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October 9, 2012

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OCT -9 2012

VIA UPS OVERNIGHT DELIVERY

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street, 2nd Floor
Harrisburg, PA 17120

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

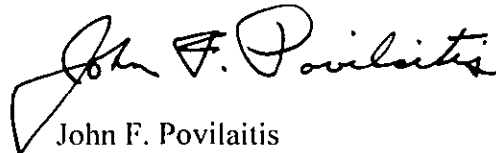
Re: Pennsylvania Public Utility Commission, Bureau of Investigation & Enforcement v.
West Penn Power Company; Docket No. C-2012-2307244

Dear Secretary Chiavetta:

On behalf of West Penn Power Company, I have enclosed for filing the Preliminary Objections of West Penn Power Company to the Complaint of the Bureau of Investigation & Enforcement in the above-captioned matter.

Copies have been served on all parties as indicated in the attached certificate of service.

Very truly yours,


John F. Povilaitis

JFP/kra

Enclosure

cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No.: C-2012-2307244
	:	
West Penn Power Company,	:	
	:	
Respondent.	:	

NOTICE TO PLEAD

TO: Heidi L. Wushinske, Esquire
Wayne T. Scott, Esquire
Johnnie E. Simms, Esquire
Pennsylvania Public Utility Commission
Bureau of Investigation & Enforcement
PO Box 3265
Harrisburg, PA 17105-3265

Pursuant to 52 Pa. Code § 5.101(b), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Preliminary Objections of West Penn Power Company to the Formal Complaint of the Bureau of Investigation & Enforcement 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, thereby 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, and where applicable, the Administrative Law Judge presiding over the case.


File with:

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265

With a copy to:

John F. Povilaitis
Alan M. Seltzer
Buchanan Ingersoll & Rooney, PC
409 North Second Street, Suite 500
Harrisburg, PA 17101-1357

Dated: October 9, 2012



John F. Povilaitis, Esq.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

RECEIVED

OCT -9 2012

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement,

Complainant,

v.

West Penn Power Company,

Respondent.

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Docket No.: C-2012-2307244

**PRELIMINARY OBJECTIONS OF WEST PENN POWER COMPANY
TO COMPLAINT OF BUREAU OF INVESTIGATION AND ENFORCEMENT**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

West Penn Power Company ("West Penn" or the "Company"), by and through its counsel John F. Povilaitis, Alan Michael Seltzer, and Buchanan Ingersoll & Rooney PC, files these Preliminary Objections pursuant to Section 5.101 of this Commission's regulations, 52 Pa. Code § 5.101, and in support thereof, avers as follows:

I. Introduction

1. In these Preliminary Objections, West Penn seeks a dismissal of Counts One, Five and Six of a certain complaint filed by the Pennsylvania Public Utility Commission's ("Commission") Bureau of Investigation and Enforcement ("I&E") at Commission Docket No. C-2012-2307244 ("Complaint") on May 30, 2012.

2. The Complaint is an outgrowth of a fatal incident that occurred on June 2, 2009 at 23 West Hempfield Drive, Irwin, Pennsylvania ("Goretzka Property"), when one of the Company's electric conductors parted, fell onto the Goretzka Property and was approached by the decedent, Carrie Goretzka.

3. As described further below, these Preliminary Objections are based on three theories, each of which is authorized by the Commission's regulations at 52 Pa. Code § 5.101(a): (i) the Commission lacks jurisdiction over Counts One, Five and Six of the Complaint (§ 5.101(a)(1)); (ii) the Complaint is legally insufficient (§ 5.101(a)(4)); and (iii) the pendency of a prior proceeding (§ 5.101(a)(6)).

II. Background

4. West Penn is an electric distribution company operating as a certificated public utility in portions of the Commonwealth of Pennsylvania and serving, among other places, the Goretzka Property.

5. On July 13, 2009, a civil action for damages due to the June 2, 2009 incident was filed in the Court of Common Pleas of Allegheny County, Pennsylvania. In 2011, a second civil action based on the same incident was filed in Allegheny County, expanding the number of defendants.¹ These actions have been consolidated and are being treated as one matter. *Court of Common Pleas of Allegheny County, Michael Goretzka, et al. v. Allegheny Energy, Inc. et al.*, at GD-09-012754 and GD-11-009919 ("Goretzka Action").

6. On May 30, 2012, I&E filed the Complaint with the Commission against West Penn requesting that the Commission impose a civil penalty of at least \$86,000.00 against West Penn under Section 3301 of the Public Utility Code ("Code"), 66 Pa.C.S. § 3301, for allegedly failing to furnish and maintain adequate, efficient, safe and reasonable service and facilities with respect to: (i) the preparation for and installation of a specific automatic splice² that failed on the electric distribution line located on the Goretzka Property; (ii) the monitoring, supervising and

¹ Attached to these Preliminary Objections as "Attachment A" is the civil complaint filed on or about June 1, 2011, in the Court of Common Pleas of Allegheny County, Pennsylvania. This complaint is referred to herein as the "Goretzka Complaint."

² An automatic splice is a device which connects the end of two pieces of conductor. Each conductor end is inserted into opposite ends of the splice and is secured, thus restoring a broken electrical circuit.

training of its employees regarding the preparation for and installation of the subject automatic splice; (iii) securing the electric distribution line located on the Goretzka Property in the automatic splice used to hold that line; and (iv) furnishing the Commission staff information requested to assist in its investigation. Complaint, ¶¶ 11-17.

7. West Penn is filing its Answer and New Matter contemporaneously with these Preliminary Objections, pursuant to extensions of time previously agreed to by I&E and West Penn, and authorized by the Commission's Secretary.

III. Applicable Legal Standards

8. The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections. 52 Pa. Code § 5.101.

9. Commission 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 (Order entered July 18, 1994).

10. A preliminary objection in civil practice seeking dismissal of a pleading will be granted only where relief is clearly warranted and free from doubt. *Interstate Traveller Services, Inc. v. Pa. Dept. of Environmental Resources*, 406 A. 2d 1020 (Pa. 1979); *Rivera v. Philadelphia Theological Seminary of St. Charles Borromeo, Inc.*, 595 A.2d 172 (Pa. Super 1991). The Commission has adopted this standard. *Montague v. Philadelphia Electric Company*, 66 Pa. PUC 24 (1988).

