

Lauren M. Lepkoski, Esq.
(610) 921-6203
(330) 315-9263 (Fax)

November 9, 2018

VIA UPS OVERNIGHT DELIVERY

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
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Harrisburg, PA 17120

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PA PUBLIC UTILITY COMMISSION
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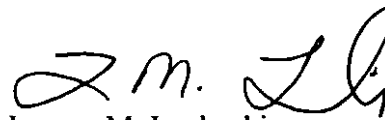
Re: Michael J. Wolfe v. West Penn Power Company
Docket No. C-2018-2646162

Dear Secretary Chiavetta:

Enclosed please find the Motion for Judgement on the Pleadings of West Penn Power Company with regard to the above-captioned matter. Please note the Motion contains a **CONFIDENTIAL** exhibit. 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

krak
Enclosures

c: As Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MICHAEL J. WOLFE

v.

WEST PENN POWER COMPANY

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Docket No. C-2018-2646162

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NOTICE TO PLEAD

TO: Michael J. Wolfe

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 for Judgment on the Pleadings of West Penn Power Company within **twenty (20) 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:

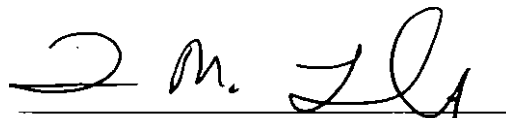
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

With a copy to:

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

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

Date: November 9, 2018



Lauren M. Lepkoski, Esquire

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

MICHAEL J. WOLFE

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v.

Docket No. C-2018-2646162

WEST PENN POWER COMPANY

MOTION OF WEST PENN POWER COMPANY FOR JUDGMENT ON THE
PLEADINGS

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

West Penn Power Company ("West Penn" or the "Company") by and through its attorneys, Lauren M. Lepkoski and Tori L. Giesler, and pursuant to 52 Pa. Code § 5.102 hereby files this Motion for Judgment on the Pleadings, seeking to dismiss the complaint of Michael J. Wolfe ("Complainant"). In support thereof, the Company avers as follows:

I. BACKGROUND

1. On or about February 5, 2018, the Complainant filed a Formal Complaint with the Pennsylvania Public Utility Commission ("Commission") regarding 2005 Burning Well Road, Wilcox Pennsylvania 15870 ("Service Location") under Account No. 100090418466 ("Account") which was electronically served on the Company on February 6, 2018. The Formal Complaint requested that a smart meter not be installed at the Service Location and specifically cited Complainant's alleged heart condition as a reason the smart meter should not be installed.

2. On February 26, 2018, the Company filed its Answer and New Matter denying the material allegations. On that same day, the Company also filed Preliminary Objections to the Formal Complaint.

3. On March 27, 2018, a Call-In Telephonic Hearing Notice was issued scheduling a hearing for May 15, 2018 before Administrative Law Judge (“ALJ”) Jeffrey A. Watson.

4. On March 30, 2018, a Cancellation Notice was issued which cancelled the telephonic hearing scheduled for May 15, 2018. On that same day, ALJ Watson was assigned as the Presiding Officer in the above-captioned proceeding and issued an Interim Order, which denied the Company’s Preliminary Objections and referred the complaint for mediation review.

5. On March 30, 2018, in accordance with 52 Pa. Code § 5.341, the Company sent 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. Any objections to the Discovery Requests were due on or before April 9, 2018 and responses to the Discovery Requests were due on or before April 19, 2018.

6. On April 17, 2018, an Interim Order Setting Resolution Conference was issued.

7. On June 22, 2018, as no objections or responses to the Discovery Requests had been provided by Complainant, the Company filed a Motion to Compel responses to its Discovery Requests in accordance with 52 Pa. Code §§ 5.371-5.372.

8. On October 1, 2018, ALJ Watson issued an Interim Order establishing an initial litigation schedule for this proceeding. The initial litigation schedule set a deadline of April 10, 2019 for any dispositive motions to be filed in this proceeding.

