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March 10, 2014

Rosemary Chiavetta, Secretary  
Pa. Public Utility Commission  
P.O. Box 3265  
Harrisburg PA 17105-3265

Re: Robert T. Whalen (represented by Utility Workers  
Union of America System Local 102) v. West Penn  
Power Company  
Docket No. C-2014-2404308

Dear Secretary Chiavetta:

Enclosed for filing please find the Answer of Complainant to Preliminary Objections in the above-referenced proceeding. The document was served on all parties of record as shown on the attached Certificate of Service.

The document was filed electronically with the Commission on this date.

Sincerely,



Enclosure

cc: All parties of record  
Katrina L. Dunderdale, Administrative Law Judge

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Robert T. Whalen (represented by Utility	:	
Workers Union of America System Local	:	
102), Complainant	:	
	:	Docket No. C-2014-2404308
v.	:	
	:	
West Penn Power Company, Respondent	:	

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ANSWER OF COMPLAINANT TO PRELIMINARY OBJECTIONS

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Pursuant to 52 Pa. Code § 5.101(f), Robert T. Whalen (represented by Utility Workers Union of America System Local 102) (“Complainant”) hereby provides the following Answer to the Preliminary Objections filed by West Penn Power Company ("Company") on February 26, 2014.

1. Admitted.
2. Denied. As set forth more fully below, Complainant has standing to bring this action, and the remedies requested in the Complaint are within the Commission's authority to award.
3. This paragraph is a prayer for relief to which no response is warranted.
- 4-8. Admitted. The Complaint speaks for itself.
9. Admitted in part and denied in part. It is admitted that Company filed an Answer and New Matter at the same time it filed Preliminary Objections. It is denied that the Answer and New Matter can be incorporated by reference into Preliminary Objections. The Commission's regulations require that preliminary objections must "state with specificity the

legal and factual grounds relied upon." 52 Pa. Code § 5.101(c). It is not appropriate, therefore, to simply incorporate by reference another, unrelated document into a preliminary objection.

10-17. Admitted.

18-19. Denied. Complainant is an individual, residential customer of Company whose meter has not been read in accordance with the requirements of the Commission's regulations. Those regulations exist to protect residential customers from receiving consecutive estimated bills. The policy reasons behind requiring regular, periodic meter reading are numerous, including fairness to the customer (ensuring that the customer is being asked to pay only for what the customer used) and encouraging the wise and efficient use of electricity (timely meter reading is essential to send a proper price signal to customers about the cost of the energy they are using), and avoiding the inconvenience to customers of having to pay a make-up bill that is either higher or lower than it should have been.

Complainant's complaint alleges that he received consecutive estimated bills in violation of the Commission's regulations. The harm to Complainant is that the Company's violation of the regulation caused him inconvenience in that he was denied the proper price signal that Commission regulations require.

As the Company recognizes in Paragraph 24, "inconvenience" is all that is required to establish standing. Moreover, the facts alleged are specific to Complainant: he personally received consecutive estimated bills.

In other words, Complainant has an interest in receiving a timely and accurate bill rendered in accordance with the Commission's regulations. The Complaint alleges that Company failed to provide such bills to him, in violation of the Commission's regulations. That is all that is required for a valid complaint.

Indeed, if the Company's interpretation were correct, then no customer could ever complain about a utility's violation of the Commission metering and billing regulations – even if the utility failed to ever read the customer's meter or render an accurate bill.

Moreover, it is not necessary for a customer to allege monetary harm in order for a complaint to be valid. The only requirement is that the customer have been personally affected by the alleged unlawful conduct of the utility. In particular, 66 Pa. C.S. § 701 authorizes "any person ... having an interest in the subject matter ... [to] 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 of any regulation or order of the commission."

The Commission frequently addresses complaints where customers allege that a utility's actions (or inactions) to the customer violated a law or regulation. For example, in *Schwartz v. Pennsylvania-American Water Co.*, Docket No. C-20031315 (Initial Decision of ALJ Corbett, Aug. 26, 2004), 2004 Pa. PUC LEXIS 59, the complainant alleged the utility had violated the Commission's termination and billing regulations, and sought only the following relief: "the Water Company should be sanctioned and should 'cease accusing customers of criminal activity, unless they can verify the same.'" ALJ Corbett upheld the complaint (in part) and ordered the utility to pay civil penalties for violating various regulations. See also *Hennon v. The Peoples Natural Gas Company*, F-01612844 (Initial Decision of ALJ Corbett, Sept. 1, 2005), 2005 Pa. PUC LEXIS 49 (awarding civil penalties, but no other relief, for a utility's failure to comply with the Commission's billing and meter reading requirements).

