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January 2, 2024

VIA ELECTRONIC FILING

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

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

Dear Secretary Chiavetta:

Enclosed please find the Preliminary Objection of West Penn Power Company to the First Amended Complaint of Michael T. Jennings and Susan Jennings. This document has been served on the Complainants as shown in the Certificate of Service.

Please contact me if you have any questions regarding this matter.

Very truly yours,

A handwritten signature in blue ink that reads "Tori L. Giesler".

Tori L. Giesler

TLG/mlr

Enclosures

c: As Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**MICHAEL T. JENNINGS and
SUSAN JENNINGS**

DOCKET NO. C-2018-3006031

v.

WEST PENN POWER COMPANY

NOTICE TO PLEAD

YOU ARE HEREBY ADVISED THAT, PURSUANT TO 52 PA. CODE § 5.101, YOU MAY ANSWER THE ENCLOSED PRELIMINARY OBJECTION WITHIN TEN (10) DAYS OF THE DATE OF SERVICE HEREOF. YOUR ANSWER TO THE PRELIMINARY OBJECTION MUST BE FILED WITH THE SECRETARY OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION, P.O. BOX 3265, HARRISBURG, PA 17105-3265. A COPY SHOULD ALSO BE SERVED ON THE UNDERSIGNED COUNSEL FOR WEST PENN POWER COMPANY.



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Date: January 2, 2024

Counsel for West Penn Power Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**MICHAEL T. JENNINGS and
SUSAN JENNINGS**

DOCKET NO. C-2018-3006031

v.

WEST PENN POWER COMPANY

**PRELIMINARY OBJECTION OF
WEST PENN POWER COMPANY TO THE
AMENDED COMPLAINT OF MICHAEL JENNINGS**

TO ADMINISTRATIVE LAW JUDGE GAIL M. CHIDO:

AND NOW, comes West Penn Power Company (“West Penn” or the “Company”)¹ and hereby files this Preliminary Objection, pursuant to the regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code § 5.101, and respectfully requests that Administrative Law Judge Gail M. Chiodo (“ALJ”) and the Commission dismiss the “First Amended Complaint” (“Amended Complaint”) filed by Michael Jennings (“Complainant”).

In the original Complaint, the Complainant contests West Penn’s planned installation of a smart meter at his property located at 200 Brook Hollow Road, Mount Pleasant, PA 15666 (“Service Location”). Telephonic evidentiary hearings were held as scheduled on July 23 and 24, 2020, and the parties filed their Main Briefs in October 2020.

Now, over three years later, the Complainant seeks to amend his original Complaint simply to add his wife, Susan Jennings, as an “additional complainant.” (Amended Complaint,

¹ West Penn notes that as of January 1, 2024, the Company merged into FirstEnergy Pennsylvania Electric Company (“FE PA”).

p. 1.) The Complainant states that “[i]n all other respects,” the original Complaint “shall remain the same” (Amended Complaint, p. 1.)

However, the Complainant is time-barred from amending his original Complaint.

Section 5.91 of the Commission’s regulations states:

Except as otherwise provided in this subchapter, no amendment to a pleading may be filed within 5 days preceding the commencement of or during a hearing unless directed or permitted by the Commission or the presiding officer after opportunity for all parties to be heard thereon.

52 Pa. Code § 5.91(c) (emphasis added). Therefore, any amendments to the Complaint were due by Friday, July 17, 2020, i.e., five days before the first day of hearings on July 23, 2020. *See id.* §§ 1.12(b), 5.91(c). Accordingly, the Complainant’s Amended Complaint dated December 11, 2023, is 1,242 days past that deadline. Thus, the Amended Complaint should be dismissed.

In support thereof, West Penn states as follows:

I. BACKGROUND

1. West Penn is a “public utility” and an “electric distribution company” as those terms are defined under the Public Utility Code, 66 Pa.C.S. §§ 102 and 2803, subject to the regulatory jurisdiction of the Commission.

2. On November 15, 2018, West Penn was served with the original Complaint, which challenges West Penn’s planned installation of a smart meter at his property located at the Service Location.

3. Telephonic evidentiary hearings were held on July 23 and 24, 2020.

4. On October 9, 2020, the Complainant filed his Main Brief, and West Penn filed its Main Brief.

5. On October 12, 2020, the Complainant filed a corrected Main Brief.

6. On October 13, 2020, the Complainant filed a Petition for Extension of Time to File Reply Briefs.

7. On October 14, 2020, Administrative Law Judge Jeffrey A. Watson (“ALJ Watson”) issued an Interim Order Permitting the Filing of Reply Briefs, which set a due date for Reply Briefs of November 10, 2020.

8. On November 4, 2020, the instant proceeding was stayed by the Commission, along with all other pending smart meter complaints.

9. On November 14, 2023, the Commission issued an Order lifting the stay.

10. On December 12, 2023, a Notice was issued assigning the ALJ to this case. Further, the ALJ issued a Post Evidentiary Hearing Conference Order, which scheduled a post evidentiary hearing conference for February 12, 2024. A Post-Hearing Conference Notice also was issued to that effect.

11. On December 13, 2023, West Penn was served with the Amended Complaint, which, like the original Complaint, challenges West Penn’s planned installation of a smart meter at his property located at the Service Location. The Amended Complaint only adds the Complainant’s wife as an “additional complainant.”

12. West Penn herein files this Preliminary Objection to the Complaint. For the reasons explained below, West Penn respectfully requests that the ALJ and the Commission summarily dismiss the Amended Complaint because it is time-barred by Section 5.91(c) of the Commission’s regulations.

II. STANDARD OF REVIEW

13. Pursuant to the Commission’s regulations, preliminary objections in response to a pleading may be filed on several grounds, including:

- (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.

