

**John L. Munsch**  
Attorney

724-838-6210  
Fax: 234-678-2370

August 24, 2016

**VIA E-FILING**

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

**Re: John Schirra v. West Penn Power Company**  
**Docket No. C-2016-2560020**

Dear Secretary Chiavetta:

Attached please find the Preliminary Objections of West Penn Power Company in the above-referenced matter. This document has been served on the Complainant as shown in the Certificate of Service.

Please contact me if you have any questions.

Very truly yours,

  
John L. Munsch

JLM:dml

Enclosures

c: As per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**JOHN SCHIRRA**

v.

**WEST PENN POWER COMPANY**

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**Docket No. C-2016-2560020**

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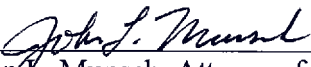
**NOTICE TO PLEAD**

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**TO: JOHN SCHIRRA**

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.

August 24, 2016

  
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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**

<b>JOHN SCHIRRA</b>	:	
	:	
v.	:	<b>Docket No. C- 2016-2560020</b>
	:	
<b>WEST PENN POWER COMPANY</b>	:	

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**WEST PENN POWER COMPANY’S  
PRELIMINARY OBJECTIONS TO THE COMPLAINT  
OF JOHN SCHIRRA**

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TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

West Penn Power Company (“West Penn” or “Company”) by and through its counsel, John L. Munsch, pursuant to Section 5.101 of the Commission’s regulations, 52 Pa. Code §5.101, requests that the Commission dismiss the Complaint of John Schirra, and in support of its Preliminary Objections states as follows:

**I. Introduction**

1. West Penn requests the dismissal of the Complaint of John Schirra (“Complainant”) because the Formal Complaint is legally insufficient, as a matter of law, and because Complainant does not claim – as required by Section 701 of the Public Utility Code 66 Pa. C.S. §701 – that the Company has taken any action or failed to take an action in violation of any law or regulation that it is required to follow.

## **II. Factual Background**

2. The Complainant is a residential customer receiving electric service from the Company at 1229 East Drive, Butler, PA 16002.

3. The Complainant filed a formal complaint with the Pennsylvania Public Utility Commission (“Commission”) at Docket No. C-2016-2560020 alleging concerns about the installation of Smart Meters.<sup>1</sup> The Complaint contends that West Penn’s schedule for the installation of a smart meter on Complainant’s Service Address is too rapid and that the installation of a smart meter on the Complainant’s Service Address should wait until 2025. In an Answer and New Matter being served contemporaneously with this Motion, West Penn responded to the material allegations in the Formal Complaint and requested that it be dismissed.

## **III. The Complaint is Insufficient as a Matter of Law**

5. In accordance with Section 5.101 of the Commission’s regulations, preliminary objections may be filed where the complaint is legally insufficient. 52 Pa. Code §5.101(4).

6. The Public Utility Code requires that “...any person...may 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 any regulation or order of the Commission.” 66 Pa. C.S. §701.

7. West Penn’s Smart Meter Deployment Plan (“SMP”) was approved by the Commission at Docket No. M-2013-2341994 by a Compliance Order entered June 5, 2014 and an Opinion and Order entered June 25, 2014. The Company’s final Smart Meter Deployment Plan was filed on June 16, 2014 and approved on June 20, 2014. The deployment plan for smart meters

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<sup>1</sup> In accordance with 66 Pa. C.S. §2807(g) smart meter technology means “...technology, including metering technology and network communications technology capable of bidirectional communication, that records electricity on at least an hourly basis, including related electric distribution system upgrades to enable the technology. 66 Pa. C.S. §2807(g).

by West Penn, as approved by the Commission, requires 98.5% of all smart meters installed by mid-2019 and the remaining 1.5% through end of 2022. The Complainant challenges no aspect of the Company's provision of electric service other than the installation of a smart meter at the Service Location, as required by Act 129 and the Company's Commission-approved SMP.

8. Commission precedent is uniform that it cannot grant exceptions to the statutory directive that smart meters be installed by allowing customers to opt out.<sup>2</sup>

9. The Complainant's neighborhood and Service Location are scheduled for immediate installation of smart meters. (See Complainant's Complaint and copy of letter from West Penn to Complainant, attached thereto, requesting immediate arrangements to install smart meter).

10. Because the Complainant fails to claim that the Company has committed or omitted an act in violation of any Commission statutes, regulations, orders or its tariff, as required by Section 701 of the Public Utility Code, 66 Pa. C.S. §701, Complainant has failed to state a claim upon which relief can be granted, and the Formal Complaint should be dismissed as legally insufficient. 52 Pa. Code §5.101(4).

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<sup>2</sup> *Negley v. Metropolitan Edison Company*, Docket No. C-2010-2205305 (Initial Decision dated January 3, 2011 became final without Commission action closed March 3, 2011); *Lutherschmidt v. Metropolitan Edison Company*, Docket No. C-2010-2200353 (Final Order entered March 25, 2011). The Commission has continued to uphold installation of smart meters and imposition of smart meter charges on customers' bills by dismissing complaints opposing installation of smart meters and imposition of smart meter charges on the basis of legal insufficiency. *Corbett v. Pennsylvania Power Company*, Docket No. C-2011-2219898 (Final Order entered May 27, 2011); *Jones v. Metropolitan Edison Company*, Docket No. C-2011-2224380 (Final Order entered June 28, 2011); *Griffin v. Metropolitan Edison Company*, Docket No. C-2012-2300172 (Final Order entered July 31, 2012); *Brake v. West Penn Power Company*, Docket No. C-2013-2367308 (Final Order entered November 14, 2013); *Drake v. Pennsylvania Electric Company*, Docket No. C-2014-2413771 (Final Order entered June 12, 2014); *Efaw v. West Penn Power Company*, Docket No. C-2014-2413744 (Final Order entered June 12, 2014). See also, the Initial Decision of ALJ Susan D. Colwell in *Dennis McElwain v. Pennsylvania Power Company*, Docket No. C-2014-2451478 issued December 3, 2015.


**IV. Conclusion**

WHEREFORE, West Penn Power Company requests that the Commission dismiss the Formal Complaint of John Schirra with prejudice because the Formal Complaint is legally insufficient as a matter of law.

Respectfully submitted,

Date: August 24, 2016

By:

  
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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  
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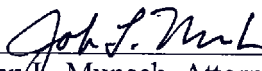
**Docket No. C-2016-2560020**

**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:

John Schirra  
PO Box 1229 East Drive  
Butler, PA 16002

Date: August 24, 2016

  
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John L. Munsch, Attorney for  
WEST PENN POWER COMPANY  
800 Cabin Hill Drive  
Greensburg, PA 15601  
(724) 838-6210