

John F. Povilaitis

717 237 4825
john.povilaitis@bipc.com

409 North Second Street
Suite 500
Harrisburg, PA 17101-1357
T 717 237 4800
F 717 233 0852
www.buchananingersoll.com

October 9, 2012

RECEIVED

OCT -9 2012

VIA UPS OVERNIGHT DELIVERY

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

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

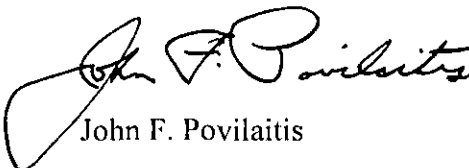
Re: Pennsylvania Public Utility Commission, Bureau of Investigation & Enforcement v.
West Penn Power Company; Docket No. C-2012-2307244

Dear Secretary Chiavetta:

On behalf of West Penn Power Company, I have enclosed for filing the Answer and New Matter of West Penn Power Company to the Complaint of the Bureau of Investigation & Enforcement in the above-captioned matter.

Copies have been served on all parties as indicated in the attached certificate of service.

Very truly yours,



John F. Povilaitis

JFP/kra

Enclosure

cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
	:	
Complainant,	:	
	:	
v.	:	Docket No.: C-2012-2307244
	:	
West Penn Power Company,	:	
	:	
Respondent.	:	

NOTICE TO PLEAD

RECEIVED

OCT -9 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

TO: Heidi L. Wushinske, Esquire
Wayne T. Scott, Esquire
Johnnie E. Simms, Esquire
Pennsylvania Public Utility Commission
Bureau of Investigation & Enforcement
PO Box 3265
Harrisburg, PA 17105-3265

Pursuant to 52 Pa. Code § 5.62(b), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Answer and New Matter of West Penn Power Company to the Formal Complaint of the Bureau of Investigation and Enforcement within **twenty (20) days** from service of this Notice, the facts set forth by West Penn Power Company in the Answer and New Matter may be deemed to be true, thereby requiring no other proof. All pleadings, such as a Reply to New Matter, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for West Penn Power Company, and where applicable, the Administrative Law Judge presiding over the case.

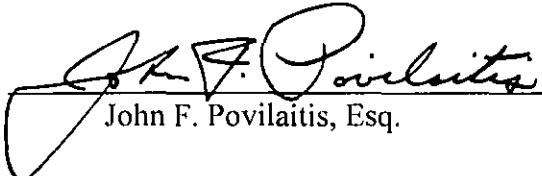
File with:

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

With a copy to:

John F. Povilaitis
Alan M. Seltzer
Buchanan Ingersoll & Rooney, PC
409 North Second Street, Suite 500
Harrisburg, PA 17101-1357

Dated: October 9, 2012


John F. Povilaitis, Esq.

10. West Penn is without knowledge or information as to what investigation was actually conducted by the staff of the Commission, nor what depositions were actually reviewed by the staff. *Strict proof thereof is demanded. Otherwise, West Penn answers the subparagraphs set forth in Paragraph 10 as follows:*

- a. Admitted.
- b. Admitted.
- c. Admitted.
- d. Admitted in part and denied in part. West Penn believes and avers that the decedent, Carrie Goretzka, saw the downed conductor from a position of complete safety within the kitchen of her home, when she happened to glance out the window and saw the downed line burning a tree in the yard. She voluntarily left the kitchen, abandoning a position of complete safety, went outside, and thereupon traveled toward the site of the incident, despite the visual cues of seeing a downed power line, smoke and burning trees. The driveway traversed by Ms. Goretzka was approximately 19 feet wide and the edge of the driveway was approximately 13 feet from where the incident occurred at its nearest point. Ms. Goretzka's injuries were consistent with attempting to grasp the power line, making contact with the power line with her left hand and wrist, or making contact with the power line with the cellular phone while it was held in her left hand. As a consequence, Ms. Goretzka suffered a severe electrical injury, including burn injuries to the palm of her left hand.
- e. Denied. The averments contained in response to subparagraph d. above are incorporated by reference.

