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October 23, 2015

VIA E-FILING

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

Re: *Marlene Broman v. West Penn Power Company*
Docket No. C-2015-2485454

Dear Secretary Chiavetta:

On behalf of West Penn Power Company, I have enclosed for electronic filing the Motion to Exclude Supplemental Exhibits in the above-captioned proceeding.

Copies have been served on all parties as indicated in the attached Certificate of Service.

Very truly yours,



Brian C. Wauhop

BCW/tlg
Enclosures
cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MARLENE BROMAN

v.

WEST PENN POWER COMPANY

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:
:
:
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Docket No. C-2015-2485454

NOTICE TO PLEAD

TO: Marlene Broman
4136 Patterson Road
Butler, PA 16002

Pursuant to 52 Pa. Code § 5.103(c), you are hereby notified that, if you do not file a written response to the Motion to Exclude Supplemental Exhibits (“Motion”) of West Penn Power Company within **twenty (20) days** from service of this Notice, the Motion may be granted. All pleadings in response to the Motion must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy served to counsel for West Penn Power Company, and the presiding Administrative Law Judge as follows:

File with:

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

With a copy to:

Brian C. Wauhop, Esq.
Buchanan Ingersoll & Rooney PC
409 N. Second Street
Suite 500
Harrisburg, PA 17101

Jeffery A. Watson
Administrative Law Judge
Piatt Place, Suite 220
301 5th Avenue
Pittsburgh, PA 15222

Dated: October 23, 2015



Brian C. Wauhop, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MARLENE BROMAN :
 :
 v. : **Docket No. C-2015-2485454**
 :
 WEST PENN POWER COMPANY :

MOTION TO EXCLUDE SUPPLEMENTAL EXHIBITS

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

West Penn Power Company (“West Penn” or the “Company”) by and through its counsel, Brian C. Wauhop, Alan Michael Seltzer, and Buchanan Ingersoll & Rooney PC, files this Motion to Exclude Supplemental Exhibits (“Motion”), pursuant to Section 5.103 of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code § 5.103(a), and in connection therewith avers as follows:

I. Introduction and Background

1. Through this Motion, West Penn seeks the exclusion of materials (“Supplemental Exhibits”) submitted by Marlene Broman (“Complainant”) following the close of the hearing held in this matter on October 6, 2015.

2. During the October 6, 2015 hearing, it was discovered that the Complainant had submitted two sets of exhibits: (i) an initial set of exhibits (“Initial Set”) sent in July 2015 containing a series of photographs; and (ii) a second set (“Second Set”) of exhibits sent in late September 2015 containing additional photographs. During the hearing, Administrative Law Judge Jeffrey Watson (“ALJ”) indicated he did not have the Complainant’s Second Set of exhibits. Counsel for the Company transmitted an electronic copy of the second set to the ALJ during the course of the hearing.

3. At the close of the hearing, it became clear that the ALJ's copy of the Complainant's Initial Set contained one extra page than the set the Complainant sent to the Company. The Complainant could not locate her copy of the Initial Set of exhibits. The ALJ directed the Complainant to provide all parties with a complete copy of the Initial Set of exhibits she submitted in July 2015. The ALJ further stated that the Company would have ten days from the date of receipt of the Initial Set to file an objection.

4. The Company received the Supplemental Exhibits on October 13, 2015. The Complainant failed to follow the ALJ's instructions: the Supplemental Exhibits do not match her Initial Set of exhibits, and fail to indicate the additional page she was supposed to provide. Instead, the Supplemental Exhibits consist almost entirely of new materials which she is introducing for the first time.

5. The ALJ did not make any allowance for the submission of new materials. The ALJ specifically stated that the Complainant was to provide only a complete copy of the Initial Set of hearing exhibits. As a result, the Company moves for the exclusion of the Supplemental Exhibits.

II. Legal Standard

6. The grounds for admissibility of evidence are set forth in 52 Pa. Code § 5.401, which provides that relevant and material evidence is generally admissible, subject to objections on other grounds and certain exclusions. However, pursuant to 52 Pa. Code § 5.401(b), evidence will be excluded if, *inter alia*, the evidence is duplicative or its probative value is outweighed by the danger of unfair prejudice or confusion of issues.

7. In hearings before the Commission, the presiding officer has the authority to control the receipt of evidence. 52 Pa. Code § 5.403(a). The presiding office must use this

authority to direct and focus the proceedings “consistent with due process.” 52 Pa. Code § 5.403(b).

