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March 26, 2018

VIA E-FILING

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


Re: Kim Betchy v. West Penn Power Company
Docket No. C-2018-3000257

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,



Lauren M. Lepkoski

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Enclosures

c: As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

KIM BETCHY

v.

WEST PENN POWER COMPANY

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Docket No. C-2018-3000257

NOTICE TO PLEAD

TO: Kim Betchy

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.

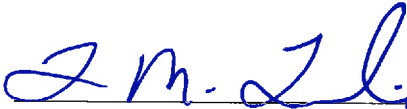
File with:

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

With a copy to:

Lauren M. Lepkoski
Tori L. Giesler
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, Pennsylvania 19612-6001

Date: March 26, 2018



Lauren M. Lepkoski, Esquire
Tori L. Giesler, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

KIM BETCHY	:	
	:	
v.	:	Docket No. C-2018-3000257
	:	
WEST PENN POWER COMPANY	:	

**PRELIMINARY OBJECTION TO THE FORMAL COMPLAINT OF
KIM BETCHY**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, West Penn Power Company ("West Penn" or the "Company"), by and through its counsel, Lauren M. Lepkoski and Tori L. Giesler, files this Preliminary Objection pursuant to Section 5.101(a) of Pennsylvania Public Utility Commission ("Commission") regulations, 52 Pa. Code § 5.101(a)(1), and in support thereof, avers as follows:

I. Introduction

1. In her recently filed Formal Complaint, Kim Betchy ("Complainant"), who resides at 140 Inwood Avenue, Carmichaels, Pennsylvania 15320 ("Service Location") alleges that she does not want a smart meter installed at the Service Location. (Formal Complaint ¶¶ 4, 5.) The Complainant states as requested relief:

Remove smart meter, replace with analog. Also, the home next door to me, to be allowed to keep the analog and to have power turned on @ 150 Inwood Ave, Carm, Pa 15320.

(Formal Complaint ¶ 5.)

2. The Company is in the process of deploying smart meters in its service territory in accordance with Act 129 of 2008 ("Act 129").¹

¹ 66 Pa.C.S. § 2806.1 *et seq.* Among other things, Act 129 specifically directed that electric distribution companies with at least 100,000 customers file a smart meter technology procurement and installation plan with the Commission for approval. 66 Pa.C.S. § 2807(f)(1) and (2).

3. On April 6, 2016, a smart meter was installed at the Service Location by Company employees while working on a service notification. Later that day, the Complainant contacted the Company and was advised of the meter exchange. The Complainant was not satisfied with the result of her telephone call and dispute rights were mailed to her. On May 5, 2016, the Complainant contacted the Company requesting that the smart meter be removed as she felt that there were health concerns. The Complainant was advised that the smart meter could not be removed per Act 129. The Complainant was not satisfied with the result of her telephone call and dispute rights were mailed to her. On July 30, 2017, the Company received a letter from the Complainant stating that she was refusing the smart meter. On August 11, 2017, the Complainant contacted the Company stating that she did not give the Company permission to install a smart meter and that the Company had stolen the previous meter. The Company representative explained that both the prior current meter are owned by the Company, the prior meter was not stolen and the installation of the smart meter was performed per Company guidelines. The Complainant stated she had a medical condition and was provided with an email address in order submit a letter from her doctor on official letterhead. The Complainant was not satisfied with the result of her telephone call and dispute rights were provided. On August 28, 2017, the Complainant filed an informal complaint with the Commission's Bureau of Consumer Services ("BCS") at Case No. 3557406 requesting that the Company remove the smart meter and re-install an analog meter due to health issues. On October 25, 2017, while at the Service Location, the Company found that the seal had been cut, the Company's meter had been removed and a foreign meter had been installed with a padlock on the meter pan. The Company immediately terminated service at the pole due to tampering and a potential unsafe condition created by the Complainant. On October 26, 2017, the Company contacted the Complainant and advised that, due to the meter tampering, electric service

would not be restored to the Service Location until an inspection is performed and a new smart meter is installed. The Complainant stated that she was not accepting of the smart meter and understood that the Company would not reconnect service without the installation of the smart meter and an inspection. On October 27, 2017, the Complainant contacted the Company and agreed to the inspection and installation of a smart meter in order to restore service. On October 30, 2017, the inspection card was received by the Company. On October 31, 2017, a second smart meter was installed and electric service was restored. On November 2, 2017, a medical letter was received on behalf of the Complainant. On December 8, 2017, BCS dismissed and closed the informal complaint finding that the Complainant's disputes were invalid. The BCS advised the Complainant that Act 129 is the law and, therefore, the Commission cannot have the smart meter removed. On February 20, 2018, the Complainant filed the instant Formal Complaint with the Commission and, on March 6, 2018, the Company was served with the Formal Complaint.

4. As explained in greater detail below, even if all of the facts in the Formal Complaint are accepted as true, they do not constitute a violation of any law which the Commission has jurisdiction to administer, or of any regulation or order of the Commission, such that relief can be granted. *See* 66 Pa.C.S. § 701.

5. As a result, the Company requests that this Preliminary Objection be granted and that the Commission: (1) strike the Complainant's request for an exemption from the installation of a smart meter for herself and for her "neighbor;" (2) dismiss the allegations regarding the neighboring property with prejudice; and (3) grant the Company such other relief as may be just and reasonable under the circumstances.

