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April 2, 2015

VIA E-FILING

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

Re: Kelli Seliga v. West Penn Power Company
Docket No. C-2015-2471759

Dear Secretary Chiavetta:

On behalf of West Penn Power Company, I have enclosed for electronic filing the Preliminary Objections of West Penn Power Company to the Formal Complaint of Kelli Seliga in the above-captioned matter.

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

Very truly yours,


Brian C. Wauhop

BCW/tlg
Enclosure

cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

KELLI SELIGA

v.

WEST PENN POWER COMPANY

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:
:
:
:

Docket No. C-2015-2471759

NOTICE TO PLEAD

TO: Kelli Seliga
130½ Superior Street
Brownsville, PA 15417

Pursuant to 52 Pa. Code § 5.101(b), you are hereby notified that, if you do not file a written response to the enclosed Preliminary Objections of West Penn Power Company to the Formal Complaint of Kelli Seliga within **ten (10) days** from service of this Notice, the Preliminary Objections may be granted. All pleadings 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.

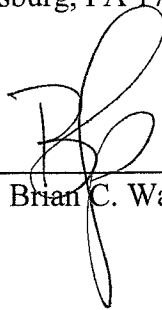
File with:

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

With a copy to:

Brian C. Wauhop
Buchanan Ingersoll & Rooney, PC
409 North Second Street
Suite 500
Harrisburg, PA 17101

Dated: April 2, 2015



Brian C. Wauhop, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|--------------------------------|---|----------------------------------|
| KELLI SELIGA | : | |
| | : | |
| v. | : | Docket No. C-2015-2471759 |
| | : | |
| WEST PENN POWER COMPANY | : | |

**PRELIMINARY OBJECTION TO THE COMPLAINT
OF KELLI SELIGA**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

West Penn Power Company (“West Penn” or the “Company”), by and through its counsel Brian C. Wauhop, Alan Michael Seltzer, and Buchanan Ingersoll & Rooney PC, files this Preliminary Objection pursuant to Section 5.101(a) of Pennsylvania Public Utility Commission (“Commission”) regulations at 52 Pa. Code § 5.101(a)(4), and in support thereof, avers as follows:

I. Introduction

1. Through this Preliminary Objection, West Penn seeks the dismissal of a Formal Complaint filed by Kelli Seliga (“Complainant”), alleging that West Penn should be directed to transfer charges on her electric bills incurred while she was a tenant to her landlord. The Complainant specifically demands that *all* of the electric service charges she paid while she was a tenant in a residential rental dwelling located at 140 Gressly Road, Ruffs Dale, Pennsylvania 15679 (“Service Location”) under Account No. 100106381831 (“Account”) from November 2013 to January 2015 should be removed and placed in the name of her landlord due to the presence of a shared metering condition at the Service Location.

2. The Formal Complaint must be dismissed for failure to state a claim. The Formal Complaint fails to aver that the Company violated any statute, regulation or order that the

Commission has jurisdiction to administer. The Complainant's unsubstantiated claims and misunderstanding of applicable law does not create a claim subject to the Commission's jurisdiction and there are no relevant facts in dispute.

3. As a result, the Company requests that this Preliminary Objection be granted and the Commission dismiss the Formal Complaint with prejudice.

II. Background

4. West Penn is an electric distribution company that is certificated as a public utility in Pennsylvania.

5. On or about February 24, 2015, the Complainant filed a Formal Complaint with the Commission against West Penn at the above-captioned docket requesting that the Commission direct the Company to transfer electric service bills (and related charges) issued by the Company to her landlord for the period November 2013 to January 2015. (Compl. ¶ 4(D)).

6. Importantly, the Complainant admits that the Company transferred the open balance on the Account to the landlord in compliance with Section 1529.1 of the Public Utility Code ("Code"), 66 Pa.C.S. § 1529.1, ("Act 54"). (Compl. ¶ 4(B)).

7. On or about March 13, 2015, the Formal Complaint was served on West Penn.

8. West Penn is timely filing its Answer and New Matter contemporaneously with this Preliminary Objection, which Answer and New Matter is incorporated into this Preliminary Objection as if fully set forth herein.

III. Preliminary Objection Regarding Legal Insufficiency Pursuant to 52 Pa. Code § 5.101(a)(4).

9. In accordance with Code Section 701, a person may complain about something done or omitted to be done by a public utility in violation of any law, regulation or order. 66 Pa.C.S. § 701.