- f. Admitted. It is further averred that the deposition testimony of Jo Ann Goretzka taken on August 5, 2010 in the case of Michael Goretzka, et al. v. Allegheny Energy, Inc. et al., in the Court of Common Pleas of Allegheny County, Pennsylvania, civil division at GD-09-012754 (“Civil Action”), indicates that when she saw the decedent lying on the grass in the yard, she ran over to the grass, was knocked down and when her hands touched the ground they were burnt.
- g. Admitted.
- h. Admitted. On June 23, 2004, West Penn linemen, Jeff Falo and Thomas Jones responded to a trouble call at the Goretzka property involving a downed 7.5kv primary conductor. In assessing the situation, Mr. Falo and Mr. Jones determined that a section of #4 ACSR conductor located in the span between two successive poles, one at the rear of the Goretzka property and one at the front of the Goretzka property near the street, had become damaged by virtue of contact with certain large pine trees located in the Goretzka yard. They determined that there was a necessity of removing a section of damaged ACSR conductor, and replacing the same. In repairing the conductor, Mr. Falo and Mr. Jones spliced in a new section of #2 AAAC aluminum conductor, which they installed using two “Fargo” aluminum automatic cable splices, GL4042A. In order to perform the repair, it was also necessary to cut the conductor at the pole near the front of the home. In reinstalling the span, Mr. Falo and Mr. Jones installed a third, GL4042A aluminum automatic cable splice, at a point within a couple of feet from the pole at the front of the Goretzka property. The item referred to in the Formal

Complaint as “the splice” is that specific third GL4042A automatic splice (the one installed within a couple of feet of the pole in the front of the home).

i. Admitted. The installation instructions printed on the plastic bags in which the GL4042A automatic cable splice is shipped state as follows:

1. DO NOT REMOVE COLOR CODED FUNNEL GUIDES AND PILOT CUPS FROM ENDS OF SPLICE.
2. BE SURE CONDUCTOR IS CLEAN (WIRE BRUSHED), STRAIGHT, IN LAY AND FREE OF BURRS.
3. MEASURE AND MARK CONDUCTOR FOR INSERTION FROM KNURL TO END OF FUNNEL GUIDE.
4. INSERT CONDUCTOR TO CENTER STOP. PUSH SMOOTHLY. DO NOT TWIST.
5. CHECK INITIAL GRIP WITH A MOMENTARY PULL ON THE CONDUCTOR PRIOR TO APPLYING LINE TENSION.
6. FOR BEST ELECTRICAL PERFORMANCE, PULL DOWN ON CONDUCTOR AFTER LINE TENSION IS APPLIED.

j. Denied. West Penn linemen were routinely trained that the ends of a conductor need to be cleaned before insertion into automatic cable splices, and wire brushes are made available for that procedure. Mr. Falo and Mr. Jones, the linemen who installed the automatic cable splice that burned through, both testified they were trained to clean conductor ends prior to insertion into an automatic cable splice with a wire brush. Moreover, although the conductor that burned through was unavailable for careful examination due to disintegration and heavy oxide deposits, the conductor installed in the other side of the same splice shows clear and unmistakable brush marks on several surfaces, indicating the conductor was brushed before the lineman made the automatic cable splice connection.

k. Admitted. The West Penn Power Company Transmission and Distribution Construction Standards state, insofar as is relevant to this matter, as follows:

1. Cut conductor so that end is square. To prevent unwrapping of strand, tape conductor and then cut through tape. Remove tape.
2. Clean conductor with wire brush. Clean completely through oxides. Unclean conductor will set up overheating and eventual failure of the splice.
3. Check that the conductor to be inserted into splice is straight.
4. Measure the conductor from the end of the metal splice body to the center of the splice. Mark the conductor to visually assure full insertion.
5. Insert the conductor into the splice smoothly, to full insertion. Do not twist the conductor. If conductor does not fully insert, DISCARD splice.
6. When the splice has been made, and before full tension is applied, it is important that a momentary tension be applied. A hard pull on the conductor will set the jaws to assure a permanent mechanical and electrical joint.

- l. Admitted. The averments contained in response to subparagraph k above are incorporated by reference.
- m. Denied. West Penn is not aware of any manufacturer statement of the substance set forth in subparagraph m, as it relates to the GL4042A splice.
- n. Denied. The deposition testimony of Mr. Falco, and Mr. Jones, the linemen who installed the automatic cable splice that burned through, testified that they were trained to clean the ends of a conductor with a wire brush. Based upon the testimony, the allegations contained in subparagraph n. are specifically denied.
- o. Admitted.
- p. Admitted.
- q. Admitted.
- r. Admitted. It is admitted that Joseph E. Starkey, Jr., Esquire, an in-house attorney from West Penn, sent a Memorandum to Robert F. Young, Deputy Chief Counsel,

Law Bureau and Daniel Searfoorce dated April 29, 2010. The Memorandum was produced in accordance with the confidentiality protections of 66 Pa.C.S. § 1508.

