

January 31, 2018

VIA E-FILING

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utilities Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

RE: Eugene J. Bazan v. West Penn Power Company Docket No. C-2017-2640338,  
Reply to West Penn Power's **Preliminary Objections**

Dear Secretary Chiavetta:

I received on January 22, 2018 an envelope from First Energy containing two documents: West Penn Power's Preliminary Objections, and Answer and New Matter of West Penn Power (WPP). WPP's 21 pages of repetitious legal verbiage boils down to the following (item 4 in the Preliminary Objections):

*that "even if all of the facts in the Formal Complaint are accepted as true, they do not constitute a violation of any law which the Commission has jurisdiction to administer...."*

In short, a corporation that plays a major role in shaping the laws under which it operates is not and cannot be held liable for breaking them, even if the laws fly in the face of the truth.

In making this assertion I do not think I am taking more liberties with reality than First Energy has. I am amazed that First Energy, a public utility, so ill serves the public. As a collective group, electric utilities have maliciously tampered with the Federal and state legislation funding smart meter programs, first by corrupting and obscuring the opt-in provision, next opposing an opt-out provision, and then making installation mandatory. It

is now running amok installing meters which, as we have stated in our Formal Complaint, are:

- a. poorly designed and prone to malfunction and fires
- b. not UL approved
- c. hazardous to health via emitting dirty electricity / non-ionizing radiation
- d. expensive to operate and replace
- e. invasive of our privacy and vulnerable to hacking, and
- f. inaccurate in recording our power consumption.

Mr. William Bathgate has addressed points a and b above in his expert evaluation of the hazardous design of the Itron meters, the type WPP wants to install on our home.

(1) As Exhibit 1 (p. 20 of Mr. Bathgate's report) shows, these devices can malfunction due to power surges from the grid or from lightning. He explicitly identifies the components that are subject to degradation, melting or explosion.

We experience frequent power glitches, probably several a month, in our neighborhood. Not infrequently a transformer explodes, triggering another glitch or outage. We keep surge protectors on sensitive devices, but are frequently resetting clocks and turning off other devices that default to an "on" state following a power loss. Therefore my concern that power surges accompanying such frequent glitches could adversely impact and result in failure and fire hazard in a smart meter installed on my home is valid.

Furthermore, it is my understanding from other incidents and discussions with power company employees, that the responsibility for damage done on the homeowner's side of the weatherhead is the homeowner's responsibility. That would include damage by a

smart meter, even though it is the utility company's device that fails and catches fire. This constitutes a significant hazard to life and property. It is akin to allowing an external agent to place a small bomb on the side of one's house and if it happens to detonate and do damage to the house, then the homeowner has to shoulder the cost of the damage and there is no liability or accountability to the agent who placed the bomb there. This agent is then authorized to replace the bomb with a new one! Exhibit 2 cites a case from January 2017 of a homeowner who had to face this issue. The EMF Safety Network has systematically documented smart meter fires in the U.S. and Canada here: <http://emfsafetynetwork.org/smart-meters/smart-meter-fires-and-explosions/>. In the case of Anthony Romeo vs. Pennsylvania PUC (No. 498 C.D. 2016, decided Feb. 8, 2017), the court concluded that

*“Just because he (Romeo) cannot personally testify as to the health and safety effects does not mean that his complaint is legally insufficient. He could make out his claim through the testimony of others as well as other evidence that goes to that issue. Because his complaint was not legally insufficient, the Commission erred in dismissing the complaint.”*

The court remanded the matter to the PUC to consider Romeo's position further. In December Romeo and PECO reached a settlement. Apparently the occasion to make Romeo's case before the PUC, that smart meters can erupt in flames and cause house fires, is still open.

