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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

200 Brook Hollow Road
Mount Pleasant, PA 15666
December 15, 2018

Pennsylvania PUC
Commonwealth Keystone Building – 2nd Floor
400 North Street
Harrisburg, PA 17120

Re: Michael T. Jennings v. West Penn Power C-2018-3006031

Dear Secretary,

Enclosed please find my Answers to Preliminary Objections.

Respectfully Submitted,



Michael T. Jennings

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SECRETARY'S BUREAU

Answers to Preliminary Objections

Michael Jennings v. West Penn Power

C-2018-3006031

FirstEnergy.

2800 Pottsville Pike
PO Box 16001
Reading, PA 19612-6001

Lauren M. Lepkoski, Esq.
(610) 921-6203
(330) 315-9263 (Fax)

December 5, 2018

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VIA E-FILING

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

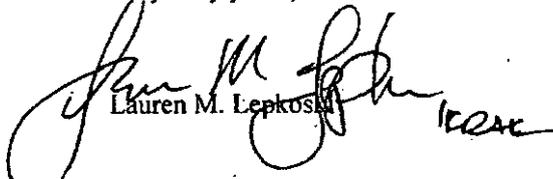
Re: **Michael T. Jennings v. West Penn Power Company**
Docket No. C-2018-3006031

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

krak
Enclosures

c: As per Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MICHAEL T. JENNINGS

v.

WEST PENN POWER COMPANY

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Docket No. C-2018-3006031

NOTICE TO PLEAD

TO: Michael T. Jennings

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.

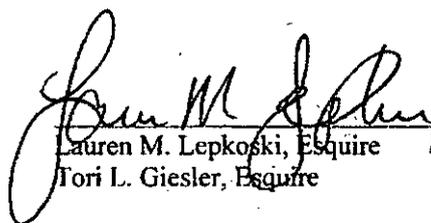
File with:

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: December 5, 2018


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

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MICHAEL T. JENNINGS

v.

WEST PENN POWER COMPANY

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Docket No. C-2018-3006031

**PRELIMINARY OBJECTION TO THE FORMAL COMPLAINT OF
MICHAEL T. JENNINGS**

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 his recently filed Formal Complaint, Michael T. Jennings ("Complainant"), who receives electric service at 200 Brook Hollow Road, Mount Pleasant, Pennsylvania 15666 ("Service Location") alleges that he does not want smart meters installed at the Service Location.

(Formal Complaint ¶ 5.) The Complainant states as requested relief:

1. I respectfully request the Commission compel West Penn Power to abide by the requirements of Sections 1501 and 1502 of the Public Utility Code and Section 57.194 of the Commission's regulations to provide safe and reasonable electric service to me and my family.
2. I respectfully request the Commission compel West Penn Power to make an accommodation for my son based on his disabilities and desist from deploying or attempting to deploy any wireless equipment which would exacerbate my family's medical conditions.
3. I respectfully request the Commission:
 - a. Allow our family to have an analog meter, which is safe for our health, or in the alternative:
 - b. Allow West Penn Power to install an alternate wired or fiber optic connected meter which emits no RF-EMF which is safe for me and my family, taking into account our family's unique medical vulnerabilities.

4. The Commission should cease and desist from any attempts to install a wireless smart meter or other harmful equipment at my premises, such as is a violation of Section 1501 and 1502 of the Public Utility Code and Section 57.194 of the Commission's regulations as they pertain to my family's unique medical conditions.

5. I ask the Commission to order a permanent stay of any termination on the part of West Penn Power against me for any alleged denial of access to the meter at my property.

6. In the alternative, and pursuant to 52 PA Code Section 1.91, I respectfully request the Commission order the waiver of any rule, regulation or Commission Order that the Commission believes requires West Penn Power to deploy a wireless RF-EMF emitting meter on my premises.

