

Lauren M. Lepkoski, Esq.
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September 6, 2018

VIA ELECTRONIC FILING

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

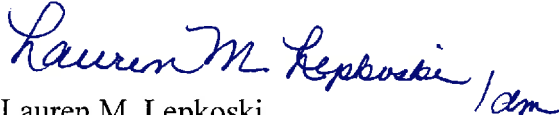
Re: Lynn Force v. West Penn Power Company
Docket No. C-2017-2634987

Dear Secretary Chiavetta:

Enclosed please find the Motion to Compel of West Penn Power Company with regard to the above-captioned matter. This document has been served on the Complainant as shown in the Certificate of Service.

Please contact me if you have any questions regarding this matter.

Very truly yours,


Lauren M. Lepkoski

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Enclosures

c: As Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

LYNN FORCE

v.

WEST PENN POWER COMPANY

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Docket No. C-2017-2634987

NOTICE TO PLEAD

TO: Lynn Force

Pursuant to 52 Pa. Code § 5.102(b), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Motion to Compel of West Penn Power Company within **five (5) days** from the service of the Notice, the facts set forth by West Penn Power Company in the Motion may be deemed to be true, thereby requirement no other proof. All pleading, such as a Reply to Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy service to counsel for West Penn Power Company, and where applicable, the Administrative Law Judge presiding over the case.

File with:

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

With a copy to:

Administrative Law Judge Jeffrey A. Watson
Pennsylvania Public Utility Commission
Piatt Place, Suite 220
301 5th Avenue
Pittsburgh, PA 15222

Lauren M. Lepkoski
Tori L. Giesler
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, Pennsylvania 19612-6001

Date: September 6, 2018


Lauren M. Lepkoski, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**MOTION OF WEST PENN POWER COMPANY TO COMPEL RESPONSES TO
INTERROGATORIES AND DOCUMENT REQUESTS**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

West Penn Power Company (“Penn Power” or the “Company”) by and through its attorneys, Lauren M. Lepkoski and Tori L. Giesler, and pursuant to 52 Pa. Code §§ 5.371-5.372, hereby files this Motion to compel Lynn Force (“Complainant”) to provide full and complete responses to interrogatories and document requests issued by the Company on August 20, 2018.

In support thereof, the Company avers as follows:

I. BACKGROUND

1. On November 20, 2017, the Complainant filed a Formal Complaint with the Pennsylvania Public Utility Commission (“Commission”) regarding 1387 University Drive, State College, Pennsylvania 16801 (“Service Location”) under Account No. 100126419546 (“Account”) which was electronically served on the Company on November 22, 2017.

2. On December 12, 2017, the Company filed its Answer and New Matter denying the material allegations. On the same day, the Company also filed Preliminary Objections to the Formal Complaint.

3. On December 23, 2017, the Complainant filed a response to the Preliminary Objections as well as a reply to the Company’s Answer and New Matter.

4. On January 26, 2018, a Motion Judge Assignment Notice was issued where the parties were informed that Administrative Law Judge (“ALJ”) Jeffrey A. Watson was assigned to rule on the Company’s Preliminary Objections.

5. On August 8, 2018, ALJ Watson issued an Order, which denied the Company’s Preliminary Objections and ordered that the docket proceed to a hearing.

6. On August 9, 2018, ALJ Watson issued an Interim Order and an Initial Telephonic Prehearing Conference Notice scheduling a prehearing conference for August 24, 2018.

7. On August 20, 2018, in accordance with 52 Pa. Code § 5.341, the Company forwarded to the Complainant interrogatories and document requests (“Discovery Requests”) via first class mail. In its Discovery Requests, the Company sought information and documents related to the Complainant’s allegations regarding the Company’s smart meters.

8. A full copy of the Company’s Discovery Requests is attached as Exhibit A.

9. On August 24, 2018, ALJ Watson convened the prehearing conference with the parties wherein a settlement was reached between the parties.

10. On August 27, 2018, the Company filed a Certificate of Satisfaction.

11. On August 30, 2018, the Company received a letter dated August 27, 2018 from the Complainant with objections to the Company’s Discovery Requests. A full copy of the Complainant’s Objections is attached as Exhibit B.

12. On September 1, 2018, the Complainant filed an objection to the Certificate of Satisfaction.

II. MOTION TO COMPEL

15. The Complainant filed objections to the Company's Discovery Requests (2 c-h and 3) claiming the requested information is not a part of her complaint.

