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August 26, 2014

Rosemary Chiavetta, Secretary
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg PA 17105-3265

Re: Robert T. Whalen v. West Penn Power Company
Docket No. C-2014-2404308

Dear Secretary Chiavetta:

Enclosed for filing please find the Complainant's Motion to Dismiss Objections and Compel a Response to Interrogatories and Requests for Production of Documents in the above-referenced proceeding.

The document was filed electronically with the Commission on this date.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott J. Rubin". The signature is written in a cursive, flowing style.

Enclosure

cc: All parties of record
Katrina L. Dunderdale, Administrative Law Judge

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

| | | |
|-------------------------------------|---|---------------------------|
| Robert T. Whalen, Complainant | : | |
| | : | |
| v. | : | |
| | : | Docket No. C-2014-2404308 |
| West Penn Power Company, Respondent | : | |
| | : | |
| | : | |

COMPLAINANT'S MOTION TO DISMISS OBJECTIONS AND
COMPEL A RESPONSE TO INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS

Pursuant to 52 Pa. Code § 5.342(g), Complainant Robert T. Whalen hereby moves to dismiss Respondent's objections to certain interrogatories and requests for production of documents and to compel responses thereto.

Complainant served his discovery requests on Respondent on July 9, 2014. As provided in 52 Pa. Code § 5.322, counsel for both parties reached an informal agreement regarding discovery that took into account counsel's personal and professional schedules, as well as expected client unavailability. As a consequence, counsel for Complainant extended the response date for providing answers and objections to August 11, 2014; counsel for both parties agreed that they would not attempt to resolve any objections to the discovery until after answers had been provided; and that counsel would waive the normal 10-day time period to file a motion to compel.

Respondent provided objections to certain of those requests on July 21, 2014. Respondent provided answers to certain requests on August 11, 2014. Counsel for both parties

held extensive telephone conferences concerning the answers and objections on August 12, 15, and 19, and resolved many of their differences. Those conferences resulted in the withdrawal of several requests by Complainant and the provision of supplemental and corrected responses and objections by Respondent on August 20, 2014. This Motion addresses only those matters that the parties were unable to resolve after their counsels' extensive discussions.

In particular, Complainant moves to dismiss Respondent's objections to Complainant's Interrogatories and Requests for Production of Documents, Set 1, questions 6, 7, 8, and 21.

These requests and Respondent's objections thereto are as follows:

Request No. 6. For each month from January 2011 through July 2014, how many residential customers were (or are) on Mr. Whalen's meter reading route?

Objection. The Company objects to this Interrogatory to the extent it seeks information about customers other than the Complainant. The presiding Administrative Law Judge ("ALJ") has ruled previously that customers of the Company other than the Complainant are not relevant to the specific allegations in the Formal Complaint filed by Mr. Whalen, which relate solely to his concerns and allegations regarding his own estimated meter readings. The Second Interim Order dated June 5, 2014 dismissed UWUA as a party from this proceeding, and as a result, facts and issues related to the service the Company provides to other customers are not relevant to the service the Company provides to the Complainant. See Second Interim Order, Bifurcation of Proceedings and Disposition of Preliminary Objections, pp. 12-13 (June 5, 2014), direct that "Utility Workers of America System Local 102 is removed as representative of the three individual complainants ..." and that "(t)he proceedings concerning the three formal complaints filed by (Whalen, Sterner and Baronner) shall be bifurcated from the other two proceedings and shall proceed to final adjudication separately." In the Third Interim Order, dated July 18, 2014, the ALJ defined the sole issue in this case as follows: "did West Penn Power Company fail to provide reasonable and adequate customer service, pursuant to the Commission's regulations, as concerns the frequency and timing of when Complainant's meter was read." Third Interim Order, p. 2 (July 18, 2014) (emphasis added). Under the Commission's regulations, parties are entitled generally to conduct discovery with respect to matters and issues that are relevant to the proceeding or that can reasonably lead to relevant information. Here, information relating to meter reading activities, Company staffing levels and other conditions that may have impacted meter readings for customers other than Mr. Whalen are not relevant to the Formal Complaint are not reasonably calculated to lead to relevant information. [footnote: See the Commission's regulations regarding discovery at 52 Pa. Code § 5.321, which provide pertinent part as follows: (c) Scope. Subject to this subchapter, a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and

location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.]