- s. Admitted in part and denied in part. It is admitted that on February 28, 2012, Adam Young, a member of the Commission staff, called and left a voicemail message reiterating a demand for information. It is averred, however, that on November 23, 2010, Daniel Searfoorce of the Commission contacted the Company requesting a follow-up on items contained in the April 29, 2010 Memorandum. The Company answered Mr. Searfoorce's inquiry to his satisfaction that same day.
- t. Admitted.
- u. Denied. As stated in the Memorandum of April 29, 2010, the Company provided the Commission staff with as much information as was then available on the subjects that the Commission staff had inquired about as per the April 28, 2010 telephone conference. Moreover, West Penn offered to provide the Commission with additional information enumerated in the April 29, 2010 Memorandum. However, the Commission staff did not request this additional information at that time. From that point forward, the analysis of the cause of the incident of June 2, 2009 continued, and expanded considerably, but as of the dates of the requests from Mr. Young and the filing of the Formal Complaint at this docket, no conclusions had been arrived at as to the cause of the separation of the conductor/splice connection, and no associated report had been prepared. This point had been very clearly communicated to Commission staff through a series of telephone conversations that took place during the Spring of 2012, at which

point it was agreed upon that the Company would provide additional comprehensive copies of the materials outlined in the April 2010 memorandum, and would provide the expert consultant's report when it became available, which was anticipated to be the September-October 2012 timeframe. Because the Civil Action was filed just a few weeks after the accident, the Company's expert investigation of the cause of the accident was conducted by the outside experts retained as part of its defense to the Civil Action. There are two primary reasons why the Company disputed Commission staff's requests for information between the commencement of the Civil Action and the completion of the Company's investigation. First, information on the results of the Company's investigation could not be provided until that investigation had been completed. Second, *providing information piecemeal during the course of the investigation could have been considered later to have constituted a waiver of the Company's right to maintain the confidentiality of its experts' preliminary thoughts and conclusions relative in the Civil Action.* Indeed, when the Company finally received a full report from its expert consultant on September 24, 2012, it was promptly delivered to Commission staff on September 25, 2012.

In addition to this report, the Company delivered additional information to Commission staff as follows: 1) on June 18, 2012, West Penn provided information to Commission staff on the destructive testing process; 2) on August 8, 2012, West Penn met with Commission staff to establish a process for providing additional information; 3) on August 31, 2012 West Penn met with Commission staff and provided information on installation of automatic splices

and brushing as well as deposition transcripts from the Civil Action; 4) on September 25, 2012, West Penn met with Commission staff to provide the Company's final report on the accident in the form of its outside experts' reports and West Penn's Pretrial Statement in the Civil Action; and 5) on October 3, 2012, the Company met with Commission staff to obtain clarification and respond to questions received regarding the accident. Therefore, West Penn believes and avers that it has provided the Commission staff with all relevant information in a timely fashion, as it became available.

11. Denied. West Penn acted reasonably and in accordance with all applicable industry standards in reference to insuring the integrity of the conductor/splice connection.

12. Denied. West Penn properly trained its employees to clean the ends of conductor with a wire brush, consistent with its standards. According to the sworn testimony of the linemen, both Jeffrey Falo and Thomas Jones, they were trained to clean the conductor ends with a wire brush.

13. Denied. West Penn properly monitored and supervised its employees who followed internal procedures for installing splices because they cleaned the ends of the parted conductor with a wire brush. Moreover, there is no material difference between wire brushing or scraping a conductor in the resulting conductivity of the connection.

14. Denied. To the contrary, the Company does insure that its linemen follow manufacturer's instructions for installing automatic splices.

15. Denied. Oxidation and corrosion occur with respect to any product consisting of a combination of steel and aluminum which is exposed to the elements over time. The build-up of heavy oxides during the five year lifespan of the automatic splice that parted was due to the

presence of dissimilar metals in the #4 ACSR conductor, temperature, entrapped moisture, deleterious chemicals such as sulfur and conductor movement in the splice grips.

16. Denied. The power line adjacent to the Goretzka property was properly secured. The power line remained in place for a period of five years, demonstrating the integrity of the splice/conductor connection.

17. Denied. The denials contained in Paragraph 10, subparagraphs r through u. are incorporated by reference.

18. (a-i) Respondent denies that any relief is appropriate.