8. A party in proceedings before the Commission has the right of presentation of evidence, cross-examination, objection, motion and argument. 52 Pa. Code § 243(a). A party will not be permitted to introduce evidence during a rebuttal phase which should have been included in the party’s case-in-chief. 52 Pa. Code § 243(e); *see also Deidra Alston v. National Fuel Gas Distribution Corporation*, Docket No. F-2011-2236871 (Final Order entered September 26, 2013 dismissing complainant’s Exceptions and affirming Initial Decision which, among other things, refused to admit the complainant’s proposed supplemental exhibits after hearing because those exhibits should have been produced as part of the complainant’s case-in-chief).

III. Argument

9. The Complainant was directed to provide a copy of her Initial Set of exhibits to the ALJ and the Company. The difference between the materials the Complainant initially sent to the ALJ and the Company was a single page. The ALJ’s directions were very clear: re-submit the Initial Set of exhibits.

10. Instead of following the ALJ’s direction, the Complainant sent in materials labeled “Exhibit X” and “Exhibit Y.”

11. “Exhibit X” was not part of any of the Complainant’s previous exhibit submissions and is entirely new. The Complainant provided no offer of proof for these materials, either at hearing or at the present.

12. “Exhibit X” should be excluded from the record because it is not what the Complainant was directed to provide. The ALJ made no statement allowing for the submission

of new materials. Allowing “Exhibit X” into the record now is unfair and prejudicial to the Company because (i) the Complainant has not established the relevance of these materials; (ii) these materials appear to be rebuttal materials, and as such, should have been provided as part of the Complainant’s case-in-chief; and (iii) the Company’s right to object and cross examine this material is precluded if the material is admitted now. *See* 52 Pa. Code §§ 5.401(b), 5.403(b), 243(a), 243(e); *Deidra Alston v. National Fuel Gas Distribution Corporation*. There is no basis for admitting “Exhibit X” into the record.

13. Next, while two pages of “Exhibit Y” depicting the Company’s tower structure appear to be part of the Initial Set of exhibits, all remaining pages are new. This material should be excluded for the same reasons “Exhibit X” should be excluded.

14. Finally, in the cover letter accompanying the Supplemental Exhibits, the Complainant compares the Company’s statements to a quote she attributes to Joseph Goebbels, Reich Minister of Propaganda in Nazi Germany. This comparison is highly offensive and insulting. There is simply no comparison between the forthright and reasonable correspondence the Company has provided to the Complainant for the last four years and the outrage perpetrated by Joseph Goebbels. The Complainant’s comparison is an unacceptable breach of decorum in this proceeding. The Commission should strike the cover letter from the record in this case.

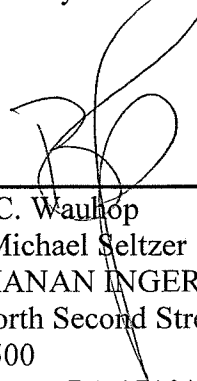
15. The Complainant’s attempt to submit new materials now, after the hearing, in direct contradiction to what the ALJ authorized, is simply the most recent example of the Complainant’s utter disregard for the Formal Complaint process. The Commission should exclude the Supplemental Exhibits in their entirety on this basis alone. Notwithstanding the latitude afforded *pro se* litigants by this Commission, there is no basis to admit the Supplemental

Exhibits. Doing so would be prejudicial to the Company and a violation of the Company's due process rights.

IV. Conclusion

16. WHEREFORE, for the reasons stated above, the Company respectfully requests that the Commission exclude the Supplemental Exhibits submitted by the Complainant in this case because: (i) the Complainant has not established the relevance of these materials; (ii) these materials should have been provided as part of the Complainant's case-in-chief; (iii) the Company's right to object and cross examine this material is precluded if the material is admitted now; and (iv) the Complainant has demonstrated disregard for the hearing process by failing to comply with the ALJ's directions.

Respectfully submitted,



Dated: October 23, 2015

Brian C. Waulkop
Alan Michael Seltzer
BUCHANAN INGERSOLL & ROONEY PC
409 North Second Street
Suite 500
Harrisburg, PA 17101
(717) 237-4975

*Attorneys for
West Penn Power Company*

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MARLENE BROMAN

v.

WEST PENN POWER COMPANY

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Docket No. C-2015-2485454

CERTIFICATE OF SERVICE

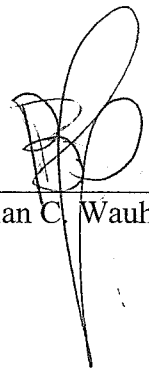
I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

Via First-Class Mail

Administrative Law Judge Jeffery A. Watson
Piatt Place, Suite 220
301 5th Avenue
Pittsburgh, PA 15222

Marlene Broman
4136 Patterson Road
Butler, PA 16002

Dated this 23rd day of October, 2015.



Brian C. Wauhop, Esq.