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June 17, 2016

VIA EFILING

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 Main Brief of West Penn Power Company 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

BCW/tlg

Enclosure

cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MARLENE BROMAN

v.

WEST PENN POWER COMPANY

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:
:
:
:

Docket No. C-2015-2485454

**MAIN BRIEF
ON BEHALF OF
WEST PENN POWER COMPANY**

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Dated: June 17, 2016

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I. STATEMENT OF THE CASE

A. Introduction

On May 22, 2015, Marlene Broman (“Complainant”) filed a Formal Complaint (“2015 Complaint”) against West Penn Power Company (“West Penn” or the “Company”)¹ challenging the Company’s right to remove two oak trees, four cedar trees, five blue spruce trees, and removal of brush and smaller incompatible vegetation growing along a fence line that borders the Complainant’s property.² The trees and vegetation grow in and along a right-of-way (“Right-of-Way”) that crosses the Complainant’s property at 4136 Patterson Road, Butler, Pennsylvania. The removal of this same vegetation was the stimulus of a prior formal complaint filed by the Complainant in 2013 at Docket No. C-2013-2356237 (“2013 Complaint”).³ West Penn made contact with the Complainant following dismissal of the 2013 Complaint to schedule the outstanding vegetation maintenance. The Complainant refused to permit West Penn to finish its work, and then filed the formal complaint forming the basis of the 2015 Complaint.

For the reasons set forth below, the Complaint should be dismissed and the relief requested by the Complainant denied. First, the claims raised in the 2015 Complaint, and the evidence presented at hearing, mirror the claims and evidence advanced by the Complainant in the 2013 Complaint that was fully litigated and dismissed by the Pennsylvania Public Utility Commission (“Commission”) on the merits.⁴ As a result, *res judicata* bars the Complainant from re-litigating the same issues and claims again here.

¹ FirstEnergy is the holding company that owns West Penn Power Company and other electric distribution companies operating in Pennsylvania, Ohio, New Jersey, New York, Maryland and West Virginia, including Pennsylvania Power Company, Pennsylvania Electric Company and Metropolitan Edison Company in Pennsylvania.

² N.T. 225:13-21; West Penn Exhibit 2.

³ For the sake of clarity (and in the interest of justice), West Penn requests that the Commission take judicial notice pursuant to 52 Pa. Code § 5.408(a) of the claims averred by the Complainant in the 2013 Complaint, *Marlene Broman v. West Penn Power Company*, Docket No. C-2013-2356237.

⁴ See ALJ Exhibits 1 and 2.

Second, with respect to any claims that are not barred by *res judicata*, the Complainant failed to satisfy her burden of proof establishing that the Company committed any violation of the Public Utility Code, 66 Pa.C.S. § 101 *et seq.* (“Code”) or any regulation, order or rule that the Commission has authority to administer. On the contrary, the evidence provided at hearing establishes that at all times relevant to this dispute the Company has provided reasonable service to the Complainant in a respectful and courteous manner. For these reasons, the Commission should dismiss the Complaint.

B. Procedural History

On or about May 22, 2015, the Complainant filed the 2015 Complaint against the Company asking that the Commission order the Company not to remove incompatible vegetation growing in the Right-of-Way that crosses her property.

On or about June 2, 2015, the Complaint was served upon the Company via electronic mail.

On June 22, 2015, West Penn filed an Answer admitting in part and denying in part the material allegations set forth in the Complaint.

On July 8, 2015, a Notice was issued scheduling the matter for hearing on Thursday, August 5, 2015 before Administrative Law Jeffrey A. Watson (“ALJ”).

On July 16, 2015, the Company filed a Motion for Summary Judgment on the basis of *res judicata*.

On July 22, 2015, the Company received materials from the Complainant responding to the Company’s Answer to the 2015 Formal Complaint.⁵

⁵ The Commission Secretary issued a letter to the Complainant indicating the initial response provided by the Complainant was insufficient because it lacked an original signature. A corrected filing was received by the Commission on July 22, 2015 conforming to the Commission’s rules of practice and procedure.

On July 27, 2015, the Company sent the ALJ and the Complainant a written request for postponement of the August 5, 2015 hearing due to the pending motion for summary judgment.

On August 3, 2015, the ALJ issued an order (“First Interim Order”) rescheduling the hearing to October 6, 2015.

On August 11, 2015, the ALJ issued an order denying the Company’s motion for summary judgment (“Second Interim Order”).

On October 6, 2015, an evidentiary hearing was held. The Complainant appeared *pro se* and provided her direct testimony, exhibits and testimony of her son, William Broman, Jr. The Company provided evidence in the form of testimony from two witnesses and exhibits.

On October 9, 2015, Complainant submitted correspondence to the ALJ with some additional proposed late-filed exhibits.

On October 23, 2015, the Company filed a Motion to Exclude some of the proposed late-filed exhibits offered by the Complainant following the hearing.

On December 31, 2015, the ALJ entered an interim order (“Third Interim Order”) indicating that he considered the Complainant’s filings to be a request to enter Complainant’s Exhibits E, F, G, and H into evidence. The interim order provided that the Company could file an objection to the entry of Complainant’s Exhibits E, F, G, and H within 14 days.

The Company did not object to the entry of these materials, and on February 29, 2016, the ALJ entered an order admitting the same into the record.

On April 27, 2016, the ALJ entered an interim order setting a briefing schedule (“Briefing Order”).

On May 12, 2016, the Complainant contacted the Company and requested additional time to file her brief. On May 13, 2016, counsel for the Company relayed the Complainant’s request

to the ALJ indicating the Company had no objection. On May 16, 2016, the ALJ entered an order granting the Complainant's request and setting a new briefing deadline of June 17, 2016.

West Penn submits this Brief in accordance with the briefing schedule established in the ALJ's April 27, 2016 interim order and the order entered May 16, 2016.

C. PROPOSED FINDINGS OF FACT

1. The Complainant is Marlene Broman, 4136 Patterson Road, Butler, Pennsylvania 16002 ("Service Location"). (2015 Complaint, ¶ 1).