**NEW MATTER REGARDING WEST PENN INSTALLATION OF THE
CONDUCTOR/SPLICE CONNECTION**

19. The Company incorporates paragraphs 1-18 above by reference.

20. West Penn assigned qualified, well-experienced, well-trained linemen to conduct the repair and reinstallation of the downed primary conductor on June 23, 2004, approximately five years before the June 2, 2009 incident. The June 23, 2004 repair and reinstallation was effected properly and carefully. The linemen who repaired the primary conductor in June 2004 selected appropriate automatic splices to perform the repair, specifically the Hubbell aluminum automatic splice, GL4042A, which was designed, manufactured and sold specifically for this type of application. That splice is specifically designed for use with #4 ACSR and #2 ACCC aluminum conductor. The linemen who effectuated the repair in June 2004 properly cleaned the ends of conductor which parted with wire brushes, and properly and securely installed the conductor in the GL4042A automatic splice, precisely in accord with the manufacturer's installation instructions. Notably, the splice/conductor connection remained secure and intact *for*

a period of five years from June 2004 through June 2009, demonstrating the adequacy and security of the installation and the integrity of the splice/conductor connection.

21. The linemen did clean the ends of the parted conductor with a wire brush, according to the linemen's sworn testimony. In addition, there is no evidence available to date that wire brushing or not wire brushing the ends of ACSR conductor before insertion into a GL4042A automatic splice, or any other automatic splice for that matter, has any material effect on the integrity of the connection. Rather, evidence available shows to the contrary that there is no material difference between wire brushing or scraping a conductor in the resulting conductivity of the connection.

NEW MATTER REGARDING COMMISSION JURISDICTION

22. The Company incorporates paragraphs 1-21 above by reference.

23. To the extent that the Commission staff seeks an adjudication by the Commission of West Penn's negligence and the cause of the June 2, 2009 fatality, those subjects are beyond the jurisdiction of the Commission. The cause of the June 2, 2009 fatality is already the subject of a civil action for damages pending in the Court of Common Pleas of Allegheny County, Michael Goretzka, et al. v. Allegheny Energy, Inc. et al., at GD-09-012754 and GD-11-009919 ("Goretzka Action").

24. Adjudication of the cause of the June 2, 2009 fatality by the Commission would necessarily intrude upon the jurisdiction of the Court of Common Pleas of Allegheny County in the Goretzka Action, and an effort by the Commission to adjudicate those issues would interfere with the orderly administration of justice in that civil action.

**NEW MATTER REGARDING INFORMATION REQUESTED BY
COMMISSION STAFF**

25. The Company incorporates paragraphs 1-24 above by reference.

26. After providing the Commission an initial report on the incident and indicating the investigation was not complete, the Company did not receive any significant requests for information from the Commission staff on the incident from the time it occurred in June 2009 until April 2010. In April 2010, a series of communications between Commission staff and the Company occurred that consisted of either information requests or commentary on the information requests. The Company indicated its willingness to provide information, such as repair records, however it declined to provide information such as interim lab reports or expert evaluations of the cause of the incident on the grounds that the investigation was not complete and the interim information constituted privileged material. These disputed issues between the Company and the Commission staff were not resolved by the end of 2010. There were no further communications between the Company and the Commission staff on this matter throughout 2011.

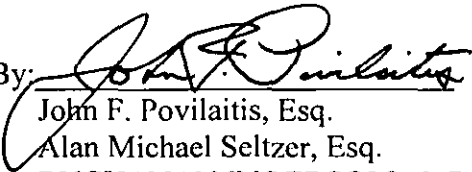
27. In late February 2012, Commission staff resumed its communications with the Company and submitted requests for reports on the incident. The failure of the Commission's staff to communicate with West Penn from November 23, 2010 through February 29, 2012 exhibits a lack of due diligence, and bars and estops the Commission staff from complaining about the alleged untimeliness of West Penn's responses to requests for information made in 2010. The Company made numerous attempts to reach Adam Young of Commission staff during the period of March 2012, in an effort to clarify the informational request communicated on February 29, 2012, and to inform the Commission as to what information was and was not yet

available. The Company was finally able to speak with Mr. Young on April 2, at which point this clarification was obtained. The Company further advised the Commission staff in April 2012 that the information it specifically sought, namely, the independent consultant's report, was not yet available to the Company. However, in an effort to provide all then-available information, it was agreed that the Company would prepare and provide information on available test results, pursuant to a requested protective order. On May 30, 2012 the Company was advised by the Bureau of Investigation and Enforcement that a formal complaint would be filed against West Penn.