Sage Associates, Environmental Consultants, has identified a further mechanism that smart meters can cause electrical fires – by loading up house wiring with high frequency harmonics that ride along the electrical wiring in bursts. Smart meters “may be contributing to electrical fires where there is a weak spot (older wiring, undersized

neutrals for the electrical load, poor grounding, use of aluminum conductors, etc.). (2)  
Our 1938 house is full of older wiring.

Is it reasonable for us to first wait for the meter to be installed and suffer real damage and then be held liable for it rather than to dispute its installation at the outset? On these grounds, item 21 of the Preliminary Objections stating that we “have made no specific averments regarding any effects experienced which began *after* a smart meter was installed,” is, on the face of it, unreasonable as it asks for evidence *before* the fact of installation, which WPP must know is the case at hand here. What is easily available on the internet and other media, are many examples of the hazards and damage caused by smart meters. Can WPP adduce any case where it bore the liability of such damage? Any sane person learns to anticipate risks to life, limb and property, and moves to protect himself from the hazards posed by these risks. In putting item 21 to print, WPP blithely turns aside the hard-wired defense mechanism of sentient evolution.

ACTION 1. What the PUC can do is eliminate these hazards by directing WPP to adhere to Act 129 §2807 (f) (2) (i) and limiting the furnishing of smart meter technology by electric distribution companies (EDC's) “Upon request from a customer that agrees to pay the cost of the smart meter at the time of the request.” Absent this adherence opens WPP to liability for damages done to life and property.

ACTION 2. What the PUC can do is assign a staff member to comb the internet and other media, and to compile a list of examples of fires and explosions caused by or (associated with if you prefer that language) smart meters. You can start by going through your own cases brought before the PUC by Pennsylvania residents. Doubtless,

you will find references to such fires (e.g., Antonio Romeo <http://www.puc.state.pa.us/pcdocs/1538418.pdf>).

Similar arguments can be made for item c in our list above, regarding effects on health. Are we required first to suffer from ill effects before we have grounds for refusing such devices? The impact of electrosmog, especially from smart meters, has been documented to adversely affect birds and pollinators. Exhibit 3 shows the first two pages of ten from a report by Dr. Magda Havas that summarize “Electrosmog Effects on Biota.” See also Poki Stewart Namkung, M.D., M.P.H. and his 2011 report to the Santa Cruz County Board of Supervisors (<http://emfsafetynetwork.org/public-health-official-report-on-smart-meters/>).

In this era of protecting our environment from human assault, we must extend our concern to the world around us that supports and sustains us. Without functioning ecosystems we humans are toast. As organic gardeners my wife and I have endeavored to create a healthy and complex ecosystem in our backyard which includes insects and birds. Damage to this ecosystem which extends out to our neighborhood is of obvious concern. Already I was puzzled why I saw few birds this winter at our bird feeder outside of my office window where I normally enjoy watching them. I have become aware that smart meters have already been installed on all the neighboring houses, and I am already wondering if the resulting electrosmog is acting as a deterrent to the birds feeding as they normally would.

ACTION 3. What the PUC can do is eliminate this hazard to sentient life, already nascent, by directing WPP to replace the smart meters on the houses immediately adjacent and across from ours. It is shocking that with all the conversation, media

coverage and research around bird and insect species decline, coupled with the language in Act 129 around energy efficiency and conservation, that actual implementation of this language gives smart meters a pass. The PUC regulates utilities. Declare that smart meters, as cigarettes, are hazardous *ipso facto*. Assign liability for these hazards to WPP.

At a more mundane level WPP has violated Commercial Law. My wife and I contracted with WPP to supply electricity to our house through our present analog meter which does not pose any of the hazards I have cited above. WPP has altered the contract without consulting with us, and without our agreement. Further, WPP together with its other EDCs have persistently distorted Act 129 against the public interest. If it continues with its intent to replace our analog meter with their smart meter, it is in violation of its contract and presents unacceptable hazards to our lives, our property, and its various life forms.

