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December 31, 2018

VIA E-FILING

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

Re: Tom and Bobbie Altman v. West Penn Power Company
Docket No. C-2018-3006434

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 Complainants 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**

TOM AND BOBBIE ALTMAN

v.

WEST PENN POWER COMPANY

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:
:

Docket No. C-2018-3006434

NOTICE TO PLEAD

TO: Tom and Bobbie Altman

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.

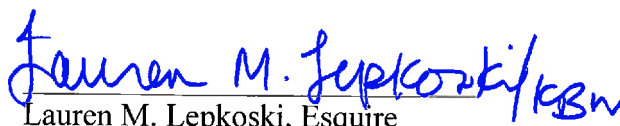
File with:

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 31, 2018


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

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TOM AND BOBBIE ALTMAN	:	
	:	
v.	:	Docket No. C-2018-3006434
	:	
WEST PENN POWER COMPANY	:	

**PRELIMINARY OBJECTION TO THE FORMAL COMPLAINT OF
TOM AND BOBBIE ALTMAN**

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 their recently filed Formal Complaint, Tom and Bobbie Altman ("Complainants"), who receive electric service at 876 Route 271 Rd N, Ligonier, Pennsylvania 15658-9998 ("Service Location") allege that they do not want a smart meter installed at the Service Location. (Formal Complaint ¶ 5.) The Complainants state as requested relief:

- (a.) WE wish to be protected from damage to our rights as a people by the deployment of the weapon manufactured by Itron as a home controller and commonly known as a "smart meter".
- (b.) WE wish to secure body and effects in our 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 certain electric appliances in homes to control their use in our 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 our security in our home.

(e.) It is undisputed that the standards and “research” relied upon, 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 and standards refer to the antiquated measurements we were capable of making as far back as in the 1930s, and therefore measures only heat effects.

(f.) It is undisputed in modern science that those standards, set decades ago in the last century, allow exposure hundreds and even thousands of times the levels of high frequency radiation that are known to disrupt multiple biological functions and that are suspected to cause cancer in humans, pets, insects and wild animals.

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

(h.) WE wish to maintain a preventative health program that does not include being bombarded by microwaves and other high frequency EMFs every few seconds by the weapon commonly called a “smart meter” while transmitting data to First Energy Corporation of Ohio.

(i.) It is undisputed Act 129 of 2008 provides for an “opt-in” policy which FIRST ENERGY CORP., and the subsidiary West Penn Power and the PENNSYLVANIA PUBLIC UTILITY COMMISSION are ignoring when “deploying” “smart meters”. 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”. WE do NOT request the weapon commonly known as a “smart meter”.

j.) In short, WE 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 our home.

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

(l.) 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.

(m.) 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”.

(n.) 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 at the time it was passed.

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

(p.) We wish that the PENNSYLVANIA PUBLIC 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, the federal Energy Policy Act of 2005, and the Acts which provides for the grants used to develop the plans and early deployment of the weapons disguised as "advanced metering".

(q.) It is not in dispute that to call the Itron home controller, or any other home controller, a meter is not essentially different than calling an automobile a speed meter.

(r.) Further, We wish that any funds granted to FIRST ENERGY CORP. and or West Penn Power and or the PENNSYLVANIA PUBLIC UTILITY COMMISSION that originated under the auspices of the federal Energy Policy Act of 2005, or any other Federal Act, 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 Acts, must be returned to the grantor.

(s.) It is not in dispute that there was never full disclosure of the dangers to property such as health, life, fire, mis-billing, increased demand on the electric grid, and privacy.

(t.) It is not in dispute that the introduction of high frequency radiation by our neighbor's "smart meters" will cause that same dangerous high frequency radiation in our home via shared cables and propagated in our home wiring.

(u.) It is undisputed that First Energy Corporation, by actions directly, by the actions of First Energy Service Company, and by the actions of its subsidiary WEST PENN POWER, dishonored our contract with them by lack of full disclosure and an intentional perversion of truth for the purpose of increased financial profit by inducing the people on Pennsylvania, by relying upon that perversion of truth, to part with our lawful property.

