

Tori L. Giesler, Esq.  
(610) 921-6203  
(330) 315-9263 (Fax)

January 10, 2019

**VIA ELECTRONIC FILING**

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

**Re: Lowell Watts v. West Penn Power Company**  
**Docket No. C-2018-3002477**

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,

  
Tori L. Giesler

krak  
Enclosures

c: As Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**LOWELL WATTS**

**v.**

**WEST PENN POWER COMPANY**

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**Docket No. C-2018-3002477**

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**NOTICE TO PLEAD**

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TO: Lowell Watts

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 requiring no other proof. All pleadings, 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: January 10, 2019

*Tori L. Giesler | KBW*  
Lauren M. Lepkoski, Esquire  
Tori L. Giesler, Esquire

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**LOWELL WATTS**

v.

**WEST PENN POWER COMPANY**

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**Docket No. C-2018-3002477**

**MOTION OF WEST PENN POWER COMPANY TO DISMISS COMPLAINT OF  
LOWELL WATTS FOR FAILURE TO COMPLY WITH ORDERS**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

West Penn Power Company (“West Penn Power” or the “Company”) by and through its attorneys, Lauren M. Lepkoski and Tori L. Giesler, and pursuant to 52 Pa. Code §§ 5.245, 5.371-5.372, hereby files this Motion to Dismiss the complaint of Lowell Watts (“Complainant”) for his failure to comply with Administrative Law Judge (“ALJ”) Jeffrey A. Watson’s Order issued November 8, 2018. In support thereof, the Company avers as follows:

**I. BACKGROUND**

1. On May 22, 2018, the Complainant filed a Formal Complaint with the Pennsylvania Public Utility Commission (“Commission”) regarding 341 Elk Avenue, Kane, Pennsylvania 16735 (“Service Location”).

2. On June 25, 2018, 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 August 2, 2018, a Motion Judge Assignment Notice was issued and ALJ Watson was assigned as the Presiding Officer in the above-captioned proceeding.

4. On August 7, 2018, ALJ Watson issued an Interim Order, which denied the Company’s Preliminary Objections.

5. On September 14, 2018, in accordance with 52 Pa. Code § 5.341, the Company issued 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.

6. On October 8, 2018, the Company received a letter from Complainant dated October 3, 2018 objecting to all of the Company’s Discovery Requests. As grounds for objection, Complainant stated that he “filed for a hearing with the PUC, not you. I lowell watts [sic], a man respectfully deny answering your legal questions and would appreciate a hearing date in front of the P.U.C.”

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

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

9. At no point did the Complainant contact the Company to discuss the Discovery Requests or seek an extension of time to respond to the Discovery Requests.

10. On October 11, 2018, in response to the Complainant’s objections to the Discovery Requests, the Company filed with the Commission a Motion to Compel Responses to Interrogatories and Document Requests.

11. On October 17, 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.

12. On November 8, 2018, an Interim Order Granting Respondent’s Motion to Compel the Complainant to provide responses to the Discovery Requests propounded by Respondent was

issued. The Order directed the Complainant to serve upon the Company full and complete responses to all of the Discovery Requests no later than December 14, 2018.

13. On November 9, 2018, a Telephonic Prehearing Conference Notice was issued which scheduled a call-in telephonic prehearing conference for December 6, 2018.

14. On November 13, 2018, an Interim Order Scheduling Prehearing Conference was issued which ordered the Parties to participate by telephone in a prehearing conference on December 6, 2018 and shall be fully prepared for the conference, consistent with the terms as detailed in the Interim Order. The Interim Order further stated that if the Parties fail to call into the hearing, the Formal Complaint would be dismissed.

15. On December 4, 2018, ALJ Watson received undated correspondence from the Complainant titled "Notice to Correct the Record" which stated, *inter alia*, that the Complainant "will be present at the pre-hearing on December 6, 2018 as a courtesy to answer any questions concerning the notice I, have given," and that "it is not my intent to participate in a pre-hearing and be at the mercy of a single man of the legal society."

16. That same day, an Interim Order Cancelling Prehearing Conference Scheduled for December 6, 2018 and Providing Notice to the Parties of the Cancellation was issued.

17. On December 17, 2018, ALJ Watson received undated correspondence from the Complainant titled "Notice" which stated, *inter alia*, that the Complainant questioned why the prehearing conference to be held on December 6, 2018 was cancelled and how ALJ Watson "believe that you have gained jurisdiction on I" and further stating that "I remind you that I operate as a man, and there is no case before the court, therefore how can you give an order," that the Complainant "perceive from your correspondence 'motion of first energy corporation to compel responses to discovery propounded on Lowell watts' that you believe that I operate in your

jurisdiction,” and that the Complainant is “not accepting any order at this time as I, will see any orders put upon I as causing harm and as a trespass by you, the man, Jeffrey Watson.”