Importantly, in the case of alleged violations of Chapter 56 of the Commission's regulations (as is the case here), Chapter 56 itself states the customer's interest to be protected, as

follows: "This chapter establishes and enforces uniform, fair and equitable residential public utility service standards governing ... account billing ... procedures. This chapter assures adequate provision of residential public utility service .... Public utilities shall utilize the procedures in this chapter to effectively manage customer accounts to prevent the accumulation of large, unmanageable arrearages." 52 Pa. Code § 56.1(a).

In other words, the billing and meter reading requirements in Chapter 56 are designed to protect customers, provide customers with timely and accurate bills, ensure that customers are paying in a timely manner for the service they receive, and avoid the accumulation of large make-up bills or arrearages. Thus, when a utility violates the requirements of Chapter 56, the customer who suffers the violation has been harmed.

20-21. The Commonwealth Court has specifically addressed standing requirements under 66 Pa. C.S. § 701, as follows:

In order to have standing to pursue a formal complaint before the PUC under Section 701 of the Code, the complainant "must have a *direct, immediate, and substantial* interest in the subject matter of the controversy." *Waddington v. Pa. PUC*, 670 A.2d 199, 202 (Pa. Cmwlth. 1995) (emphasis added), *appeal denied*, 544 Pa. 679, 678 A.2d 368 (1996). "The requirement that an interest be 'direct' simply means that the person claiming to be aggrieved must show causation of the harm to *his* interest by the matter of which he complains." *Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 195, 346 A.2d 269, 282 (1975) (plurality) (emphasis added). The requirement that an interest be "immediate" and not a remote consequence of the matter concerns "the nature of the causal connection between the action complained of and the injury to the person challenging it." *Id.* at 197, 346 A.3d at 283. The requirement of a "substantial" interest means that the interest must have substance - *i.e.*, there must be some discernible adverse effect to some interest other than the abstract interest of all citizens in having others comply with the law. *Id.* at 195, 346 A.2d at 282.

*Municipal Authority of the Borough of West View v. Pa. PUC*, 41 A.3d 929, 933 (Pa. Cmwlth. 2012) (emphasis in original).

22. Admitted in part and denied in part. It is admitted that Complainant has the burden of establishing his standing. It is denied that he has failed to do so.

23. Denied. Complainant alleged that he had received nine estimated bills during 2013 in violation of the requirements of Chapter 56. As stated above, that violation constitutes a harm to his interest in receiving accurate, timely bills and avoiding unnecessary billing adjustments that come from the receipt of consecutive estimated bills. As explained above, it is not necessary to allege monetary harm from the violation of a Commission regulation; only that the violation occurred directly to the customer and that the customer's interest in receiving accurate and timely bills was adversely affected.

24. Denied. Whether a violation is "technical" is a question of fact to be determined at hearing. Moreover, even if the violation were only "technical" (which Complainant denies), the Commission's Policy Statement concerning violations of Commission regulations specifically recognizes that technical violations can give rise to civil penalties, though in a lower amount than more serious violations. Specifically, the first factor set forth in the Policy Statement provides: "When the conduct is less egregious, such as administrative filing or technical errors, it may warrant a lower penalty." 52 Pa. Code § 69.1201(c)(1) (emphasis added).

25-26. Denied, as set forth in detail above.

27. The answers to paragraph 1-26 are incorporated herein by reference.

28. Admitted.

29. Denied. Initially, Complainant would note that the Commission has docketed the Complaint as being by an individual complaint "represented by" UWUA. Moreover, the Complaint alleges that many UWUA members have received consecutive estimated bills, just as the named Complainant received. As discussed above, such violations of Chapter 56 cause direct, immediate, and substantial harm to each customer who receives (or fails to receive) bills in violation of the Chapter 56 requirements.

30. Admitted.

30-2.<sup>1</sup> Denied. As explained above, Complainant individually, as well as UWUA on behalf of its members, have alleged facts sufficient to establish a "direct, immediate, and substantial" interest in this proceeding.

31. Denied, as explained above.

33-40.<sup>1</sup> Admitted in part and denied in part. It is admitted that the Commission does not have jurisdiction over purported class action suits. It is denied that this Complaint is such a proceeding. Complainants are not seeking relief on behalf of any other customers, other than those directly represented by UWUA. Rather, they are asking the Commission to levy a civil penalty, and order corrective action, based on the number of customers affected by the violations. This is one of the specific criteria delineated in the Commission's Policy Statement on civil penalties. Specifically, the Policy Statement provides that the following factor, among others, "will be considered by the Commission" in determining the amount of a civil penalty: "The number of customers affected and the duration of the violation." 52 Pa. Code § 69.1201(c)(5).