11. The moving party may not rely on its own factual assertions, but must accept for purposes of disposition of the preliminary objections, all well-pleaded, material facts of the other party, as well as any inference fairly deducible from those facts. *County of Allegheny v. Commw. of Pa.*, 490 A.2d 402 (Pa. 1985). Therefore, in ruling on a preliminary objection, the

Commission must assume, for decisional purposes only, that the factual allegations of the complaint are true. *Id.*

12. A preliminary objection may be granted only if the moving party prevails as a matter of law. *Roc v. Flaherty*, 527 A.2d 211 (Pa. Cmwlth. 1985). Any doubt must be resolved in favor of the non-moving party by refusing to sustain the preliminary objections. *Dept. of Auditor General, et al. v. State Employees' Retirement System, et al.*, 836 A.2d 1053, 1064 (Pa. Cmwlth. 2003) citing, *Boyd v. Ward*, 802 A.2d 705 (Pa. Cmwlth. 2002).

IV. Argument

A. **Certain Counts of the Complaint are Outside the Commission's Jurisdiction, are Legally Insufficient, and Should Also Be Dismissed Due to a Pending Prior Proceeding**

13. The Counts of the Complaint that are the subject of these Preliminary Objections relate specifically to West Penn's conduct in connection with the preparation for, installation of and maintenance and operation associated with the specific automatic splice that failed on the electric distribution line traversing the Goretzka Property (i.e., Counts One, Five, and Six). As described in greater detail below, these counts are expressly the subject of and are being addressed by the civil court in the Goretzka Action.

1) **The Commission Lacks Jurisdiction Over Counts One, Five and Six of the Complaint.**

14. Clear and unequivocal evidence confirms that Counts One, Five and Six of the I&E Complaint are being thoroughly addressed in the Goretzka Action, and there is no legal basis for the Commission to relitigate them in this proceeding. The comparison below demonstrates the extent of the overlap between Counts One, Five and Six of the I&E Complaint and the allegations in the civil complaint filed in the Goretzka Action that have been pending since 2009. As such, and as described further below, this proceeding impermissibly encroaches

upon the primary jurisdiction of the Court of Common Pleas of Allegheny County, Pennsylvania with respect to these counts of the I&E Complaint:

I&E Counts

Goretzka Action Allegations

Count One – “West Penn Power...did not ensure the integrity of the splice...”

“Defendants Allegheny Power, Allegheny Energy and West Penn Power Company...failed to properly secure the subject power line in the automatic splice used to hold the line...”. Goretzka Complaint, ¶ 35(b).

Count Five – “...West Penn failed...to ensure that the splice was free from oxidizing agents that could cause excess corrosion.”

“Defendants Allegheny Power, Allegheny Energy and West Penn Power Company...failed to ensure splices were free from oxidizing agents that could cause excess corrosion leading to splice failure”. Goretzka Complaint, ¶ 35(s).

Count Six – “...West Penn failed to furnish and maintain adequate, efficient, safe, and reasonable service and facilities by not properly securing the power line in the automatic splice used to hold the line”.

“Defendants Allegheny Power, Allegheny Energy and West Penn Power Company...failed to properly secure the subject power line in the automatic splice used to hold the line...”. Goretzka Complaint, ¶ 35(b).

15. The Pennsylvania courts have long recognized that frequently “both the courts and administrative agencies must each play roles in the adjudication of certain matters.” *Elkin v. Bell Telephone Company*, 491 Pa. 123, 420 A.2d 371, 375 (1980). To address this situation, the courts have developed the doctrine of “primary jurisdiction”, which “permits the bifurcation of a plaintiff’s claim, whereby a trial court, faced with a claim requiring the expertise of an administrative agency, will first cede the analysis of the issue or issues to that agency.” *Id.* at 131-32, 420 A.2d at 376. *See also, C. Leslie Pettko v. Pennsylvania American Water Company*, 39 A.3d 473 (Pa. Commw. 2012).

16. In determining whether the doctrine of primary jurisdiction applies, courts must look beyond the form of action to the essence of the underlying claims. *T.W. Phillips Gas & Oil Co. v. Peoples Natural Gas Co.* 89 Pa. Cmwlth. 377, 492 A.2d 776, 779 (1985). A scrutiny of the claims must be performed to determine whether or not the action is a challenge to rates and service where Commission jurisdiction is vested. For example, matters relating to tariffs are peculiarly within the expertise of the Commission and as such are outside the jurisdiction of the courts. *Morrow v. Bell Tel. Co. of Pennsylvania*, 330 Pa. Super. 276, 479 A. 2d 548, 550 (1984).

17. However, in evaluating the appropriate forum in which to adjudicate matters, the Pennsylvania Supreme Court has admonished courts not to abdicate judicial responsibility:

[W]here the subject matter is within an agency's jurisdiction *and* where it is a complex matter requiring special competence, with which the judge or jury would not or could not be familiar, the proper procedure is for the court to refer the matter to the appropriate agency. Also weighing in the consideration should be the need for uniformity and consistency in agency policy and legislative intent. Where, on the other hand, the matter is not one peculiarly within the agency's area of expertise, but is one which the courts or jury are equally well-suited to determine, the court must not abdicate its responsibility.

Elkin v. Bell Telephone Company at 134-35, 420 A.2d at 377 (footnotes omitted).

18. As the Commonwealth Court noted in *County of Erie v. Verizon North, Inc.*:

It is well established that the courts of common pleas have unlimited jurisdiction over all actions and proceedings, except as may otherwise be provided by law. 42 Pa.C.S. § 931. However the courts may refrain from hearing a case under the doctrine of "primary jurisdiction" where protection of the integrity of the regulatory scheme dictates that the parties preliminarily resort to the agency that administers the scheme for the resolution of disputes. *Weston v. Reading Co.*, 445 Pa. 182, 282 A.2d 714 (1971). Thus, this doctrine recognizes that both courts and administrative agencies play a role in the adjudication of certain matters. [footnotes omitted] Our Supreme Court in *Elkin* thoroughly discussed this doctrine and stated that the purpose of the doctrine, among other things, is to make use of the agency's special experience and expertise in complex areas and promote consistency and uniformity in the area of administrative

policy. *Id.*, 491 Pa. at 132-33, 420 A.2d at 376. These purposes are frequently effectuated in, and the doctrine is principally applicable to, controversies concerning “regulated industries.” *Id.* at 133, 420 A.2d at 376. *One caveat, however, is that courts should not develop a “dependency” on “agencies whenever a controversy remotely involves some issue, falling arguably within the domain of the agency’s ‘expertise,’ “because expertise is not a talisman dissolving a court’s jurisdiction, nor should accommodation to the administrative function be an abdication of judicial responsibility.* *Id.* at 134, 420 A.2d at 377. [footnotes omitted]

County of Erie v. Verizon North, Inc., 879 A. 2d 357, 363 (Pa. Cmwlth. 2005),

(emphasis added).