18. That same date, a second Telephonic Prehearing Conference Notice was issued which scheduled a call-in telephonic prehearing conference for February 5, 2018.

19. To date no responses to the Company’s Discovery Requests have been provided by the Complainant in violation of the Interim Order entered on November 8, 2018, nor has any communication from the Complainant been received by the Company.

## **II. MOTION TO DISMISS**

20. 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).

21. 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).

22. 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.

23. 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.

24. 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.

25. 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.

26. The Complainant has failed to provide any response to the Company's Discovery Requests. The Complainant's actions demonstrate a 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, with prejudice, the Complaint of Lowell Watts.

Respectfully submitted,

Dated: January 10, 2019

Tori L. Giesler / WPCW

Lauren M. Lepkoski  
Attorney No. 94800  
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Counsel for West Penn Power Company



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PO Box 16001  
Reading, PA 19612-6001

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

September 14, 2018

**VIA FIRST CLASS MAIL**

Lowell Watts  
141 Elk Avenue  
Kane, PA 16735

**Re: Lowell Watts v. West Penn Power Company**  
**Docket No. C-2018-3002477**

Dear Mr. Watts:

Enclosed please find the Interrogatories and Requests for Production of Documents (Set I) to Lowell Watts. Pursuant to 52 Pa. Code §§ 5.341 and 5.349, *et seq.*, your answers are due within twenty days of service of this letter (October 4, 2018). In addition, any objections are due within ten days of service of this letter (September 25, 2018). This document has been served as indicated within the Certificate of Service.

Very truly yours,

Lauren M. Lepkoski

Enclosures

c: As Per Certificate of Service  
The Honorable Jeffrey Watson, Public Utility Commission (Cover Letter and Certificate)  
Rosemary Chiavetta, Esq., Public Utility Commission (Cover Letter and Certificate)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**LOWELL WATTS**

v.

**WEST PENN POWER COMPANY**

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**Docket No. C-2018-3002477**

**INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS OF  
WEST PENN POWER COMPANY TO LOWELL WATTS, SET I**

West Penn Power Company hereby propounds these Interrogatories and Requests for Production of Documents (Set I) to Lowell Watts (the "Complainant"). Telephone or other contact concerning availability and timing of formal responses is encouraged. The answer to each interrogatory should be started on a new page. The answers should restate the question asked and indicate the person(s) supplying the information.

Pursuant to 52 Pa. Code § 5.342, you must send your answers to me within 20 days (October 4, 2018) and objections within 10 days (September 25, 2018). Your answers and objections should not be filed with the Pennsylvania Public Utility Commission. You should only file the cover letter and certificate of service, with the Commission's Secretary Rosemary Chiavetta and send a copy to Administrative Law Judge Jeffrey A. Watson. If you have any objection to any of the interrogatories or the request for documents, please identify the interrogatory or request and state your objection in full as to why you should not have to answer/produce it. Any objection not raised within the 10-day period provided for by 52 Pa. Code § 5.342(c) will be deemed waived and you will not be permitted to raise the objection at a later time.

Dated: September 14, 2018

**INSTRUCTIONS**

A. In answering these Interrogatories and Requests for Production of Documents, please furnish all information available to you, including any such information possessed by others that you can obtain, and not merely such information known of your own personal knowledge. If you cannot answer the Interrogatories and Requests in full after exercising due diligence to secure the information to do so, so state and answer to the extent possible.

B. Other than for the reasons identified herein, you must provide an answer to all Interrogatories and Requests for Production of Documents. If the answer to the question is "none" or "unknown," such statement must be written in the answer. If you consider the question to be inapplicable, "N/A" must be written in the answer. If an answer is omitted because of a claim of privilege, the basis of privilege is to be stated.

C. If the answer to any of the Interrogatories and Requests for Production of Documents is that you lack knowledge of some or all of the requested information, describe all efforts made by you to obtain the information necessary to answer that Interrogatory or Request.

D. These Interrogatories and Requests for Production of Documents are to be deemed continuing in nature, and you shall promptly supply, by way of supplemental response, any additional responsive information that may become known to you or anyone acting on your behalf after your answers have been prepared or served.

E. As used herein, the terms "Complainant" and "you" refer to Lowell Watts and his attorneys, agents, or representatives.

F. As used herein, the terms "Company" or "Respondent" refer to West Penn Power Company, and any agent, agency, or affiliate thereof.

G. As used herein, the term "proceeding" refers to the instant complaint proceeding at the Pennsylvania Public Utility Commission at Docket No. C-2018-3002477.

H. As used herein, the terms "service location," "property," or "home" refer to your service address of 141 Elk Avenue, Kane, Pennsylvania 16735.