Request No. 7. For each unscheduled estimated read of Mr. Whalen's meter identified in response to question 3, please state whether all customers on Mr. Whalen's meter reading route were similarly affected. If there are any months where all customers on the route were not similarly affected, please provide a detailed explanation of why Mr. Whalen's meter was estimated while others on his route were not estimated; and provide any documents that show or discuss the reasons for the different treatment of customers on the same route.

Objection. *The Company objects to this Interrogatory on the same bases described in the objection to Interrogatory and Data Request No. 6, which is incorporated herein. The Company objects, on the basis of relevance, to providing any information that shows or discusses meter reading routes for customers other than the Complainant or about the number of customers that had unscheduled meter reads other than the Complainant.*

Request No. 8. For each month from January 2011 through July 2014, please provide a copy of each and every report, memorandum, or electronic mail message that mentions Mr. Whalen's service address and/or meter reading route and that shows or discusses the number of residential customer accounts that had unscheduled estimated meter reads. If the original report is in an electronic form, please provide the electronic files in their original electronic form in addition to paper copies.

Objection. *The Company objects to this Interrogatory on the same bases described in the objection to Interrogatory and Data Request No. 6, which is incorporated herein. The Company objects, on the basis of relevance, to providing any information that shows or discusses meter reading routes for customers other than the Complainant or about the number of customers that had unscheduled meter reads other than the Complainant. In addition, Interrogatory and Data Request No. 8 request subjects the Company to unnecessary burden, oppression and expense and distracts or otherwise burdens employees from their normal work functions in order to produce materials that are unlikely to lead to relevant or admissible information. The Company avers that meter reading routes change periodically and West Penn's organization and approach to meter reading changed following the merger between FirstEnergy Corp. and Allegheny Energy, Inc. Trying to locate and recover information from that time period would be difficult, if not impossible, for the Company to complete. Furthermore, data some data transferred between the two companies is archived and in some cases not accessible; not all data transferred from Allegheny Energy into the new system.*

Request No. 21. Please provide all internal Company policies or procedures relating to residential customer accounts that receive three or more consecutive estimated bills that are or were in effect during the time period January 2011 through July 2014. If a policy or procedure was changed during this time period, please identify the person or persons responsible for making the change.

Objection. The Company objects to this Interrogatory on the same bases described in the objection to Interrogatory and Data Request No. 19, which is incorporated herein.

*[The objection to no. 19, to which no motion to compel is filed, stated:
The Company objects to this Interrogatory on the same bases described in the objection to Interrogatory and Data Request No. 16, which is incorporated herein. In addition, Interrogatory and Data Request No. 19 subjects the Company to unnecessary burden, oppression and expense and distracts or otherwise burdens employees from their normal work functions in order to produce materials that are unlikely to lead to relevant or admissible information.]*

*[The objection to no. 16, to which no motion to compel is filed, stated:
The Company objects to this Interrogatory on the same basis described in the objection to Interrogatory and Data Request No. 6, which is incorporated herein. The Second Interim Order dated June 5, 2014 dismissed the Complainant's claim for relief concerning the Commission requiring the Company to hire more meter readers, and as a result, facts and issues related to the Company's hiring and staffing levels is not relevant to the service the Company provides to the Complainant. See Second Interim Order, Bifurcation of Proceedings and Disposition of Preliminary Objections, p. 13 (June 5, 2014).]*

Complainant moves to dismiss these objections and compel responses for the following reasons.

1. The Commission's discovery regulations specifically permit discovery regarding "any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party ... It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." 52 Pa. Code § 5.321(c).

2. Among the types of relief requested by Complainant in his Second Amended Formal Complaint is the imposition of a civil penalty under 66 Pa. C.S. § 3301.