19. In this proceeding, the issues raised in Counts One, Five and Six relate to the unique and specific circumstances of the failed automatic splice that are already properly before the civil court in the Goretzka Action. The civil court in that proceeding is currently addressing West Penn’s alleged negligence and related issues in connection with the preparation for and installation of a specific failed automatic splice.

20. The issues raised in Counts One, Five and Six being litigated in the Goretzka Action are not within any special competence of the Commission, are not matters a judge or jury would be unable or incapable of addressing, and there is no compelling need for uniformity or consistency of Commission policy in connection with the specific claim for damages arising from the fatality in the Goretzka Action. I&E has not pointed to any previous Commission order or any regulation of the Commission that establishes any Commission standard relating to the repair of conductors or the use of automatic splices. There is no representation in I&E’s Complaint that installation of automatic splices or the brushing of conductors is an area of special expertise of the Commission such that the courts should be deferential to the Commission and cede to it primary jurisdiction over issues relating to the specific splice at issue in the Goretzka Action and referenced in Counts One, Five and Six of the I&E Complaint. On the

contrary, negligence and damage claims are precisely the types of matters routinely adjudicated by the civil courts, judges and juries.

21. Adding further support for Counts One, Five and Six being litigated exclusively by the civil court in the Goretzka Action is that the Commission's enforcement powers do not include the power to award money damages. *Elkin, supra; Feingold v. Bell of Pa.*, 383 A.2d 791 (Pa. 1978); *Nagy v. Bell Tel. Co.*, 436 A.2d 701 (Pa. Super 1981).

22. Adjudication of the cause of the June 2, 2009 fatality and related issues in Counts One, Five and Six by the Commission in this proceeding would necessarily intrude upon the jurisdiction of the Court of Common Pleas of Allegheny County in the Goretzka Action, and the Commission's attempt to adjudicate those issues would interfere with the orderly administration of justice in that proceeding, which has already been under way for three years. Neither the Court nor any party in the Goretzka Action has sought to refer any of the allegations in that case to the Commission so that its special expertise and familiarity with a public utility issue could be applied. Moreover, when a court defers to the Commission for an initial adjudication of an issue so that the court may incorporate the Commission's adjudication into its subsequent evaluation of negligence and damages, it is customary, and indeed necessary, for the Commission's role in the litigation to be completed first. Here, I&E's Complaint will be litigated only *after* the technical issues of the integrity, negligence and damages with respect to the specific automatic splice on the Goretzka Property have been determined, given that the Goretzka Action is scheduled for trial in the Fall of 2012 as part of Allegheny County's October Trial List.

2) Counts One, Five and Six of I&E's Complaint are Legally Insufficient.

23. Counts One, Five and Six of I&E's Complaint contain conclusions unsupported by any factual averments. For example, Count One alleges that the Company "did not ensure the

integrity of the splice”; Count Five alleges that the Company failed “to ensure that the splice was free from oxidizing agents that could cause excessive corrosion”; and Count Six alleges that the Company erred “by not properly securing the power line in the automatic splice used to hold the line.” Nowhere in these counts does I&E allege -- let alone demonstrate -- *how* the Company allegedly failed to furnish and maintain adequate, efficient, safe and reasonable service and facilities.

24. The I&E Complaint could have connected the generalized allegations in Counts One, Five and Six with specific facts, but either failed or consciously chose not to do so. For example, the allegations in Paragraph 10 (i)-(n) of the I&E Complaint address various aspects of wire brushing the conductor as part of the preparation for installing an automatic splice. This includes: (i) cleaning the conductor with a wire brush; (ii) the Company’s training on brushing; and (iii) the Company’s internal transmission and distribution standards regarding brushing, etc. Importantly, nowhere in Counts One, Five and Six does I&E ever allege that the Company failed to wire brush the conductor that was inserted into the failed splice during the 2004 repair and that such failure *caused* the automatic splice to fail five years later in 2009.

25. I&E is asking this Commission to accept on blind faith the implication that the Company’s failure to brush the conductor in 2004 caused the automatic splice failure without ever asserting it and providing facts in support of such assertion. The broad conclusions and general statements in Counts One, Five and Six do not constitute a legally sufficient pleading that properly connects the alleged legal conclusions of unreasonable service with any specific West Penn conduct. This crucial void in I&E’s allegations essentially means that I&E has not presented any factual basis under which West Penn could be found to have provided

unreasonable service. Accordingly, Counts One, Five and Six of I&E's Complaint are insufficient as a matter of law.

3) Counts One, Five and Six of the I&E Complaint Should Be Dismissed Due to a Prior Pending Proceeding

26. Finally, Counts One, Five and Six of the I&E Complaint are barred by the Goretzka Action under 52 Pa. Code § 5.101(a)(6). Given the pendency of the Goretzka Action in civil court, West Penn has justifiably relied upon litigating the cause of the June 2, 2009 fatality and related matters at one time and in one forum. However, Counts One, Five and Six overlap completely with the specific issues being litigated in the Goretzka Action. If these same issues are permitted to be litigated before the Commission in this proceeding, the Company will have to spend more resources – legal and otherwise – to defend itself. It is unreasonable, unnecessary and not in the public interest to have two separate fora trying the same issues, which could also result in inconsistent or different outcomes.

27. Moreover, should this Commission litigation proceed on the negligence issues raised by I&E in the Complaint, the testimony and evidence to be evaluated by an Administrative Law Judge related to the integrity of the specific automatic splice in question necessary for this type of products liability and tort action will add unprecedented complexity and costs to the conduct of this Commission proceeding.


28. As stated previously, all issues subsumed in or associated with Counts One, Five and Six of the I&E Complaint including, without limitation, the cause of the June 2, 2009 fatality, any West Penn negligence in connection with the failed automatic splice, the causes of that specific splice failure and claims for damages are already being actively litigated in the pending Goretzka Action. The Company will be severely prejudiced if it is required to relitigate these issues in this proceeding.

