

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|                         |   |                |
|-------------------------|---|----------------|
| James S. Lederach       | : |                |
|                         | : |                |
| v.                      | : | C-2024-3046327 |
|                         | : |                |
| West Penn Power Company | : |                |

**INTERIM ORDER  
SUSTAINING PRELIMINARY OBJECTIONS**

On February 8, 2024, James S. Lederach (Complainant) filed a Formal Complaint against West Penn Power Company (West Penn Power), checking the box for a reliability, safety, or quality problem. He specifically alleged that West Penn Power refused to provide electricity service to a residential apartment that he intends to lease. As relief he wants the Commission to order West Penn Power to initiate electricity service and to pay damages in the form of lost rent.

West Penn Power filed an Answer and New Matter on March 4, 2024. West Penn Power denied the material allegations of the complaint.

West Penn Power also filed Preliminary Objections which included a notice to plead on March 4, 2024. West Penn Power contends that the Commission lacks the jurisdiction to award money damages and seeks to strike that portion of the Complainant’s request for relief. The Complainant did not file a response.<sup>1</sup> West Penn Power’s objection is now ripe for review.

By preliminary objection, West Penn Power contends that the Commission does not have jurisdiction to award money damages, citing, among other cases, the Pennsylvania Supreme Court’s decision in *Feingold v. Bell of Pennsylvania*, 383 A.2d 791 (Pa. 1978).

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<sup>1</sup> The Complainant lists himself as an attorney in the representation portion of the formal complaint form.

Accordingly, West Power asks that the Complainant's request for damages in the form of lost rent be stricken as impertinent matter.

The Commission's Rules of Administrative Practice and Procedure authorize a person to file a formal complaint claiming violation of a statute, which the Commission has jurisdiction to administer, or of a regulation or order of the Commission.<sup>2</sup> Preliminary objections to a formal complaint are available to a party under the Commission's Rules.<sup>3</sup>

Preliminary objection practice before the Commission is similar to Pennsylvania civil practice respecting preliminary objections.<sup>4</sup> In deciding the preliminary objections, the Commission must determine whether, based on well-pleaded factual averments of the petitioners, recovery or relief is possible.<sup>5</sup> Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections.<sup>6</sup> All of the non-moving party's averments in the complaint must be viewed as true for purposes of deciding the preliminary objections, and only those facts specifically admitted may be considered against the non-moving party.<sup>7</sup>

To the extent the Complainant is seeking a monetary award for damages to her appliances, West Penn Power is correct. The Commission lacks authority to award monetary damages.<sup>8</sup> In *Feingold*, our Pennsylvania Supreme Court explained the Commission's lack of authority to award monetary damages:

The Public Utility Law placed a broad range of subject matters under the control of the Public Utility Commission (PUC), making that agency responsible for ensuring the adequacy, efficiency, safety, and

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<sup>2</sup> 52 Pa.Code § 5.21(a).

<sup>3</sup> 52 Pa.Code § 5.101.

<sup>4</sup> *Equitable Small Transportation Intervenors v. Equitable Gas Company*, 1994 Pa. PUC LEXIS 69, Docket No. C-00935435 (July 18, 1994).

<sup>5</sup> *Dept. of Auditor General v. SERS*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003); *P.J.S. v. Pa. State Ethics Comm'n*, 669 A.2d 1105 (Pa. Cmwlth. 1996).

<sup>6</sup> *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002).

<sup>7</sup> *Ridge v. State Employees' Retirement Board*, 690 A.2d 1312 (Pa. Cmwlth. 1997).

<sup>8</sup> See *In Re: Melograne*, 812 A. 2d 1164 (Pa. 2002); *Feingold v. Bell of Pennsylvania*, 383 A.2d 791 (Pa. 1977).

reasonableness of public utility services. Act of May 28, 1937, P.L. 1053, art. IV, *as amended*, Act of October 7, 1976, P.L. 1057, No. 215, 66 P.S. § 1171 (Supp.1977-78). The enforcement and remedial powers of the PUC, although formidable, are not those of a court. The PUC is empowered to correct, by regulation or order, abuses in the provision of service. Act of May 28, 1937, P.L. 1053, § 413, 66 P.S. § 1183 (1959). The PUC has the power to impose fines upon a public utility for violation of the Public Utility Law. Act of May 28, 1937, P.L. 1053, art. XIII, § 1301, *as amended*, Act of October 7, 1976, P.L. 1057, No. 215, § 25, 66 P.S. § 1491 (Supp.1977-78). Since the PUC is a creature of statute, it has only those powers which are expressly conferred upon it by the Legislature and those powers which arise by necessary implication. *Allegheny County Port Authority v. Pa. P. U. C.*, 427 Pa. 562, 237 A.2d 602 (1967); *Delaware River Port Authority v. Pa. P. U. C.*, 393 Pa. 639, 145 A.2d 172 (1958).

It is relevant to the case now before us that 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.  
[9]

Applying the Court's ruling in *Feingold* to the present proceeding, Complainant cannot recover compensatory damages at this administrative agency. Requests for compensatory damages should be made before a court of common pleas or a district magistrate. Therefore, West Penn Power's preliminary objection is sustained, and the Complainant's request for relief in the form of monetary damages is stricken.

THEREFORE,

IT IS ORDERED:

1. That the Preliminary Objection filed by West Penn Power Company is sustained.

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<sup>9</sup> *Feingold* at 794.

2. That Complainant James Lederach's requested monetary relief is stricken from his Formal Complaint filed at Docket No. C-2024-3046327, as impertinent matter.

Date: April 9, 2024

\_\_\_\_\_/s/  
Mary D. Long  
Administrative Law Judge

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