

December 7, 2020

Via Electronic Filing

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

**Re: Docket No. C-2020-3022902
James Lieto v. West Penn Power Company
Preliminary Objections**

Dear Secretary Chiavetta:

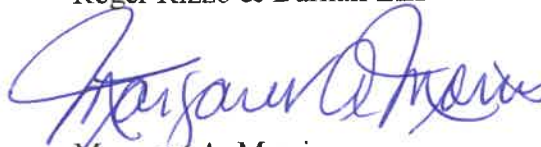
Attached for filing is the Preliminary Objections of West Penn Power Company to the Complaint filed by James Lieto in the above captioned proceedings.

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

If there are any questions, please do not hesitate to contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

MAM/co
Enclosures

cc: Teresa K. Harrold, Esquire, FirstEnergy Service Company [w/encls.]
James Lieto [w/encls.]

**Re: Docket No. C-2020-3022902
James Lieto v. West Penn Power Company
Preliminary Objections**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following person(s), in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Via Electronic Mail

James Lieto
JUSTJim232@gmail.com

Dated: December 7, 2020


Margaret A. Morris, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JAMES LIETO :
 :
 :
 v. : Docket No. C-2020-3022902
 :
 :
 WEST PENN POWER COMPANY :

NOTICE TO PLEAD

Pursuant to 52 Pa. Code § 5.63, 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 Preliminary Objections, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served 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
rchiavetta@pa.gov

With a copy to:

Margaret A. Morris, Esquire
Reger Rizzo & Darnall LLP
mmorris@regerlaw.com

Date: December 7, 2020



Margaret A. Morris, Esquire
Attorney ID No. 75048
Reger Rizzo & Darnall LLP
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2929 Arch Street
Philadelphia, PA 19104
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Counsel for West Penn Power Company

2. The Complainant resides at 142 Pinehill Road, Artemas, Pennsylvania (Service Location). He filed a Formal Complaint alleging a power surge on April 8, 2020 caused damage to personal property. He seeks reimbursement for the alleged damaged property at the Service Location.

3. In its Answer and New Matter being served contemporaneously with this Preliminary Objection, West Penn denied that the April 8, 2020 event was within the Company's control.

4. Pursuant to 52. Pa. Code § 5.101, West Penn objects to the relief requested, to the extent that the Complainant seeks compensation from West Penn for the alleged damage to his property. The Commission lacks subject matter jurisdiction to award monetary 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. 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).

7. In the instant Formal Complaint, the Complainant requests to be reimbursed for the alleged damaged personal property.

8. Clearly, the relief requested 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 § 5.101(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).

11. In *Feingold*, the Pennsylvania Supreme Court explained:

[T]he 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, at 794.

12. The Court of Common Pleas retains original jurisdiction over suits for monetary damages. *Behrend, supra*.

13. A prayer for damages from a deciding body that lacks the requisite authority to grant such relief constitutes an "impertinent matter." The request is irrelevant to that cause of action and is therefore correctly challenged through a motion to strike on the relevance grounds. *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 requested relief sought through this Formal Complaint is irrelevant to the instant cause of action and is therefore an “impertinent matter.”

III. Conclusion

Consistent with Pennsylvania law, the Commission does not have subject matter jurisdiction to award monetary damage, as requested by the Complainant. Accordingly, the Complainant’s request for reimbursement is an impertinent matter; as such it must be stricken as per the prescriptions of 52 Pa. Code § 5.101(a)(2).

WHEREFORE, Respondent, West Penn Power Company, requests that the requested relief for reimbursement be stricken from the Formal Complaint filed by James A. Lieto for lack of subject matter jurisdiction.

Respectfully submitted,



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Date: December 7, 2020

Counsel for West Penn Power Company