7. We request the Commission grant an in-person hearing in Pittsburgh, PA.

(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 September 18, 2018, the Company sent correspondence to the Complainant regarding the installation of smart meters at the Service Location. On September 27, 2018, the Complainant contacted the Company stating that he was interested in relocating the electric service at the Service Location and that there is a meter located on a barn that he would like to re-wire through one meter. A relocation of service notification was created. On November 6, 2018, the Complainant's wife, Susan Jennings, contacted the Company to request the address of the Company's president. The call dropped while Mrs. Jennings was on hold. On November 7, 2018, the Company received an "opt-out" letter dated October 17, 2018 in which the Complainant refused installation of smart meters at the Service Location. On November 9, 2018, a Company representative spoke with Mr. and Mrs. Jennings and attempted to address their concerns regarding installation of smart meters at the Service Location. They refused installation of smart meters at

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).

the Service Location. The Complainant was advised to have his relocation of service completed by April 2019. On November 12, 2018, the Company sent correspondence to the Complainant in an attempt to schedule installation of smart meters at the Service Location. On November 14, 2018, the Complainant filed the Formal Complaint with the Commission and, on November 15, 2018, the Company was electronically 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.²

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 smart meters; (2) dismiss the 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 September 18, 2018, the Company sent correspondence to the Complainant regarding the installation of smart meters at the Service Location. On September 27, 2018, the Complainant contacted the Company stating that he was interested in relocating the electric service at the Service Location and that there is a meter located on a barn that he would like to re-wire through one meter. A relocation of service notification was created. On November 6, 2018, the Complainant's wife, Susan Jennings, contacted the Company to request the address of the

² See 66 Pa.C.S. § 701.

Company's president. The call dropped while Mrs. Jennings was on hold. On November 7, 2018, the Company received an "opt-out" letter dated October 17, 2018 in which the Complainant refused installation of smart meters at the Service Location. On November 9, 2018, a Company representative spoke with Mr. and Mrs. Jennings and attempted to address their concerns regarding installation of smart meters at the Service Location. They refused installation of smart meters at the Service Location. The Complainant was advised to have his relocation of service completed by April 2019. On November 12, 2018, the Company sent correspondence to the Complainant in an attempt to schedule installation of smart meters at the Service Location.

8. On November 14, 2018, the Complainant filed the Formal Complaint with the Commission and, on November 15, 2018, the Company was electronically served with the Formal Complaint.

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.³

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.⁴ The Commission has adopted this standard.⁵

13. In accordance with Section 701 of the Code⁶ 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.⁷ 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.⁸ 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.⁹

³ *Equitable Small Transportation Intervenors v. Equitable Gas Company*, Docket No. C-00935435 (Opinion and Order entered July 18, 1994).

⁴ *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).

⁵ *Montague v. Philadelphia Electric Company*, 66 Pa. PUC 24 (1988).

⁶ 66 Pa.C.S. § 701

⁷ *Id.*

⁸ *County of Allegheny v. Commw. of Pa.*, 490 A.2d 402 (Pa. 1985).

⁹ *Id.*

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, 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.¹⁰

17. 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 smart meters 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.

¹⁰ *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 December 5, 2014); *Efaw v. West Penn Power Company*, Docket No. C-2014-2413744 (Final Order entered December 5, 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.

18. Therefore, the Formal Complaint is legally insufficient because it fails to state a claim upon which the Commission can grant relief.¹¹

19. The Commission may dismiss a complaint without hearing if a hearing is not necessary in the public interest.¹²

20. Recently, the Commission set for hearing two cases in which the complainant was opposed to the installation of a smart meter at their premises.¹³ 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.¹⁴ In contrast, in the instant case, the Complainant has made no specific factual averments regarding any health effects experienced *after* smart meters were installed. The Complainant simply avers that he does not want smart meters due to generic health and safety concerns. The Commission has not recognized a customer's lack of consent to install a smart meter as sufficient to overcome Preliminary Objections.¹⁵

¹¹ See 52 Pa. Code § 5.101(a)(4).

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

¹³ *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).

¹⁴ *Id.*

¹⁵ *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).

21. 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 nearly identical to the alleged averments in the formal complaint at Docket No. C-2017-2600495, in that the Complainant has only alleged that he does not want smart meters installed 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.

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

23. 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.

24. Rule 9 of the Company's Commission-approved tariff,¹⁶ 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 Complainant's refusal to allow the Company access to its own meter is a violation of Rules 9 and 20 of the Company's Commission-approved tariff¹⁷ 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.¹⁸

25. 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 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 grant its Preliminary Objection and that the Commission: (1) strike the Complainant's request for an exemption from the installation of smart meters; (2) dismiss the

¹⁶ *West Penn Power Company Retail Electric Service Tariff*, Electric Pa. PUC No. 52, p. 40 issued May 1, 2015, effective May 3, 2015.

