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July 17, 2017

VIA ELECTRONIC FILING

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

Re: Bennii Gatlin-Ali v. West Penn Power Company
Docket No. C-2017-2611525

Dear Secretary Chiavetta:

Attached please find the **Preliminary Objection** 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: slm

Enclosures

c: As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

BENNII GATLIN-ALI

v.

WEST PENN POWER COMPANY

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Docket No. C-2017-2611525

NOTICE TO PLEAD

TO: Bennii Gatlin-Ali:

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 served to counsel for West Penn Power Company, and where applicable, the Administrative Law Judge presiding over the case.

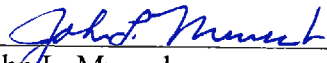
File with:

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

With a copy to:

John L. Munsch
FirstEnergy Service Company
800 Cabin Hill Drive
Greensburg, PA 15601

Date: July 17, 2017



John L. Munsch

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

BENNII GATLIN-ALI

v.

WEST PENN POWER COMPANY

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Docket No. C-2017-2611525

**PRELIMINARY OBJECTION TO THE FORMAL COMPLAINT OF
BENNII GATLIN-ALI**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

West Penn Power Company (West Penn or Company), by and through its attorney, pursuant to 52 Pa. Code § 5.101, hereby files its Preliminary Objection to the Formal Complaint filed by Bennii Gatlin-Ali in the above-captioned proceeding. West Penn objects to the Formal Complaint on the ground that the Commission lacks statutory authority to award refunds incurred more than four years prior to the date of the complaint.

In support of its preliminary objection, West Penn states as follows:

I. Procedural Background

1. West Penn is an electric distribution company certificated as a public utility permitted to operate within the Commonwealth in Pennsylvania.

2. The Complainant filed a Formal Complaint seeking compensation for allegedly incorrect billing at the service location, 40 Carson St., Uniontown, Pennsylvania, between November of 2008 and June of 2010. The Complainant does not specify the exact date of the incorrect billing nor the amount of the incorrect billing.

3. In an Answer and New Matter being served contemporaneously with this Preliminary Objection, West Penn has denied the material allegations in the Formal Complaint.

4. West Penn's records indicate that from 10/14/2008 to 1/4/2010 electric service at the service location, 40 Carson St., Uniontown, Pennsylvania, was in the names of Bennii C. Ali and Stuart Ali under account number 12220010332508. The account finalled on 1/4/2010 with an outstanding balance of \$512.67 which was transferred on 1/7/2010 to the Complainant's next account at 29 E. Kerr St., Apt. A, Uniontown, Pennsylvania.

5. Complainant states: "Date 11/08 to 6/10 my bill was erroneous amounts every month"

6. Complainant filed her formal complaint with the Commission on or about June 14, 2017.

7. Four years prior to the date of Complainant's complaint would be on or about June 14, 2013.

II. Argument

8. The Commission's Rules of Practice and Procedure permit parties to file preliminary objections. 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.

9. Commission's procedure regarding the disposition of preliminary objections is similar to that utilized in Pennsylvania civil practice. *Equitable Small Transportation Intervenors v. Equitable Gas Company*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994).

10. In the Formal Complaint, the Complainant seeks reimbursement for rates that she contends were improperly charged by West Penn between November of 2008 and June of 2010: "Date 11/08 to 6/10 my bill was erroneous amounts every month..."

11. Inasmuch as the Complainant seeks refund for rates charged more than four years prior to his Complaint, such a remedy is barred by the statute of limitations contained in Section 1312 of the Public Utility Code.

12. Section 1312 provides:

If, in any proceeding involving rates, the commission shall determine that any rate received by a public utility was unjust or unreasonable, or was in violation of any regulation or order of the commission, or was in excess of the applicable rate contained in an existing and effective tariff of such public utility, the commission shall have the power and authority to make an order requiring the public utility to refund the amount of any excess paid by any patron, in consequence of such unlawful collection, within four years prior to the date of the filing of the complaint, together with interest at the legal rate from the date of each such excessive payment. 66 a.C.S. §1312.

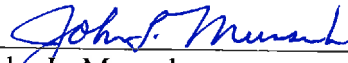
13. The four-year statute of limitations for refunds in Section 1312 has been upheld and followed in numerous Commission decisions. *Watson v. Equitable Gas*, 2012 Pa. PUC LEXIS 1524 (Docket No. C-2012-2399202, Sept. 17, 2012); *Hicks v Philadelphia Gas Works*, 2012 Pa. PUC LEXIS 1088 (Docket No. C-2010-2207800, June 26, 2012); *Ross v. PECO Energy Company*, 2008 Pa. PUC LEXIS 829 (Docket No C-2008-2060301, Oct. 14, 2008).

14. As a matter of law under Section 1312 of the Code, Complainant would not be entitled to a refund for amounts prior to June of 2013, even assuming, arguendo, that his Complaint is otherwise factually correct.

WHEREFORE, West Penn Power Company requests that the Pennsylvania Public Utility Commission deny and dismiss the Complaint of Bennii Gatlin-Ali.

Respectfully submitted,

Dated: July 17, 2017



John L. Munsch
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Greensburg, PA 15601
724-838-6210
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Counsel for West Penn Power Company

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BENNII GATLIN-ALI

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Preliminary Objections of West Penn Power Company to the Formal Complaint of Bennii Gatlin-Ali upon the individual listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by First Class Mail, postage prepaid, as follows:

Bennii Gatlin-Ali
604 Gaskill Avenue
Jeannette, PA 15644

Dated: July 17, 2017



John L. Munsch
FirstEnergy Service Company
800 Cabin Hill Drive
Greensburg, PA 15601
724-838-6210
jmunsch@firstenergycorp.com