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September 2, 2014

VIA UPS OVERNIGHT DELIVERY

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

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SEP 02 2014

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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

Dear Secretary Chiavetta:

On behalf of West Penn Power Company, I have enclosed for filing the Answer of West Penn Power Company to Complainant's Motion to Dismiss Objections and Compel Discovery Responses in the above-captioned matter.

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

Very truly yours,

Brian C. Wauhop /AMS

Brian C. Wauhop

BCW/tlg
Enclosure
cc: Certificate of Service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

SEP. 02 2014

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

ROBERT T. WHALEN

v.

WEST PENN POWER COMPANY

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Docket No. C-2014-2404308

**ANSWER OF WEST PENN POWER COMPANY TO
COMPLAINANT'S MOTION TO DISMISS OBJECTIONS AND
COMPEL DISCOVERY RESPONSES**

Pursuant to the Pennsylvania Public Utility Commission's ("Commission") regulations at 52 Pa. Code §§ 5.342(g)(1), West Penn Power Company ("West Penn" or the "Company"), by and through its counsel, Brian C. Wauhop, John Povilaitis, Alan Michael Seltzer and Buchanan Ingersoll & Rooney PC, hereby files this Answer ("Answer") to Robert T. Whalen's ("Complainant") Motion to Compel Discovery Responses ("Motion") to Interrogatories and Requests for the Production of Documents, Set 1, Nos. 6, 7, 8 and 21.

I. Introduction

The Company does not dispute (i) the history of the discovery phase of this proceeding; (ii) the recitation of Interrogatory and Data Request Nos. 6, 7, 8 and 21; or (iii) the Company's specific Objections thereto, as set forth in the Motion. The Company served general and specific Objections to the Complainant's discovery requests on August 20, 2014.

The Company objects to Interrogatory and Data Request Nos. 6, 7, 8 and 21 and reasserts its Objections served on August 20, 2014, which are incorporated herein. There is no reason for the Commission to compel the Company to answer the Complainant's interrogatories because

they seek information that is not relevant or not likely to become relevant to the issues in this proceeding. The only issue in this case is whether the Company's service to the Complainant is reasonable and consistent with applicable law and Commission regulations. Because the Complainant cannot lawfully assert claims on behalf of others (such as other customers), all that can be explored in discovery and ultimately litigated is whether the estimated electric service bills provided to the Complainant by the Company are reasonable, proper and consistent with the Pennsylvania Public Utility Code and the Commission's regulations regarding monthly billing. Because the interrogatories at issue in the Motion request information about service the Company provides to customers other than the Complainant, the information sought is irrelevant to the ultimate issue in this case, i.e., the sufficiency of service the Company provides to the Complainant.

Moreover, the basis asserted by the Complainant for requiring the Company to produce the requested information — the Commission's Policy Statement on Factors for Evaluating Litigated and Settled Proceedings ("Policy Statement")¹ — is not a valid reason to compel the Company to produce irrelevant information to the Complainant. In fact, the Commission has never ordered a party to produce discovery materials on that basis, and the Complainant has provided no legal or other justification for the Commission to do so now.

Simply put, the Motion is an impermissible and inappropriate attempt to force the Company to provide irrelevant information regarding the service it provides to customers other than the Complainant so the Complainant can pursue claims against the Company on issues that do not impact or relate to him. Accordingly, the Motion should be denied.

¹ See 52 Pa. Code § 69.1201

II. Specific Response to Motion

The Company responds to the numbered paragraphs in the Motion as follows:

1. Admitted in part and denied in part. It is admitted that paragraph 1 of the Motion contains a partial quote from the Commission's regulations at 52 Pa. Code § 5.321(c). It is specifically denied that this paragraph quotes all relevant portions of that regulation.

2. Admitted. It is admitted that one of the forms of relief the Complainant has requested the imposition of a civil penalty.

3. Admitted in part and denied in part. It is admitted that paragraph 3 of the Motion contains a partial quote from the Commission's regulations at 52 Pa. Code § 69.1201. It is denied that this paragraph quotes all relevant portions of that regulation.

4. Denied. The Complainant incorrectly relies on the Policy Statement to support his erroneous claim that the information requested in Interrogatory and Data Request Nos. 6, 7 and 8 must be produced in discovery because it will be admissible at any evidentiary hearing in this case. The Complainant fails to understand or acknowledge that the Policy Statement – which is employed by the Commission to craft a remedy when it has determined that certain public utility conduct violates the Public Utility Code or a Commission or order or statute – *does not* provide an *independent* basis for a claim upon which discovery can be launched. The Complainant cites no authority for such proposition because there is none. The Policy Statement, by itself, does not – and cannot – make an otherwise irrelevant fact admissible in a proceeding.

