

200 Brook Hollow Road
Mount Pleasant, PA 15666
December 15, 2018

VIA ELECTRONIC FILING

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

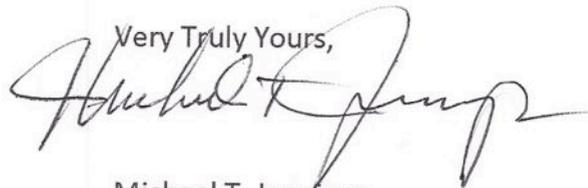
Re: Michael T. Jennings v. West Penn Power Company
Docket No. C-2018-3006031

Dear Secretary Chiavetta,

Attached please find the Answers of Michael T. Jennings to the Preliminary Objections of West Penn Power in the above-referenced matter. This document has been served on West Penn Power as shown in the Certificate of Service.

Please contact me if you have any questions.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Michael T. Jennings", written in a cursive style.

Michael T. Jennings

ssj
Enclosures

C: As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MICHAEL T. JENNINGS	:	
	:	
v.	:	Docket No. C-2018-3006031
	:	
WEST PENN POWER COMPANY	:	

Answers to Preliminary Objections

1. Admitted.

2. Admitted in part, denied in part.
By way of further answer, West Penn Power/First Energy has violated Section 1501 and 1502 of the PA PUC law, Section 504 of the Rehabilitation Act of 1973 (disability); Title II of the Americans with Disabilities Act of 1990 (disability); and the Fair Housing Act. In fact, there is no requirement in Act 129 for West Penn/First Energy to deploy meters that are harmful for my family. This would be a direct violation of Section 1501 and 1502 of the PA PUC law and is therefore is not in accordance with PUC law as applied to me and my family. Under the Fair Housing Act, it is against the law to refuse to make reasonable accommodations for persons with a disability if the accommodation may be necessary to afford such person a reasonable and equal opportunity to use and enjoy a dwelling. Our son has been designated as disabled through the Social Security Administration since October 2010.

3. Admit – first sentence
Admit – second sentence
As further explanation, complainant was on an information gathering process to consider options. Later in the process complainant learned more about the RF emitting, transient- and harmonic-producing smart meter would be detrimental to our son’s and family’s health.
Admit – third sentence
Admit – fourth sentence
Admit in part, deny in part – fifth sentence
Complainant’s wife did call West Penn Power to request the address of the company president. Whether the call was dropped or not, West Penn Power did not attempt to return the call to satisfy our inquiry.
Admit in part, denied in part – sixth sentence
Complainant is not asking for an opt-out, just reasonable accommodations for severe, existing medical conditions that would be exacerbated if the smart meter was installed

on complainant's property and which would significantly contribute to a deterioration on my son's and my family's health.

Admit in part, deny in part – seventh sentence

Denise, a representative from West Penn Power, did call complainant and his wife on November 9, 2018. Denise did give complainant information on the relocation of the meter if complainant did indeed decide to do it. She proceeded to inform complainant he would be receiving a shut off notice on November 21, 2018, but he should disregard it. Denise also stated complainant could ignore the "Friendly Letter," the 10-day shut-off notice and the 3-day shut-off notice. Complainant explained the circumstances of having a disabled child with medical conditions. Denise stated the company used to accept medical letters, but not anymore. Complainant asked what if we decided not to have the meter installed. Denise informed complainant a formal complaint would have to be filed to put a hold on the account for smart meter installation.

Denied – eighth sentence

Complainant did not refuse the smart meter during the call with Denise.

Admit in part, deny in part – ninth sentence

Denise advised complainant "if you are going to do this," it needs to be done by April 2019. Complainant made no agreement with Denise during this phone call.

Admit in part, deny in part – tenth sentence

Complainant did receive a letter on November 13th

The letter stated several attempts had been made to contact complainant. Complainant received no calls; no messages left on either voice mail; no in-person visits or no other written notifications from West Penn Power/First Energy.

4. Denied.

West Penn Power/First Energy has violated Section 1501 and 1502 of the PA PUC law, Section 504 of the Rehabilitation Act of 1973 (disability); Title II of the Americans with Disabilities Act of 1990 (disability); and the Fair Housing Act. In fact, there is no requirement in Act 129 for West Penn/First Energy to deploy meters that are harmful for my family. This would be a direct violation of Section 1501 and 1502 of the PA PUC law and is therefore is not in accordance with PUC law as applied to me and my family. West Penn's smart meter is an unsafe delivery of electricity to my property and could exacerbate our family's medical conditions.