2. The Respondent is West Penn Power Company, a jurisdictional public utility providing residential electric service in the Commonwealth of Pennsylvania to the Complainant.

3. This Complaint and dispute concern West Penn's plans to control the vegetation growing in a Right-of-Way that crosses the Complainant's property. (2015 Complaint ¶ 5; N.T. 44:10-11).

4. Previously, the Complainant filed the 2013 Complaint challenging West Penn's plans to control the vegetation growing in a Right-of-Way that crosses the Complainant's property. (N.T. 30:19-25, 31:1-6; ALJ Exhibits 1 and 2).

5. The Commission fully adjudicated the 2013 Complaint and dismissed it on the merits. (ALJ Exhibits 1 and 2).

6. The Complainant's most recent claims as set forth in the 2015 Complaint and at hearing are that (i) West Penn did not maintain wild vegetation along a fence row on the left side of the transmission tower; and (ii) a West Penn brochure includes a "new" vegetation maintenance program. (N.T. 38:15-16; 55:3-4; 103:8-9)

7. Complainant's Exhibits A and B are Google Earth images of the Complainant's property. (N.T. 58: 144: 172; Complainant's Exhibits A and B).

8. Complainant's Exhibits C through H are photographs of the Complainant's property. (N.T. 144: 181, Third Interim Order; Complainant's Exhibit C-H).

9. Complainant's Exhibit J is a copy of a FirstEnergy vegetation management brochure that provides general information about vegetation management to landowners. (N.T. 185-186; Complainant's Exhibit J).

10. West Penn Exhibit 1 is a letter dated May 12, 2015 sent by Harry Flannery to the Complainant. (N.T. 207:2-22; West Penn Exhibit 1).

11. West Penn Exhibit 2 is a copy of the work plan showing the vegetation maintenance that still needs to be completed per the Commission's order dismissing the 2013 Complaint. (N.T. 226:7-9; 228:9-16; ALJ Exhibit 2).

12. West Penn Exhibit 7 is a letter dated December 18, 2014 sent by Harry Flannery to the Complainant attaching a copy of ALJ Exhibit 2 to the Complainant. (N.T. 207:23-24; West Penn Exhibit 7).

13. West Penn Exhibit 8 is a letter dated December 8, 2014 sent by Harry Flannery to the Complainant explaining that the Commission had dismissed the 2013 Complaint. (N.T. 208:7-11; West Penn Exhibit 8).

14. West Penn Exhibit 9 is a letter dated February 4, 2015 sent by Harry Flannery to the Complainant enclosing another copy of ALJ Exhibit 2 and a proof of service showing the Complainant signed a proof of service on April 25, 2014. (N.T. 208:14-16; West Penn Exhibit 9).

15. West Penn did not engage in vegetation maintenance on the Complainant's property pending a final decision on the 2013 Complaint by the Commission. (N.T. 225:22-24, 228:9-17; 241:20-25).

16. West Penn contacted the Complainant once the Commission reached a final decision regarding the 2013 Complaint to schedule vegetation maintenance. (N.T. 205:14-25; 206; 207:1-17; West Penn Exhibits 1, 7, 8, 9).

17. As part of that contact, West Penn provided a brochure to the Complainant. (N.T. 207:4-5; Complainant's Exhibit J).

18. The vegetation maintenance that needs to be completed is the same maintenance that the Commission authorized when it dismissed the 2013 Complaint. (N.T. FN 90; West Penn Exhibit 2).

19. The Complainant refused West Penn's request to complete the vegetation maintenance authorized by the Commission. (cite needed)

20. The vegetation maintenance plan prescribed for the Complainant's property has not changed since 2012. (N.T.; West Penn Exhibit 2).

21. No new trees or vegetation was added to the existing vegetation maintenance plan for the Complainant's property since the Commission dismissed the 2013 Complaint. (N.T. 274:25, 275:1-6; West Penn Exhibit 2).

II. STATEMENT OF THE QUESTIONS PRESENTED

1. Q. Whether the claims in the 2015 Complaint regarding the existing vegetation maintenance plan for the Complainant's property are barred by the doctrine of *res judicata*?

A. *Proposed answer: Yes*

2. Q. Whether the Complainant has met her burden of proof under Code Section 332(a) by a preponderance of the evidence that West Penn has failed to provide safe, adequate and reasonable electric service to the Service Location?

A. *Proposed answer: No*

3. Q. Whether the Company rebutted any *prima facie* case established by the Complainant?

A. *Proposed answer: Yes*

III. APPLICABLE LEGAL STANDARDS

A. *Res Judicata*

The Commission recognizes the doctrine of *res judicata* and acknowledges its two operative forms. Administrative Law Judge Angela T. Jones recently explained the doctrine as follows:

The doctrine of “*res judicata*, which is also known as claim preclusion, holds that a final judgment on the merits by a court of competent jurisdiction will bar any future action on the same cause of action between the parties and their privies.” *Hopewell Estates, Inc. v. Kent*, 646 A.2d 1192, 1194 (Pa. Super. 1994) citing, *McArdle v. Tronetti*, 627 A.2d 1219 (Pa. Super. 1993). This principle was explained in the case of *Pa. Pub. Util. Comm’n Schuylkill Twp. v. Borough of Phoenixville*, 1993 Pa. PUC LEXIS 78 as follows:

The terms *res judicata* and collateral estoppel have been replaced in recent years in an effort to clarify the difference between the two ... The current terms (adopted by the drafters of the Restatement (Second) of Judgments) are claim preclusion and issue preclusion.

Claim preclusion, formerly technical or strict *res judicata*, is the term used to describe the effects of merger and bar a prior judgment will have in a later action. Matters which were actually litigated and also matters which should have been litigated in prior actions as part of the same cause of action will not be allowed to be re-litigated in a subsequent action.