(v.) We 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 by requesting utility customer.

(w.) We request relief from FIRST ENERGY CORP. in that they restore the breach of our contract by reconnecting the electricity to our house with same (still in place) the analog meter only, not infringing upon our privacy and not putting our health in jeopardy, putting our lives at risk with dangerous high frequency radiation, and violating our privacy in the sanctity of our home.

(x.) We request relief by prohibiting FIRST ENERGY CORP., or any other entity, from installing any meter or home controller in the area that would affect the quality of the electricity in our home.

(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 12, 2017, the Company sent correspondence to the Complainants, regarding the installation of a smart meter at the Service Location. On January 9, 2018, the Company received notification from Wellington Energy that the Complainants refused installation of the smart meter. On January 11, 2018, the Company contacted the Complainants to discuss the smart meter installation and spoke with Mr. Altman who reiterated his refusal of the smart meter installation. On January 12, 2018, the Company sent correspondence to the Complainants in an attempt to schedule installation of a smart meter at the Service Location. On April 10, 2018, the Company sent a second correspondence to the Complainants in an attempt to schedule installation of a smart meter at the Service Location. On April 20, 2018, a pre-disconnection warning letter was issued to the Complainants 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 April 30, 2018, a service termination notice was issued to the Complainants pursuant to 66 Pa.C.S. § 1406, 52 Pa. Code § 56.81 and

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).

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.

Rules 9 and 20 of the Company's Commission-approved tariff.³ On May 14, 2018, the Company attempted to contact the Complainants regarding the service termination notice in accordance with 52 Pa. Code § 56.93. That same day, Mr. Altman contacted the Company stating that he received no mail or telephone calls from the Company and would only accept certified mail. On May 21, 2018, a Company representative went to the Service Location to exchange the meter or disconnect service due to the Complainants previous refusal of the smart meter installation. The Company representative was not permitted access to its equipment. Later that day, Mr. Altman contacted the Company reiterating his refusal of the smart meter installation. He stated that he was upset that the Company representative came to the Service Location to disconnect his service. Mr. Altman further stated that he advised the Company representative that he was trespassing and the Company representative left without disconnecting the service. He also stated that he has a contract in negotiation with Chuck Jones, the CEO of FirstEnergy, and the Commission and wanted a hold placed on his Account. The Company representative advised that no communication has been received from the Commission. Mr. Altman then requested the name of the Company representative's supervisor and a name was provided. The Complainant was offered the Commission telephone number to which he responded that he "does everything in writing." The Company representative then offered the Company's mailing address, but the Complainant refused the information stating that he already had that information. On May 30, 2018, the Complainants continued to refuse installation of a smart meter and service was cut at the pole. Mr. Altman then threatened the Company representative's job and home, stating that he knew Chuck Jones and that the Company representatives were "evil" for disconnecting the service to the Service Location. On June 1, 2018, the Company received an "opt-out" letter from the Complainants. The

³ *Id.*

Complainants then filed the Formal Complaint with the Commission and, on December 10, 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.⁴

5. As a result, the Company requests that this Preliminary Objection be granted and that the Commission: (1) strike the Complainants' request for an exemption from the installation of a smart meter; (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 December 12, 2017, the Company sent correspondence to the Complainants, regarding the installation of a smart meter at the Service Location. On January 9, 2018, the Company received notification from Wellington Energy that the Complainants refused installation of the smart meter. On January 11, 2018, the Company contacted the Complainants to discuss the smart meter installation and spoke with Mr. Altman who reiterated his refusal of the smart meter installation. On January 12, 2018, the Company sent correspondence to the Complainants in an attempt to schedule installation of a smart meter at the Service Location. On April 10, 2018, the Company sent a second correspondence to the Complainants in an attempt to schedule installation of a smart meter at the Service Location. On April 20, 2018, a pre-disconnection warning letter

⁴ See 66 Pa.C.S. § 701.