V. **Conclusion**

29. For the legal and policy reasons specified above, West Penn requests that Counts One, Five, and Six of the I&E Complaint be dismissed with prejudice as being: (i) outside the bounds of the Commission's jurisdiction; (ii) legally insufficient under 52 Pa. Code § 5.101(a)(4); and (iii) already subject to a prior pending proceeding under 52 Pa. Code § 5.101(a)(6).

Respectfully submitted,

Dated: October 9, 2012



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KLINE & SPECTER

A Professional Corporation

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Attorneys for Plaintiffs

MICHAEL J. GORETZKA, INDIVIDUALLY, :
AS THE PARENT AND NATURAL :
GUARDIAN OF MINORS, CHLOE :
AND CARLIE GORETZKA, AND AS :
ADMINISTRATOR OF THE :
ESTATE OF CARRIE GORETZKA, :
DECEASED :
23 West Hempfield Drive :
Irwin, PA 15642 :

COURT OF COMMON PLEAS
ALLEGHENY COUNTY

JURY TRIAL DEMANDED

AND

JOANN GORETZKA
405 Cowan Drive
Elizabeth, PA 15037

Plaintiffs,

VS.

ALLEGHENY ENERGY, INC.
800 Cabin Hill Drive
Greensburg, PA 15601-1689

AND

ALLEGHENY POWER
800 Cabin Hill Drive
Greensburg, PA 15601-1689

AND

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OCT -9 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

WEST PENN POWER COMPANY
800 Cabin Hill Drive
Greensburg, PA 15601-1689

AND

FIRST ENERGY CORPORATION
76 South Main Street
Akron, OH 44308

Defendants.

NOTICE TO PLEAD

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Lawyer Referral Service
Room 920, City County Building
Pittsburgh, PA 15219
(412) 261-2088

ADVISO

Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace falta asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la corte pueda decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE, SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

Lawyer Referral Service
Room 920, City County Building
Pittsburgh, PA 15219
(412) 261-2088

KLINE & SPECTER

A Professional Corporation

BY: SHANIN SPECTER, ESQUIRE
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KILA B. BALDWIN, ESQUIRE

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MICHAEL J. GORETZKA, INDIVIDUALLY,
AS THE PARENT AND NATURAL
GUARDIAN OF MINORS, CHLOE
AND CARLIE GORETZKA, AND AS
ADMINISTRATOR OF THE
ESTATE OF CARRIE GORETZKA,
DECEASED

23 West Hempfield Drive
Irwin, PA 15642

COURT OF COMMON PLEAS
ALLEGHENY COUNTY

JURY TRIAL DEMANDED

AND

JOANN GORETZKA

405 Cowan Drive
Elizabeth, PA 15037

Plaintiffs,

VS.

ALLEGHENY ENERGY, INC.

800 Cabin Hill Drive
Greensburg, PA 15601-1689

AND

ALLEGHENY POWER

800 Cabin Hill Drive
Greensburg, PA 15601-1689

AND

WEST PENN POWER COMPANY
800 Cabin Hill Drive
Greensburg, PA 15601-1689

AND

FIRST ENERGY CORPORATION
76 South Main Street
Akron, OH 44308

Defendants.

CIVIL ACTION COMPLAINT

Plaintiff Michael Goretzka, individually, as the parent and natural guardian for minors Chloe Goretzka and Carlie Goretzka, and as Administrator of the Estate of Carrie Goretzka, deceased, and plaintiff JoAnn Goretzka, complain of the defendants as follows:

THE PARTIES

1. Plaintiff Michael Goretzka, age 40 on June 2, 2009, is an adult person and citizen of the Commonwealth of Pennsylvania, residing therein at 23 West Hempfield Drive, Irwin, Pennsylvania 15642.

2. Plaintiff Michael Goretzka is the Administrator of the Estate of Carrie Goretzka, deceased, having been so appointed by the Register of Wills of Westmoreland County on June 12, 2009. See Short Certificate attached hereto as Exhibit "A."

3. Chloe Goretzka, age 4 on June 2, 2009, is a minor and citizen of the Commonwealth of Pennsylvania, residing therein at 23 West Hempfield Drive, Irwin, Pennsylvania 15642.

4. Carlie Goretzka, age 2 on June 2, 2009, is a minor and citizen of the Commonwealth of Pennsylvania, residing therein at 23 West Hempfield Drive, Irwin,

Pennsylvania 15642.

5. Plaintiff-decedent Carrie Goretzka, age 39 on June 2, 2009, was the mother of minor-plaintiffs Chloe and Carlie Goretzka.

6. Plaintiff Michael Goretzka was the husband of Carrie Goretzka and is the father and legal guardian of minor-plaintiffs Chloe and Carlie Goretzka.

7. Plaintiff JoAnn Goretzka, age 65 on June 2, 2009, is an adult person and citizen of the Commonwealth of Pennsylvania, residing therein at 405 Cowan Drive, Elizabeth, PA 15037.

8. JoAnn Goretzka was the mother-in-law of Carrie Goretzka and is the grandmother of Chloe and Carlie Goretzka.

9. Defendant, Allegheny Power, is a Pennsylvania corporation, having its principal place of business in Pennsylvania. At all times relevant hereto Allegheny Power has regularly conducted business in Allegheny County, Pennsylvania.

10. Defendant, Allegheny Energy, is a Maryland corporation, having its principal place of business in Pennsylvania. At all times relevant hereto Allegheny Energy has regularly conducted business in Allegheny County, Pennsylvania.

11. Defendant, West Penn Power Company, is a Pennsylvania corporation, having its principal place of business in Pennsylvania. At all times relevant hereto West Penn Power Company has regularly conducted business in Allegheny County, Pennsylvania.

12. Defendant First Energy Corporation ("First Energy") is an Ohio corporation, having its principal place of business in Ohio.

13. Upon information and belief, defendant First Energy merged with defendant Allegheny Energy through a stock sale on February 25, 2011.

14. Defendant First Energy assumed the assets and liabilities of defendant Allegheny Energy in this merger.

15. Thus, defendant First Energy is liable for the actions of Defendant Allegheny Energy.

16. Defendants Allegheny Power, Allegheny Energy, and West Penn Power Company, installed, owned, and maintained the power lines located at or around 23 West Hempfield Drive, Irwin, Pennsylvania that are the subject of this lawsuit.