Issue preclusion, formerly collateral estoppel, prevents the re-litigation of an issue of fact or law which was actually litigated in a prior proceeding and was necessary to the original judgment.

Claim preclusion applies only when all four conditions exist:

- (1) identity of the subject matter;
- (2) identity of the cause of action;
- (3) identity of the parties; and
- (4) identity of the quality or capacity (legal status) of the parties suing or being sued.

Issue preclusion does not require an identity of the parties, but does require:

- (1) the issue(s) decided by a prior final judgment is identical with the one(s) presented in the later action;
- (2) the issue(s) was actually litigated;
- (3) the party against whom issue preclusion is asserted was a party or in privy with a party to the prior litigation; and
- (4) the determination of the issue(s) was essential to the prior final judgment.⁶

The doctrine of *res judicata* is designed to promote certainty, finality and judicial economy.⁷ It reflects the refusal of the law to tolerate the re-litigation of a matter decided by a court or agency of competent jurisdiction so as to curtail waste of the resources of the agency and the respondent regarding issues that already have been adjudicated.⁸

In addition to the doctrine of *res judicata*, Code Section 316 bars further collateral attacks upon Commission orders. Code Section 316 provides in pertinent part:

Whenever the commission shall make any rule, regulation, finding, determination or order, the same shall be *prima facie* evidence of the facts found and shall remain conclusive upon all parties affected thereby, unless set aside, annulled or modified on judicial review.⁹

Unless the Commission rescinds a decision it has issued, its determinations are conclusive for all parties affected.¹⁰

B. Jurisdiction of the Commission

Section 701 of the Code provides that any person may complain, in writing, about any act or thing done or omitted to be done by a public utility in violation, or claimed violation, of any

⁶ See *Albert Buoncristiano v. Philadelphia Gas Works*, Docket No. C-2015-2466853 pp. 5-6 (Initial Decision issued March 9, 2016; Final Order entered April 29, 2016) (additional citations omitted).

⁷ *Canon v. Verizon Pennsylvania Inc.*, Docket No. C-2013-2353818 (Opinion and Order entered March 6, 2014).

⁸ *Id.*

⁹ See 66 Pa.C.S. § 316.

¹⁰ See *Albert Buoncristiano v. Philadelphia Gas Works*, Docket No. C-2015-2466853, Conclusion of Law 8, (Initial Decision issued March 9, 2016; Final Order entered April 29, 2016) (citing 66 Pa.C.S. § 316).

law that the Commission has jurisdiction to administer, or any regulation or order of the Commission.¹¹

The Commission has only those duties, powers, responsibilities and jurisdiction as are expressly or by necessary implication given to it by the Legislature.¹² The Commission must act within, and cannot exceed, its jurisdiction.¹³ Jurisdiction may not be conferred by the parties where none exists.¹⁴ A challenge to subject matter jurisdiction of a forum to hear a particular dispute is never waived; this jurisdictional question may be raised at any stage of the judicial process.¹⁵

C. Adequate, efficient, safe and reliable service

Code Section 1501 contains the substantive legal standard applicable to this proceeding. Under Code Section 1501, every public utility has a duty to “...furnish and maintain adequate, efficient, safe, and reasonable service and facilities and to make all such repairs, changes, alterations, substitutions, extensions and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public.”¹⁶ The term “service” means not only the distribution of electrical energy, but also, includes any and all acts related to that function, even the maintenance practices that an electric utility undertakes.¹⁷

¹¹ 66 Pa.C.S. § 701.

¹² *Rogoff v. The Buncher Company*, 395 Pa. 477, 151 A.2d 83 (1959), *Western Pennsylvania Water Company v. Pa. P.U.C.*, 311 A.2d 370 (Pa. Cmwlth. 1973).

¹³ *City of Pittsburgh v. Pa. P.U.C.*, 43 A.2d 348 (Pa. Super. 1945).

¹⁴ *Roberts v. Martorano*, 427 Pa. 581, 235 A.2d 602 (1967).

¹⁵ *Commonwealth v. Atlantic & Gulf Coast Stevedores, Inc.*, 422 Pa. 442, 221 A.2d 128 (1966), *see also Lydine Dutton v. Cordia Communications Corporation*, Docket No. F-2010-2201413 (Final Order entered September 22, 2011) (“...jurisdictional issues are never waived...”).

¹⁶ 66 Pa.C.S. § 1501.

¹⁷ *West Penn Power Co. v. Pa. P.U.C.*, 578 A.2d 75 (Pa. Cmwlth. 1990). *See also* Code Section 102, which defines “service” in pertinent part as:

. . . any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by

The Commonwealth Court has ruled that Code Section 1501 requires a complainant to establish that a public utility violated its duty to provide reasonable service in order to sustain a complaint brought under this section:

We hold that in order for the PUC to sustain a complaint brought under this section, the utility must be in violation of its duty under this section. Without such a violation by the utility, the PUC does not have the authority, when acting on a customer's complaint, to require any action by the utility.¹⁸

Similarly, Section 57.194(a) of the Commission's regulations, states that "an EDC shall furnish and maintain adequate, efficient, safe and reasonable service and facilities, and shall make repairs, changes, alterations, substitutions, extensions and improvements in or to the service and facilities necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public. The service shall be reasonably continuous and without unreasonable interruptions or delay."¹⁹

D. Burden of proof

Code Section 332(a) states that the proponent of a rule or order has the burden of proof in a Commission proceeding,²⁰ except as otherwise provided in Code Section 315.²¹ "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party.²² In order to prevail in this proceeding, the Complainant has the burden of showing that the Company

public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public . . .

¹⁸ *West Penn Power Co. v Pa. P.U.C.*, 478 A.2d 947, 949 (Pa. Cmwlth. 1984) (footnote omitted).

¹⁹ 52 Pa. Code § 57.194(a).

²⁰ 66 Pa.C.S. § 332(a).

²¹ 66 Pa.C.S. § 315.

