

John L. Munsch
Attorney

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November 5, 2012

VIA E-FILE


Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Michael Balogh v. West Penn Power Company
Complaint Docket No. C-2012-2329713

Dear Secretary Chiavetta:

Enclosed is West Penn Power Company's **Answer and New Matter and Preliminary Objection** to the above-captioned Formal Complaint, with certificate of service attached

Very truly yours,


John L. Munsch
Attorney

JLM:jss

Enclosures

cc: Certificate of Service

Pennsylvania Public Utility Commission;
Re: Michael Balogh v. West Penn Power Company; Docket No. C-2012-2329713

VERIFICATION

Raymond E. Valdes states that he is a Rates Advisor for West Penn Power Company authorized to make this verification on its behalf, and that the facts set forth in the attached **Answer and New Matter and Preliminary Objection** are true and correct to the best of his knowledge, information and belief. He understands that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: November 5, 2012


RAYMOND E. VALDES


Pennsylvania Public Utility Commission;
Re: Michael Balogh v. West Penn Power Company; Docket No. C-2012-2329713

CERTIFICATE OF SERVICE

I hereby certify that I have this day served by first-class mail, postage prepaid, the foregoing
Answer and New Matter and Preliminary Objection addressed as follows:

Michael Balogh
132 High Street
Herminie, PA 15637

Date: November 5, 2012



John L. Munsch, Attorney for
WEST PENN POWER COMPANY
800 Cabin Hill Drive
Greensburg, PA 15601
(724) 838-6210

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MICHAEL BALOGH

v.

WEST PENN POWER COMPANY

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Docket No. C-2012-2329713

NOTICE TO PLEAD

TO: MICHAEL BALOGH

You are hereby notified to file a written response to the enclosed New Matter within ten (10) days from service hereof, or a judgment may be entered against you.

November 5, 2012



John L. Munsch, Attorney for
WEST PENN POWER COMPANY
800 Cabin Hill Drive
Greensburg, PA 15601
(724) 838-6210
Pa. I.D. No. 31489

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MICHAEL BALOGH	:	
	:	
v.	:	Docket No. C-2012-2329713
	:	
WEST PENN POWER COMPANY	:	

**ANSWER AND NEW MATTER OF
WEST PENN POWER COMPANY
TO THE COMPLAINT OF MICHAEL BALOGH**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

West Penn Power Company ("West Penn" or the "Company"), by and through its counsel, John L. Munsch, answers and provides New Matter to the above-captioned Formal Complaint ("Formal Complaint") pursuant to Section 5.61 of the Pennsylvania Public Utility Commission ("Commission") regulations, 52 Pa. Code §5.61, as follows:

1. Admitted
2. Admitted.
3. Admitted.
- 4(A). Not applicable.

4(B). Admitted in part and denied in part. It is admitted that Complainant does not currently have a smart meter for his account. It is denied that the Complainant is being charged, as stated in the Complaint, for "something that I don't have." The Complainant is being charged monthly for a Commission-approved Smart Meter Technologies ("SMT") Surcharge which is assessed to all of West Penn's residential, commercial, and industrial customers to recover SMT-related costs for: (1) evaluating the Company's back-office systems, system-wide network development and installation plan and perform any needed redesign based on that evaluation; (2) deploying

approximately 25,000 smart meters to support energy efficiency and demand response offerings; and (3) recovering expenditures in support of the development of a smart meter deployment plan.

By way of further answer, the SMT Surcharge originated from Act 129 of 2008¹ ("Act 129") signed into law by then Governor Edward G. Rendell on October 15, 2008. The SMT Surcharge is applied in accordance with the Public Utility Code, in accordance with Act 129, and in accordance with the Company's duly filed and Commission-approved tariff.

The Company's smart meter program was implemented pursuant to the Amended Joint Petition for Settlement at Docket No. M-2009-2123951 as approved by Commission Order entered June 30, 2011.

5. For the reasons expressed in the Company's response in Paragraph 4 and in its New Matter, the Company's SMT Surcharge is an appropriate charge and is approved by the Commission. The SMT Surcharge is correctly calculated and applied by the Company and should not be removed from the Complainant's monthly invoice from West Penn.

6. Admitted.

7. Admitted.

8. Not applicable.

9. Not applicable.

10. Not applicable.

¹ 66 Pa.C.S. §§2806.1 *et seq.*

NEW MATTER

11. Paragraphs 1-10 of this Answer are incorporated by reference as if fully set forth herein.

12. West Penn is an electric distribution company providing electric service to customers within the Commonwealth of Pennsylvania.

13. Act 129² took effect on November 12, 2008, thirty days after it was signed into law by then Governor Edward G. Rendell.

14. Among other things, Act 129 specifically directed that electric distribution companies ("EDCs") with at least 100,000 customers file a smart meter technology ("SMT") procurement and installation plan with the Commission for its approval. 66 Pa.C.S. §§2807(f)(1) and (2). Act 129 also established cost recovery methods for costs incurred in implementing an approved Plan. 66 Pa.C.S. §§2807(f)(7).