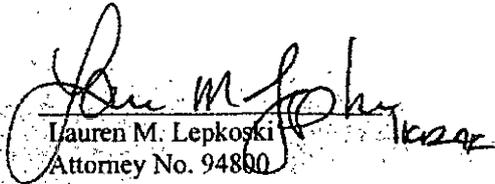
¹⁷ *West Penn Power Company Retail Electric Service Tariff*, Electric Pa. PUC No. 52, pp. 40, 55, issued May 1, 2015, effective May 3, 2015.

¹⁸ *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).

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: December 5, 2018


Lauren M. Lepkoski
Attorney No. 94800

Tori L. Giesler
Attorney No. 207742
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, Pennsylvania 19612-6001
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Counsel for West Penn Power Company

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SECRETARY'S BUREAU

BEFORE THE
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MICHAEL T. JENNINGS

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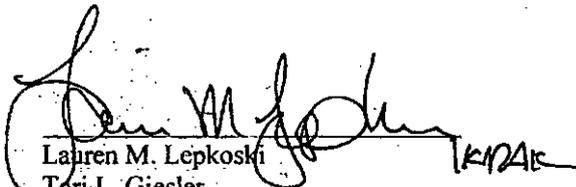
CERTIFICATE OF SERVICE

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 Michael T. Jennings 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:

Michael T. Jennings
200 Brook Hollow Road
Mount Pleasant, PA 15666

Dated: December 5, 2018



Lauren M. Lepkoski
Tori L. Giesler
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, Pennsylvania 19612-6001
(610) 921-6203
(610) 921-6658
llepkoski@firstenergycorp.com
tgiesler@firstenergycorp.com

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Answers to Preliminary Objections

DEC 15 2018

1. Admitted.

PA PUBLIC UTILITY COMMISSION
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2. Admitted in part, denied in part.

By way of further answer, West Penn Power/First Energy has violated Section 1501 and 1502 of the PA PUC law, Section 504 of the Rehabilitation Act of 1973 (disability); Title II of the Americans with Disabilities Act of 1990 (disability); and the Fair Housing Act. In fact, there is no requirement in Act 129 for West Penn/First Energy to deploy meters that are harmful for my family. This would be a direct violation of Section 1501 and 1502 of the PA PUC law and is therefore is not in accordance with PUC law as applied to me and my family. Under the Fair Housing Act, it is against the law to refuse to make reasonable accommodations for persons with a disability if the accommodation may be necessary to afford such person a reasonable and equal opportunity to use and enjoy a dwelling. Our son has been designated as disabled through the Social Security Administration since October 2010.

3. Admit – first sentence

Admit – second sentence

As further explanation, complainant was on an information gathering process to consider options. Later in the process complainant learned more about the RF emitting, transient- and harmonic-producing smart meter would be detrimental to our son's and family's health.

Admit – third sentence

Admit – fourth sentence

Admit in part, deny in part – fifth sentence

Complainant's wife did call West Penn Power to request the address of the company president. Whether the call was dropped or not, West Penn Power did not attempt to return the call to satisfy our inquiry.

Admit in part, denied in part – sixth sentence

Complainant is not asking for an opt-out, just reasonable accommodations for severe, existing medical conditions that would be exacerbated if the smart meter was installed on complainant's property and which would significantly contribute to a deterioration on my son's and my family's health.

Admit in part, deny in part – seventh sentence

Denise, a representative from West Penn Power, did call complainant and his wife on November 9, 2018. Denise did give complainant information on the relocation of the meter if complainant did indeed decide to do it. She proceeded to inform complainant he would be receiving a shut off notice on November 21, 2018, but he should disregard it. Denise also stated complainant could ignore the "Friendly Letter," the 10-day shut-off notice and the 3-day shut-off notice. Complainant explained the circumstances of having a disabled child with medical conditions. Denise stated the company used to accept medical letters, but not anymore. Complainant asked what if we decided not to have

the meter installed. Denise informed complainant a formal complaint would have to be filed to put a hold on the account for smart meter installation.

