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August 22, 2018

VIA E-FILING

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

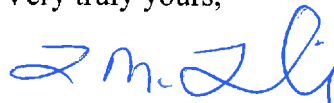
Re: Diana Sabatine v. West Penn Power Company
Docket No. C-2018-3002804

Dear Secretary Chiavetta:

Attached please find the Amended 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

krak
Enclosures

c: As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DIANA SABATINE

v.

WEST PENN POWER COMPANY

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:
:
:

Docket No. C-2018-3002804

NOTICE TO PLEAD

TO: Diana Sabatine

Pursuant to 52 Pa. Code § 5.101 you are hereby notified that if you do not file a reply to the enclosed Amended 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 Amended 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: August 22, 2018



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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DIANA SABATINE	:	
	:	
v.	:	Docket No. C-2018-3002804
	:	
WEST PENN POWER COMPANY	:	

**AMENDED PRELIMINARY OBJECTION TO THE AMENDED FORMAL
COMPLAINT OF DIANA SABATINE**

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 Amended 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 Amended Formal Complaint, Diana Sabatine (“Complainant”), who resides at 315 Possom Hollow Road, Latrobe, Pennsylvania 15650 (“Service Location”) alleges that she does not want a smart meter installed at the Service Location. (Amended Formal Complaint ¶ 5.) The Complainant states as requested relief:

- (a.) I wish to be protected from damage to my rights as a people by the deployment of the weapon commonly known as a “smart meter”.
- (b.) I wish to secure body and effects in my home from a weapon commonly called a “smart meter” as a surveillance device.
- (c.) It is undisputed that the weapon known as a “smart meter”, when fully deployed, will interface with electric appliances in homes to control their use in my home.
- (d.) It is undisputed that there is no way anyone can guarantee that the network of weapons commonly called “smart meters” cannot be hacked by some clever man or woman, a foreign agency, or a domestic agency, or a disgruntled employee of the electric company, compromising my security in my home.

(e.) It is undisputed that the “research” used by the PENNSYLVANIA PUBLIC UTILITY COMMISSION and the electric companies to measure the Electro Magnetic Field (EMF) safety of the weapon commonly called a “smart meter” is woefully outdated. Said EMF research refers to the antiquated measurements we were capable of making as far back as in the 1930s, and therefore measures only heat effects. It is undisputed in modern science that those standards, set decades ago in the last century, allow exposure hundreds and even thousands of times that suspected to cause cancer and known to disrupt multiple biological functions in humans, pets, and wild animals.

(f.) It is undisputed that the military of several countries deploy microwave weapons both overtly and covertly for both deadly effects and more subtle effects.

(g.) I wish to maintain a preventative health program that does not include being bombarded by microwaves and other EMFs every few seconds by the weapon commonly called a “smart meter”.

(h.) It is undisputed Act 129 is an “opt-in” in which FIRST ENERGY CORP., West Penn Power and the PENNSYLVANIA PUBLIC UTILITY COMMISSION are ignoring. The word “shall” in act 129 of 2008 means there is no escape from the plain language meaning. The plain language of the act is “at the customer request”. I do NOT request the weapon commonly known as a “smart meter”.

(i.) In short, I request that the PENNSYLVANIA PUBLIC UTILITY COMMISSION do not allow FIRST ENERGY CORP. and or West Penn Power to deploy the weapon commonly known as a smart meter on my home.

(j.) It is undisputed that the PENNSYLVANIA PUBLIC UTILITY COMMISSION is a sub-corporation to STATE OF PENNSYLVANIA, and therefore subject to the Organic Law of PENNSYLVANIA.

(k.) It is undisputed that any officer of any corporation who exceeds the charter of that corporation is no longer protected by the “corporate veil” and becomes liable as a people.

(l.) It is undisputed that for an employee of the PENNSYLVANIA PUBLIC UTILITY COMMISSION and or FIRST ENERGY CORP. and West Penn Power to act contrary to the Organic Law is to act outside his or her authority, and therefore outside both the “corporate veil” and “sovereign immunity”.

(m.) It is undisputed that deployment of the weapon commonly called a “smart meter” on homes without the consent of the owner AND the occupants violates all three rights as put forth in the Declaration of Independence: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness.” It is undisputed that this is one of the Organic Laws by which all state and federal acts must be measured, and if found to violate any of the Organic Laws, said legislative act is null and void ab initio.

(n.) NOTICE: If FIRST ENERGY CORP. and or West Penn Power does deploy a weapon capable of disrupting the security of my home and or effects, take this as NOTICE that I will hold every people liable who had the duty to resist any such act but did not.