10. The Formal Complaint only challenges the Company's transfer of the outstanding balance on the Account to the Complainant's landlord, which transfer the Company was obligated to do under Act 54. There is no other averment in the Formal Complaint that could constitute a violation of the Code, regulation or any Commission orders. Therefore, the Formal Complaint is legally insufficient because it fails to state a claim upon which the Commission can grant relief.

11. The Commission's Rules of Administrative Practice and Procedure permit the filing of preliminary objections. 52 Pa. Code § 5.101; see also *Equitable Small Transportation Interveners v. Equitable Gas Company*, Docket No. C-00935435 (July 18, 1994).

12. The grounds for preliminary objections are limited to those set forth in 52 Pa Code § 5.101(a) as follows:

- (1) Lack of Commission jurisdiction or improper service of the pleading initiating the proceeding.
- (2) Failure of a pleading to conform to this chapter or the inclusion of scandalous or impertinent matter.
- (3) Insufficient specificity of a pleading.
- (4) Legal insufficiency of a pleading.
- (5) Lack of capacity to sue, nonjoinder of a necessary party or misjoinder of a cause of action.
- (6) Pendency of a prior proceeding or agreement for alternative dispute resolution.
- (7) Standing of a party to participate in the proceeding.

13. The Commission's procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transportation Interveners*, *supra*.

14. Thus, in resolving a preliminary objection, the Commission must assume that:

[a]ll material facts set forth in the complaint as well as all inferences reasonably deductible therefrom are admitted as true. The question presented by the demurrer is whether, on the facts averred, the law says with certainty that no recovery is possible. Where a doubt exists as to whether a demurrer should be sustained, this doubt should be resolved in favor of overruling it.

McMahon v. Shea, 688 A.2d 1179, 1181 (Pa. 1997). The Commission may dismiss a complaint without hearing if, in its opinion, a hearing is not necessary in the public interest. 52 Pa. Code § 5.21(d); *see also Lydine Dutton v. Cordia Communications Corporation*, Docket No. F-2010-2201413 (Initial Decision entered March 10, 2011; Order entered September 22, 2011) (citing 66 Pa.C.S. § 703(b)).

15. While the Commission generally refrains from dismissing complaints filed by *pro se* complainants without allowing them an opportunity to develop an evidentiary record, an administrative law judge has the discretion to dismiss a complaint on preliminary motion if that dismissal is neither arbitrary nor capricious, and is otherwise in accordance with the law. *Guesman v. Columbia Gas of Pennsylvania, Inc.*, Docket No. C-2012-2326301 (Final Order entered January 4, 2013) (citing *Graham v. Philadelphia Suburban Water Company and Bell-Atlantic Pennsylvania, Inc.*, Docket No. C-00957557 (Order entered June 12, 1996).

16. The only relief demanded by the Complainant is the transfer to her landlord of electric service bills (and related charges) predating the discovery of a shared metering condition at the Service Location. The Formal Complaint cites no legal authority for this demand because there is none.

17. The Formal Complaint contains no allegations constituting a violation of the Code, any Commission orders or regulations. Assuming all the facts pleaded in the Formal Complaint are true, the Complainant has failed to state a claim upon which the Commission can grant relief.

18. 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).

19. The moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the preliminary objection, all well-pleaded, material facts of the other party, as well as every 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 Formal Complaint are true. *Id.*

20. The disposition of this Preliminary Objection is controlled by the provisions of Code Section 1529.1, which provide as follows:

If [a] . . . residential building contains one or more dwelling units not individually metered, an affected public utility shall forthwith list the account for the premises in question in the name of the owner, and the owner shall thereafter be responsible for the payment for the utility services rendered thereunto[.]

66 Pa.C.S. § 1529.1

21. In *Ace Check Cashing, Inc. v. Philadelphia Gas Works, Eddie and Jennifer West*, Docket No. C-2008-2056428 (Final Order entered May 21, 2010), the Commission held that public utilities are required to list the electric service account, including any arrearages, in the name of the landlord upon the finding of foreign load. The landlord has the responsibility to pay the utility bills until the foreign load is corrected. Once the foreign load is corrected by the

landlord and verified by the utility, the utility will place the account back in the name of the tenant. However, the arrearages, if any, are required to remain with the landlord.