²² *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

is responsible or accountable for the problem described in the Complaint.²³ The Complainant must establish her case by a preponderance of the evidence.²⁴

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility.²⁵ If a utility does not rebut that evidence, a complainant will prevail.²⁶ If the utility rebuts a complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence.²⁷ The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on the complainant.²⁸

Furthermore, substantial evidence in the record must support the decision of the Commission.²⁹ The term "substantial evidence" means such relevant evidence that a reasonable mind may accept as adequate to support a conclusion.³⁰ More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.³¹ In addition, the offense must be a violation of the Code, the Commission's regulations, or an outstanding order of the Commission.³²

²³ *Patterson v. Bell Telephone Company of Pennsylvania*, Docket No. F-8966524 (Final Order Entered February 8, 1990), *Feinstein v. Philadelphia Suburban Water Company*, Docket No. 20822 (Final Order Entered October 6, 1976).

²⁴ *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600 (Pa. Cmwlth. 1990), alloc. den., 529 A.2d 654, 602 A.2d 863 (1992).

²⁵ *Heller v. Indian Spring Water Co.*, C-2012-2334240 (Final Order Entered June 7, 2013) (citing *Replogle v. Pennsylvania Electric Company*, Docket No. F-06727378 (Final Order Entered October 9, 1980)), and *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ See, e.g., Section 704 of the Administrative Agency Law, 2 Pa.C.S. § 704, *Yellow Cab Company v. Pa. P.U.C.*, 524 A.2d 1069 (Pa. Cmwlth. 1987).

³⁰ *Norfolk & Western Ry. Co. v. Pa. P.U.C.*, 489 Pa. 109, 413 A.2d 1037 (1980).

³¹ *Norfolk & Western Ry. Co. v. Pa. P.U.C.*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

³² 66 Pa.C.S. § 701; *West Penn Power Co. v. Pa. P.U.C.*, 478 A.2d 947, 949 (Pa. Cmwlth. 1984).

Accordingly, the record in this case must be reviewed to determine whether the Complainant has satisfied her burden of proof, i.e., whether the Complainant has established by a preponderance of the evidence that West Penn has failed to provide safe, adequate and reasonable service to the Service Location. Additionally, any finding that West Penn has provided unreasonable service also must be supported by substantial record evidence.

IV. SUMMARY OF THE ARGUMENT

The Complainant is not entitled to relief under any of the theories she has asserted. First, the bulk of the testimony (and the claims raised in the 2015 Complaint) relate to the earlier 2013 Complaint which was disposed on the merits by a final act of the Commission. Therefore, *res judicata* bars the Complainant from re-litigating those claims here.

Second, to the degree that any claims survive dismissal under *res judicata*, the Complainant has failed to establish a *prima facie* case that the Company provided unreasonable service or committed any violation of the Code, regulation, or order of the Commission. The Complainant never alleged that the Company failed to meet its obligation to provide reasonable service, and the evidence presented at hearing does not establish any wrongdoing on the Company's part.

Third, to the degree the Complainant could be considered to have carried her burden of proof (which she did not do), the Company successfully rebutted any *prima facie* case with significant evidence unchallenged by the Complainant at hearing. The Company provided substantial record evidence rebutting any claims that survive *res judicata* set forth by the Complainant. The Complainant failed to rebut any of the Company's evidence.

V. ARGUMENT

A. The Complainant's claims regarding vegetation management are barred by *res judicata*.

As a matter of law—and as specifically stated by the ALJ during the hearing—the Commission's opinion and order dismissing the 2013 Complaint preclude the Complainant from re-litigating claims regarding vegetation management stemming from the 2013 Complaint. As a result, the Complainant's attempts to prosecute those same claims in this proceeding are barred.³³

1. The 2013 Complaint

ALJ Exhibit 1 is a copy of the Initial Decision issued on October 8, 2013 by Administrative Law Judge Katrina Dunderdale (“ALJ Dunderdale”) regarding the 2013 Complaint. As mentioned above, West Penn respectfully requests that the ALJ take judicial notice of the claims advanced by the Complainant in the 2013 Complaint. ALJ Dunderdale summarized the content of the 2013 Complaint as follows:

On April 2, 2013, Complainant filed a formal complaint with the Commission alleging Respondent cut down her trees without prior notice, even though the trees were not interfering with Respondent's transmission line. Complainant requested the Commission require Respondent to stop its “ground to sky” vegetation practices on her property.³⁴

ALJ Dunderdale further explained the claims advanced by the Complainant in the 2013 Complaint and articulated at hearing as follows:

- “...an ongoing dispute with [the Complainant and] West Penn over the utility's tree trimming and removal practices. Ms. Broman also averred that West Penn wanted to widen the right-of-way over her property;”³⁵

³³ The ALJ explained the doctrine of *res judicata* and how Code Section 316 prevents collateral attacks on the Commission's determinations in the Second Interim Order. *See* Second Interim Order at 4, Docket No. C-2015-2485454 (August 13, 2015) (citing *Reynolds v. PPL Electric Utilities Corp*, Docket No. C-2011-2255268 (Commission order entered January 5, 2012), slip op. at 4 (citing *Day v. Volkswagenwerk Aktiengesellschaft*, 464 A.2d 1313 (Pa. Super. 1983) and 66 Pa.C.S. § 316).

³⁴ ALJ Exhibit 1, p. 10.

³⁵ ALJ Exhibit 1, p. 1.