By way of further answer, see number 7 in my formal complaint where I allege that West Penn Power/First Energy will be creating unsafe conditions on my property and in my house which is a violation of Sections 1501 and 1502 of the Public Utility Code and Section 57.194 of the Commission's regulations.

Also see number 8 in my formal complaint:

"According to Subchapter O. Advanced Meter Deployment issued under the Public Utility Code, 66 Pa. C.S. § 501 and 2807(a), "This subchapter does not require the public to participate in an advanced metering program."

The Commission must hear my formal complaint and not dismiss because the Commission has jurisdiction and must hear complaints alleging utility violations to Section 1501 and 1502 of the PA PUC law.

5. Complainant requests West Penn Power/First Energy grant my request for accommodations based on numerous severe medical conditions with diagnoses that would be exacerbated with the installation of a smart meter. I ask the Commission not to dismiss with prejudice and allow my case to proceed as an action against West Penn/First Energy as to violations of Section 1501 and 1502 of the PA PUC law, Section 504 of the Rehabilitation Act of 1973 (disability); Title II of the Americans with Disabilities Act of 1990 (disability); and the Fair Housing Act.

6. Requires a legal conclusion.

7. Admit – first sentence

Admit – second sentence

As further explanation, complainant was on an information gathering process to consider options. Later in the process complainant learned more about the RF emitting, transient- and harmonic-producing smart meter would be detrimental to our son's and family's health.

Admit – third sentence

Admit – fourth sentence

Admit in part, deny in part – fifth sentence

Complainant's wife did call West Penn Power to request the address of the company president. Whether the call was dropped or not, West Penn Power did not attempt to return the call to satisfy our inquiry.

Admit in part, denied in part – sixth sentence

Complainant is not asking for an opt-out, just reasonable accommodations for medical conditions that would be exacerbated if the smart meter was installed on complainant's property and which would significantly contribute to a deterioration on my son's and my family's health.

Admit in part, deny in part – seventh sentence

Denise, a representative from West Penn Power, did call complainant and his wife on November 9, 2018. Denise did give complainant information on the relocation of the meter if complainant did indeed decide to do it. She proceeded to inform complainant he would be receiving a shut off notice on November 21, 2018, but he should disregard it. Denise also stated complainant could ignore the "Friendly Letter," the 10-day shut-off notice and the 3-day shut-off notice. Complainant explained the circumstances of having a disabled child with medical conditions. Denise stated the company used to accept medical letters, but not anymore. Complainant asked what if we decided not to have the meter installed. Denise informed complainant a formal complaint would have to be filed to put a hold on the account for smart meter installation.

Denied – eighth sentence

Complainant did not refuse the smart meter during the call with Denise.

Admit in part, deny in part – ninth sentence

Denise advised complainant “if you are going to do this,” it needs to be done by April 2019. Complainant made no agreement with Denise during this phone call.

Admit in part, deny in part – tenth sentence

Complainant did receive a letter on November 13th

The letter stated several attempts had been made to contact complainant. Complainant received no calls; no messages left on either voice mail; no in-person visits, or no other written notifications from West Penn Power/First Energy.

8. Admitted, although Complainant has no knowledge regarding electronic service to West Penn Power/First Energy.
9. Requires a legal conclusion, complainant does not need to answer.
10. Requires a legal conclusion, complainant does not need to answer.
11. Requires a legal conclusion, complainant does not need to answer.
12. Requires a legal conclusion, complainant does not need to answer.
13. Requires a legal conclusion - first sentence
Denied, second sentence
Denied, third sentence
As further answer, West Penn Power/First Energy has violated Section 1501 and 1502 of the PA PUC law, Section 504 of the Rehabilitation Act of 1973 (disability); Title II of the Americans with Disabilities Act of 1990 (disability); and the Fair Housing Act as stated in my formal complaint. In fact, there is no requirement in Act 129 for West Penn/First Energy to deploy meters that are harmful to my family. This would also be a direct violation of Section 1501 and 1502 of the PA PUC law, Section 504 of the Rehabilitation Act of 1973 (disability); Title II of the Americans with Disabilities Act of 1990 (disability); and the Fair Housing Act.
14. Admitted. Further answer, I allege in my formal complaint serious existing health conditions with diagnoses that could be exacerbated; therefore, preliminary objections must be denied and I must be permitted to present my case.
15. Complainant is without sufficient knowledge to deny or to admit the first three sentences.
Complainant denies the fourth sentence.
Complainant does challenge West Penn Power’s/First Energy’s deployment of a smart meter on the complainant’s property which is not required by Act 129 as West Penn Power/First Energy should grant accommodations under Section 1501 and 1502 of the PA PUC law, Section 504 of the Rehabilitation Act of 1973 (disability); Title II of the Americans with Disabilities Act of 1990 (disability); and the Fair Housing Act, per ADA