was issued to the Complainants 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 April 30, 2018, a service termination notice was issued to the Complainants 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 May 14, 2018, the Company attempted to contact the Complainants regarding the service termination notice in accordance with 52 Pa. Code § 56.93. That same day, Mr. Altman contacted the Company stating that he received no mail or telephone calls from the Company and would only accept certified mail. On May 21, 2018, a Company representative went to the Service Location to exchange the meter or disconnect service due to the Complainants previous refusal of the smart meter installation. The Company representative was not permitted access to its equipment. Later that day, Mr. Altman contacted the Company reiterating his refusal of the smart meter installation. He stated that he was upset that the Company representative came to the Service Location to disconnect his service. Mr. Altman further stated that he advised the Company representative that he was trespassing and the Company representative left without disconnecting the service. He also stated that he has a contract in negotiation with Chuck Jones, the CEO of FirstEnergy, and the Commission and wanted a hold placed on his Account. The Company representative advised that no communication has been received from the Commission. Mr. Altman then requested the name of the Company representative's supervisor and a name was provided. The Complainant was offered the Commission telephone number to which he responded that he "does everything in writing." The Company representative then offered the Company's mailing address, but the Complainant refused the information stating that he already had that information. On May 30, 2018, the Complainants

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.*

continued to refuse installation of a smart meter and service was cut at the pole. Mr. Altman then threatened the Company representative's job and home, stating that he knew Chuck Jones and that the Company representatives were "evil" for disconnecting the service to the Service Location. On June 1, 2018, the Company received an "opt-out" letter from the Complainants.

8. The Complainants then filed the Formal Complaint with the Commission and, on December 10, 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.⁷

⁷ *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.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 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, 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 Complainants challenge 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.

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.*

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 Complainants have 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.

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

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 December 31, 2014); *Efaw v West Penn Power Company*, Docket No. C-2014-2413744 (Final Order entered December 31, 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.)

¹⁶ See 52 Pa. Code § 5.101(a)(4).

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 Complainants have made no specific factual averments regarding any health effects experienced *after* a smart meter was installed. The Complainants simply aver that they do not want a smart meter due to generic health and privacy concerns.²⁰ The Complainants further allege that Act 129 provides for an “opt-in” policy.²¹ The Commission is unable to grant the Complainants an “exemption” from Act 129. The Commission has not recognized a customer’s lack of consent to install a smart meter as sufficient to overcome Preliminary Objections.²²

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.*

²⁰ Formal Complaint ¶ 5.

²¹ *Id.*

²² *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).

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 nearly identical to the alleged averments in the formal complaint at Docket No. C-2017-2600495, in that the Complainants have only alleged that they do not want a smart meter installed at the Service Location. The Complainants have not set forth in their complaint that any act done by the Company violates a Commission regulation, statute or order.

23. 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.

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,²³ 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 tariff²⁴ 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.²⁵

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 Complainants have not set forth in their 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 Complainants' request for an exemption from the installation of a smart meter; (2) dismiss the

²³ *West Penn Power Company Retail Electric Service Tariff*, Electric Pa. PUC No. 52, p. 40 issued May 1, 2015, effective May 3, 2015.

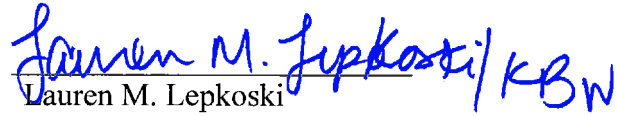
²⁴ *West Penn Power Company Retail Electric Service Tariff*, Electric Pa. PUC No. 52, pp. 40, 55, issued May 1, 2015, effective May 3, 2015.

²⁵ *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 31, 2018



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Counsel for West Penn Power Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

TOM AND BOBBIE ALTMAN :
 :
 v. : **Docket No. C-2018-3006434**
 :
WEST PENN POWER COMPANY :


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 Tom and Bobbie Altman 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:

Tom and Bobbie Altman
876 Route 271
Ligonier, PA 15658-9998

Dated: December 31, 2018


Lauren M. Lepkoski
Tori L. Giesler
FirstEnergy Service Company
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