(o.) I wish that the PENNSYLVANIAPUBLIC UTILITY COMMISSION to cause the plans to “deploy” the weapons commonly called “smart meter” to be limited to those customers that request said weapons, as required by The Declaration of Independence, Act 129 of 2008, and the federal Energy Policy Act of 2005 which provides for the grants used to develop the plans to deploy the weapons disguised as “advanced metering”.

(p.) Further, I wish that any funds granted to FIRST ENERGY CORP. and or West Penn Power and or the PENNSYLVANIAPUBLIC UTILITY COMMISSION that originated under the auspices of the federal Energy Policy Act of 2005 that was not spent to make deployment of the “smart meter” at the customer request as required by the federal Energy Act of 2005 to be refunded to the Federal Government. It is undisputed that money granted that is not spent according to the terms of the grant, in this case the terms of the federal Energy Policy Act of 2005, must be returned to the grantor.

(q.) I wish for the true nature of the weapons commonly referred to as “smart meter” to be fully disclosed to any customer before allowing formal request and deployment, with full comprehension and understanding by requesting customer.

(r.) I request relief from FIRST ENERGY CORP. and or West Penn Power that they do not breach my current contract with the analog meter.

(Amended 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

3. On December 15, 2017, the Complainant contacted the Company to refuse installation of the smart meter at the Service Location. The Company representative advised the Complainant that there is no “opt out” option available. The Complainant stated that she was not satisfied with the results of her telephone call and dispute rights were provided. On December 26, 2017, the Complainant contacted the Company stating that she refused the smart meter installation

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).

on December 15, 2017 and was told to contact the Commission, but she was not given a complaint number. On March 15, 2018, the Company attempted to contact the Complainant to discuss her concerns regarding the smart meter installation. The Complainant answered the telephone call but indicated that she was not able to talk at that time and disconnected the call. On March 16, 2018, the Company sent correspondence to the Complainant in an attempt to schedule installation of a smart meter at the Service Location. On May 10, 2018, the Company sent correspondence to the Complainant in an attempt to schedule installation of a smart meter at the Service Location. On May 21, 2018, a pre-disconnection warning letter was issued to the Complainant pursuant to 66 Pa.C.S. § 1406, 52 Pa. Code § 56.81 and Rules 9 and 20 of the Company's Commission-approved tariff.² On May 24, 2018, the Complainant contacted the Company stating that she is in contact with the CEO and any correspondence should come to her by certified mail. She requested the name of the head of the smart meter department. The Complainant's call was transferred to the smart meter department in the Company's contact center. The Complainant indicated she was aware of the federal statutes and Pennsylvania Act and it's only an option and she does not want a smart meter. The Complainant further stated that 'no trespassing' signs have been posted and, if anyone shows up, they would be fined per the notice. The Complainant was dissatisfied with the results of her telephone call and stated that she sent a notice of liability to the Commission. The Company representative advised the Complainant that the Company owns the meter and the Company can disconnect the service if she continues to refuse installation of the smart meter. On May 31, 2018, a service termination notice was issued to the Complainant pursuant to 66 Pa.C.S. § 1406, 52 Pa. Code § 56.81 and Rules 9 and 20 of the Company's Commission-approved tariff.³

² 66 Pa.C.S. § 1406(a)(4); 52 Pa. Code § 56.81(3); *West Penn Power Company Retail Electric Service Tariff*, Electric Pa. PUC No. 52, pp. 40, 55, issued May 1, 2015, effective May 3, 2015.

³ *Id.*

On June 4, 2018, the Complainant's husband, John Sabatine, contacted the Company regarding the service termination notice. He stated the Complainant had been diagnosed with cancer in 2014 and they were advised that the smart meter would be detrimental to her health. He is trying to find information to convince the Complainant that the smart meter is not harmful or invasive and requested more time. Mr. Sabatine was advised that the Company is unable to offer any additional delays as we must adhere to the installation schedule approved by the Commission. Mr. Sabatine indicated that he was still refusing installation of the smart meter and understood that disconnection of service was imminent. Mr. Sabatine was advised that he has the right to file a complaint with the Commission. On June 11 and June 12, 2018, the Company attempted to contact the Complainant regarding the service termination notice and smart meter refusal. On June 18, 2018, Mr. Sabatine contacted the Company to report that a formal complaint had been filed with the Commission. Later that day, the Company was electronically served with the Formal Complaint and termination efforts ceased. On July 9, 2018, the Company filed an Answer and New Matter to the Formal Complaint and Preliminary Objections. On July 24, 2018, a Motion Judge Assignment Notice was issued which assigned Administrative Law Judge Jeffrey A. Watson to rule on the Company's Preliminary Objection. By letter dated July 27, 2018, the Complainant filed an Amended Formal Complaint with the Commission. On August 2, 2018, the Company was electronically served with the Amended Formal Complaint.

