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August 7, 2013

**VIA E-FILE**


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

**Re: Harold Brake v. West Penn Power Company  
Complaint Docket No. C-2013-2367308**

Dear Secretary Chiavetta:

Enclosed is the *Reply of West Penn Power Company to the Exceptions of Complainant, Harold Brake*, to the above-captioned proceeding with certificate of service attached.

Very truly yours,

  
John L. Munsch  
Attorney

JLM:jss

Enclosures

cc: Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

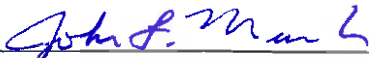
<b>HAROLD BRAKE</b>	:	
	:	
v.	:	<b>Docket No. C-2013-2367308</b>
	:	
<b>WEST PENN POWER COMPANY</b>	:	

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served by first-class mail, postage prepaid, the foregoing *Reply of West Penn Power Company to the Exceptions of Complainant Harold Brake* addressed as follows:

Harold Brake  
P.O. Box 275  
St. Thomas, PA 17252

Date: August 7, 2013

  
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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**

<b>HAROLD BRAKE</b>	:	
<b>Complainant,</b>	:	
	:	
<b>v.</b>	:	<b>Docket No. C-2013-2367308</b>
	:	
<b>WEST PENN POWER COMPANY,</b>	:	
<b>Respondent.</b>	:	

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**REPLY OF WEST PENN POWER COMPANY TO  
THE EXCEPTIONS OF COMPLAINANT HAROLD BRAKE**

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West Penn Power Company (“West Penn” or “Company”) files Reply Exceptions to the Exceptions filed by Harold Brake (“Complainant”) to the Initial Decision of Administrative Law Judge (“ALJ”) Kandace F. Melillo which was served to West Penn under Secretarial Letter of the Pennsylvania Public Utility Commission (“Commission”) dated July 25, 2013. West Penn files its Reply Exceptions pursuant to 52 Pa. Code §5.535.

**I. Factual Background**

West Penn is an electric distribution company that is certificated as a public utility within the Commonwealth of Pennsylvania. On or about May 28, 2013, 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.

On or about June 6, 2013, the Formal Complaint was served on West Penn via First Class Mail. The Complainant is a residential customer receiving electric service from the Company at 224 Rhondel Drive, St. Thomas, Pennsylvania. It is undisputed that the Complainant does not have, and has not had, a smart meter serving his residence.

West Penn filed an Answer, New Matter, and Preliminary Objections to the Complainant’s Complaint on June 11, 2013. In an Initial Decision issued July 25, 2013, the ALJ determined that the sole issue was whether customers have to pay for smart meters prior to installation. The ALJ concluded that, in accordance with Commission decisions, electric distribution companies such as West Penn are required by law to file and implement smart meter plans and to charge customers accordingly and that there is no provision for delaying the charge until the customer has had the meter installed.

## **II. Reply to Exceptions**

### **Exception No 1: The Initial Decision was not signed by the ALJ or other qualified staff person.**

In response to Exception No. 1 West Penn points out that the Initial Decision was issued under a Secretarial Letter, dated July 25, 2013, signed by the Commission’s Secretary, as is the customary method of issuing Initial Decisions.

### **Exception No. 2: The Complainant was not offered oral argument.**

In response to Exception No. 2, West Penn suggests that the Complainant takes exception that he was not offered a hearing. The Complainant was not offered a hearing because the ALJ recommended dismissal of the Complaint without a hearing because the complaint was insufficient as a matter of law.

**Exception No. 3: The Complainant was not offered an appeal process.**

In response to Exception No. 3 West Penn points out that a full appeal process is open to the either party to the Pennsylvania appellate courts after a final decision of the Commission.

**Exception No 4: The ALJ's decision is contrary to *Transportation Services, Inc. v. Underground Storage Tank Indemnification Bd.*, 67 A.3d 142, Pa.Cmwlth. (2013).**

In response to Exception No 4, West Penn points out that the Complainant misinterprets the *Transportation Services* case. The *Transportation Services* decision of the Commonwealth Court has no bearing on the present case. *Transportation Services* involves the interpretation of the Commonwealth's storage tank regulations and does not entail an interpretation of the smart meter provisions of the Public Utility Code.

Transportation Services, Inc. petitioned for review the adjudication of the Board of the Pennsylvania Underground Storage Tank Indemnification Fund denying Transportations Services' claim for reimbursement of expenses incurred in cleaning up contamination caused by a leak from one of its underground storage tanks. The Board denied the claim for the stated reason that Transportation Services was not current on its storage tank capacity fees when the contamination was discovered.

Transportation Services argued that because its underground tanks were pumped out and closed in the fall of 1997, it was not required to pay any fees to the Fund after January 1, 1998. Accordingly, Transportation Services argued that it was current on its fees when, in 2005, the contamination was discovered.

Pennsylvania Underground Storage Tank regulations at Section 451(c) of Title 25 of the Pennsylvania Code differentiate between tanks being used for storage and tanks that are “empty.”

The Court held that capacity fees are not due on tanks that are empty and closed. The regulation provides that a tank is empty even if it contains one inch of “residue.” 25 Pa.Code §245.451(a). The regulation’s intent is to impose a capacity fee on tanks that meet the legal definition of “empty.” The Court held that the Fund lacked authority to charge Transportation Services a capacity fee after 1997 once it was established, factually, that its tanks were empty as that term is defined in 25 Pa.Code §245.451(a), and that Transportation Services was up to date in its payment of fees.

Complainant seems to contend, moreover, that West Penn is getting cost recovery for something West Penn has not provided, namely, a smart meter for the Complainant. West Penn points out that the Complainant is being charged monthly for a Commission-approved 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 background, 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. 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).

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").

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

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.

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.

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. On August 1, 2012, as amended on August 27, 2012, the Company submitted its annual rate change to the SMT Surcharge for the period of January 1, 2013 through December 31, 2013. The Commission accepted the filing by Secretarial Letter dated December 14, 2012, and directed the Company to file a tariff compliance filing for SMT Surcharge rates effective January 1, 2013.<sup>1</sup>

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). 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 metered customers.

**Response to Exception No. 6: The Commission should deny West Penn's next request for approval of a Smart Meter Surcharge.**

West Penn points out that the Complainant may use appropriate procedural avenues to challenge future smart meter charge submissions by the Company.

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<sup>1</sup> As ordered by the Commission, on December 20, 2012 the Company filed a tariff compliance filing as Supplement No. 223 to Electric – Pa. P.U.C. No. 39, with rates effective January 1, 2013.

**Response to Exception No. 7: Presenting alleged charges paid by Complainant for smart meter charges.**

In response to Exception No. 7 West Penn points out that the Complainant is attempting to make a factual presentation outside of hearing and such presentation should be disregarded.


**III. Conclusion**

West Penn Power Company requests that the Exceptions of Complainant, Harold Brake, be denied, and that the Complaint be dismissed with prejudice.

Respectfully submitted,

Date: August 7, 2013

By:

  
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