and HUD. There is nothing in Act 129 which mandates RF emitting and harmonic transient producing meters, especially those that could exacerbate existing medical conditions.

By way of further answer, see number 7 of my formal complaint where I allege that West Penn Power/First Energy will be creating unsafe conditions on my property and in my house which is a violation of Sections 1501 and 1502 of the Public Utility Code and Section 57.194 of the Commission's regulations.

16. Denied

Complainant is not asking for an opt-out, but requesting reasonable accommodations for existing, serious medical conditions that would be exacerbated by the installation of a smart meter on our property.

17. Denied

Complainant is not asking for an opt-out. There are numerous existing, serious medical conditions with diagnoses that would be exacerbated by the installation of a smart meter which are covered under Section 1501 and 1502 of the PA PUC law, Section 504 of the Rehabilitation Act of 1973 (disability); Title II of the Americans with Disabilities Act of 1990 (disability); and the Fair Housing Act. First Energy/West Penn Power is violating Section 1501 and 1502 of the PA PUC law in forcing Complainant to accept a smart meter on his home or face disconnection from electrical supply in relation to his disabled son. Commission should find the Company to be in violation of PUC law for not filing a petition for relief to accommodate Complainant's serious health concerns.

18. Denied

Complainant is not asking for an optout.
Alleging a violation of West Penn Power's duties and responsibilities under PA 66 Section 1501 and 1502, as Complainant has alleged in my formal complaint, at numbers 1, 2, 3, 5, 7 and 10, does set forth a matter which the PUC does have jurisdiction to hear, and which, in fact, mandates the PUC to hear this formal complaint, taking all of my allegations as true. West Penn argues aptly in preliminary objections number 14, that the moving party may not rely on its own factual assertions, but must accept for the purposes of disposition of the preliminary objection, all well-pleaded, material facts of the other party, as well as every inference fairly deducible from those facts. *County of Allegheny v. Commw. Of PA*, 490 A.2d 402 (PA 1985). Therefore, in ruling on a preliminary objection, the Commission must assume, for decisional purposes only, that the factual allegations of the Formal Complaint are true.

19. Admitted in part.

By way of further answer, I am a customer of West Penn Power. We, like other utility customers, have diagnoses that would be exacerbated by having a smart meter on my property. The proceeding is in the public interest. See for example:

Kreider vs PECO – C-2015-2469655 (hearing held on March 9, 2016)
Murphy vs PECO – C-2015-2475726 (hearings held on several dates in 2016, 2017)
Paul vs PECO – C-2015-2475355 (hearing held in the fall of 2016)
Povacz vs PECO – C-2015-2475023 (hearing held on several dates in 2016, 2017)
McKnight vs PECO – C-2017-2621057 (held Spring 2018)
Bachman vs PECO – C-2017-2623504 (hearing was held)
Hriadal vs Duquesne Light -C-2016-2571726 (will proceed to a hearing)

Also, see *Edward Albert Lucey v. Metropolitan Edison Company* C-2018-3003679 which is a similar complaint to mine where the judge ruled against the utility company.