4. As explained in greater detail below, even if all of the facts in the Amended 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.⁴

⁴ See 66 Pa.C.S. § 701.

5. As a result, the Company requests that this Amended Preliminary Objection be granted and that the Commission: (1) strike the Complainant's request for an exemption from the installation of a smart meter; (2) dismiss the Amended Formal Complaint in its entirety 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 December 15, 2017, the Complainant contacted the Company to refuse installation of the smart meter at the Service Location. The Company representative advised the Complainant that there is no "opt out" option available. The Complainant stated that she was not satisfied with the results of her telephone call and dispute rights were provided. On December 26, 2017, the Complainant contacted the Company stating that she refused the smart meter installation on December 15, 2017 and was told to contact the Commission, but she was not given a complaint number. On March 15, 2018, the Company attempted to contact the Complainant to discuss her concerns regarding the smart meter installation. The Complainant answered the telephone call but indicated that she was not able to talk at that time and disconnected the call. On March 16, 2018, the Company sent correspondence to the Complainant in an attempt to schedule installation of a smart meter at the Service Location. On May 10, 2018, the Company sent correspondence to the Complainant in an attempt to schedule installation of a smart meter at the Service Location. On May 21, 2018, a pre-disconnection warning letter was issued to the Complainant pursuant to 66 Pa.C.S. § 1406, 52 Pa. Code § 56.81 and Rules 9 and 20 of the Company's Commission-approved

tariff.⁵ On May 24, 2018, the Complainant contacted the Company stating that she is in contact with the CEO and any correspondence should come to her by certified mail. She requested the name of the head of the smart meter department. The Complainant's call was transferred to the smart meter department in the Company's contact center. The Complainant indicated she was aware of the federal statutes and Pennsylvania Act and it's only an option and she does not want a smart meter. The Complainant further stated that 'no trespassing' signs have been posted and, if anyone shows up, they would be fined per the notice. The Complainant was dissatisfied with the results of her telephone call and stated that she sent a notice of liability to the Commission. The Company representative advised the Complainant that the Company owns the meter and the Company can disconnect the service if she continues to refuse installation of the smart meter. On May 31, 2018, a service termination notice was issued to the Complainant pursuant to 66 Pa.C.S. § 1406, 52 Pa. Code § 56.81 and Rules 9 and 20 of the Company's Commission-approved tariff.⁶ On June 4, 2018, the Complainant's husband, John Sabatine, contacted the Company regarding the service termination notice. He stated the Complainant had been diagnosed with cancer in 2014 and they were advised that the smart meter would be detrimental to her health. He is trying to find information to convince the Complainant that the smart meter is not harmful or invasive and requested more time. Mr. Sabatine was advised that the Company is unable to offer any additional delays as we must adhere to the installation schedule approved by the Commission. Mr. Sabatine indicated that he was still refusing installation of the smart meter and understood that disconnection of service was imminent. Mr. Sabatine was advised that he has the right to file a complaint with the Commission. On June 11 and June 12, 2018, the Company attempted to contact

⁵ 66 Pa.C.S. § 1406(a)(4); 52 Pa. Code § 56.81(3); *West Penn Power Company Retail Electric Service Tariff*, Electric Pa. PUC No. 52, pp. 40, 55, issued May 1, 2015, effective May 3, 2015.

⁶ *Id.*

the Complainant regarding the service termination notice and smart meter refusal. On June 18, 2018, Mr. Sabatine contacted the Company to report that a formal complaint had been filed with the Commission.

8. The Complainant filed the Formal Complaint with the Commission and, on June 18, 2018, the Company was electronically served with the Formal Complaint. On July 9, 2018, the Company filed an Answer and New Matter to the Formal Complaint and Preliminary Objections. On July 24, 2018, a Motion Judge Assignment Notice was issued which assigned Administrative Law Judge Jeffrey A. Watson to rule on the Company's Preliminary Objection. By letter dated July 27, 2018, the Complainant filed an Amended Formal Complaint with the Commission. On August 2, 2018, the Company was electronically served with the Amended Formal Complaint.