41. Denied for the reasons stated above.

42. Denied for the reasons stated above.

43. The answers to paragraph 1-42 are incorporated herein by reference.

44. Admitted.

45. Denied. The Commission has jurisdiction to order a utility to take corrective action, as described more fully below.

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<sup>1</sup> The Preliminary Objections contain two paragraphs numbered 30 and no paragraph numbered 32.

46-50. Admitted in part and denied in part. It is admitted that Chapter 15 of the Public Utility Code, as well as other provisions of the Code, give the Commission certain authority over the services and facilities employed by a public utility. It is denied that the subject matter of the Complaint, or the relief requested, is the subject of a labor dispute. It is further denied that the Commission lacks the authority to order a utility to take specific compliance action, including the hiring of appropriate personnel.

By way of further answer, Section 1505 of the Code authorizes the Commission to order a utility to take specific actions to ensure the safety and reliability of service and otherwise comply with the commission's regulations. Specifically, that section provides:

Whenever the commission, after reasonable notice and hearing, upon its own motion or upon complaint, finds that the service or facilities of any public utility are unreasonable, unsafe, inadequate, insufficient, or unreasonably discriminatory, or otherwise in violation of this part, the commission shall determine and prescribe, by regulation or order, the reasonable, safe, adequate, sufficient, service or facilities to be observed, furnished, enforced, or employed, including all such repairs, changes, alterations, extensions, substitutions, or improvements in facilities as shall be reasonably necessary and proper for the safety, accommodation, and convenience of the public.

66 Pa. C.S. § 1505 (emphasis added).

That is, Section 1505 gives the Commission authority not just to find that a utility is failing to comply with a regulation, but to order specific corrective action to avoid future violations. This applies not only to the facilities used to provide service, but also to the "service" that is provided to customers. The Code defines "service" as follows:

Used in its broadest and most inclusive sense, includes any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities ... in the performance of their duties under this part to their patrons, employees, other public utilities, and the public ...

66 Pa. C.S. § 102 (Service)

Thus, the Commission has the authority to order a utility to take specific actions to correct violations. Complainant has suggested that one such action would be the hiring of a sufficient number of people to read meters in compliance with the Commission's regulations. Such a remedy is by no means the only remedy available to the Commission, but it is well within the Commission's authority under Section 1505.

Indeed, the Commission has taken just such action in other cases. For example, the Commission has ordered an energy marketing company to take the following corrective actions, among others:

- a. Just Energy will only use employees, not independent contractors, when conducting door-to-door sales; ...
- d. Just Energy will conduct background checks on all potential employees and will provide the background check criteria to staff; ...
- g. Just Energy will hire an employee whose role is to oversee and ensure compliance of the sales office(s) and employees with these license conditions as well as applicable law and company policies.

See *Status Report of Just Energy Pennsylvania Corp.*, Docket No. A-2009-2097544 (Order entered Aug. 15, 2013), 2013 Pa. PUC LEXIS 467. See also the Commission's regulations regarding marketing and sales practices for competitive energy suppliers. Those regulations impose several requirements on licensed suppliers that engage in door-to-door sales, including criminal background checks, Megan's law requirements, training, and disciplinary practices. Those practices apply both to employees and independent contractors of a licensed supplier. See 52 Pa. Code §§ 111.4 to 111.6.

Similarly, the Commission has ordered utilities to undertake employee training, hire consultants or independent contractors to improve compliance, and take similar actions in response to violations of Commission regulations. See, for example, *Pa. PUC v. Aqua Pennsylvania, Inc.*, Docket No. M-2010-2155842 (Order, Jan. 14, 2011), 2011 Pa. PUC LEXIS

1070, where the Commission levied a civil penalty for violations and ordered a utility to undertake training of employees and other corrective actions including a requirement to "hire an outside consultant to review its updated training programs that include field training and subsequent testing in key areas."

In other words, Section 1505 gives the Commission broad powers to order a utility to take corrective actions when the utility has failed to comply with Commission regulations or other requirements. The Commission has the authority to impose specific utility practices relating to personnel -- including hiring, training, background checks, avoiding the use of independent contractors, among others.

WHEREFORE, for the reasons set forth above, Complainant respectfully requests the Commission to deny the Preliminary Objections filed by the Company.

Respectfully submitted,



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Dated: March 10, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that I have caused to be served this day a true copy of Answer of Complainant to Preliminary Objections upon the parties listed below by electronic mail and U.S. mail, first-class, postage prepaid, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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Dated: March 10, 2014

  
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