- “Complainant challenged the lawfulness of Respondent cutting or proposing to cut trees in or alongside the easement, as exceeding the grant of easement. She also challenged the location of the center line of the right-of-way and contested the disputed trees were within the right-of-way;”³⁶
- “Complainant argues West Penn created its own vegetation plan and it is unclear to Complainant whether the Commission reviewed the plan and the impact the implementation of that plan has on property owners such as Complainant. Specifically, Complainant asks the Commission to order Respondent to only trim back trees used in her windbreak that may interfere with the transmission line wires;”³⁷
- “Complainant contends Respondent’s use and maintenance of the right-of-way has changed over the decades and Respondent’s right to enter onto her property and do whatever it wants has been unchecked;”³⁸ and
- “Complainant maintains most of her trees and shrubs did not interfere with the transmission lines and those trees and shrubs which might have been too high should have been trimmed down to a safe height;”³⁹

In her Initial Decision, ALJ Dunderdale correctly ruled that claims regarding the scope and size of the Right-of-Way are not issues that the Commission has jurisdiction to consider.⁴⁰ ALJ Dunderdale sustained other parts of the 2013 Complaint based on her finding that the Complainant proved that West Penn failed to provide reasonable service to the Complainant and directed West Penn to pay a \$6,000.00 civil penalty and to refrain from completing its existing work plan,⁴¹ which mandated the removal of two oak trees, four cedar trees, five blue spruce trees, and removal of brush and smaller incompatible vegetation growing along the fence line on the left side of the support tower.⁴²

³⁶ ALJ Exhibit 1, pp. 13-14.

³⁷ ALJ Exhibit 1, p. 15.

³⁸ ALJ Exhibit 1, p. 15.

³⁹ ALJ Exhibit 1, p. 15.

⁴⁰ ALJ Exhibit 1, p. 14, Conclusion of Law 5.

⁴¹ ALJ Exhibit 1, p. 25, Ordering Para. 2, 4.

⁴² West Penn Exhibit 2.

West Penn filed Exceptions and on April 23, 2014, the Commission reversed the Initial Decision.⁴³ First, the Commission sustained the Initial Decision's determination that the Commission does not have jurisdiction to interpret and rule upon the scope and size of an easement.⁴⁴ Next, The Commission analyzed the evidence produced by the Complainant and determined that the Complainant had not met her burden of proof that West Penn had provided unreasonable service in its vegetation management practices.⁴⁵ Specifically, the Commission held that "[t]he record in this proceeding provides substantial record evidence in which West Penn demonstrated that its actions were consistent with both keeping to the terms of the right-of-way agreement and following its TVM Program."⁴⁶ The Commission detailed its findings with specific references to the record where West Penn provided evidence establishing the basis and reasonableness of its vegetation maintenance program.⁴⁷

The Commission sent a copy of the opinion and order reversing ALJ Dunderdale's Initial Decision to the Complainant. The Complainant received a copy of the Commission's April 23, 2014 opinion and order on April 25, 2014 at 11:25 a.m.⁴⁸ The Complainant did not file a petition for reconsideration under 52 Pa. Code § 5.572, nor did she file an appeal from the Commission's final order to the Commonwealth Court. Therefore, the April 23, 2014 opinion and order became a final Commission action pursuant to 52 Pa. Code § 5.536(a) for *res judicata* purposes.

2. The 2015 Complaint

On May 22, 2015, the Complainant filed the 2015 Complaint. In it, the Complainant averred as follows:

⁴³ ALJ Exhibit 2.

⁴⁴ ALJ Exhibit 2, pp. 9-10.

⁴⁵ ALJ Exhibit 2, p. 12.

⁴⁶ ALJ Exhibit 2, p. 13.

⁴⁷ ALJ Exhibit 2, pp. 13-15.

⁴⁸ West Penn Exhibit 9, Item B.

- “I would request relief from West Penn Power/First Energy (WPP) strong arm tactics to cut my ornamental trees per WPP own sky to ground vegetation management program;”⁴⁹
- “WPP letter from Attorney Flannery letter of May 12, 2015 says they will cut my privacy fence tree per the FERC guidelines and WPP’s approved Vegetation Management program;”⁵⁰
- “I have spent thousands of dollars to grow and prune these trees as my personal privacy fence that was provided for in my 1968 Right of Way agreement and now WPP develops a Vegetation Program 45 plus years latter [sic] and hides behind “SAFETY & RELIABILITY” to do sky to ground cutting;”⁵¹
- “WPP published programs now decides what trees are acceptable and meet their Safety and Reliability standards;”⁵²
- “WPP was given pictures over two years ago and has done nothing to provide any safety or reliability for its workers and the power transmission over said line;”⁵³
- “...I do not agree that WPP can implement a sky to ground vegetation program that does not affect either the safety or reliability of said 138 KVW line;”⁵⁴ and
- “Recent review by WPP noted that the 25 foot distance is NOW not the issue but the type of trees they are. If WPP performs their suggested maintenance service program and we maintain the safety distance WPP wants, THERE is NO SAFETY OR RELIABILITY issues.”⁵⁵

At hearing, the Complainant and her witness again challenged West Penn’s vegetation management program:

- Marlene Broman provided testimony challenging the interpretation, dimensions and scope of the right-of-way;⁵⁶
- Marlene Broman provided testimony regarding the events that gave rise to the 2013 Complaint;⁵⁷

⁴⁹ 2015 Complaint, Docket No. C-2015-2485454, Section 5.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ N.T. 16:25; 17:1-9; 46-47; 52:16-25; 53:1-7; 54:1-12; 64:1-17; 68:15-20.

⁵⁷ N.T. 26-27; 29; 33; 34; 45:10-25; 64:1-17; 66:4-19.

- Marlene Broman provided testimony alleging West Penn engaged in or planned to engage in ground-to-sky cutting;⁵⁸
- Marlene Broman provided testimony challenging the validity of West Penn's vegetation maintenance program;⁵⁹
- William Broman, Jr. provided testimony challenging the interpretation, dimensions and scope of the right-of-way;⁶⁰
- William Broman, Jr. provided testimony regarding the events that gave rise to the 2013 Complaint;⁶¹
- William Broman, Jr. provided testimony alleging West Penn engaged in or planned to engage in ground-to-sky cutting;⁶²
- William Broman, Jr. provided testimony challenging the validity of West Penn's vegetation maintenance program;⁶³

3. Analysis

For the doctrine of *res judicata* to prevail four conditions must be met:

- (1) Identity of issues;
- (2) Identity of causes of action;
- (3) Identity of persons and parties to the action; and
- (4) Identity of the quality and capacity of the parties suing or sued.