The Company never objected to Complainant's interrogatories on the basis that the information sought would be inadmissible. The Company objected because the information sought is *not relevant* to the subject matter of this action. Facts must be relevant to be

admissible. The information sought by the Complainant is not relevant and, therefore, is neither discoverable nor admissible. The Complainant's reliance on the Policy Statement is misplaced.

It is well-established in Pennsylvania jurisprudence that evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence and the fact is of consequence in determining the action. Pa. R. E. 401. Pennsylvania Rule of Evidence 402 provides as follows: “[a]ll relevant evidence is admissible, except as otherwise provided by law. Evidence that is not relevant is not admissible.” The Commission has adopted this standard at 52 Pa. Code § 5.401(a): “[r]elevant and material evidence is admissible subject to objections on other grounds.” *See also Eckenrode v. PECO Energy Company*, Docket No. C-2012-2337839 (Final Order entered February 6, 2014) (“evidence will be excluded from the record if it will be repetitious or cumulative and *not relevant* to the proceedings.” (citing 52 Pa. Code § 5.401(a)(b) (emphasis added)).

Importantly, the Commission's regulation regarding the scope of discovery explains that “a party may obtain discovery regarding any matter, not privileged, which is *relevant* to the subject matter involved in the pending action...” 52 Pa. Code § 5.321(c) (emphasis added).

The information sought in Interrogatory and Data Request Nos. 6, 7 and 8 is not discoverable because it is not relevant. As explained in the Company's Objection to Interrogatory No. 6, the presiding Administrative Law Judge (“ALJ”) specifically 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). Thus, the scope of this proceeding relates solely to the service provided by the Company to the *Complainant* regarding readings obtained from the *Complainant's* meter for

the electricity that the *Complainant* used at the *Complainant's* residence. Interrogatory and Data Request Nos. 6, 7 and 8 request information about the service the Company provided to customers other than the Complainant. Information about the service the Company provided to other customers is not relevant here because it does not make any fact regarding the service the Company provided to the Complainant more or less probable. *See* Pa. R. E. 401. As a result, this information is neither discoverable nor admissible. *See* 52 Pa. Code § 5.321(c); Pa. R. E. 402; 52 Pa. Code § 5.401(a).

5. Denied. The Company incorporates its existing Objections to Interrogatory and Data Request Nos. 6 and 7 and its response to Paragraph 4 herein. Information about the service that the Company provided to other customers is irrelevant to a determination of the reasonableness of the service the Company provided to the Complainant.

6. The Company incorporates its existing Objections to Interrogatory and Data Request No. 8 herein. On August 12, 2014, counsel for the Complainant refined Interrogatory and Data Request No. 8 to request only those reports relating to the Complainant's account with the Company. The Company researched this request and determined that no such reports exist, and the documents that do refer to Mr. Whalen's service address and/or meter reading route are email messages between the Company and its counsel regarding this case. These messages between the Company and its attorneys are protected from discovery by the attorney-client privilege.

However, the Complainant does not mention his August 12, 2014 clarification in the Motion, and instead renews his request to include all of the information initially requested in Interrogatory and Data Request No. 8. To the degree that Interrogatory and Data Request No. 8 seeks information regarding the service the Company provided to other customers, the Company

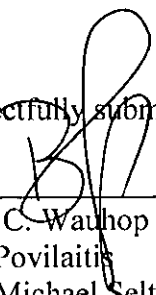
incorporates its responses to Paragraphs 4 and 5 herein. In addition, Interrogatory and Data Request No. 8 request subjects the Company to unnecessary burden, oppression and expense and distracts or otherwise burdens employees from their normal work functions in order to produce materials that are unlikely 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 would be difficult, if not impossible, for the Company to complete. Furthermore, 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.

7. Denied. The Company incorporates its response to Paragraph 4 and its existing Objections to Interrogatory and Data Request No. 21 herein.

WHEREFORE, West Penn Power Company respectfully requests that the ALJ deny the Complainant's Motion to Dismiss Objections and Compel a Response to Interrogatories and Requests for Production of Documents and grant the Company such other relief as is just and reasonable under the circumstances.

Dated: September 2, 2014

Respectfully submitted,



Brian C. Wauhob
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PA PUBLIC UTILITY COMMISSION
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Attorneys for
West Penn Power Company

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ROBERT T. WHALEN

v.

WEST PENN POWER COMPANY

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Docket No. C-2014-2404308

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).

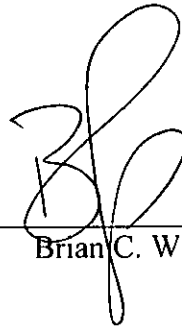
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Harrisburg, PA 17101-1923

The Honorable Katrina L. Dunderdale
Pittsburgh District Office
Pennsylvania Public Utility Commission
Piatt Place
301 5th Avenue - Suite 220
Pittsburgh, PA 15222

Dated this 2nd day of September, 2014.



Brian C. Wauhop, Esq.

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