17. At all material times hereto, defendants Allegheny Power, Allegheny Energy, and West Penn Power acted by themselves and by and through their agents, servants and employees, including actual and/or apparent agents.

18. At all times relevant hereto, defendants Allegheny Power, Allegheny Energy, and West Penn Power were engaged in the provision and supply of high voltage electric current to residential customers, including the plaintiffs in this action.

OPERATIVE FACTS

19. The allegations set forth above are incorporated herein by reference as if set forth in full.

20. On June 2, 2009, at or about 4:28 p.m., plaintiff's decedent, Carrie Goretzka, lost all power in her home.

21. Carrie Goretzka saw a fire coming from the power lines in her backyard, and went into her garage to retrieve her cell phone.

22. Upon information and belief, in order to get proper cell phone reception, Carrie Goretzka went into her side yard with her cell phone in an attempt to contact 911.

23. Although there were no adverse weather conditions, and upon information and belief, the 7200 volt power line fell from the pole in her yard nearest to West Hempfield Drive.

24. Carrie Goretzka came in contact with the live wire that had fallen.

25. Upon information and belief, the downed power line caused Carrie Goretzka to fall in the yard.

26. Mrs. Goretzka was shocked continuously and caught fire until the defendants' employees reported to the scene and removed the line from her.

27. Plaintiff JoAnn Goretzka saw Carrie Goretzka being shocked and on fire, as she laid helpless in the yard with the downed power line wrapped around her.

28. Plaintiff JoAnn Goretzka shocked her fingertips, and was thrown back several feet when she tried to assist Carrie Goretzka as Carrie Goretzka was being shocked by the downed line.

29. Minor plaintiffs Chloe and Carlie Goretzka stood feet from the downed power line and saw their mother being shocked and on fire as she laid helpless on the ground in her yard.

30. JoAnn, Chloe, and Carlie Goretzka are all suffering from depression, anxiety, and sleeplessness as a result of seeing Carrie Goretzka being shocked by the downed power line.

31. Defendants Allegheny Power, Allegheny Energy, and West Penn Power Company knew and/or should have known that the subject power line was in danger of falling, as the same power line had fallen at this location within the past five (5) years.

32. Defendants Allegheny Power, Allegheny Energy, and West Penn Power Company knew and/or should have known that falling power lines such as the line that is the

subject of this complaint present a great risk of danger to persons who walk under and around them on a daily basis.

33. Defendants Allegheny Power, Allegheny Energy, and West Penn Power knew or should have known that a power line could fall if the power line and the splices that held it up were not installed correctly.

34. Defendants Allegheny Power, Allegheny Energy, and West Penn Power Company should have installed and maintained the subject power line and its splices so that the line could not injure persons walking beneath or around it, such as Carrie Goretzka.

35. Defendants Allegheny Power, Allegheny Energy, and West Penn Power Company were negligent and reckless in the installation, maintenance, and inspection of the subject power line and its connections and/or splices in that defendants:

- a. failed to use reasonable and proper care in the installation and maintenance of the subject power line and its connections and/or splices so as to avoid the risk of serious bodily injury from this power line falling;
- b. failed to properly secure the subject power line in the automatic splice used to hold the line;
- c. failed to perform adequate testing and inspection and failed to perform necessary maintenance so as to ensure the safety of the power line and all those who walked underneath it;
- d. failed to replace the subject power line and/or its connectors and/or splices and to properly alert the public, including plaintiff's decedent and JoAnn Goretzka, to the

dangerous propensities of this power line to fall after defendants knew or should have known about the unsafe condition of the power line;

- e. failed to select and install a proper splice for use on the subject line;
- f. failed to use the highest degree of care practicable in the provision and supply of high voltage electric current;
- g. failed to properly install and inspect the splices on the subject line;
- h. failed to use reasonable and proper care in installing, maintaining, and inspecting a power line and its connections and/or splices so that it would not fall to the ground;
- i. failed to properly prepare the power line for splice installation when this line was hung, including, but not limited to failure to properly clean the conductor and/or use anti-corrosive agent on the conductor before insertion into the splice;
- j. failed to use reasonable and proper care installing, maintaining, and inspecting power lines and connections and/or splices that were safe for their intended use;
- k. failed to timely respond to reports of downed power line on June 2, 2009 and/or problems with power lines on June 2,

2009 so as to prevent the harm suffered by Carrie Goretzka and JoAnn Goretzka;

- l. failed to properly train employees in conductor, splice, and connection installation, preparation, and cleaning;
- m. failed to properly monitor and supervise employees to ensure proper conductor, splice, and connection installation;
- n. failed to ensure employees were following internal procedures and training for splice and conductor installation;
- o. failed to ensure employees were following manufacturer specifications for splice and conductor installation;
- p. failed to timely replace the conductor after it had previously fallen;
- q. failed to select and use the proper conductor for use at this site;
- r. failed to properly keep power lines clear of trees, vegetation, and other debris;
- s. failed to ensure splices were free from oxidizing agents that could cause excess corrosion leading to splice failure;
- t. failed to use splices that were not defective; and,
- u. failed to replace splices known to be of deficient quality and therefore defective.

36. As a direct and proximate result of the wanton, reckless, tortious, and negligent conduct of all defendants, as set forth herein, Carrie Goretzka died on June 5, 2009 after enduring excruciating pain and suffering. Prior to her death, and as a direct result of defendants' conduct, Carrie Goretzka had burns covering 85% of her body, and had several fingers severed from her left hand. Carrie Goretzka underwent a left arm amputation and medical procedures in an attempt to save her life after being shocked.

37. As a direct and proximate result of the wanton, reckless, tortious, and negligent conduct of all defendants, as set forth herein, jointly and severally, JoAnn Goretzka suffered emotional injury and burns on her fingertips.

38. As a direct and proximate result of the wanton, reckless, tortious, and negligent conduct of all defendants, as set forth herein, jointly and severally, Chloe and Carlie Goretzka suffered serious and devastating emotional injury.

39. Plaintiffs claim all damages recoverable under the law, including compensatory and punitive damages.

MICHAEL GORETZKA

v.