52 Pa. Code § 5.101(a) (emphasis added).

14. In ruling on preliminary objections, the Presiding Officer must accept as true all well-pled allegations of material facts as well as all inferences reasonably deducible therefrom. *Stilp v. Cmwth.*, 910 A.2d 775, 781 (Pa. Cmwth. 2006) (citing *Dep't of Gen. Servs. v. Bd. of Claims*, 881 A.2d 14 (Pa. Cmwth. 2005)). However, the Presiding Officer need not accept as true conclusions of law, unwarranted inferences from facts, argumentative allegations, or expressions of opinion. *Stanton-Negley Drug Co. v. Dep't of Pub. Welfare*, 927 A.2d 671, 673 (Pa. Cmwth. 2007). Notwithstanding, any doubt must be resolved in favor of the non-moving party. *Stilp*, at 781.

15. In addition, the Presiding Officer must determine whether, based on the factual pleadings, if recovery is possible. *See Rok v. Flaherty*, 527 A.2d 211, 214 (Pa. Cmwth. 1987). Indeed, for preliminary objections to be sustained, it must appear with certainty that the law will permit no recovery. *See Stilp*, at 781; *Milliner v. Enck*, 709 A.2d 417, 418 (Pa. Super. 1998).

III. PRELIMINARY OBJECTION

A. PRELIMINARY OBJECTION NO. 1 – THE AMENDED COMPLAINT IS TIME-BARRED BY SECTION 5.91(C) OF THE COMMISSION’S REGULATIONS

16. West Penn incorporates by reference Paragraphs 1 through 15 as if fully set forth herein.

17. The Amended Complaint should be dismissed because it is time-barred by Section 5.91(c) of the Commission’s regulations. *See* 52 Pa. Code § 5.91(c).

18. Section 5.91(c) of the Commission’s regulations states:

Except as otherwise provided in this subchapter, no amendment to a pleading may be filed within 5 days preceding the commencement of or during a hearing unless directed or permitted by the Commission or the presiding officer after opportunity for all parties to be heard thereon.

52 Pa. Code § 5.91(c) (emphasis added).

19. In this case, the telephonic evidentiary hearings were held, as scheduled, on July 23 and 24, 2020.

20. Therefore, any amendments to the Complaint were due by Friday, July 17, 2020, *i.e.*, five days before the first day of hearings on July 23, 2020. *See id.* §§ 1.12(b), 5.91(c).

21. However, the Complainant’s Amended Complaint was filed on or about December 11, 2023, and served on West Penn on December 13, 2023.

22. Thus, the Complainant’s Amended Complaint dated December 11, 2023, is 1,242 days past the deadline to amend his original Complaint.

23. Moreover, the Complainant provides no “good cause” for this extremely “late filing.” *Goforth v. Pa. Elec. Co.*, 2020 Pa. PUC LEXIS 617, at *5 (Order entered Dec. 3, 2020) (“*Goforth*”).

24. Additionally, in *Goforth*, the Commission rejected considering an amendment to a formal complaint that was filed approximately one month after the deadline. *See Id.* at *4-5 (stating that the amended complaint was filed on March 6, 2020, while it was due no later than February 6, 2020, *i.e.*, five days before the hearing on February 11, 2020).

25. Here, the time lapse between the filing of the Amended Complaint and its due date is even more egregious (*i.e.*, 1, 242 days).

26. For these reasons, the Amended Complaint is time-barred by Section 5.91(c) of the Commission's regulations and should be dismissed.²

WHEREFORE, West Penn respectfully requests that the Amended Complaint be summarily dismissed pursuant to 52 Pa. Code § 5.101(a)(4).

² In addition, it is inconsequential for the Complainant to amend his original Complaint to add his wife as an "additional complainant." (Amended Complaint, p. 1.) The parties have already filed their Main Briefs. Furthermore, the Complainant's wife is in privity with the Complainant and, therefore, would be bound by the Commission's ruling in this case. Indeed, "[p]rivacy is broadly defined as 'mutual or successive relationships to the same right of property, or such an identification of interest of one person with another as to represent the same legal right.'" *Hillgartner v. Port Auth.*, 936 A.2d 131, 140 (Pa. Cmwlth. 2007) (quoting *Montella v. Berkheimer Assocs.*, 690 A.2d 802, 804 (Pa. Cmwlth. 1997)). Here, the Complainant avers that Susan Jennings is his wife. (Amended Complaint, p. 1.) Therefore, the Complainant and Susan Jennings are in privity with each other.

IV. CONCLUSION

WHEREFORE, West Penn Power Company respectfully requests that the Amended Complaint filed by Michael Jennings be dismissed pursuant 52 Pa. Code § 5.101(a)(4).

Respectfully submitted,



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Date: January 2, 2024

Counsel for West Penn Power Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|-------------------------|---|---------------------------|
| MICHAEL T. JENNINGS and | : | |
| SUSAN JENNINGS | : | |
| Complainant | : | |
| | : | |
| v. | : | Docket No. C-2018-3006031 |
| | : | |
| WEST PENN POWER COMPANY | : | |
| Respondent | : | |

VERIFICATION

I, David R. Villao, hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief and that I expect West Penn Power Company to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904.

January 2, 2024
Date



**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**MICHAEL T. JENNINGS and
SUSAN JENNINGS**

DOCKET NO. C-2018-3006031

v.

WEST PENN POWER COMPANY

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Preliminary Objection of West Penn Power Company to the Amended Formal Complaint of Michael T. Jennings and Susan Jennings upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by electronic mail as follows:

Michael T. and Susan Jennings
Lilmac2@zoominternet.net

Administrative Law Judge Gail Chiodo
gchiodo@pa.gov

Dated: January 2, 2024



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