What the PUC can do is simply direct WPP to follow Act 129 § 2807(f) (2) “Electric distribution companies shall furnish smart meter technology as follows: (i) Upon request from a customer that agrees to pay the cost of the smart meter at the time of the request.”

My wife and I are not requesting a smart meter and do not give our consent to pay for it. The claim by WPP that there is no opt-out provision in Act 129 flies in the face of simple English logic. An opt-out provision is not necessary when the Act itself requires an opt-in as the only listed way for a customer to get a smart meter.

In a further mangling of logic, PECO, in an earlier case against Antonio Romeo (Public Meeting 2-11-16), went on to claim, “The absence of an opt out was further


underscored, contended PECO, by recent legislation introduced in the Pennsylvania General Assembly that sought to amend Act 129 to provide for an opt out provision but which had not yet been acted on.” PECO’s claim is ludicrous. The PA Assembly need not provide explicitly for an opt-out provision when the Act itself requires opt-in as the only listed way for a customer to get a smart meter. The Assembly’s efforts to do so were simply to compensate for the way the EDC’s have successfully distorted the public perception of Act 129 § 2807(f) (2).

The intent of the law is clear from the comments of Senators Tomlinson, Boscola and Fumo as recorded in the Senate Journal pages 2626-2631. (3) For example, Sen. Boscola stated, “We also made sure that smart meters would not be mandated for every single ratepayer” and Sen. Fumo: “In addition, we did not mandate smart meters, we made them optional.”

You must be aware of the mounting consumer resistance to smart meters, not only in Pennsylvania but throughout the country and other parts of the world. Remedies are on the way as various states and municipalities reconsider smart meters. (4)

To reiterate, this reply to the Preliminary Objections clarifies that I am not requesting a smart meter and do not give my consent to pay for it, in compliance with Act 129 § 2807(f) (2). As our Public Utility Commission, we believe you are in a position to undertake this enforcement, as you are mandated to enforce the law as it is written.

Sincerely,

  
Eugene J. Bazan

Attached: Exhibit 1, Exhibit 2, Exhibit 3, Exhibit 4

Endnotes:

(1) Bathgate report: <http://www.stopsmartmetersbc.com/wp-content/uploads/2017/02/Evaluation-of-the-ITRON-Open-Way-AMI-Meter-PowerPoint-by-William-S.-Bathgate-Jan.12-2017-.pdf>

(2) Sage Associates report: <http://emfsafetynetwork.org/wp-content/uploads/2011/06/Smart-Meters-Risk-for-fire.pdf>

(3) Senate Journal Pages 2626-2631 herein:  
<http://www.legis.state.pa.us/WU01/LI/SJ/2008/0/Sj20081008.pdf#page=8>

(4) The Oklahoma legislature will be considering Bill 2872 in February. (Exhibit 4) (<https://legiscan.com/OK/bill/HB2872/2018>). The New York State Senate is already considering legislation to allow no penalty opt out (<http://blog.tenthamentendmentcenter.com/2018/01/new-york-bill-would-allow-customers-to-opt-out-of-smart-meters-undermine-federal-program-3/>). Jefferson County, Washington has put the utility's smart meter plan on hold (Nov. 1, 2017): [http://www.ptleader.com/news/pud-backs-off-on-smart-meters/article\\_9947ab94-be87-11e7-acdb-d78e54ea7694.html](http://www.ptleader.com/news/pud-backs-off-on-smart-meters/article_9947ab94-be87-11e7-acdb-d78e54ea7694.html) and recent meeting (Jan. 16, 2018): [http://www.ptleader.com/news/pud-smart-meter-opt-out-decision-on-hold/article\\_ca2aa1a0-0093-11e8-8712-9b33d4872d9d.html#tncms-source=article-nav-next](http://www.ptleader.com/news/pud-smart-meter-opt-out-decision-on-hold/article_ca2aa1a0-0093-11e8-8712-9b33d4872d9d.html#tncms-source=article-nav-next)