**ALLEGHENY POWER, ALLEGHENY ENERGY,
WEST PENN POWER COMPANY, and FIRST ENERGY CORPORATION
FIRST CAUSE OF ACTION: WRONGFUL DEATH ACT**

40. The allegations set forth above are incorporated herein by reference as if set forth in full.

41. Plaintiff, Michael Goretzka, Administrator of the Estate of Carrie Goretzka, brings this action on behalf of the beneficiaries under and by virtue of the Wrongful Death Act, 42 Pa. C.S.A. §8301, and the applicable Rules of Civil Procedure and decisional law.

42. Carrie Goretzka left surviving her the following persons who are beneficiaries under the Wrongful Death Act:

Michael Goretzka (husband)
Chloe Goretzka (daughter)
Carlie Goretzka (daughter)
John Salandro (father)
Joann Suomela (mother)

43. As a direct and proximate result of the wanton, reckless, tortious, and negligent conduct of all defendants, as set forth herein, Carrie Goretzka died on June 5, 2009 after enduring excruciating pain and suffering. Prior to her death, and as a direct result of defendants' conduct, Carrie Goretzka had burns covering 85% of her body, and had several fingers severed from her left hand. Carrie Goretzka underwent a left arm amputation and other medical procedures in an attempt to save her life after being shocked.

44. Plaintiff, Michael Goretzka, Administrator of the Estate of Carrie Goretzka, claims the full measure of damages recoverable under the Wrongful Death Act, including, but not limited to, damages for medical, funeral and burial expenses and expenses of administration necessitated by reason of injuries causing decedent's death, damages for monetary support that decedent would have provided to the beneficiaries during decedent's lifetime, damages for services provided or which could have been expected to have been performed in the future by decedent, damages for the loss of companionship, comfort, society, guidance, solace, and protection by decedent, and also damages for the emotional and psychological losses suffered by the beneficiaries named above.

WHEREFORE, plaintiff Michael Goretzka demands damages against defendants, including compensatory damages, damages for loss of consortium and punitive damages, jointly and severally, in an amount in excess of twenty five thousand dollars (\$25,000.00), and in excess

of the prevailing arbitration limits under the Wrongful Death Act, exclusive of delay damages and costs.

MICHAEL GORETZKA
v.
ALLEGHENY POWER, ALLEGHENY ENERGY,
WEST PENN POWER COMPANY, and FIRST ENERGY CORPORATION
SECOND CAUSE OF ACTION: SURVIVAL ACT

45. The allegations set forth above are incorporated herein by reference as if set forth in full.

46. Plaintiff, Michael Goretzka, Administrator of the Estate of Carrie Goretzka, brings this Survival Action on behalf of the Estate of Carrie Goretzka under and by virtue of 42 Pa.C.S.A. §8302, and the applicable Rules of Civil Procedure and decisional law.

47. The persons who are entitled to the Estate of Carrie Goretzka are:

Michael Goretzka (husband)
Chloe Goretzka (daughter)
Carlie Goretzka (daughter)

48. As a result of the wanton, reckless, negligent, and tortious conduct of all defendants, jointly and severally, as set forth herein, plaintiff, Michael Goretzka's decedent was caused grave injuries and death resulting in the entitlement to damages by the beneficiaries under the Survival Act.

49. On behalf of the Survival Act beneficiaries, the Administrator claims all damages available under the Survival Act, including damages for loss of earnings and economic loss to decedent's estate, damages for medical expenses, damages for the loss of life's pleasures, damages for all loss of income, retirement, and Social Security income as a result of decedent's death, damages for the pain, suffering, and inconvenience endured by decedent prior to her

death, including, but not limited to, physical pain and suffering, mental pain and suffering, and the fright and mental suffering attributed to the peril leading to decedent's death.

WHEREFORE, plaintiff Michael Goretzka demands damage against all defendants, including compensatory and punitive damages, jointly and severally, in an amount in excess of twenty five thousand dollars (\$25,000.00), and in excess of the prevailing arbitration limits under the Survival Act, exclusive of delay damages and costs.

COUNT I
MICHAEL GORETZKA
v.
ALLEGHENY POWER, ALLEGHENY ENERGY,
WEST PENN POWER COMPANY, AND FIRST ENERGY CORPORATION
NEGLIGENCE AND RECKLESSNESS

50. The allegations set forth above are incorporated herein by reference as if set forth in full.

51. Defendants Allegheny Power, Allegheny Energy, and West Penn Power Company were negligent and reckless in the installation and maintenance of the subject power line in that defendants:

- a. failed to use reasonable and proper care in the installation and maintenance of the subject power line and its connections and/or splices so as to avoid the risk of serious bodily injury from this power line falling;
- b. failed to properly secure the subject power line in the automatic splice used to hold the line;

- c. failed to perform adequate testing and inspection and failed to perform necessary maintenance so as to ensure the safety of the power line and all those who walked underneath it;
- d. failed to replace the subject power line and/or its connectors and/or splices and to properly alert the public, including plaintiff's decedent and JoAnn Goretzka, to the dangerous propensities of this power line to fall after defendants knew or should have known about the unsafe condition of the power line;
- e. failed to select and install a proper splice for use on the subject line;
- f. failed to use the highest degree of care practicable in the provision and supply of high voltage electric current;
- g. failed to properly install and inspect the splice on the subject line;
- h. failed to use reasonable and proper care in installing, maintaining, and inspecting a power line and its connections and splices so that it would not fall to the ground;
- i. failed to properly prepare the power line for splice installation when this line was hung, including, but not limited to failure to properly clean the conductor and/or use

anti-corrosive agent on the conductor before insertion into the splice;

- j. failed to use reasonable and proper care installing, maintaining, and inspecting power lines and connections and splices that were safe for their intended use;
- k. failed to timely respond to reports of downed power line on June 2, 2009 and/or problems with power lines on June 2, 2009 so as to prevent the harm suffered by Carrie Goretzka and JoAnn Goretzka;
- l. failed to properly train employees in conductor, splice, and connection installation, preparation, and cleaning;
- m. failed to properly monitor and supervise employees to ensure proper conductor, splice, and connection installation;
- n. failed to ensure employees were following internal procedures and training for splice and conductor installation;
- o. failed to ensure employees were following manufacturer specifications for splice and conductor installation;
- p. failed to timely replace the conductor after it had previously fallen;
- q. failed to select and use the proper conductor for use at this site;

- r. failed to properly keep power lines clear of trees, vegetation, and other debris;
- s. failed to ensure splices were free from oxidizing agents that could cause excessive corrosion leading to splice failure;
- t. failed to use splices that were not defective; and,
- u. failed to replace splices know to be of deficient quality and therefore defective.

