

John L. Munsch
Attorney

724-838-6210
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October 3, 2013

VIA E-FILE

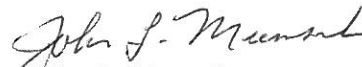
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Thomas Altman v. West Penn Power Company
Complaint Docket No. C-2013-2383058

Dear Secretary Chiavetta:

Enclosed are West Penn Power Company's **Preliminary Objections** 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

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

THOMAS ALTMAN

v.

WEST PENN POWER COMPANY

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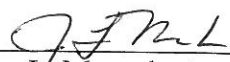
Docket No. C-2013-2383058

CERTIFICATE OF SERVICE

I hereby certify that I have this day served by first-class mail, postage prepaid, the foregoing
Preliminary Objections addressed as follows:

Thomas Altman
309 Culbertson Avenue
Greensburg, PA 15601

Date: October 3, 2013



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**

THOMAS ALTMAN

v.

WEST PENN POWER COMPANY

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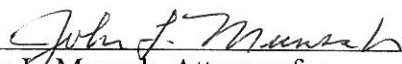
Docket No. C-2013-2383058

NOTICE TO PLEAD

TO: THOMAS ALTMAN

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

October 3, 2013



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**

THOMAS ALTMAN	:	
	:	
v.	:	Docket No. C-2013-2383058
	:	
WEST PENN POWER COMPANY	:	

**PRELIMINARY OBJECTIONS
TO THE COMPLAINT OF THOMAS ALTMAN**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

West Penn Power Company (“West Penn” or the “Company”) by and through its counsel, John L. Munsch, files Preliminary Objections to the Formal Complaint of Thomas Altman (“Complainant”), pursuant to Section 701 of the Public Utility Code (“Code”), 66 Pa.C.S. §701, and pursuant to Sections 5.101(a) and 5.22 of the Pennsylvania Public Utility Commission (“Commission”) regulations, 52 Pa. Code §§5.101(a) and 5.22, and in support thereof avers as follows:

I. Introduction

1. These Preliminary Objections request the dismissal of the Complaint of 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 West Penn has taken any action or failed to take an action in violation of any law or regulation. Further, the Complaint should be dismissed because the Commission does not have jurisdiction over the factual dispute described by Complainant; the Complainant’s complaint is legally insufficient because the Complaint

apparently attempts to mis-join a cause of action against an electrical generation supplier, Stream Energy, to include West Penn Power Company.

II. Factual Background

2. The averments contained in West Penn's answer are incorporated herein as if set forth.

3. West Penn has admitted the averment in Paragraph No. 3 of the Complaint that West Penn is an electric distribution utility as that term is defined in Section 2803 of the Public Utility Code. West Penn is an electric distribution company not an electric generation supplier as those terms are defined in Section 2803 of the Public Utility Code, 66 Pa. C. S. §2803.

4. In his Complaint the Complainant admits that in May of 2013 the Complainant engaged Stream Power to provide his electric generation service. The averments of Complainant's complaint substantively and wholly concern the provision of electric generation service after his engagement of Stream Power to provide electric generation service. Complainant does not state any facts that would implicate West Penn in any manner in the Complainant's concerns about his electric generation service.

III. Preliminary Objections

5. The Commission is granted discretion to dismiss a complaint without a hearing if a hearing is not necessary or in the public interest. 66 Pa. C.S. §703(b); 52 Pa. Code §5.21(d). Because a hearing in this case is not necessary or in the public interest, and would be a fruitless exercise, the Complaint should be dismissed

6. West Penn's Preliminary Objections are submitted pursuant to Section 5.101(a) of the Commission's regulations, as follows:

a. Section 5.101(a)(1): **Lack of Commission Jurisdiction.**

The entire substance of the Complainant's complaint is that he was charged an unreasonable price for electric generation service by an electric generation supplier. As provided by Section 2806 of the Public Utility Code, 66 Pa.C.S. §2806(a), the Commission no longer regulates the generation of electricity as a public utility service or function. The Commission's jurisdiction over electric generation suppliers does not extend to regulate the prices that an electric generation supplier charges its customers under private contracts. See Delmarva Power & Light Co. v. Com. Of Pa., Pa. Publ. Util. Comm'n, PPL EnergyPlus, LLC v. Com. Of PA, 870 A.2d 901 (Pa. 2005); Daniel Ruhl v. Dominion Retail, Inc. (C-2008-2061229) (ID dated March 30, 2009).

b. 5.101(a)(4): **Legal insufficiency of a pleading.**

Specifically West Penn states that Complainant has failed to state "[t]he act or thing done or omitted to be done or about to be done, or omitted to be done by the respondent in violation, or claimed violation, of a statute which the commission has jurisdiction to administer, or of a regulation or over of the Commission" as is required of a Complaint by Section 5.22(a)(4) of Commission regulations. The averments of Complainant's complaint substantively and wholly concern the agreement and terms of generation service from Stream Power to provide electric generation service. Complainant does not state any facts that

would implicate West Penn in any manner, nor does it state how West Penn would be involved in unreasonable rates for electric generation service.

c. 5.101(a)(5): **Misjoinder of a cause of action.**

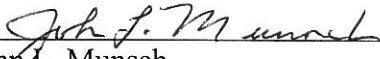
The Complainant's facts presented in the Complaint present a dispute against an electric generation supplier for possibly misstating or misrepresenting the terms or price of the electric generation supplier's terms and price with Complainant. West Penn is not an electric generation supplier and the facts presented in the Complaint do not present a cause of action against West Penn. By naming or attempting to name West Penn in the complaint the Complainant has misjoined a cause of action, if any.

IV. Conclusion

WHEREFORE, West Penn Power Company requests that the Commission dismiss the Formal Complaint of Thomas Altman with prejudice and grant such other relief as may be just and reasonable under the circumstances.

Respectfully submitted,

Dated: October 3, 2013

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