3. The Commission's Policy Statement on Factors and Standards for Evaluating Litigated and Settled Proceedings Involving Violations of the Public Utility Code and Commission Regulations lists the specific "factors and standards that will be considered by the Commission"

in determining the amount of civil penalty that should be assessed. Among those standards and factors are the following:

- a. "Whether the regulated entity made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future. These modifications may include activities such as training and improving company techniques and supervision. The amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management in correcting the conduct may be considered." 52 Pa. Code § 69.1201(c)(4).
- b. "The number of customers affected and the duration of the violation." 52 Pa. Code § 69.1201(c)(5).
- c. "The compliance history of the regulated entity which committed the violation. An isolated incident from an otherwise compliant utility may result in a lower penalty, whereas frequent, recurrent violations by a utility may result in a higher penalty." 52 Pa. Code § 69.1201(c)(6)

4. All of the requests subject to this motion seek the type of information that is specifically set forth in the Commission's Policy Statement and, thus, would be admissible or, at a minimum, help "lead to the discovery of admissible evidence" as required by 52 Pa. Code § 5.321(c).

5. Request Nos. 6 and 7 seek information on the number of customers whose meters are on the same meter reading route as Complainant and whether any customers on that route were not treated in the same manner on each meter reading occasion. In responses to other requests, Respondent provided information showing the number of times between January 2011 and the present when Complainant's meter reading was estimated and the reasons for those estimates. It does not appear that any of those estimated reads were caused by a condition specific to Complainant (such, as an unchained dog, icy sidewalk, or other hazard on the premises). Thus, it appears likely that all customers on Mr. Whalen's meter reading route should have been similarly affected on each occasion. In order to determine the amount of any civil penalty (assuming Complainant can prove violations of the Commission's meter reading regulations), it is necessary to assess the "number of customers affected and the duration of the violation" (52 Pa. Code

§ 69.1201(c)(5)). This information lies solely within Respondent's possession and control.

Respondent, therefore, should be required to provide the number of residential customers on the same meter reading route as Mr. Whalen and whether those customers were similarly affected on each occasion when Mr. Whalen's meter was estimated.

6. Request No. 8 seeks copies of any reports or other documents that mention the meter reading practices on Mr. Whalen's account or meter route. Similar to requests 6 and 7, this information is useful in determining the number of customers affected by the alleged violations. In addition, this information will help assess Respondent's "compliance history" (52 Pa. Code § 69.1201(c)(6)) and "the amount of time it took the utility to correct the conduct once it was discovered and the involvement of top-level management" (52 Pa. Code § 69.1201(c)(4)).

7. Request No. 21 seeks copies of "internal Company policies or procedures relating to residential customer accounts that receive three or more consecutive estimated bills" and how those procedures may have changed during the period covered in this matter. This information is directly relevant to the criterion which requires an evaluation of whether Respondent "made efforts to modify internal practices and procedures to address the conduct at issue and prevent similar conduct in the future." 52 Pa. Code § 69.1201(c)(4). The request also asks Respondent to identify the people who were responsible for any changes in policy or procedures, which is directly relevant to the potential "involvement of top-level management." Id.

WHEREFORE, Complainant respectfully requests the Administrative Law Judge to enter an order dismissing Respondent's objections to Interrogatories and Requests for Production of

Documents, Set 1, numbers 6, 7, 8, and 21, and to compel Respondent to provide answers to those requests within 10 days of the entry of the order.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Scott J. Rubin". The signature is fluid and cursive, with the first name "Scott" and last name "Rubin" clearly distinguishable.

Scott J. Rubin
Counsel for Complainant

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Dated: August 26, 2014

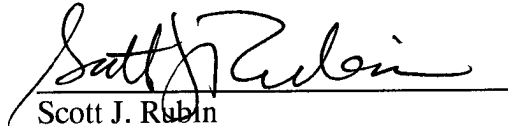
CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served this day a true copy of the foregoing document upon the parties listed below by electronic mail and U.S. mail, first-class, postage prepaid, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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Dated: August 26, 2014



Scott J. Rubin
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