

November 12, 2015

VIA UPS Next Day

Rosemary Chiavetta, Esquire
Secretary
PA Public Utility Commission
Commonwealth Keystone Building, 2 North
P.O. Box 3265
Harrisburg, PA 17105-3265

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Re: Docket No. C-2015-2475942
Shelly Moyer v. West Penn Power Company
Preliminary Objection of West Penn Power

Dear Secretary Chiavetta:


Enclosed for filing are the original and one copy of the Preliminary Objection of West Penn Power Company (Respondent) to the Amended Complaint filed by Shelly Moyer (Complainant) in the above captioned proceeding. Kindly file the original of record, date stamp and return the copy in the envelope enclosed for your convenience. **Please note Respondent requests an expedited hearing due to account balance.**

A copy of the Answer and New Matter has been provided to the Complainant in the manner indicated on the attached Certificate of Service.

If there are any questions, please do not hesitate to contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

MAM/jmm
Enclosures

cc: The Hon. Dennis J. Buckley, PA Public Utility Commission [w/enc.]
John L. Munsch, Esquire, FirstEnergy Service Company [w/enc.]
Shelly Moyer [w/enc.]

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SHELLY MOYER :
 :
 v. : Docket No. C-2015-2475942
 :
 WEST PENN POWER COMPANY :

NOTICE TO PLEAD

Pursuant to 52 Pa. Code § 5.63, you are hereby notified that if you do not file a written response answering the enclosed Preliminary Objection of West Penn Power Company within twenty (20) days from service of this Notice, the facts set forth by West Penn Power Company in the Preliminary Objection may be deemed to be true, whereby requiring no other proof. All pleadings, such as a Reply to Preliminary Objection, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for West Penn Power Company, Margaret A. Morris, Esq., and the Administrative Law Judge presiding over the issue.

File with:

Rosemary Chiavetta, Esq.
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building – 2 North
P.O. Box 3265
Harrisburg, PA 17105

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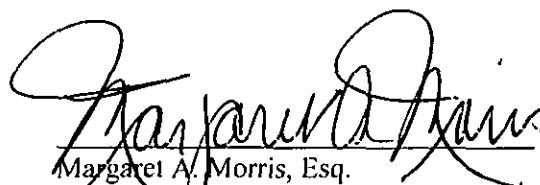
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

With a copy to:

Margaret A. Morris, Esq.
Reger Rizzo & Darnall LLP
Cira Centre, 13th Floor
2929 Arch Street
Philadelphia, PA 19104

The Hon. Dennis J. Buckley
PA Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105

Date: November 12, 2015



Margaret A. Morris, Esq.
Attorney ID No. 75048
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Counsel for West Penn Power Company

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BEFORE THE
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SHELLY MOYER :
 :
 v. : Docket No. C-2015-2475942
 :
 WEST PENN POWER COMPANY :

**PRELIMINARY OBJECTION OF WEST PENN POWER COMPANY TO
THE AMENDED COMPLAINT OF SHELLY MOYER**

West Penn Power Company (West Penn or Company), by and through its attorneys, Reger Rizzo & Darnall LLP, and pursuant to 52 Pa. Code § 5.101, hereby asserts the following Preliminary Objection in response to the Amended Complaint filed with the Pennsylvania Public Utility Commission (Commission) by Shelley Moyer (Complainant or Moyer) in this matter. Specifically, West Penn requests that the Amended Complaint be dismissed preliminarily on the grounds that the dispute raised in this Amended Complaint is the same as was raised in the Complaint filed previously, at this same docket, which after hearing is still pending before Administrative Law Judge Dennis J. Buckley and the Commission. Thus, answering and addressing the issue raised in the Amended Complaint – identical to the issue raised in the original Complaint – is not a prudent use of the time and resources of the parties, the Administrative Law Judge or the Commission. The well-established doctrine of *lis pendens*, recognized by the Commission in numerous cases, is applicable here.

In support of this Preliminary Objection, West Penn avers and represents as follows:

I. BACKGROUND

1. On April 6, 2015 Moyer filed a formal Complaint, at Docket No. C-2015-2475942. The sole issue raised in the Complaint is Moyer's contention that she is not responsible for a prior account balance for service provided by the Company to the service address. The Complainant indicated that it was an appeal of a decision rendered by the Commission's Bureau of Consumer Services (BCS) at BCS Decision No. 3266550.

2. An Answer and New Matter were timely filed by West Penn. The proceeding was assigned to Judge Buckley for hearing and decision and a telephonic hearing was scheduled for July 9, 2015. The hearing was held as scheduled. West Penn appeared through counsel and with a witness; the Complainant failed to appear or to obtain a continuance.

