service, hazard to public safety due to use of utility facilities, installation of utility facilities, is exclusively conferred on the PUC. *Behrend v. Bell Telephone Co.*, 431 Pa. 63, 243 A.2d 346 (1968); *Chester County v. Philadelphia Electric Co.*, 420 Pa. 422, 218 A.2d 331 (1966); *Colonial Products Co. v. PUC*, 188 Pa.Super. 163, 146 A.2d 657 (1958). The Complaint filed by Plaintiffs requests relief in the above listed ways.

13. The recitation of damages in the complaint filed with the PUC cannot be seen to be impertinent as it goes directly to the issues being raised in the complaint.

14. As required by the Code, the Complaint must set forth the omissions, and failures of West Penn Power that the Commission has jurisdiction to review. 66 Pa.C.S. § 701; 52 Pa.Code § 5.21(a). The District in the instant matter is requesting such correction to occur. Because the District has requested relief that is recoverable under the Public Utilities Code, the action and requests therein do not constitute “impertinent matter” and therefore are able to be reviewed and decided by the commission.

WHEREFORE, Plaintiff requests that the Pennsylvania Public Utility Commission overrule Defendant, West Penn Power’s, Preliminary Objections.

Respectfully submitted,



Annemarie K. Harr
Annemarie K. Harr

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	:	
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	:	
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ORDER OF COURT

AND NOW, this _____ day of _____, 2019, upon consideration of the Response to the Preliminary Objections to Complaint filed on behalf of Bentworth School District it is hereby ORDERED, ADJUDGED, and DECREED that the Preliminary Objections are hereby OVERRULED and DENIED.

By the Commission:

CERTIFICATE OF SERVICE

I, Annemarie K. Harr, Esquire, hereby certify that a true and correct copy of the foregoing Response to Preliminary Objections was served by Regular and Electronic Mail and Electronic Filing with the PUC eFiling System

Rosemary Chiavetta, Esq.
PA Public Utility Commission
Secretary
P.O. Box 3265
Harrisburg, PA

Margaret A. Morris, Esq.
Reger Rizzo & Darnell LLP
Cira Center, 13th Floor
2929 Arch Street
Philadelphia, PA 19104
mmorris@regerlaw.com

June 19, 2019
Date


Annemarie K. Harr
Annemarie K. Harr, Esquire