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December 26, 2018

VIA ELECTRONIC FILING

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

Re: Robert Ponzetto v. West Penn Power Company
Docket No. C-2018-3002145

Dear Secretary Chiavetta:

Enclosed please find the Motion to Dismiss 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

kbw
Enclosures

c: As Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ROBERT PONZETTO

v.

WEST PENN POWER COMPANY

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Docket No. C-2018-3002145

NOTICE TO PLEAD

TO: Robert Ponzetto

Pursuant to 52 Pa. Code § 5.371(b), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Motion to Dismiss 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
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: December 26, 2018


Lauren M. Lepkoski, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ROBERT PONZETTO

v.

WEST PENN POWER COMPANY

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Docket No. C-2018-3002145

**MOTION OF WEST PENN POWER COMPANY TO DISMISS COMPLAINT OF
ROBERT PONZETTO FOR FAILURE TO COMPLY WITH ORDER**

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 §§ 5.371-5.372, hereby files this Motion to Dismiss the complaint of Robert Ponzetto (“Complainant”) for his failure to comply with the Interim Order of Administrative Law Judge Jeffrey A. Watson. In support thereof, the Company avers as follows:

I. BACKGROUND

1. On May 21, 2018, the Complainant filed a Formal Complaint with the Pennsylvania Public Utility Commission (“Commission”) regarding 931 Maple Drive, Greensburg, Pennsylvania 15601 (the “Service Location”) under Account No. 100099938159 (“Account”) which was electronically served on the Company on May 23, 2018.

2. On June 12, 2018, the Company filed its Answer and New Matter denying the material allegations as well as Preliminary Objections.

3. On July 24, 2018, a motion judge assignment notice was issued assigning this matter to Administrative Law Judge Jeffrey A. Watson (“ALJ Watson”) for disposition.

4. On August 7, 2018, an Interim Order was issued by ALJ Watson denying the Company’s Preliminary Objections.

5. 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. A copy of the Discovery Requests of the Company is attached as Exhibit A.

6. The Complainant did not file any objection to the Discovery Request and has not provided any responses or the requested documents by the due date.

7. On September 17, 2018, in accordance with 52 Pa. Code §§ 5.371-5.372, the Company filed a Motion to Compel the Complainant to provide full and complete responses to the Discovery Requests issued by the Company on August 20, 2018.

8. On October 15, 2018, an Interim Order Establishing Initial Litigation Schedule was issued which set forth the schedule for discovery, the identification of witnesses, and filing of motions in this proceeding

9. On November 7, 2018, ALJ Watson issued an Interim Order granting the Company’s Motion to Compel and ordering the Complainant to provide full, complete objections and/or responses to the Company’s Discovery Requests on or before November 30, 2018.

10. To date, no responses to the Company’s Discovery Requests have been provided to the Company by the Complainant, nor has any communication from the Complainant been received by the Company.

II. MOTION TO DISMISS

11. The Commission’s regulations permit the discovery of “any matter, not privileged, which is relevant to the subject matter involved in the pending action.” 52 Pa. Code § 5.321(c).

12. Generally speaking, this Commission applies a standard of relevance which is less restrictive than that required by parties to present information into the evidentiary record. It is not grounds 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. 52 Pa. Code § 5.321(c).

13. 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.

14. The information sought here by the Company is relatively simple and straightforward. It is directly relevant and material to the issues raised by the Complainant. The Company is entitled to the requested information to enable it to fully investigate and defend against the Complainant’s allegations.

15. 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 and provides that the Commission or the presiding officer may, on motion, make an appropriate order if a party fails to appear, answer, file sufficient answers, file objections, make a designation or otherwise respond to discovery requests.

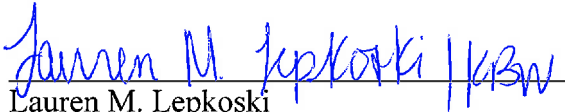
16. Further, 52 Pa. Code § 5.372 provides that the presiding officer may impose appropriate sanctions upon a party found to be in violation of the obligations set forth in the Commission's Regulations.

17. The Complainant's failure to provide any response to the Company's Discovery Requests, as ordered by ALJ Watson on November 7, 2018, demonstrates his lack of cooperation and willingness to participate in this proceeding as required under the Commission's regulations. As a result, the Formal Complaint in this proceeding should be dismissed in its entirety.

WHEREFORE, West Penn Power Company respectfully requests that the Commission dismiss in its entirety the Complaint of Robert Ponzetto.

Respectfully submitted,

Dated: December 26, 2018


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Counsel for West Penn Power Company

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CERTIFICATE OF SERVICE


I hereby certify that I have this day served a true copy of the Motion to Dismiss 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:

Robert Ponzetto
931 Maple Drive
Greensburg, PA 15601

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: December 26, 2018



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