52. As a direct and proximate result of defendants' negligence and recklessness, Michael Goretzka sustained and will continue to sustain significant injuries and damages as described herein.

WHEREFORE, plaintiff Michael Goretzka demands damages against all defendants, including compensatory and punitive damages, jointly and severally, in an amount in excess of twenty five thousand dollars (\$25,000.00), and in excess of the prevailing arbitration limits, exclusive of delay damages and costs.

COUNT II
MICHAEL GORETZKA AS ADMINISTRATOR OF THE ESTATE OF
CARRIE GORETZKA
v.
ALLEGHENY POWER, ALLEGHENY ENERGY,
WEST PENN POWER COMPANY, AND FIRST ENERGY CORPORATION
NEGLIGENCE AND RECKLESSNESS

53. The allegations set forth above are incorporated herein by reference as if set forth in full.

54. Defendants Allegheny Power, Allegheny Energy, and West Penn Power Company were negligent and reckless in the installation and maintenance of the subject power line in that the defendants:

- a. failed to use reasonable and proper care in the installation and maintenance of the subject power line and its connections and/or splices so as to avoid the risk of serious bodily injury from this power line falling;
- b. failed to properly secure the subject power line in the automatic splice used to hold the line;
- c. failed to perform adequate testing and inspection and failed to perform necessary maintenance so as to ensure the safety of the power line and all those who walked underneath it;
- d. failed to replace the subject power line and/or its connectors and/or splices and to properly alert the public, including plaintiff's decedent and JoAnn Goretzka, to the dangerous propensities of this power line to fall after defendants knew or should have known about the unsafe condition of the power line;
- e. failed to select and install a proper splice for use on the subject line;
- f. failed to use the highest degree of care practicable in the provision and supply of high voltage electric current;
- g. failed to properly install and inspect the splice on the subject line;
- h. failed to use reasonable and proper care in installing, maintaining, and inspecting a power line and its

connections and splices so that it would not fall to the ground;

- i. failed to properly prepare the power line for splice installation when this line was hung, including, but not limited to failure to properly clean the conductor and/or use anti-corrosive agent on the conductor before insertion into the splice;
- j. failed to use reasonable and proper care installing, maintaining, and inspecting power lines and connections and splices that were safe for their intended use;
- k. failed to timely respond to reports of downed power line on June 2, 2009 and/or problems with power lines on June 2, 2009 so as to prevent the harm suffered by Carrie Goretzka and JoAnn Goretzka;
- l. failed to properly train employees in conductor, splice, and connection installation, preparation, and cleaning;
- m. failed to properly monitor and supervise employees to ensure proper conductor, splice, and connection installation;
- n. failed to ensure employees were following internal procedures and training for splice and conductor installation;

- o. failed to ensure employees were following manufacturer specifications for splice and conductor installation;
- p. failed to timely replace the conductor after it had previously fallen;
- q. failed to select and use the proper conductor for use at this site;
- r. failed to properly keep power lines clear of trees, vegetation, and other debris;
- s. failed to ensure splices were free from oxidizing agents that could cause excessive corrosion leading to splice failure;
- t. failed to use splices that were not defective; and,
- u. failed to replace splices know to be of deficient quality and therefore defective.

55. As a direct and proximate result of defendants' negligence and recklessness, Michael Goretzka sustained and will continue to sustain significant injuries and damages as described herein.

WHEREFORE, plaintiff Michael Goretzka demands damages against all defendants, including compensatory and punitive damages, jointly and severally, in an amount in excess of twenty five thousand dollars (\$25,000.00), and in excess of the prevailing arbitration limits, exclusive of delay damages and costs.

**COUNT III
JOANN GORETZKA**

v.

**ALLEGHENY POWER, ALLEGHENY ENERGY,
WEST PENN POWER COMPANY, AND FIRST ENERGY CORPORATION
NEGLIGENCE AND RECKLESSNESS**

56. The allegations set forth above are incorporated herein by reference as if set forth in full.

57. Defendants Allegheny Power, Allegheny Energy, and West Penn Power Company were negligent and reckless in the installation and maintenance of the subject power line in that defendants:

- a failed to use reasonable and proper care in the installation and maintenance of the subject power line and its connections and/or splices so as to avoid the risk of serious bodily injury from this power line falling;
- b. failed to properly secure the subject power line in the automatic splice used to hold the line;
- c. failed to perform adequate testing and inspection and failed to perform necessary maintenance so as to ensure the safety of the power line and all those who walked underneath it;
- d. failed to replace the subject power line and/or its connectors and/or splices and to properly alert the public, including plaintiff's decedent and JoAnn Goretzka, to the dangerous propensities of this power line to fall after

defendants knew or should have known about the unsafe condition of the power line;

- e. failed to select and install a proper splice for use on the subject line;
- f. failed to use the highest degree of care practicable in the provision and supply of high voltage electric current;
- g. failed to properly install and inspect the splice on the subject line;
- h. failed to use reasonable and proper care in installing, maintaining, and inspecting a power line and its connections and splices so that it would not fall to the ground;
- i. failed to properly prepare the power line for splice installation when this line was hung, including, but not limited to failure to properly clean the conductor and/or use anti-corrosive agent on the conductor before insertion into the splice;
- j. failed to use reasonable and proper care installing, maintaining, and inspecting power lines and connections and splices that were safe for their intended use;
- k. failed to timely respond to reports of downed power line on June 2, 2009 and/or problems with power lines on June 2,

2009 so as to prevent the harm suffered by Carrie Goretzka and JoAnn Goretzka;

- l. failed to properly train employees in conductor, splice, and connection installation, preparation, and cleaning;
- m. failed to properly monitor and supervise employees to ensure proper conductor, splice, and connection installation;
- n. failed to ensure employees were following internal procedures and training for splice and conductor installation;
- o. failed to ensure employees were following manufacturer specifications for splice and conductor installation;
- p. failed to timely replace the conductor after it had previously fallen;
- q. failed to select and use the proper conductor for use at this site;
- r. failed to properly keep power lines clear of trees, vegetation, and other debris;
- s. failed to ensure splices were free from oxidizing agents that could cause excessive corrosion leading to splice failure;
- t. failed to use splices that were not defective; and,
- u. failed to replace splices know to be of deficient quality and therefore defective.