Denied – eighth sentence

Complainant did not refuse the smart meter during the call with Denise.

Admit in part, deny in part – ninth sentence

Denise advised complainant “if you are going to do this,” it needs to be done by April 2019. Complainant made no agreement with Denise during this phone call.

Admit in part, deny in part – tenth sentence

Complainant did receive a letter on November 13th

The letter stated several attempts had been made to contact complainant. Complainant received no calls; no messages left on either voice mail; no in-person visits or no other written notifications from West Penn Power/First Energy.

4. Denied.

West Penn Power/First Energy has violated Section 1501 and 1502 of the PA PUC law, Section 504 of the Rehabilitation Act of 1973 (disability); Title II of the Americans with Disabilities Act of 1990 (disability); and the Fair Housing Act. In fact, there is no requirement in Act 129 for West Penn/First Energy to deploy meters that are harmful for my family. This would be a direct violation of Section 1501 and 1502 of the PA PUC law and is therefore is not in accordance with PUC law as applied to me and my family. West Penn’s smart meter is an unsafe delivery of electricity to my property and could exacerbate our family’s medical conditions.

By way of further answer, see number 7 in my formal complaint where I allege that West Penn Power/First Energy will be creating unsafe conditions on my property and in my house which is a violation of Sections 1501 and 1502 of the Public Utility Code and Section 57.194 of the Commission’s regulations.

Also see number 8 in my formal complaint:

“According to Subchapter O. Advanced Meter Deployment issued under the Public Utility Code, 66 Pa. C.S. § 501 and 2807(a), “This subchapter does not require the public to participate in an advanced metering program.”

The Commission must hear my formal complaint and not dismiss because the Commission has jurisdiction and must hear complaints alleging utility violations to Section 1501 and 1502 of the PA PUC law.

5. Complainant requests West Penn Power/First Energy grant my request for accommodations based on numerous severe medical conditions with diagnoses that would be exacerbated with the installation of a smart meter. I ask the Commission not to dismiss with prejudice and allow my case to proceed as an action against West Penn/First Energy as to violations of Section 1501 and 1502 of the PA PUC law, Section 504 of the Rehabilitation Act of 1973 (disability); Title II of the Americans with Disabilities Act of 1990 (disability); and the Fair Housing Act.

6. Requires a legal conclusion:

7. Admit – first sentence

Admit – second sentence

As further explanation, complainant was on an information gathering process to consider options. Later in the process complainant learned more about the RF emitting, transient- and harmonic-producing smart meter would be detrimental to our son's and family's health.

Admit – third sentence

Admit – fourth sentence

Admit in part, deny in part – fifth sentence

Complainant's wife did call West Penn Power to request the address of the company president. Whether the call was dropped or not, West Penn Power did not attempt to return the call to satisfy our inquiry.

Admit in part, denied in part – sixth sentence

Complainant is not asking for an opt-out, just reasonable accommodations for medical conditions that would be exacerbated if the smart meter was installed on complainant's property and which would significantly contribute to a deterioration on my son's and my family's health.

Admit in part, deny in part – seventh sentence

Denise, a representative from West Penn Power, did call complainant and his wife on November 9, 2018. Denise did give complainant information on the relocation of the meter if complainant did indeed decide to do it. She proceeded to inform complainant he would be receiving a shut off notice on November 21, 2018, but he should disregard it. Denise also stated complainant could ignore the "Friendly Letter," the 10-day shut-off notice and the 3-day shut-off notice. Complainant explained the circumstances of having a disabled child with medical conditions. Denise stated the company used to accept medical letters, but not anymore. Complainant asked what if we decided not to have the meter installed. Denise informed complainant a formal complaint would have to be filed to put a hold on the account for smart meter installation.

Denied – eighth sentence

Complainant did not refuse the smart meter during the call with Denise.

Admit in part, deny in part – ninth sentence

Denise advised complainant "if you are going to do this," it needs to be done by April 2019. Complainant made no agreement with Denise during this phone call.

Admit in part, deny in part – tenth sentence

Complainant did receive a letter on November 13th

The letter stated several attempts had been made to contact complainant. Complainant received no calls; no messages left on either voice mail; no in-person visits, or no other written notifications from West Penn Power/First Energy.