II. Background

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

7. On April 6, 2016, a smart meter was installed at the Service Location by Company employees while working on a service notification. Later that day, the Complainant contacted the Company and was advised of the meter exchange. The Complainant was not satisfied with the result of her telephone call and dispute rights were mailed to her. On May 5, 2016, the Complainant contacted the Company requesting that the smart meter be removed as she felt that there were health concerns. The Complainant was advised that the smart meter could not be removed per Act 129. The Complainant was not satisfied with the result of her telephone call and dispute rights were mailed to her. On July 30, 2017, the Company received a letter from the Complainant stating that she was refusing the smart meter. On August 11, 2017, the Complainant contacted the Company stating that she did not give the Company permission to install a smart meter and that the Company had stolen the previous meter. The Company representative explained that both the prior current meter are owned by the Company, the prior meter was not stolen and the installation of the smart meter was performed per Company guidelines. The Complainant stated she had a medical condition and was provided with an email address in order submit a letter from her doctor on official letterhead. The Complainant was not satisfied with the result of her telephone call and dispute rights were provided. On August 28, 2017, the Complainant filed an informal complaint with the Commission's Bureau of Consumer Services ("BCS") at Case No. 3557406 requesting that the Company remove the smart meter and re-install an analog meter due to health issues. On October 25, 2017, while at the Service Location, the Company found that the seal had been cut, the Company's meter had been removed and a foreign meter had been installed

with a padlock on the meter pan. The Company immediately terminated service at the pole due to tampering and a potential unsafe condition created by the Complainant. On October 26, 2017, the Company contacted the Complainant and advised that, due to the meter tampering, electric service would not be restored to the Service Location until an inspection is performed and a new smart meter is installed. The Complainant stated that she was not accepting of the smart meter and understood that the Company would not reconnect service without the installation of the smart meter and an inspection. On October 27, 2017, the Complainant contacted the Company and agreed to the inspection and installation of a smart meter in order to restore service. On October 30, 2017, the inspection card was received by the Company. On October 31, 2017, a second smart meter was installed and electric service was restored. On November 2, 2017, a medical letter was received on behalf of the Complainant. On December 8, 2017, BCS dismissed and closed the informal complaint finding that the Complainant's disputes were invalid. The BCS advised the Complainant that Act 129 is the law and, therefore, the Commission cannot have the smart meter removed.

8. On or about February 20, 2018, the Complainant filed a Formal Complaint with the Commission against West Penn at the above-captioned docket which was then electronically served on the Company on March 6, 2018.

9. 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. Argument

10. 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.

11 The 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).

12. 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 Traveler 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).

13. In accordance with Section 701 of the Code, 66 Pa.C.S. § 701, a person may file a complaint which sets 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 of any regulation or order of the commission." As explained below, the Company has not violated

the Public Utility Code or the orders or regulations of the Commission.² In fact, the Company's action have been in compliance with Act 129 and the June 5 Order. Further, the Complainant does not have standing to file a complaint or request relief on behalf of the resident or owner of the neighboring property located at 150 Inwood Avenue, Carmichaels, Pennsylvania 15320 ("Neighboring Property").

14. 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.*

15. The Commission's procedural regulations allow a party to object to pleadings that are filed by complainants who lack the capacity to sue as well as complainants who lack standing to participate in a proceeding. *See* 52 Pa. Code § 5.102(a)(7).

16. The Complainant states as part of her requested relief that she does not want a smart meter installed at and wishes to have power restored to the neighboring property located at 150 Inwood Avenue, Carmichaels, Pennsylvania 15320 ("Neighboring Property").

17. The Complainant is not a customer of record nor an applicant for service for the Neighboring Property.

18. The Complainant lacks standing and capacity to file or to prosecute a complaint related to the Neighboring Property.

² 66 Pa.C.S. § 701.

29. The Commission has held that a person or entity has standing when the person or entity has a direct, immediate and substantial interest in the subject matter of a proceeding. *Joint Application of Pennsylvania-American Water Co. and Evansburg Water Co. for Approval of the transfer, by sale, of the water works property and rights of Evansburg Water Co. to Pennsylvania-American Water Co.*, A-212285F0046/47 and A-210870F01 (Ordered entered July 9, 1998); *William Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975); *Landlord Service Bureau, Inc. v. Equitable Gas Co.*, 79 Pa. P.U.C. 342 (1993); *Re Equitable Gas Co.*, 76 Pa. P.U.C. 23 (1992); *Manufacturers' Association of Erie v. City of Erie - Bureau of Water*, 50 Pa. P.U.C. 43 (1976); *Waddington v. Pennsylvania Public Utility Commission*, 670 A.2d 199 (Pa. Cmwlth. 1995), *alloc. denied*, 678 A.2d 368 (Pa. 1996).

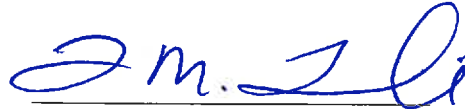
30. Requiring a person or entity to have a direct, immediate and substantial interest in the subject matter of a proceeding helps avoid frivolous, harassing lawsuits whose costs are ultimately borne, at least in part, by utility ratepayers. *NFG, supra*.

IV. Conclusion

WHEREFORE, for the foregoing reasons, West Penn Power Company respectfully requests that the Commission: (1) strike the Complainant's request for an exemption from the installation of a smart meter for herself and for her "neighbor;" (2) dismiss the allegations

regarding the neighboring property with prejudice; and (3) grant the Company such other relief as may be just and reasonable under the circumstances.

Respectfully submitted,



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Counsel for West Penn Power Company

Dated: March 26, 2018

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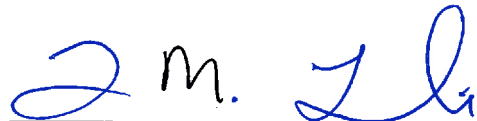
CERTIFICATE OF SERVICE

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 Kim Betchy upon the individuals 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:

Kim Betchy
140 Inwood Avenue
Carmichaels, PA 15320

Dated: March 26, 2018



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