3. The Complaint remains pending before the Judge Buckley as no initial decision has been issued.

4. On November 4, 2015, the Complainant filed the second Complaint against West Penn, docketed by the Commission as an Amended Complaint. The issue raised in this Amended Complaint is identical to that raised in the original Complaint and which was the subject of the prior BCS decision, namely, her responsibility for the prior account balance.

II. PRELIMINARY OBJECTION

5. The Pennsylvania Public Utility Code 66 Pa.C.S.A. §§ 101, et seq., provides that a written complaint may be filed by any person concerning “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.” 66 Pa. C.S.A. § 701; see also, 56 Pa. Code § 5.21.

6. The Commission’s Rules of Administrative Practice and Procedure permit the filing of preliminary objections under certain circumstances, including “the pendency of a prior proceeding . . .” 52 Pa. Code § 101(a)(6).

7. The Commission is granted discretion to dismiss a complaint without a hearing if a hearing in the public interest is not necessary. 66 Pa. C.S. § 703(b); 52 Pa. Code § 5.21(d).

8. The doctrine of *lis pendens* arose to prevent a respondent from having to defend several suits on the same cause of action at the same time, to prevent the squandering of scarce judicial resources on duplicative actions, to maintain an orderly legal process and to avoid inconsistent decisions on the same causes of action. “The law is quite clear that *lis pendens* is a valid defense only when the parties, the causes of action and the relief sought are the same in both actions (citations omitted).” *Procacina v. Susen*, 301 Pa. Super. 392, 394, 447 A.2d 1023, 1025 (1982).

9. The Commission has recognized the doctrine of *lis pendens* in numerous proceedings, and has permitted the preliminary dismissal of a complaint when a complainant already has an open proceeding before the Commission, as is the case here. See, *Shan v. Verizon Pennsylvania Inc.*, Docket No. C-2011-2243183, Opinion and Order entered January 12, 2012; *Slayton v PECO Energy Company*, Docket No., F-2010-2181788, Final Order entered December 15, 2010.

10. Applying the doctrine of *lis pendens*, as incorporated into 52 Pa. Code § 101(a)(6), the Amended Complaint should be preliminarily dismissed, as the parties, the causes of action and the relief sought are the same in both Complaints filed by Moyer.

11. Complainant already has an open proceeding before the Commission involving the exact issue raised by the Amended Complaint (her responsibility for the prior account balance). Because this is the same and only issue raised in the original Complaint, the issue will be finally decided when the Commission issues an order. At that time, the Complainant will have been afforded her opportunity to present her case before Judge Buckley, and ultimately, the Commission.

11. The Complainant has essentially re-filed the same Complaint that she made previously against West Penn, currently pending before Judge Buckley, which was heard on July 9, 2015, and is awaiting decision.

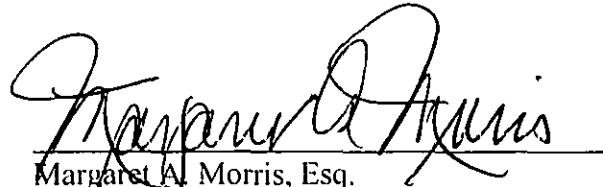
12. Allowing the Complainant to relitigate her sole issue, her responsibility for the prior account balance, is redundant and unnecessary, and clearly would waste the

time and resources of the parties, Judge Buckley and the Commission. She was afforded a full and fair opportunity to litigate the issue that she raised. Should she disagree with any initial decision rendered by Judge Buckley based on the evidentiary hearing, the Complainant is free to file exceptions with the Commission.

WHEREFORE, for the reasons set forth above, Respondent, West Penn Power Company respectfully requests that the Amended Complaint of Shelly Moyer be preliminarily dismissed on the ground that the sole issue raised in that Amended Complaint is currently pending before the Commission in the present docket.

Respectfully submitted,

Dated: November 13, 2015



Margaret A. Morris, Esq.
Attorney ID No. 75048
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Counsel for West Penn Power Company

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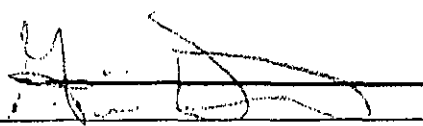
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VERIFICATION

Gina Dietrich states that she is Advanced Business Analyst for FirstEnergy Service Co., that she is authorized to make this verification on its behalf, and that the facts set forth in the attached **Preliminary Objections** are true and correct to the best of her knowledge, information and belief. She 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 12, 2015



GINA DIETRICH

**Re: Docket No. C-2015-2475942
Shelly Moyer v. West Penn Power Company
Preliminary Objection of West Penn Power**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following persons on the attached service list, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

Via Electronic and First Class Mail

Shelly Moyer
131A S. Potomac Street
First Floor
Waynesboro, PA 17268-2619
lazamatt@yahoo.com

Dated: November 12, 2015

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Margaret A. Morris, Esquire