8. Admitted, although Complainant has no knowledge regarding electronic service to West Penn Power/First Energy.

9. This requires a legal conclusion, complainant does not need to answer.

10. This requires a legal conclusion, complainant does not need to answer.

11. This requires a legal conclusion, complainant does not need to answer.

12. This requires a legal conclusion, complainant does not need to answer.

13. Requires a legal conclusion - first sentence

Denied, second sentence

Denied, third sentence

As further answer, West Penn Power/First Energy has violated Section 1501 and 1502 of the PA PUC law, Section 504 of the Rehabilitation Act of 1973 (disability); Title II of the Americans with Disabilities Act of 1990 (disability); and the Fair Housing Act as stated in my formal complaint. In fact, there is no requirement in Act 129 for West Penn/First Energy to deploy meters that are harmful to my family. This would also be a direct violation of Section 1501 and 1502 of the PA PUC law, Section 504 of the Rehabilitation Act of 1973 (disability); Title II of the Americans with Disabilities Act of 1990 (disability); and the Fair Housing Act.

14. Admitted. Further answer, I allege in my formal complaint serious existing health conditions with diagnoses that could be exacerbated; therefore, preliminary objections must be denied and I must be permitted to present my case.

15. Complainant is without sufficient knowledge to deny or to admit the first three sentences.

Complainant denies the fourth sentence.

Complainant does challenge West Penn Power's/First Energy's deployment of a smart meter on the complainant's property which is not required by Act 129 as West Penn Power/First Energy should grant accommodations under Section 1501 and 1502 of the PA PUC law, Section 504 of the Rehabilitation Act of 1973 (disability); Title II of the Americans with Disabilities Act of 1990 (disability); and the Fair Housing Act, per ADA and HUD. There is nothing in Act 129 which mandates RF emitting and harmonic transient producing meters, especially those that could exacerbate existing medical conditions.

By way of further answer, see number 7 of my formal complaint where I allege that West Penn Power/First Energy will be creating unsafe conditions on my property and in my house which is a violation of Sections 1501 and 1502 of the Public Utility Code and Section 57.194 of the Commission's regulations.

16. Denied

Complainant is not asking for an opt-out, but requesting reasonable accommodations for existing, serious medical conditions that would be exacerbated by the installation of a smart meter on our property.

17. Denied

Complainant is not asking for an opt-out. There are numerous existing, serious medical conditions with diagnoses that would be exacerbated by the installation of a smart meter which are covered under Section 1501 and 1502 of the PA PUC law, Section 504 of the Rehabilitation Act of 1973 (disability); Title II of the Americans with Disabilities Act of 1990 (disability); and the Fair Housing Act. First Energy/West Penn Power is violating Section 1501 and 1502 of the PA PUC law in forcing Complainant to accept a smart meter on his home or face disconnection from electrical supply in relation to his disabled son. Commission should find the Company to be in violation of PUC law for not filing a petition for relief to accommodate Complainant's serious health concerns.

18. Denied

Complainant is not asking for an optout.

Alleging a violation of West Penn Power's duties and responsibilities under PA 66 Section 1501 and 1502, as Complainant has alleged in my formal complaint, at numbers 1, 2, 3, 5, 7 and 10, does set forth a matter which the PUC does have jurisdiction to hear, and which, in fact, mandates the PUC to hear this formal complaint, taking all of my allegations as true. West Penn argues aptly in preliminary objections number 14, that 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.

19. Admitted in part.

By way of further answer, I am a customer of West Penn Power. We, like other utility customers, have diagnoses that would be exacerbated by having a smart meter on my property. The proceeding is in the public interest. See for example:

Kreider vs PECO – C-2015-2469655 (hearing held on March 9, 2016)

Murphy vs PECO – C-2015-2475726 (hearings held on several dates in 2016, 2017)

Paul vs PECO – C-2015-2475355 (hearing held in the fall of 2016)

Povacz vs PECO – C-2015-2475023 (hearing held on several dates in 2016, 2017)

McKnight vs PECO – C-2017-2621057 (held Spring 2018)

Bachman vs PECO – C-2017-2623504 (hearing was held)

Hriadal vs Duquesne Light -C-2016-2571726 (will proceed to a hearing)

Also, see *Edward Albert Lucey v. Metropolitan Edison Company* C-2018-3003679 which is a similar complaint to mine where the judge ruled against the utility company.