15. On June 24, 2009, the Commission issued an Implementation Order outlining the standards each Plan must meet, and provided guidance on the procedures to be followed for submittal, review and approval of all aspects of each SMT plan. *Smart Meter Procurement and Installation, Implementation Order*, Docket No. M-2009-2092655 (Order entered on June 24, 2009).

16. On August 14, 2009, West Penn filed with the Commission a Petition for Approval of SMT Procurement and Installation Plan ("WP Original SMIP"). The WP Original SMIP proposed that smart meters be installed and the costs associated with the plan be recovered through a reconcilable adjustment clause called the SMT Surcharge.

²66 Pa.C.S. §§2806.1 *et seq.*

17. The WP Original SMIP was the subject of a public proceeding in which many parties with varying interests fully evaluated and discussed all issues raised by the installation and recovery of costs for smart meters. The Complainant did not participate in this proceeding or otherwise raise any concerns about smart meters.

18. On March 9, 2011, West Penn filed an Amended Joint Petition for Settlement at Docket No. M-2009-2123951. The Commission approved the Amended Joint Petition for Settlement by Order entered June 30, 2011. On August 22, 2011, the Company submitted its compliance filing for the SMT Surcharge tariff, with a surcharge effective date of September 1, 2011 through December 31, 2011. On December 21, 2011, the Company submitted its annual rate change to the SMT Surcharge for the period of January 1, 2012 through December 31, 2012, Supplement No. 211 to Electric -- Pa. P.U.C. No. 39, in accordance with the surcharge rates specified in the Amended Joint Petition for Settlement.

19. The implementation of the Amended Joint Petition for Settlement and the approval of the costs associated with its implementation are in accordance with Act 129. 66 Pa.C.S. §2807(f).

20. West Penn is required by statute, a Commission order and its Commission-approved tariff to implement its smart metering program and the terms of the Amended Joint Petition for Settlement to charge a SMT Surcharge to its customers.

21. The Complainant wants the SMT Surcharge removed from his monthly invoices from West Penn. However, Act 129, Commission orders, and West Penn's duly filed and Commission-approved tariff allow West Penn to implement its smart metering program and to charge a SMT Surcharge to its customers.

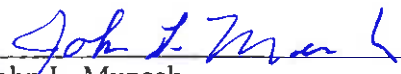
22. Thus, based on the above, as a matter of law, the Complainant's complaint is legally insufficient and must be dismissed. 52 Pa. Code §5.101(a)(4).

WHEREFORE, West Penn Power Company hereby requests that the Complaint of Michael Balogh be dismissed with prejudice and that the Commission grant the Company such other relief as is just and reasonable under the circumstances.

Respectfully submitted,

Dated: November 5, 2012

By:



John L. Munsch
Pa. I.D. No. 31489
Attorney for
WEST PENN POWER COMPANY
800 Cabin Hill Drive
Greensburg, PA 15601
(724) 838-6210

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MICHAEL BALOGH

v.

WEST PENN POWER COMPANY

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Docket No. C-2012-2329713

NOTICE TO PLEAD

TO: MICHAEL BALOGH

You are hereby notified to file a written response to the enclosed Preliminary Objection within ten (10) days from service hereof, or a judgment may be entered against you.

November 5, 2012



John L. Munsch, Attorney for
WEST PENN POWER COMPANY
800 Cabin Hill Drive
Greensburg, PA 15601
(724) 838-6210
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MICHAEL BALOGH	:	
	:	
v.	:	Docket No. C-2012-2329713
	:	
WEST PENN POWER COMPANY	:	

**PRELIMINARY OBJECTION
TO THE COMPLAINT OF MICHAEL BALOGH**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

West Penn Power Company ("West Penn" or the "Company") by and through its counsel, John L. Munsch, files this Preliminary Objection to the Formal Complaint of Michael Balogh ("Formal Complaint"), pursuant to Section 5.101(a)(4) of the Pennsylvania Public Utility Commission ("Commission") regulations, 52 Pa. Code §5.101(a)(4), and in support thereof avers as follows:

I. Introduction

1. This Preliminary Objection requests the dismissal of the Complaint of Michael Balogh ("Complainant") because his Formal Complaint is legally insufficient, as a matter of law and he does not claim -- as required by Section 701 of the Public Utility Code ("Code"), 66 Pa.C.S. §701 -- that the Company has taken any action or failed to take an action in violation of any law or regulation that it is required to follow.

II. Factual Background

2. West Penn is an electric distribution company that is certificated as a public utility within the Commonwealth of Pennsylvania.

3. On or about October 6, 2012, the Complainant filed a Formal Complaint with the Commission against West Penn at the above-captioned docket alleging that he is being charged for a Smart Meter even though he does not have a smart meter. The Complainant requests removal of the Smart Meter Technologies ("SMT") Surcharge.