9. West Penn is timely filing its Amended Answer and New Matter contemporaneously with this Amended Preliminary Objection, which Amended Answer and New Matter is incorporated into this Amended 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.⁷

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.⁸ The Commission has adopted this standard.⁹

13. In accordance with Section 701 of the Code¹⁰ 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.¹¹ In fact, the Company's action have been in compliance with Act 129 and the June 5 Order.

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.¹² Therefore, in ruling on a preliminary objection, the Commission must assume, for decisional purposes only, that the factual allegations of the Amended Formal Complaint are true.¹³

15. West Penn's smart meter deployment plan was approved by the Commission at Docket No. M-2013-2341991 by Order entered June 5, 2014. In accordance with the June 5 Order,

⁷ *Equitable Small Transportation Intervenors v. Equitable Gas Company*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994).

⁸ *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).

⁹ *Montague v. Philadelphia Electric Company*, 66 Pa. PUC 24 (1988).

¹⁰ 66 Pa.C.S. § 701

¹¹ *Id.*

¹² *County of Allegheny v. Commw. of Pa.*, 490 A.2d 402 (Pa. 1985).

¹³ *Id.*

the Company filed its final Smart Meter Deployment Plan (“SMP”) on June 16, 2014. The SMP was approved by the Commission on June 20, 2014. 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 SMP.

16. Commission precedent is uniform that it cannot grant exceptions to the statutory directive that smart meters be installed by allowing customers to opt out.¹⁴

17. Assuming the facts pleaded in the Formal Complaint are true, as the Commission must for the purposes of ruling on a preliminary objection, the Complainant has failed to allege that West Penn has committed or omitted an act in violation of a Commission statute, regulation, order, or West Penn's tariff, a finding of which must be made in order to sustain a formal complaint.¹⁵

18. Because Act 129 and the Commission’s orders not only authorize but require the Company to develop and implement a smart meter procurement and installation plan, and do not allow a customer to opt out of having a smart meter installed, this Complaint must be dismissed. As a matter of law, the Company is required to install a smart meter at the Service Location. As such, the Commission cannot find the Company to be in violation for having attempted to follow the law as it has done here.

¹⁴ *Negley v. Metropolitan Edison Company*, Docket No. C-2010-2205305 (Final Order entered 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 (Opinion and Order entered November 14, 2013); *Drake v. Pennsylvania Electric Company*, Docket No. C-2014-2413771 (Final Order entered August 22, 2014); *Efaw v West Penn Power Company*, Docket No. C-2014-2413744 (Final Order entered August 22, 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 16, 2015.

¹⁵ See 66 Pa.C.S. § 701; *County of Allegheny*, supra. (Compl. ¶ 4.)

19. Therefore, the Amended Formal Complaint is legally insufficient because it fails to state a claim upon which the Commission can grant relief.¹⁶

20. The Commission may dismiss a complaint without hearing if a hearing is not necessary in the public interest.¹⁷

21. Recently, the Commission set for hearing two cases in which the complainant was opposed to the installation of a smart meter at their premises.¹⁸ These cases represent a departure from past Commission practice of dismissing such complaints on preliminary objections. The Commission stated that where a complainant has presented specific factual averments regarding the health or other effects that they have experienced after a smart meter was installed at their home, the Commission has overruled preliminary objections and allowed a case to proceed. Specifically, in *Kreider*, the complainant alleged specific deleterious health effects after installation of a smart meter affecting her specific medical condition. Further, in *Van Schoyck*, the complainants alleged potential health risks due to constant ringing noise in their home and their inability to sleep since the time the smart meter was installed.¹⁹ In contrast, in the instant case, the Complainant has made no specific factual averments regarding any health effects *after* installation of a smart meter. Specifically, the Complainant states generally that she does not want a smart meter installed at the Service Location as she believes that her “medical condition(s)” will worsen. The Commission is unable to grant the Complainant an “exemption” from Act 129. The

¹⁶ See 52 Pa. Code § 5.101(a)(4).

¹⁷ 66 Pa.C.S. § 703(b); 52 Pa. Code § 5.21 (d).

¹⁸ *Susan Kreider v. PECO Energy Company*, Docket No. C-2015-2469655 (Order on Reconsideration entered January 28, 2016); *Stephen and Diane Van Schoyck v. PECO Energy Company*, Docket No. C-2015-2478239 (Opinion and Order entered February 25, 2016).