20. Denied.

The Commission heard complainants who were affected by electro-hypersensitivity and who asked for accommodations because they are medically vulnerable. In such cases, the install of a smart meter violated Section 1501 and 1502 of the PA PUC law.

Complainants listed above have alleged in their complaints and have testified as to negative health effects both at their home and in their neighborhoods. Although Ms. Kreider did have an AMI meter installed on her property, none of the other

Complainants listed above had an AMI meter installed on their properties and yet, the PUC allowed these cases plus at least two others: *Romeo vs. PECO*, appealed to Commonwealth Court, *Romeo v. Pa. PUC*, 154 A.3d. 422 (Pa. Commw. 2017) and *Randall Albrecht vs. PECO* C-2016-253766, to proceed to a hearing (although in the *Romeo* case, it was the Commonwealth Court which reversed the Commission ruling which had denied *Romeo* a hearing.

Denied – Sixth Sentence

By way of further answer, The Commonwealth Court's *Romeo* decision supports my contention that my complaint not be dismissed:

Romeo v. Pa. PUC, 154 A.3d. 422 (Pa. Commw. 2017) which stated, in pertinent part:

"*Romeo* claimed that the smart meters *cause* safety and fire hazards and have negative health impact. Just because he cannot personally testify as to health and safety effects does not mean that his complaint is legally insufficient. He could make out his claim through the testimony of others as well as other evidence that goes to that issue." Just because I do not have a smart meter on my home, does not mean that West Penn Power gets to expose me and my family, against my wishes and against the advice of our physicians, that our existing medical conditions with diagnoses would be exacerbated.

Obviously West Penn Power/First Energy did not even read my complaint and not familiar with *Romeo v. Pa. PUC*, 154 A.3d. 422 (Pa. Commw. 2017) as *Ann V. Sheehan v. West Penn Power* C-2017-2630406 who brought *Romeo v. Pa. PUC* to their attention.

Denied – Seventh Sentence

I have not alleged generic health and safety concerns. I have alleged my family has experienced existing severe medical conditions with diagnoses that would be exacerbated by the installation of a smart meter on my property. My son's possible death is certainly not considered generic. 24/7 care of our son is not generic.

Denied – Eighth Sentence

A lack of consent is not the issue in this complaint. The issue is the lack of responsibility to provide accommodations for a disabled person according to Sections 1501 and 1502 of the PA PUC law, Section 504 of the Rehabilitation Act of 1973 (disability); Title II of the Americans with Disabilities Act of 1990 (disability); and the Fair Housing Act, per ADA and HUD. The Commission has to recognize accommodations under these Federal laws.

West Penn Power/First Energy is using generic language in copying from old filings without regard to new case load. Dr. Fugo's complaint was filed almost 3 years ago and out of touch with reality. There have been more than 20 cases since Kreider that have not been dismissed on preliminary objections. Dr. Fugo's complaint is totally different from my complaint. Citing this case is ridiculous.

21. Denied – first sentence

West Penn Power/First Energy cites the *Charles F Jackson v. Pennsylvania Electric Company C-2017-2600495*. The Jackson case is not comparable to my complaint. I do allege in my complaint that the utility violated the Public Utility Code, Commission regulations or orders or its tariff provisions. Please read our complaint.

Denied – second sentence

West Penn Power's/First Energy's deployment of a smart meter on the complainant's property is not required by Act 129 as West Penn Power/First Energy should grant accommodations under Section 1501 and 1502 of the PA PUC law, Section 504 of the Rehabilitation Act of 1973 (disability); Title II of the Americans with Disabilities Act of 1990 (disability); and the Fair Housing Act, per ADA and HUD. There is nothing in Act 129 which mandates RF emitting and harmonic transient producing meters, especially those that could exacerbate existing medical conditions.

By way of further answer, see number 7 of my formal complaint where I allege that West Penn Power/First Energy will be creating unsafe conditions on my property and in my house which is a violation of Sections 1501 and 1502 of the Public Utility Code and Section 57.194 of the Commission's regulations.