28. West Penn was concerned that producing certain confidential information to the Commission could have resulted in a finding that the Company waived a privilege applicable in the Civil Action including, but not limited to the attorney client privilege and/or work product doctrines. Further, the specific report sought by the Commission had not yet been produced to the Company, making it impossible for the Company to in turn produce it to Commission staff.

29. West Penn provided reasonable responses to Commission staff's request for information when those requests were made, given that: (i) the Civil Action that was filed almost immediately after the incident; and (ii) the investigation of the cause of the June 2, 2009 accident was complex and lengthy. Under the circumstances, West Penn made reasonable efforts to furnish information requested by the Commission staff in aid of its investigation.

WHEREFORE, West Penn Power Company hereby requests that the Formal Complaint of the Bureau of Investigation and Enforcement be dismissed with prejudice and the Commission grant the Company such other relief as is just and reasonable under the circumstances.

By: 
John F. Povilaitis, Esq.
Alan Michael Seltzer, Esq.
BUCHANAN INGERSOLL & ROONEY PC
409 North Second Street, Suite 500
Harrisburg, PA 17101
(717) 237-4825

Tori Giesler, Esq.
FirstEnergy Services Company
2800 Pottsville Pike
Reading, PA 19610

*Attorneys for
West Penn Power Company*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement,

Complainant,

v.

West Penn Power Company,

Respondent.

Docket No.: C-2012-2307244

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

Via UPS Overnight Delivery

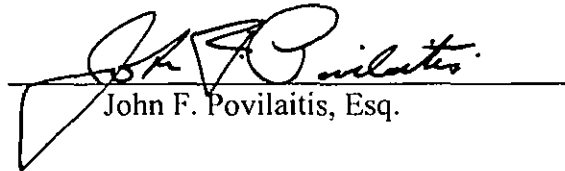
Heidi L. Wushinske, Esquire
Wayne T. Scott, Esquire
Johnnie E. Simms, Esquire
Pennsylvania Public Utility Commission
Bureau of Investigation & Enforcement
PO Box 3265
Harrisburg, PA 17105-3265

RECEIVED

OCT -9 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Dated this 9th day of October, 2012.


John F. Povilaitis, Esq.

UPS CampusShip: View/Print Label

1. **Ensure there are no other shipping or tracking labels attached to your package.** Select the Print button on the print dialog box that appears. Note: If your browser does not support this function select Print from the File menu to print the label.
2. **Fold the printed sheet containing the label at the line so that the entire shipping label is visible.** Place the label on a single side of the package and cover it completely with clear plastic shipping tape. Do not cover any seams or closures on the package with the label. Place the label in a UPS Shipping Pouch. If you do not have a pouch, affix the folded label using clear plastic shipping tape over the entire label.

3. GETTING YOUR SHIPMENT TO UPS

UPS locations include the UPS Store[®], UPS drop boxes, UPS customer centers, authorized retail outlets and UPS drivers.

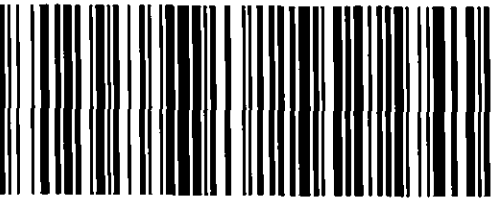
Find your closest UPS location at: www.ups.com/dropoff

Take your package to any location of The UPS Store[®], UPS Drop Box, UPS Customer Center, UPS Alliances (Office Depot[®] or Staples[®]) or Authorized Shipping Outlet near you. Items sent via UPS Return Services(SM) (including via Ground) are also accepted at Drop Boxes. To find the location nearest you, please visit the Resources area of CampusShip and select UPS Locations.

Customers with a Daily Pickup

Your driver will pickup your shipment(s) as usual.

FOLD HERE

JOHN P. POVILAITIS (717) 237-4835 4835 BUCHANAN INGERSOLL & ROONEY PC 409 NORTH SECOND STREET HARRISBURG PA 17101		0.0 LBS LTR	1 OF 1
SHIP TO: SECRETARY ROSEMARY CHIAVETTA 717-772-7777 PA PUBLIC UTILITY COMMISSION 400 NORTH STREET COMMONWEALTH KEYSTONE BUILDING HARRISBURG PA 17120-0200			
	PA 171 9-20 		
UPS NEXT DAY AIR		1	
TRACKING #: 1Z VE5 478 01 9047 2651			
			
BILLING: P/P			
Timekeeper Name: J. Povilaitis C/M #: 0078964-000015			
CS 14.5.29. WNTIE80 30.0A 07/2012			