4. On or about October 17, 2012, the Formal Complaint was served on West Penn via First Class Mail.

5. West Penn is timely filing its Answer and New Matter contemporaneously with this Preliminary Objection.

6. The Complainant is a residential customer receiving electric service from the Company at 132 High Street, Herminie, Pennsylvania.

III. The Complaint is Insufficient as a Matter of Law

7. In accordance with Section 5.101 (4) of the Commission's regulations, preliminary objections may be filed where the complaint is legally insufficient. 52 Pa. Code §5.101 (4).

8. The Code requires that "...any person...may complain in writing, setting forth any act or thing done or omitted to be done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or any regulation or order of the Commission." 66 Pa.C.S. §701.

9. On October 15, 2008, then Governor Edward G. Rendell signed Act 129 of 2008 ("Act 129") into law. The Act took effect thirty days thereafter on November 12, 2008.

10. Among other things, Act 129 specifically directed that electric distribution companies with at least 100,000 customers file a SMT procurement and installation plan with the Commission for approval. 66 Pa.C.S. §§2807(f)(1) and (2). Act 129 also established acceptable cost recovery methods. 66 Pa.C.S. §§2807(f)(7). Pursuant to Act 129, each Plan was required to describe the smart meter technologies proposed to be installed in new construction and in accordance with a depreciation schedule not to exceed 15 years. 66 Pa.C.S. §§2807(f)(1) and (2).

11. In an Implementation Order issued on June 24, 2009, the Commission outlined the standards each Plan must meet, and provided guidance on the procedures to be followed for submittal, review and approval of all aspects of each Plan. *Smart Meter Procurement and Installation, Implementation Order*, Docket No. M-2009-2092655 (Order entered June 24, 2009) ("Implementation Order").

12. The Commission interpreted Act 129 to require all covered EDCs to deploy smart meters system-wide within 15 years, i.e. by April 2025, and it included a requirement that smart meters deployment be "in accordance with a depreciation schedule not to exceed 15 years."

13. On August 14, 2009, West Penn filed with the Commission a Petition for Approval of Smart Meter Technology Procurement and Installation Plan. The plan proposed that smart meters be installed and the costs associated with the plan be recovered through a reconcilable adjustment clause called the SMT Surcharge.

14. The West Penn SMT plan was the subject of a public proceeding in which many parties with varying interests fully evaluated and discussed issues raised by the

installation and recovery of costs for smart meters. The Complainant did not participate in this proceeding or otherwise raise any concerns about smart meters.

15. By Opinion and Order entered July 21, 2010, the Commission stayed West Penn's SMT proceeding. On March 9, 2011, West Penn filed an Amended Joint Petition for Settlement of All Issues at Docket No. M-2009-2123951. The Commission approved the Amended Joint Petition for Settlement on June 30, 2011. On August 22, 2011, the Company submitted its compliance filing for the SMT Surcharge tariff, with a surcharge effective date of September 1, 2011 through December 31, 2011. On December 21, 2011, the Company submitted its annual rate change to the SMT Surcharge for the period of January 1, 2012 through December 31, 2012, Supplement No. 211 to Electric – Pa. P.U.C. No. 39, in accordance with the surcharge rates specified in the Amended Joint Petition for Settlement.

16. The Commission's approval of the implementation and cost recovery of West Penn's SMT plan are in accordance with 66 Pa.C.S. §2807(f).

17. West Penn is required by statute, by its Commission-approved tariff and by Commission orders to implement its smart metering program and by the terms of the Amended Joint Petition for Settlement to charge a SMT Surcharge to all of its customers.

18. As confirmed by the recent Initial Decisions in *Richard Negley v. Metropolitan Edison Company*, Docket No. C-2010-2205305, (Order entered December 15, 2010) and *Dennis Lutherschmidt v. Metropolitan Edison Company*, Docket No. C-2010-2200353, (Order entered January 19, 2011), *all* customers are subject to the SMT Surcharge and there is no "opt-out" provision applicable to this charge. Copies of said decisions are attached hereto as Exhibit A.


19. Because the Complainant fails to claim that the Company has committed or omitted an act in violation of any Commission statutes, regulations, orders or its tariff, as required by Code Section 701, 66 Pa.C.S §701, he has not stated a claim upon which relief can be granted, and his Formal Complaint should be dismissed as legally insufficient. 52 Pa. Code §5.101 (4).

IV. Conclusion

WHEREFORE, West Penn Power Company requests that the Commission dismiss the Formal Complaint of Michael Balogh with prejudice because his Formal Complaint is legally insufficient as a matter of law, and grant the Company such other relief as may be just and reasonable under the circumstances.

Respectfully submitted,

Dated: November 5, 2012

By: 

John L. Munsch
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Attorney for
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