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October 3, 2016

VIA E-FILING

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

Re: Wm. C. Fraser, Jr. v. West Penn Power Company
Docket No. C-2016-2566193

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**

WM. C. FRASER, JR.

v.

WEST PENN POWER COMPANY

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:
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:
:

Docket No. C-2016-2566193

NOTICE TO PLEAD

TO: Wm. C. Fraser, Jr.

Pursuant to 52 Pa. Code § 5.101 you are hereby notified that if you do not file a reply to the enclosed **Preliminary Objections** of West Penn Power Company within ten (10) days from service of this notice, the facts set forth by West Penn Power Company in the Preliminary Objections may be deemed to be admitted, thereby requiring no other proof. All pleadings, such as a Reply to Objection, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy service to counsel for West Penn Power Company, and where applicable, the Administrative Law Judge presiding over the case.

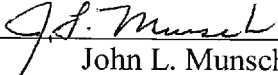
File with:

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

With a copy to:

John L. Munsch
West Penn Power Company
800 Cabin Hill Drive
Greensburg, PA 15601

Date: October 3, 2016



John L. Munsch

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

WM. C. FRASER, JR.	:	
	:	
v.	:	Docket No. C- 2016-2566193
	:	
WEST PENN POWER COMPANY	:	

**WEST PENN POWER COMPANY'S
PRELIMINARY OBJECTIONS TO THE COMPLAINT
OF WM. C. FRASER, JR.**

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 Wm. C. Fraser, Jr., and in support of its Preliminary Objections states as follows:

I. Introduction

1. West Penn requests the dismissal of the Complaint of Wm. C. Fraser, Jr. (“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 427B Three Degree Road, Renfrew, Pennsylvania.

3. The Complainant filed a formal complaint with the Pennsylvania Public Utility Commission (“Commission”) at Docket No. C-2016-2566193 alleging concerns about the installation of Smart Meters.¹ The Complaint states that he does not want a smart meter installed on the service address because of a medical condition. The Complaint does not specify the concern or the health condition. The installation of a smart meter at Complainant’s service address has not yet occurred.

4. 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-2013-2341991 by a Compliance Order entered June 5, 2014, and

¹ 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).

an Opinion and Order entered June 25, 2014. The deployment plan for smart meters 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.

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

9. In Colbert v. PECO Energy Company, Docket No. C-2015-2515607 (Opinion and Order entered June 30, 2016), the Commission granted the electric utility's preliminary objections and dismissed a Complaint that alleged vague health effects of smart meters. The Commission wrote in Colbert: "In this particular case, the Complainants' factual averments fail to implicate a potential violation of the Code, a Commission Order or Regulation, or the Company's tariff. The Complainants have not presented a claim to which they could personally testify that would support a finding that the installation of a smart meter was responsible for any specific safety or health affects they experienced within their home." Colbert at p. 10. In the present case, the Complainant, Mr. Fraser, does not allege that the West Penn has installed a smart meter at his

² *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.

service location. Since the complaint in this case does not allege that West Penn installed a smart meter at the Complainant's service location and does not allege that the Complainant has suffered specific physical symptoms resulting from the installation of a smart meter, the Preliminary Objection of West Penn should be granted. See also Fugo v. PECO Energy Company, Docket No. C-2015-2519763 (Initial Decision final without further action) (Order entered July 7, 2016).

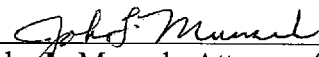
10. Because the Complainant fails to claim that the Company has committed or omitted an act in violation of any Commission statutes, regulations, orders or its tariff, as required by Section 701 of the Public Utility Code, 66 Pa. C.S. §701, Complainant has failed to state a claim upon which relief can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

IV. Conclusion

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

Respectfully submitted,

Date: October 3, 2016

By: 

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**

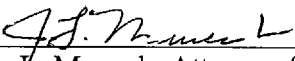
WM. C. FRASER, JR.	:	
	:	
v.	:	Docket No. C-2016-2566193
	:	
WEST PENN POWER COMPANY	:	

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:

Wm. C. Fraser, Jr.
145 Reif Lane
Renfrew, PA, 16053

Date: October 3, 2016



John L. Munsch, Attorney for
WEST PENN POWER COMPANY
800 Cabin Hill Drive
Greensburg, PA 15601
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