Day v. Volkswagenwerk Aktiengesellschaft, 474 A.2d 1313, 1316-17 (Pa. Super. 1983).

Applied here, both the 2013 Complaint and the 2015 Complaint dispute West Penn's vegetation maintenance program as it applies to the Right-of-Way that crosses the Complainant's property located at 4136 Patterson Road, Butler, Pennsylvania 16002, and both complaints request relief from the Commission directing West Penn not to remove certain vegetation. The cause of action in both complaints challenges the validity of West Penn's vegetation

⁵⁸ N.T. 62:1-9; 64:8-9; 88:9-10.

⁵⁹ N.T. 33:9-12; 34:1-16; 39; 44:8-25; 49:9-21; 56:5-10; 63:2-13; 64:18-25; 65:1-6.

⁶⁰ N.T. 113:14-19; 122:12-16.

⁶¹ N.T. 125.

⁶² N.T. 112:21-23; 120:6; 121:7, 13-15; 158:22-23.

⁶³ N.T. 105:3-5; 112:23-25; 113:1-5.

management program and whether West Penn provided reasonable service when executing that plan. Each complaint involves the same Complainant, Marlene Broman, and the same Respondent, West Penn Power Company, each acting in the exact same capacity as they did in the 2013 Complaint with respect to electric service at the same location, 4136 Patterson Road, Butler, Pennsylvania 16002. Thus, all the elements of *res judicata* are met. *Day*, 474 A.2d at 1316-17.

The doctrine of *res judicata* applies here to bar the claims raised in the 2015 Complaint that were fully litigated or should have been raised in the 2013 Complaint proceedings.⁶⁴ The Commission entered a final order at *Marlene Broman v. West Penn Power Company*, Docket No. C-2013-2356237, reversing ALJ Dunderdale’s Initial Decision and dismissing the 2013 Complaint. Therefore, the matter is closed and has not been reopened or reversed on appeal. The 2015 Complaint was filed to prevent West Penn from removing the same trees that West Penn wanted to remove back in 2012. Also, under Code Section 316, the Complainant’s reformulations of prior claims (for example, calling the same trees a “snow fence” in the 2013 Complaint proceedings and then referring to them as “ornamental” or “decorative” trees in the 2015 Complaint proceeding; re-litigating the width of the Right-of-Way and the validity of West Penn’s vegetation management program; claims regarding FERC’s jurisdiction over utility vegetation maintenance) fail as collateral attacks on the Commission’s final determinations on these issues.

⁶⁴ Additionally, the elements required to establish issue preclusion are also satisfied here: the same issues raised in the 2015 Complaint were actually litigated and decided in the 2013 Complaint proceeding where the Commission ruled against the Complainant, and the determination of those issues was essential to the final judgment dismissing the 2013 Complaint. See *Albert Buoncrisiano v. Philadelphia Gas Works*, Docket No. C-2015-2466853 pp. 5-6 (Initial Decision issued March 9, 2016; Final Order entered April 29, 2016).

The ALJ provided the Complainant with many opportunities to explain how the 2015 Complaint is different from the 2013 Complaint.⁶⁵ However, the record in this case establishes that the gravamen of the 2015 Complaint is the same as the 2013 Complaint. For these reasons, West Penn respectfully requests that the Commission dismiss the 2015 Complaint because the Complainant has already litigated challenges to the removal of incompatible vegetation and the reasonableness of West Penn's vegetation management plans to a final decision in the 2013 Complaint proceeding.

B. The Complainant failed to meet her burden of proof.

As the party seeking a rule or order from this Commission in this case, i.e., a finding that West Penn had failed to provide reliable electric service to the Service Location, the Complainant has the burden of proof in this matter.⁶⁶ As explained above, the Complainant's case-in-chief consisted mainly of allegations and evidence related to events giving rise to the 2013 Complaint, and those claims are barred under the doctrine of *res judicata*. Review of the record indicates that the Complainant and her witness, William Broman Jr., appear to have articulated two claims that are distinct from the earlier 2013 Complaint: (i) over the last two years, West Penn did not remove vegetation growing on the left side of one tower; and (ii) West Penn provided a brochure to the Complainant. The Complainant supported these claims with testimonial evidence⁶⁷ and photographs of her property.⁶⁸

⁶⁵ There can be no question that the ALJ afforded the *pro se* Complainant every possible opportunity to present her case, and to present issues that would not be precluded by the Commission's final order regarding the 2013 Complaint proceedings. The ALJ afforded the Complainant almost 5 hours to delivery her case, and permitted the Complainant to ask additional questions or adduce testimony from West Penn witnesses. *See, e.g.*, N.T. 30:19-25; 31:1-4; 36:22-25; 37:1-9, 15-20; N.T. 38:11-13; 59:5-16; 60:19-25; 61:1-2, 16-20; 62:17-18; 67:15-19; 69:17-21, 24-25; 70:1-3; 95:21-25; 96:1-17; 99:25; 100:1-15; 107:14-18; 109:13-15; 210:12-15. West Penn delivered its case in roughly one hour and 45 minutes, and referred to only one aspect of the 2013 Complaint proceedings—the work plan that is still outstanding from that action—to establish that the same issues are present in both actions.

⁶⁶ *See supra*, p. 10-12.

⁶⁷ N.T. 19, 20, 29, 32, 36, 37, 46, 47, 51, 52.

⁶⁸ Complainant's Exhibits C-H.

Both the Code and the Commission's regulations require only that a public utility provide service that is reasonably continuous and without unreasonable interruptions.⁶⁹ In *Re Metropolitan Edison Co.*,⁷⁰ the Commission adopted the Recommended Decision of ALJ John H. Corbett, Jr. as follows:

The Code only requires a public utility to furnish reasonable service. 66 Pa. Code § 1501. It does not mandate perfect service nor must a public utility provide the best possible service. Most certainly, a public utility is not a guarantor of either perfect service or the best possible service.

