

July 14, 2021

**Via Electronic Filing**

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

**Re: Docket No. C-2021-3026767  
Kenneth Burns v. West Penn Power Company  
Preliminary Objections of West Penn**

Dear Secretary Chiavetta:


Attached for filing is the Preliminary Objections of West Penn Power Company to the Complaint filed by Kenneth Burns in the above captioned proceeding.

A copy of the Preliminary Objections has been provided to the Complainant 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: Tori Giesler, Esquire, FirstEnergy Service Company [w/encls.]  
Kenneth Burns [w/encls.]

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Kenneth Burns v. West Penn Power Company  
Preliminary Objections of West Penn**

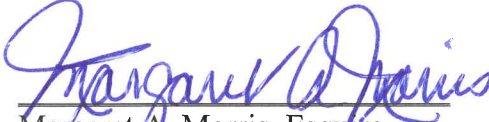
**CERTIFICATE OF SERVICE**

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**

Kenneth Burns  
[marciaburns@verizon.net](mailto:marciaburns@verizon.net)

Dated: July 14, 2021

  
Margaret A. Morris, Esquire

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

KENNETH BURNS

v.

WEST PENN POWER COMPANY

:  
:  
:  
:  
:

Docket No. C-2021-3026767

**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.

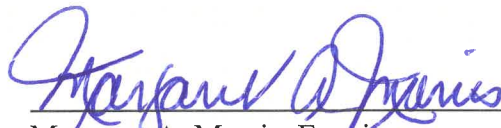
**File with:**

Rosemary Chiavetta, Esquire  
Secretary  
Pennsylvania Public Utility Commission  
[rchiavetta@pa.gov](mailto:rchiavetta@pa.gov)

**With a copy to:**

Margaret A. Morris, Esquire  
Reger Rizzo & Darnall LLP  
[mmorris@regerlaw.com](mailto:mmorris@regerlaw.com)

Date: July 14, 2021



Margaret A. Morris, Esquire  
Attorney ID No. 75048  
Reger Rizzo & Darnall LLP  
Cira Centre, 13<sup>th</sup> Floor  
2929 Arch Street  
Philadelphia, PA 19104  
(215) 495-6524 (tel.)  
[mmorris@regerlaw.com](mailto:mmorris@regerlaw.com)

*Counsel for West Penn Power Company*

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

KENNETH BURNS	:	
	:	
v.	:	Docket No. C-2021-3026767
	:	
WEST PENN POWER COMPANY	:	

**PRELIMINARY OBJECTIONS OF WEST PENN POWER COMPANY  
TO THE COMPLAINT OF KENNETH BURNS**

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 Objections to the Formal Complaint of Kenneth Burns (Complainant) filed 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) who is without authorization to grant the Complainant's request for damages. The Formal Complaint includes impertinent matter in its requested relief. Therefore, West Penn requests that these Preliminary Objections be granted and 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; and (3) 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 residential electric service in the name of Kenneth L. Burns to 120 Road Runner Lane, Ligonier, Pennsylvania (Service Location) under Account No. 100095832596 (Account).

2. The Complainant filed a Formal Complaint alleging damage to personal property and seeks payment for “damages to our property of approximately \$25,000.00.” Complaint at ¶ 5.

3. In its Answer and New Matter being served contemporaneously with this Preliminary Objection, West Penn denied that its actions were negligent or that the Company is responsible for the alleged damage to personal property.

4. Pursuant to 52 Pa. Code § 5.101, West Penn objects to the requested relief on the grounds that the Commission lacks jurisdiction to award monetary damages. The Complainant seeks to have West Penn pay for the alleged damage to his property.

**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).

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

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

A. Impertinent Matter

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).

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

### III. Conclusion

15. Consistent with Pennsylvania law, the Commission does not have subject matter jurisdiction to award monetary damages and the Complainant's request for reimbursement 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 requested relief for damages be stricken from the Formal Complaint filed by Kenneth Burns for lack of subject matter jurisdiction.

Respectfully submitted,



Margaret A. Morris, Esq.  
Attorney ID No. 75048  
Reger Rizzo & Darnall LLP  
Cira Centre, 13<sup>th</sup> Floor  
2929 Arch Street  
Philadelphia, PA 19104  
(215) 495-6524 tel.  
[mmorris@regerlaw.com](mailto:mmorris@regerlaw.com)

Date: July 14, 2021

*Counsel for West Penn Power Company*