16. Discoverable matter under the Commission's regulations is matter that is relevant and unprivileged. 66 Pa.C.S. § 333(d). The standard for permissible discovery is set forth in the Commission's regulations at 52 Pa. Code § 5.321(c) as follows:

§ 5.321. Scope.

(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.

17. There are limitations on discovery. Those limitations are set forth in the Commission's regulations at 52 Pa. Code § 5.361(a) - (c) as follows:

§ 5.361. Limitation of scope of discovery and deposition.

(a) Discovery or deposition is not permitted which:

(1) Is sought in bad faith.

(2) Would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent, a person or party.

(3) Relates to matter which is privileged.

(4) Would require the making of an unreasonable investigation by the deponent, a party or witness.

(b) In rate proceedings, discovery is not limited under subsection (a) solely because the discovery request requires the compilation of data or information which the answering party does not maintain in the format requested, in the normal course of business, or because the discovery request requires that the answering party make a special study or analysis, if the study or analysis cannot reasonably be conducted by the party making the request.

(c) If the information requested has been previously provided, the answering party shall specify the location of the information.

18. Discovery may be obtained regarding any matter relevant to the subject matter. Relevant evidence is evidence that tends to make an act at issue more or less probable. Moreover, evidence is relevant if it advances the inquiry in some degree and, thus, has probative value. Although the law does not furnish an absolute test of relevancy, the Pennsylvania Supreme Court follows a two-part analysis for determining relevance. In *Commonwealth v. Stewart*, 461 Pa. 274, 336 A.2d 282 (1975), the Court held that “[i]t must be determined first if the inference sought to be raised by the evidence bears upon a matter at issue in this case and, second, whether the evidence renders the desired inference more probable than it would be without the evidence. *Id.* at 284.

19. The information sought here by the Company is relatively simple and straightforward, and generic in nature regarding the Complainant’s concerns related to the installation of a smart meter. Moreover, the questions are directly relevant and material to the issues raised by the Complainant in both her Formal Complaint as well as responsive pleadings. Specifically, the Complainant has raised health concerns as a reason for which she should be permitted to avoid having to produce responses to the Company’s Discovery Requests. The Company is entitled to the requested information to enable it to fully investigate what information the Complainant relied on to make the specific and detailed allegations she did in her Formal Complaint and responsive pleading as well as what she intends to rely on to support her claims at the evidentiary hearings.

22. The Commission’s regulations at 52 Pa. Code § 5.371 address the consequences of a participant’s failure to comply with the Commission’s discovery regulations. Section 5.371 provides that:

- (a) The Commission or the presiding officer may, on motion, make an appropriate order if one of the following occurs:

- (1) A party fails to appear, answer, file sufficient answers, file objections, make a designation or otherwise respond to discovery requests, as required under this subchapter.

23. Further, 52 Pa. Code § 5.372 provides that the presiding officer may impose appropriate sanctions upon a party found to be found in violation of the obligations set forth in the Commission's regulations.


24. The Company requests that the Complainant be directed to provide full and complete responses to the Discovery Requests to be received by the undersigned counsel for the Company within five business days after entry of an Order Granting the Motion to Compel.

25. In the event the Complainant is directed by the Commission but fails to respond to the Company's Discovery Requests, the Company respectfully requests that the Complaint against the Company be dismissed in its entirety.

WHEREFORE, West Penn Power Company respectfully requests that the Commission issue an Order compelling the Complainant to fully and completely respond to the Discovery Requests such that the responses are received by counsel for the Company no later than five business days after entry of an Order on the Motion to Compel. Further, in the event the Complainant does not comply with the Order directed by the Commission and fails to respond to the Company's Discovery Requests, the Company respectfully requests that the Commission dismiss in its entirety the Formal Complaint of Lynn Force.

Respectfully submitted,

Dated: September 6, 2018


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Counsel for West Penn Power Company

**BEFORE THE
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Motion to Compel of West Penn Power Company upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by First Class Mail, postage prepaid, as follows:

Lynn Force
1387 University Drive
State College, PA 16801

Administrative Law Judge Jeffrey A. Watson
Pennsylvania Public Utility Commission
Piatt Place, Suite 220
301 5th Avenue
Pittsburgh, PA 15222

Dated: September 6, 2018


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