9. On or about October 29, 2018, Counsel for the Company was informed that Complainant has been deceased since April 2018 and that there is a new customer of record at the Service Location. A copy of the death certificate provided to the Company is attached hereto as **CONFIDENTIAL Exhibit A.**

II. ARGUMENT

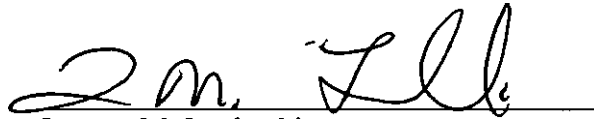
10. This Commission has previously held that causes of action abate upon the death of a Complainant, although it is possible that a matter may be revived by survivors. *See Boyd v. Metropolitan Edison Company*, C-2017-2629256, Initial Decision entered Oct. 17, 2018 (citing *Freeman v. Giacoma Costa Fu Andrea*, 282 F.Supp. 525 (E.D. Pa. 1968); *Johnson v. Peoples First Nat'l Bank & Trust Co.*, 394 Pa. 116, 145 A.2d 716 (1958); *Ruth Smiles v. PECO Energy Co.*, C-2013-2362241, Final Order entered Jan. 15, 2014; *Pearl Dickens v. PAWC*, C-2013-2367268, Final Order entered April 2, 2014). The Commission has also held that the death of a party divests the Commission of subject matter jurisdiction over claims brought by that party, absent a personal representative substituting for the deceased. *Kreider v. PECO Energy Co.*, Docket No. C-2015-2469655 (Opinion and Order entered May 23, 2017).

11. In this case, Complainant's death has divested the Commission of subject matter jurisdiction over the claims in the Formal Complaint. To date, there has been no attempt made by anyone to substitute themselves as a personal representative for Complainant – nor would any attempt to do so be appropriate given the personal reasons provided by Complainant in the Formal Complaint to support his requested relief. As there is no Complainant to continue onward with this proceeding, the Formal Complaint must be dismissed.

WHEREFORE, West Penn Power Company respectfully requests that the Commission dismiss in its entirety, with prejudice, the Formal Complaint of Michael J. Wolfe.

Respectfully submitted,

Dated: November 9, 2018

A handwritten signature in black ink, appearing to read "L. Lepkoski", written over a horizontal line.

Lauren M. Lepkoski
Attorney No. 94800
Tori L. Giesler
Attorney No. 207742
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, Pennsylvania 19612-6001
(610) 921-6203
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llepkoski@firstenergycorp.com
tgiesler@firstenergycorp.com

Counsel for West Penn Power Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

MICHAEL J. WOLFE
Complainant

v.

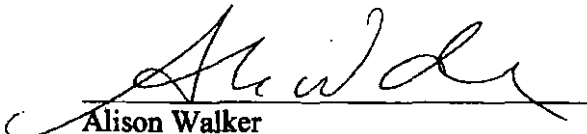
WEST PENN POWER COMPANY
Respondent

Docket No. C-2018-2646162

VERIFICATION

I, Alison Walker, Customer Service Compliance Specialist, hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief and that I expect West Penn Power Company to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904.

11/9/18
Date


Alison Walker

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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MICHAEL J. WOLFE

v.

WEST PENN POWER COMPANY

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Docket No. C-2018-2646162

CERTIFICATE OF SERVICE

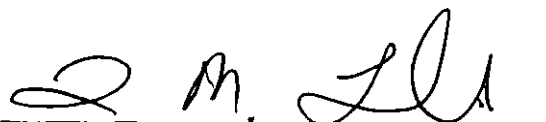
I hereby certify that I have this day served a true copy of the Motion for Judgment on the Pleadings of West Penn Power Company upon the individual listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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

Michael J. Wolfe
2005 Burning Well Road
Wilcox, PA 15870

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

Dated: November 9, 2018



Lauren M. Lepkoski
Tori L. Giesler
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
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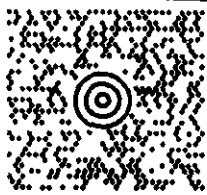
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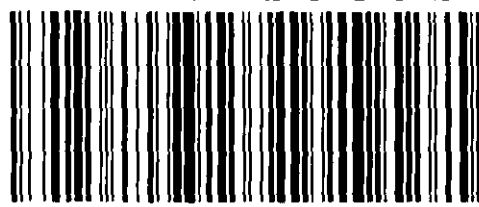


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