Denied, sentence number 3

Pursuant to 52 PA Code § 56.141 – Dispute procedures – “(2) Termination stayed.... when a... complaint has been properly filed in accordance with this subchapter, termination shall be prohibited until resolution of the dispute or complaint...”. Complainant has properly filed a formal complaint in accordance with 52 PA Code § 56.141.

Denied, sentence number 4

The Commission does not give West Penn Power/First Energy the authority to install smart meters to harm its consumers who have health problems and in which the medical conditions would be exacerbated.

Denied, sentence number 5

My complaint is not identical whatsoever to formal complaint at Docket No. C-2017-2600495.

Denied; sentence number 6

I have set forth in my complaint the Company violated a Commission regulation, statute or order. Read my complaint.

22. Denied

This matter does meet the standards set forth and this matter can survive preliminary objections.

23. Denied

Cases cited by West Penn Power are irrelevant to my case. Negley has nothing to do with my case. Complainant does not have time or resources to investigate the complaints cited by West Penn Power to distinguish them from my complaint of our specific health complaints and whether they are actually stated violations of Section 1501 and 1502 of the PA PUC law, Section 504 of the Rehabilitation Act of 1973 (disability); Title II of the Americans with Disabilities Act of 1990 (disability); and the Fair Housing Act.

However, complainant notes that *Richard Negley v. Metropolitan Edison Company*, Docket No. C-2010-2205305 (initial decision issued January 3, 2011); was 3 or more years older than *Kreider*, which was decided in January 2016. *Kreider* was permitted a hearing by the Commission and allowed to explain the negative health effects of her electro-hypersensitivity, which occurred when exposed to an AMI meter, which was in violation of Section 1501 of the PA PUC law.

24. Denied – First sentence

It does not give West Penn Power/First Energy the authority to install smart meters to harm its consumers who have health problems and in which the medical conditions would be exacerbated.

Denied – Second sentence

The Complainant properly filed a formal complaint.

Denied – Third sentence

Pursuant to 52 PA Code § 56.141 – Dispute procedures – “(2) Termination stayed.... when a... complaint has been properly filed in accordance with this subchapter, termination shall be prohibited until resolution of the dispute or complaint...”

Pursuant to 52 PA Code § 56.92 – Notice of dispute pending – “A public utility may not mail or deliver a notice of termination if a notice of...formal complaint has been filed and is unresolved...”

25. Denied

I have set forth in my complaint the Company violated a Commission regulation, statute or order. Again, read my complaint.

Smart meters should not be implemented if it is damaging to one's health and if accommodations should be made per Federal law. I have set forth violations of Section 1501 and 1502 of the PA PUC law, which is a statute. I have also set forth violations of Section 504 of the Rehabilitation Act of 1973 (disability); Title II of the Americans with Disabilities Act of 1990 (disability); and the Fair Housing Act which are Federal statutes.

It is surprising to Complainant that West Penn Power does not seem to recognize well pled complaints regarding violations of Section 1501 and 1502 against it. PUC vs West Penn Power (6-2-2009) shows that the utility must be familiar with the consequences of its violations of Section 1501 and the PA PUC law. In this case, the Commission, citing section 3301 against West Penn Power for violations of Section 1501 and 1502, for the horrific and untimely death of Carrie Goretzka. Ms. Goretzka was electrocuted and burned over 85 percent of her body when a power line that had been improperly spliced fell in her yard. This was witnessed by her children and her mother, who was injured when trying to save her daughter's life.

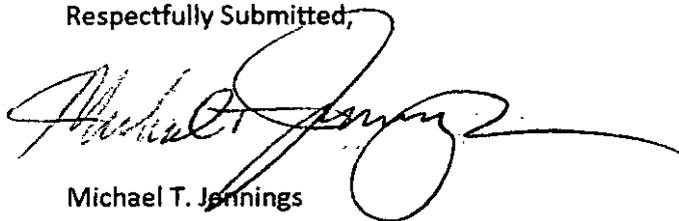
Conclusion:

Denied

For reasons stated in my responses.

I respectfully request denial of West Penn Power's preliminary objections and ask that you grant my request for accommodations by upholding the legality and validity of my complaint and allow me to proceed to a hearing on the merits of my complaint. Please grant me relief that is just and reasonable under the circumstances.

Respectfully Submitted,



Michael T. Jennings

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