22. In *Elizabeth Santos v. Metropolitan Edison Company*, Docket Number C-00967757, (Final Order entered August 7, 1997) the Commission held that upon discovery of a foreign load, the utility must place the electric service account in the landlord's name and collect any unpaid bills only from the landlord. As a result, the Complainant is responsible for the tenant's delinquent account balance, including arrearages.

23. Applied here, in conformity with Act 54 and Commission policy, West Penn transferred the unpaid balance (i.e., \$153.91) from the Account to the Complainant's landlord after West Penn confirmed the existence of a shared metering condition at the Service Location. In the Formal Complaint, the Complainant admitted the Company transferred the open balance of \$153.92 to the landlord:

[West Penn] said . . . *could only transfer what I had not yet paid*
[\$153.91].

(Compl. ¶ 4(B)) (emphasis added).

24. The Complainant argues that she should not be held responsible for any of the bills she *already paid* while she was a tenant at the Service Location, rather than the outstanding balance due when the shared metering condition was discovered. However, the Commission's current foreign load policy does not support this argument. Act 54 and the Commission's policy requires a utility to list an electric service account, including any arrearages, in the name of the owner upon the finding of foreign load. Disputes over payment of a tenant's balance in shared metering complaints are matters between the landlord and the tenant, and therefore, these matters are beyond the Commission's jurisdiction to decide. See *James W. Massey v. Peoples Natural Gas Company LLC*, Docket No. C-2013-2397016, p. 13 (Order entered February 12, 2015

holding that once the existence of foreign load is verified, any dispute between the landlord and the tenant regarding financial responsibility is a matter to be resolved in the court of common pleas)); *Morykan v. Metropolitan Edison Company*, Docket No. C-2014-2403154 (Initial Decision entered April 8, 2014 sustaining preliminary objections and dismissing complaint for lack of subject matter jurisdiction, holding that where the landlord admitted to foreign load and was billed by the utility for the tenant's balance, "[t]his is precisely the issue . . . that the Commission lacks jurisdiction to hear.").

25. It is both clear and undisputed that West Penn fully complied with the Code and Commission precedent in handling this foreign load situation after it discovered the existence of a shared metering condition at the Service Location. Assuming the facts pleaded in the Formal Complaint are true, as the Commission must for the purposes of a preliminary objection, the Complainant has failed to allege that West Penn has committed or omitted an act in violation of a Commission statute, regulation, order, or West Penn's tariff. *County of Allegheny*, supra. In fact, and as noted above, the Formal Complaint actually admits that the Company transferred the balance due on the Account to the landlord's account after confirming the shared metering condition at the Service Location. (Compl. ¶ 4(B).) The Company has done nothing other than follow the law with respect to the shared metering/foreign load condition at the Service Location.

26. The Formal Complaint cites no legal authority for the proposition that a landlord is responsible for paying electric bills incurred and paid for by a tenant before a shared metering condition has been discovered. No such legal authority exists. On the contrary, the Complainant's attempt to recoup sums allegedly paid to her landlord under the facts raised in the Formal Complaint is solely between the Complainant and her landlord and not within the Commission's jurisdiction to adjudicate.

27. Therefore, the Formal Complaint is legally insufficient because it fails to state a claim upon which the Commission can grant relief. *See* 52 Pa. Code § 5.101(a)(4); *McMahon v. Shea*, supra. Furthermore, a hearing in this matter is not necessary and would not serve the public interest. 66 Pa.C.S. §703(b).

IV. Conclusion

WHEREFORE, for the foregoing reasons, West Penn Power Company respectfully requests that the Commission grant its Preliminary Objection and (i) dismiss the Formal Complaint in its entirety because the Complainant has not stated a claim for which relief may be granted and (ii) grant the Company such other relief as may be just and reasonable under the circumstances.

Respectfully submitted,



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Alan Michael Seltzer, Esquire
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409 North Second Street, Suite 500
Harrisburg, PA 17101-1357
(215) 665-4016

Dated: April 2, 2015

Attorneys for
West Penn Power Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

KELLI SELIGA

v.

WEST PENN POWER COMPANY

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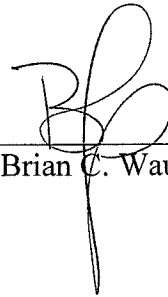
CERTIFICATE OF SERVICE

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 First-Class Mail

Kelli Seliga
130½ Superior Street
Brownsville, PA 15417

Dated this 2nd day of April, 2015.



Brian C. Wauhop, Esq.