20. Denied.

The Commission heard complainants who were affected by electro-hypersensitivity and who asked for accommodations because they are medically vulnerable. In such cases, the install of a smart meter violated Section 1501 and 1502 of the PA PUC law. Complainants listed above have alleged in their complaints and have testified as to negative health effects both at their home and in their neighborhoods. Although Ms. Kreider did have an AMI meter installed on her property, none of the other Complainants listed above had an AMI meter installed on their properties and yet, the PUC allowed these cases plus at least two others: *Romeo vs. PECO*, appealed to Commonwealth Court, *Romeo v. Pa. PUC*, 154 A.3d. 422 (Pa. Commw. 2017) and *Randall Albrecht vs. PECO* C-2016-253766, to proceed to a hearing (although in the *Romeo* case, it was the Commonwealth Court which reversed the Commission ruling which had denied *Romeo* a hearing.

Denied – Sixth Sentence

By way of further answer, The Commonwealth Court’s *Romeo* decision supports my contention that my complaint not be dismissed:

Romeo v. Pa. PUC, 154 A.3d. 422 (Pa. Commw. 2017) which stated, in pertinent part:

“*Romeo* claimed that the smart meters *cause* safety and fire hazards and have negative health impact. Just because he cannot personally testify as to 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.” Just because I do not have a smart meter on my home, does not mean that West Penn Power gets to expose me and my family, against my wishes and against the advice of our physicians, that our existing medical conditions with diagnoses would be exacerbated.

Obviously West Penn Power/First Energy did not even read my complaint and not familiar with *Romeo v. Pa. PUC*, 154 A.3d. 422 (Pa. Commw. 2017) as *Ann V. Sheehan v. West Penn Power* C-2017-2630406 who brought *Romeo v. Pa. PUC* to their attention.

Denied – Seventh Sentence

I have not alleged generic health and safety concerns. I have alleged my family has experienced existing severe medical conditions with diagnoses that would be exacerbated by the installation of a smart meter on my property. My son's possible death is certainly not considered generic. 24/7 care of our son is not generic.

Denied – Eighth Sentence

A lack of consent is not the issue in this complaint. The issue is the lack of responsibility to provide accommodations for a disabled person according to Sections 1501 and 1502 of the PA PUC law, Section 504 of the Rehabilitation Act of 1973 (disability); Title II of the Americans with Disabilities Act of 1990 (disability); and the Fair Housing Act, per ADA and HUD. The Commission has to recognize accommodations under these Federal laws.

West Penn Power/First Energy is using generic language in copying from old filings without regard to new case load. Dr. Fugo's complaint was filed almost 3 years ago and out of touch with reality. There have been more than 20 cases since Kreider that have not been dismissed on preliminary objections. Dr. Fugo's complaint is totally different from my complaint. Citing this case is ridiculous.

21. Denied – first sentence

West Penn Power/First Energy cites the *Charles F Jackson v. Pennsylvania Electric Company* C-2017-2600495. The Jackson case is not comparable to my complaint. I do allege in my complaint that the utility violated the Public Utility Code, Commission regulations or orders or its tariff provisions. Please read our complaint.

Denied – second sentence

West Penn Power's/First Energy's deployment of a smart meter on the complainant's property is not required by Act 129 as West Penn Power/First Energy should grant accommodations under Section 1501 and 1502 of the PA PUC law, Section 504 of the Rehabilitation Act of 1973 (disability); Title II of the Americans with Disabilities Act of 1990 (disability); and the Fair Housing Act, per ADA and HUD. There is nothing in Act 129 which mandates RF emitting and harmonic transient producing meters, especially those that could exacerbate existing medical conditions.

By way of further answer, see number 7 of my formal complaint where I allege that West Penn Power/First Energy will be creating unsafe conditions on my property and in my house which is a violation of Sections 1501 and 1502 of the Public Utility Code and Section 57.194 of the Commission's regulations.

Denied, third sentence

Pursuant to 52 PA Code § 56.141 – Dispute procedures – “(2) *Termination stayed....* when a... complaint has been properly filed in accordance with this subchapter, termination shall be prohibited until resolution of the dispute or complaint...”

Complainant has properly filed a formal complaint in accordance with 52 PA Code § 56.141.

Denied, fourth sentence

The Commission does not give West Penn Power/First Energy the authority to install smart meters to harm its consumers who have health problems and in which the medical conditions would be exacerbated.

Denied, fifth sentence

My complaint is not identical whatsoever to formal complaint at Docket No. C-2017-2600495.

Denied, sixth sentence

I have set forth in my complaint the Company violated a Commission regulation, statute or order. Read my complaint.