¹⁹ *Id.*

Commission has not recognized a customer's lack of consent to install a smart meter as sufficient to overcome preliminary objections.²⁰

22. In *Charles F. Jackson v. Pennsylvania Electric Company*, Docket No. C-2017-2600495 (Order Entered August 31, 2017), the Commission approved the Initial Decision of ALJ David A. Salapa, dated June 26, 2017, which granted the preliminary objections of Pennsylvania Electric Company and dismissed the formal complaint of Mr. Jackson (who was disputing the installation of a smart meter) finding that formal complaint was legally insufficient, pursuant to 52 Pa. Code § 5.101(a)(4), in that the complaint fails to allege that the utility violated the Public Utility Code, Commission regulations or orders or its tariff provisions. The respondent was found to be authorized to install smart meters and impose a charge on its customers to develop and implement a smart meter procurement and installation plan that will lead to the installation of smart meters throughout its service territory. ALJ Salapa further found that the respondent was authorized to terminate the Mr. Jackson's service if he refused to provide the respondent with access to its meter and equipment to install the smart meter.

This Commission decision was entered after *Kreider*. The instant formal complaint is similar to the alleged averments in the formal complaint at Docket No. C-2017-2600495, in that the Complainant has only alleged that the installation of a smart meter would violate his privacy rights and does not want a smart meter at the Service Location. The Complainant has not set forth in his complaint that any act done by the Company violates a Commission regulation, statute or order.

²⁰ *Richard and Marie Fugo in care of Fugo Eye Institute v. PECO Energy Company*, Docket Nos. C-2015-2519763 and C-2015-2519770 (Order entered April 6, 2016).

23. Therefore, the Company respectfully submits that the matters plead in the subject Amended Formal Complaint do not meet the standards set in *Kreider* and *Van Schoyck* such that this matter can survive dismissal on preliminary objections.

24. Further, the Commission has upheld decisions granting preliminary objections and dismissing complaints for legal insufficiency opposing smart meter installation. In *Negley*, ALJ Susan D. Colwell dismissed a complaint opposing installation of smart meters for legal insufficiency. ALJ Colwell concluded that Act 129 of 2008 authorized the installation of smart meters by EDCs. ALJ Colwell held that the Commission's orders approving the EDC's smart meter plans did not exempt any customers from the smart meter plans. By Commission final order entered March 3, 2011, ALJ Colwell's Initial Decision became final without further Commission action.

25. Rule 9 of the Company's Commission-approved tariff,²¹ allows the Company to have access to its customers' premises for any and all purposes relating to the supply of electric energy which includes the exchange of meters. The Complainants refusal to allow the Company access to its own meter is a violation of Rules 9 and 20 of the Company's Commission-approved tariff²² and is grounds for termination of service. The Commission has also upheld decisions finding that a utility has the ability to terminate the service of a customer who refuses installation of a smart meter.²³

26. Because Act 129 of 2008 and the Commission's orders authorize the Company to develop and implement a smart meter procurement and installation plan, the Complainant has not

²¹ *West Penn Power Company Retail Electric Service Tariff*, Electric Pa. PUC No. 52, p. 40 issued May 1, 2015, effective May 3, 2015.

²² *West Penn Power Company Retail Electric Service Tariff*, Electric Pa. PUC No. 52, pp. 40, 55, issued May 1, 2015, effective May 3, 2015.

²³ *Art Larson v. PECO Energy Company*; Docket No. C-2014-2451754 (Opinion and Order entered June 11, 2015). See also, *Catherine J. Frompovitch v. PECO Energy Company*; Docket No. C-2015-2474602 (Opinion and Order entered May 3, 2018).

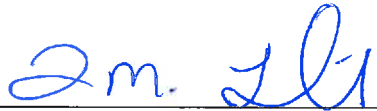
set forth in his complaint any act done by the Company that violates a Commission regulation, statute or order.

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; (2) dismiss the Amended Formal Complaint in its entirety with prejudice; and (3) grant the Company such other relief as may be just and reasonable under the circumstances.

Respectfully submitted,

Dated: August 22, 2018



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Counsel for West Penn Power Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DIANA SABATINE

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v.

Docket No. C-2018-3002804

WEST PENN POWER COMPANY

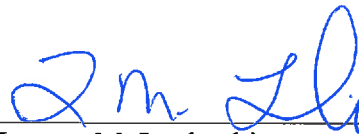
CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Amended Preliminary Objections of West Penn Power Company to the Amended Formal Complaint of Diana Sabatine 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:

Diana Sabatine
315 Possum Hollow Road
Latrobe, PA 15650

Dated: August 22, 2018



Lauren M. Lepkoski
Tori L. Giesler
FirstEnergy Service Company
2800 Pottsville Pike
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