58. As a direct and proximate result of the wanton, reckless, tortious, and negligent conduct of all defendants, as set forth herein, jointly and severally, JoAnn Goretzka suffered burns on her fingertips.

WHEREFORE, plaintiff JoAnn Goretzka demands damages against all defendants, including compensatory and punitive damages, jointly and severally, in an amount in excess of twenty five thousand dollars (\$25,000.00), and in excess of the prevailing arbitration limits, exclusive of delay damages and costs.

COUNT IV
MICHAEL GORETZKA FOR MINOR PLAINTIFFS CHLOE GORETZKA AND
CARLIE GORETZKA

v.

ALLEGHENY POWER, ALLEGHENY ENERGY,
WEST PENN POWER COMPANY, AND FIRST ENERGY CORPORATION
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

59. The allegations set forth above are incorporated herein by reference as if set forth in full.

60. As a result of the wanton, reckless, negligent, and tortious conduct and fault of all defendants, jointly and severally, as well as their agents, servants and/or employees, Chloe and Carlie Goretzka suffered mental anguish and distress, including, but not limited to, emotional distress, anxiety, and depression.

61. Chloe and Carlie Goretzka directly and contemporaneously witnessed the above-described negligence and injury caused to Carrie Goretzka and/or witnessed the pain and suffering of Carrie Goretzka.

62. The witnessing of the negligence and injury described herein caused Chloe and Carlie Goretzka to suffer severe emotional shock and trauma and psychological injury.

63. As a result of the emotional shock and trauma suffered by Chloe and Carlie Goretzka as a result of defendants' negligence, Chloe and Carlie Goretzka continue to experience physical and/or emotional effects and/or manifestations of that emotional trauma and shock, including sleeplessness, anxiety, depression and other symptoms, and will continue to so suffer in the future, and therefore, are entitled to recover damages in their own right for their physical injuries and emotional pain and suffering under the law.

WHEREFORE, plaintiff Michael Goretzka demands damages against all defendants, including compensatory and punitive damages, jointly and severally, in an amount in excess of twenty five thousand dollars (\$25,000.00), and in excess of the prevailing arbitration limits, exclusive of delay damages and costs.

COUNT V
JOANN GORETZKA
v.
ALLEGHENY POWER, ALLEGHENY ENERGY,
WEST PENN POWER COMPANY, AND FIRST ENERGY CORPORATION
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

64. The allegations set forth above are incorporated herein by reference as if set forth in full.

65. As a result of the wanton, reckless, negligent, and tortious conduct and fault of all defendants, jointly and severally, as well as their agents, servants and/or employees, JoAnn Goretzka suffered mental anguish and distress, including, but not limited to, emotional distress, anxiety, and depression.

66. JoAnn Goretzka directly and contemporaneously witnessed the above-described negligence and injury caused to Carrie Goretzka and/or witnessed the pain and suffering of Carrie Goretzka.

67. The witnessing of the negligence and injury described herein caused JoAnn Goretzka to suffer severe emotional shock and trauma and psychological injury.

68. As a result of the emotional shock and trauma suffered by JoAnn Goretzka as a result of defendants' negligence, JoAnn Goretzka continues to experience physical and/or emotional effects and/or manifestations of that emotional trauma and shock, including sleeplessness, anxiety, depression and other symptoms, and will continue to so suffer in the future, and therefore, is entitled to recover damages in her own right for her physical injuries and emotional pain and suffering under the law.

WHEREFORE, plaintiff JoAnn Goretzka demands damages against all defendants, including compensatory and punitive damages, jointly and severally, in an amount in excess of twenty five thousand dollars (\$25,000.00), and in excess of the prevailing arbitration limits, exclusive of delay damages and costs.

Date: 6/1/11

By: 

KLINE & SPECTER,
A Professional Corporation

SHANIN SPECTER, ESQUIRE
DOMINIC C. GUERRINI, ESQUIRE
KILA B. BALDWIN, ESQUIRE
Attorneys for Plaintiffs

VERIFICATION

I, Michael J. Goretzka, individually, for minors, Chloe and Carlie Goretzka, and as Administrator of Estate of Carrie Goretzka, deceased, hereby state that I am a plaintiff in this action and that the facts set forth in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. I understand that this statement is made subject to the penalties of 18 Pa. P.C.S.A. §4904 relating to unsworn falsification to authorities.


MICHAEL J. GORETKZA

DATE: 5/3/11

VERIFICATION

I, JoAnn Goretzka, hereby state that I am a plaintiff in this action and that the facts set forth in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. I understand that this statement is made subject to the penalties of 18 Pa. P.C.S.A. §4904 relating to unsworn falsification to authorities.


JOANN GORETZKA

DATE: 5-31-11

RECEIVED

OCT -9 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

EXHIBIT "A"

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF WESTMORELAND

SHORT CERTIFICATE

I, EARL S. KEIM II

Register for the Probate of Wills and Granting
Letters of Administration in and for
WESTMORELAND County, do hereby certify that on
the 12th day of June, Two Thousand and Nine,
Letters of ADMINISTRATION

in common form were granted by the Register of
said County, on the

estate of CARRIE LYNN GORETZKA, late of HEMPFIELD TOWNSHIP
(First, Middle, Last)

in said county, deceased, to MICHAEL J GORETZKA
(First, Middle, Last)

and that same has not since been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the
seal of said office at GREENSBURG, PENNSYLVANIA, this 12th day of June
Two Thousand and Nine.

File No. 65-09-01150

Date of Death 6/05/2009

S.S. # 172-56-9908

Earl S. Keim II
Register of Wills

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement,

Complainant,

v.

West Penn Power Company,

Respondent.

Docket No.: C-2012-2307244

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

Via UPS Overnight Delivery


Heidi L. Wushinske, Esquire
Wayne T. Scott, Esquire
Johnnie E. Simms, Esquire
Pennsylvania Public Utility Commission
Bureau of Investigation & Enforcement
PO Box 3265
Harrisburg, PA 17105-3265

RECEIVED

OCT -9 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Dated this 9th day of October, 2012.


John F. Povilaitis, Esq.