The same principle was affirmed in *Emerald Art Glass v. Duquesne Light Co.*: “[s]ection 1501 of the Code does not translate into a duty to provide ‘perfect’ service.”⁷¹

Regarding the Complainant's first argument, she testified that in the last two years, West Penn did not come to her property and remove brush and incompatible vegetation growing on the left side of the tower. The Complainant failed to address the fact that over that exact time period, resolution of the 2013 Complaint was still pending. The Complainant's argument appears to attack West Penn for not doing the very same conduct the Complainant cites as the source of both the 2013 Complaint and the 2015 Complaint. This is not unreasonable service; in fact, it is completely reasonable for West Penn to refrain from engaging in vegetation maintenance on the Complainant's property pending the outcome of a dispute on that *precise* issue. Moreover, the work plan specifically stated that West Penn would remove the vegetation the Complainant testified she wanted to have removed.⁷² Thus, the Complainant did not establish a *prima facie* case of unreasonable service with her claims regarding removal of the vegetation growing along the fence row on the left side of the tower.

⁶⁹ See *supra*, p. 9-10.

⁷⁰ 80 Pa. PUC 662, 672 (1993).

⁷¹ Docket No. C-00015494 (Order entered June 14, 2002), at 7 (“Emerald Art Glass”); see also *Analytical Laboratory Services, Inc. v. Metropolitan Edison Co.*, Docket No. C-20066608 (Order entered December 21, 2007).

⁷² N.T. 229:12-15; West Penn Exhibit 2.

The Complainant's second argument that a West Penn representative gave her a brochure in 2015 is equally unavailing. The Complainant and William Broman, Jr. testified at hearing that a West Penn brochure gave rise to new claims.⁷³ The Complainant did not produce the brochure; however, West Penn provided a more recent copy of the document described by the Complainant.⁷⁴ That brochure is an informational piece that West Penn provides to customers regarding the West Penn vegetation maintenance program, which is the same program that the Complainant challenged in her 2013 Complaint. The brochure does not alter right-of-way rights, nor does it constitute a change from the vegetation maintenance program that the Complainant challenged in 2013. In sum, the existence of the brochure (and West Penn's act of providing it to the Complainant) does not establish a *prima facie* case of unreasonable service.

Therefore, the Complainant has failed to carry her burden of establishing a *prima facie* case in support of her claims.

C. The Company successfully rebutted the Complainant's case with substantial evidence.

Even assuming *arguendo* that the Complainant established a *prima facie* case against the Company (which she did not do), the Company rebutted the Complainant's case with substantial and compelling testimony and exhibits at hearing.

First, the Company presented the testimony of Harry Flannery, Senior Corporate Counsel for West Penn.⁷⁵ Mr. Flannery presented testimony and exhibits establishing the following critical facts:

- West Penn became aware that the Complainant felt that she had won her case after the Commission dismissed the 2013 Complaint, and Mr. Flannery contacted the Complainant to explain the Commission's April 23, 2014 opinion and order;⁷⁶

⁷³ N.T. 39:16-17; 41:17-23; 122:12-16.

⁷⁴ N.T. 184:14-18. During hearing, West Penn electronically transmitted the current version of the brochure to the ALJ and the Complainant. This document was admitted as Complainant's Exhibit J.

⁷⁵ N.T. 120:13-25, 121-122, West Penn Exhibits 1, 2.

- Mr. Flannery provided copies of the Commission’s April 23, 2014 opinion and order to the Complainant;⁷⁷
- The vegetation maintenance that West Penn needs to do now is simply the work that the Commission authorized when it dismissed the 2013 Complaint;⁷⁸ and
- West Penn is not prescribing removal of any trees other than those initially placed at issue by the Complainant in the 2013 Complaint.⁷⁹

Mr. Flannery sponsored copies of four letters he sent to the Complainant regarding the work West Penn needed to complete as a result of the Commission’s dismissal of the 2013 Complaint.⁸⁰ Mr. Flannery also testified that federal mandates require all electric utilities have a vegetation management plan in place, and West Penn has such a plan that it implements regarding transmission lines that are 69 kilovolts (“kV”) and above.⁸¹

The Company also presented the testimony of Nick Weston, a FirstEnergy Transmission Forestry Specialist,⁸² who is an International Society of Arboriculture-certified arborist.⁸³ Mr. Weston provided testimony establishing the following facts:

- the vegetation that West Penn discussed with the Complainant in 2015 is the same vegetation that the Complainant placed at issue in the 2013 Complaint;⁸⁴
- the work plan to remove this vegetation was developed in 2012⁸⁵ and that the removal of same was put on hold pending the resolution of the 2013 Complaint;⁸⁶
- the vegetation West Penn needs to remove is incompatible with West Penn’s vegetation maintenance program because the plants have the potential to grow tall enough to interfere with the conductors;⁸⁷

⁷⁶ N.T. 205:14-25; 206:1-20; West Penn Exhibits 1, 7, 8, 9.

⁷⁷ Id.

⁷⁸ N.T. 208:17-23.

⁷⁹ N.T. 208:24-25; 209:1-3.

⁸⁰ West Penn Exhibits 1, 7, 8, 9.

⁸¹ N.T. 215:25; 216:1-8.

⁸² N.T. 222:5-12.

⁸³ N.T. 223:8-16.

⁸⁴ N.T. 225:10-24; 231:7-9.

⁸⁵ N.T. 225:22-24.

⁸⁶ N.T. 228:9-17; 241:20-25.

⁸⁷ N.T. 230:4-11.