22. Denied

This matter does meet the standards set forth and this matter can survive preliminary objections.

23. Denied

Cases cited by West Penn Power are irrelevant to my case. Negley has nothing to do with my case. Complainant does not have time or resources to investigate the complaints cited by West Penn Power to distinguish them from my complaint of our specific health complaints and whether they are actually stated violations of Section 1501 and 1502 of the PA PUC law, Section 504 of the Rehabilitation Act of 1973 (disability); Title II of the Americans with Disabilities Act of 1990 (disability); and the Fair Housing Act.

However, complainant notes that *Richard Negley v. Metropolitan Edison Company*, Docket No. C-2010-2205305 (initial decision issued January 3, 2011); was 3 or more years older than *Kreider*, which was decided in January 2016. *Kreider* was permitted a hearing by the Commission and allowed to explain the negative health effects of her electro-hypersensitivity, which occurred when exposed to an AMI meter, which was in violation of Section 1501 of the PA PUC law.

24. Denied – first sentence

It does not give West Penn Power/First Energy the authority to install smart meters to harm its consumers who have health problems and in which the medical conditions would be exacerbated.

Denied – second sentence

The Complainant properly filed a formal complaint.

Denied – third sentence

Pursuant to 52 PA Code § 56.141 – Dispute procedures – “(2) *Termination stayed....* when a... complaint has been properly filed in accordance with this subchapter, termination shall be prohibited until resolution of the dispute or complaint...”

Pursuant to 52 PA Code § 56.92 – Notice of dispute pending – “A public utility may not mail or deliver a notice of termination if a notice of...formal complaint has been filed and is unresolved...”

25. Denied

I have set forth in my complaint the Company violated a Commission regulation, statute or order. Again, read my complaint.

Smart meters should not be implemented if it is damaging to one’s health and if accommodations should be made per Federal law. I have set forth violations of Section 1501 and 1502 of the PA PUC law, which is a statute. I have also set forth violations of Section 504 of the Rehabilitation Act of 1973 (disability); Title II of the Americans with Disabilities Act of 1990 (disability); and the Fair Housing Act which are Federal statutes.

It is surprising to Complainant that West Penn Power does not seem to recognize well pled complaints regarding violations of Section 1501 and 1502 against it. PUC vs West Penn Power (6-2-2009) shows that the utility must be familiar with the consequences of its violations of Section 1501 and the PA PUC law. In this case, the Commission, citing section 3301 against West Penn Power for violations of Section 1501 and 1502, for the horrific and untimely death of Carrie Goretzka. Ms. Goretzka was electrocuted and burned over 85 percent of her body when a power line that had been improperly spliced fell in her yard. This was witnessed by her children and her mother, who was injured when trying to save her daughter’s life.

Conclusion:

Denied

For reasons stated in my responses.

I respectfully request denial of West Penn Power’s preliminary objections and ask that you grant my request for accommodations by upholding the legality and validity of my complaint and allow me to proceed to a hearing on the merits of my complaint. Please grant me relief that is just and reasonable under the circumstances.

Respectfully Submitted,

Michael T. Jennings

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MICHAEL T. JENNINGS
Complainant

v.

WEST PENN POWER COMPANY
Respondent

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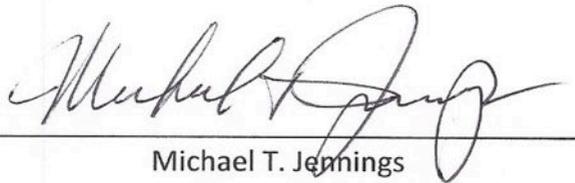
Docket No. C-2018-3006031

VERIFICATION

I, Michael T. Jennings, 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. Section 4904.

12-15-18

Date



Michael T. Jennings

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MICHAEL T. JENNINGS

v.

WEST PENN POWER COMPANY

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Docket No. C-2018-3006031

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Answers of Michael T. Jennings to the Preliminary Objections of West Penn Power Company upon the individuals listed below, in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant.)

Service by e-filing as follows:

Lauren M. Lepkoski
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FirstEnergy Service Company
2800 Pottsville Pike
P. O. Box 16001
Reading, PA 19612-6001
llepkoski@firstenergycorp.com
tgiesler@firstenergycorp.com

Dated: December 15, 2018



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