- the work plan developed in 2012 and 2013 included removal of the plants located on the left side of the tower that the Complainant is now alleging that West Penn failed to remove;⁸⁸ and
- Mr. Weston contacted the Complainant to schedule a time when West Penn could finish the vegetation maintenance, and that the Complainant again refused to permit removal of two oak trees, four cedar trees, and five blue spruce trees located in the Right-of-Way.⁸⁹

Mr. Weston also clarified that the brochure given to the Complainant was an informational document “...that was created to inform property owners of [West Penn’s] program as a whole.”⁹⁰

West Penn’s witnesses provided substantial evidence that the reason the vegetation growing on the left side of the tower was not removed was that the 2013 Complaint was still pending. That West Penn would refrain from performing vegetation maintenance pending the outcome of a dispute related to vegetation maintenance is completely reasonable, and moreover, West Penn’s evidence establishes that the vegetation will be removed. In addition, West Penn’s witness explained the purpose of the informational brochure was to inform customers of the vegetation maintenance program as a whole. The existence of the brochure offered as Complainant’s Exhibit J does not—and cannot—create a cause of action for the Complainant to prosecute issues and claims that have already been decided by the Commission.

Therefore, the Complaint should be dismissed because the Complainant failed to carry her burden of proof establishing a *prima facie* case that the Company committed any violation. Furthermore, to the degree that the Complainant could be viewed to have established a *prima facie* case against the Company (which the Complainant failed to establish), the Company

⁸⁸ N.T. 229:12-15. Mr. Weston testified that removal of the plants growing along the fence row on the left side of the tower was being done “at the request of [the Complainant].” See N.T. 229:15.

⁸⁹ N.T. 231:10-25; 232:1-5.

⁹⁰ N.T. 280:2-4.

presented substantial expert testimony and evidence sufficient to rebut the Complainant's *prima facie* case. The Complainant never rebutted the Company's evidence at any time.⁹¹

VI. PROPOSED CONCLUSIONS OF LAW

1. Technical *res judicata* or claim preclusion applies only when all four conditions exist: (1) identity of the subject matter; (2) identity of the cause of action; (3) identity of the parties; and (4) identity of the quality or capacity (legal status) of the parties suing or being sued. *Albert Buoncristiano v. Philadelphia Gas Works*, Docket No. C-2015-2466853 pp. 5-6 (Initial Decision issued March 9, 2016; Final Order entered April 29, 2016).

2. Issue preclusion or collateral estoppel applies when the following factors are met: (1) the issue(s) decided by a prior final judgment is identical with the one(s) presented in the later action; (2) the issue(s) was actually litigated; (3) the party against whom issue preclusion is asserted was a party or in privity with a party to the prior litigation; and (4) the determination of the issue(s) was essential to the prior final judgment. *Albert Buoncristiano v. Philadelphia Gas Works*, Docket No. C-2015-2466853 pp. 5-6 (Initial Decision issued March 9, 2016; Final Order entered April 29, 2016).

3. In addition to the doctrine of *res judicata*, Code Section 316 bars further collateral attacks upon Commission orders. 66 Pa.C.S. § 316. Unless the Commission rescinds a decision it has issued, its determinations are conclusive for all parties affected. *Albert Buoncristiano v. Philadelphia Gas Works*, Docket No. C-2015-2466853, Conclusion of Law 8, (Initial Decision issued March 9, 2016; Final Order entered April 29, 2016) (citing 66 Pa.C.S. § 316).

⁹¹ To the degree that cross-examination of Mr. Weston reached issues of the application and reasonableness of West Penn's entire transmission vegetation maintenance program and its role in developing the 2012 plan for the Complainant's property, those issues were conclusively decided by the Commission's final order entered April 23, 2015, and the Commission has not rescinded that order, nor has it been appealed. As such, those determinations remain binding upon the Complainant and West Penn. See 66 Pa.C.S. § 316. The Complainant offered no evidence giving the Commission any reason to alter its prior determination.

4. The Complainant carries the burden of showing that the utility is responsible or accountable for the problem described in the Complaint in order to prevail. *Patterson v. Bell Telephone Company of Pennsylvania*, Docket No. F-8966524 (Final Order Entered February 8, 1990), *Feinstein v. Philadelphia Suburban Water Company*, Docket No. 20822 (Final Order Entered October 6, 1976).

5. The burden of proof must be carried by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. P.U.C.*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 529 A.2d 654, 602 A.2d 863 (1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

6. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. P.U.C.*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. P.U.C.*, 623 A.2d 6 (Pa. Cmwlth. 1993), 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. P.U.C.*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

7. The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701; *West Penn Power Co. v. Pa. P.U.C.*, 478 A.2d 947, 949 (Pa. Cmwlth. 1984).

8. The "burden of proof" is composed of two distinct burdens: the burden of production and the burden of persuasion. *Hurley v. Hurley*, 754 A.2d 1283 (Pa. Super. 2000).

9. The burden of persuasion determines which party must produce sufficient evidence to meet the applicable standard of proof. *Hurley v. Hurley*, 754 A.2d 1283 (Pa. Super. 2000).

10. The burden of persuasion never leaves the party on whom it is originally cast, but the burden of production may shift during the course of the proceedings.” *Riedel v. County of Allegheny*, 633 A.2d 1325, 1328 n. 11 (Pa. Cmwlth. 1993).

11. The Complainant’s claims are barred by the doctrine of *res judicata*.

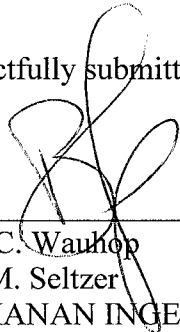
12. The Complainant failed to meet her burden of proving she is entitled to relief or that the Company provided unreasonable service. 66 Pa.C.S. § 332(a).

13. The Company has provided reasonable, safe, efficient and adequate service to the Complainant. 66 Pa.C.S. § 1501.

VII. CONCLUSION

Based upon the foregoing, it is respectfully requested that the Complaint of Marlene Broman be dismissed with prejudice.

Respectfully submitted,



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Dated: June 17, 2016

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

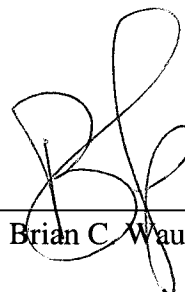
I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

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 17th day of June, 2016.



Brian C. Wauhop, Esq.