I. As used herein, the term "household" refers to you and all other individuals who reside at the service location.

J. As used herein, the terms "document" or "documentation" includes any written, printed, typed, recorded, or graphic matter, whether produced or reproduced or stored on paper, cards, tapes, film, electronic facsimile, computer storage devices or any other devices or media, including, but not limited to papers; books; letters; photographs; objects; tangible things; correspondence; e-mails; websites; webpages; telegrams; cables; telex messages; memoranda; medical records; notes; notations; records; work papers; transcripts; minutes; reports and recordings of telephone or other conversations, or of interviews, or of conferences, or of other meetings; affidavits; statements; opinions; proposals; reports; surveys; plans; studies; analyses; audits; evaluations; contracts; agreements; journals; statistical records; invoices; receipts; desk calendars; appointment books; diaries; lists; tabulations; summaries; sound recordings; computer printouts; data processing input and output; microfilms; all records kept by electronic, photographic, or mechanical means; and things similar to any of the foregoing, however denominated. When one or more of the foregoing documents is requested or referred to, the request or reference shall include, but is not limited to, the original and each and every copy and draft thereof having writings, notations, corrections, or markings unique to such copy or draft.

K. As used herein, all other words are to be given their ordinary and usual meanings, according to a current edition of Webster's Dictionary.

**INTERROGATORIES OF WEST PENN POWER COMPANY TO LOWELL WATTS,**  
**SET I**

1. Are you claiming that the installation of a smart meter at your property would cause or contribute to an adverse health condition for any member of your household?
2. If the answer to question 1 is yes, please provide the following information for each household member whose health you claim will be affected:
  - a. Name;
  - b. Age;
  - c. The specific health condition that you believe would be caused by or contributed to as a result of the smart meter being installed;
  - d. Whether the household member is already experiencing the specific health condition, and, if so, the date on which the condition was first experienced and the date on which the condition was first diagnosed by a medical doctor;
  - e. Whether the household member has experienced the specific health condition within the last four years;
  - f. Any medication prescribed to the household member; and
  - g. Whether the household member has visited a medical professional for the specific health condition, and if so, the name, address, and phone number of the medical professional and the date of the visit(s) to the medical professional.



- a. If yes, please provide the name of the cell phone manufacturer and the model  
(for example, Apple i-Phone 7S).
  - b. Does anyone else in your home use a cellular phone?
  - c. How many cellular phones are in use at your home?
  - d. For each cellular phone used by a member of your household, please provide  
the name of the phone manufacturer and the model.
7. Is there satellite television at your home?
- a. If yes, please identify the satellite television provider (for example, Direct  
TV).
  - b. If yes, where is the satellite disk located?
8. Is there a laptop computer at the service location?
- a. If yes, where is it located?
9. Do you have a wifi network in your home?
- a. If yes, where is the wifi router located?
10. Is it your position that a customer has the right to request a smart meter not be  
installed at his service location?
11. Is it your position that a customer must request smart meter installation?

12. Is it your position that Act 129 of 2008 does not require the utility to install smart meters throughout its service territory?
13. Is it your position that you would like to opt out completely from smart meter installation?
14. To your knowledge, has a smart meter been installed by the Company at your property?
15. Please describe in detail how you believe a smart meter operates.
16. Please list the specific issues you intend to raise at the hearing in this proceeding.
17. Please identify the legal support, including specific citations, for each issue identified in question 16.
18. Please list the factual support for each issue identified in question 16.
19. Please provide the following information for all witnesses you intend to call to testify at the hearing in this proceeding.
  - a. Provide the full name of the witness.
  - b. Provide the address and telephone number of the witness.
  - c. Provide the title or position held by the witness.
  - d. Provide the educational background of the witness.
  - e. Provide the employment background of the witness.

- f. Provide the scope of the testimony for the witness.
20. Would any witness identified in question 19 be offered as an expert?
- a. If yes, provide the curriculum vitae of the witness and a summary of the testimony the expert witness is expected to provide.
21. Please describe in detail your educational background.
- a. Please list any relevant certificates, trainings, or degrees that you obtained.
  - b. Please provide a description of the certificate, training, or degree.
  - c. Please provide the date that any certificate, training, or degree was obtained.
  - d. Please provide the name and address of the institution which provided the certificate, training, or degree.
22. Please describe in detail your employment history.
- a. Please provide your employer name and address.
  - b. Please provide the title of your position.
  - c. Please provide the dates of your employment.
  - d. Please provide the duties performed in your position.

**REQUESTS FOR PRODUCTION OF DOCUMENTS OF WEST PENN POWER  
COMPANY TO LOWELL WATTS, SET I**

23. Please provide copies of all documentation supporting your position that the installation of a smart meter would cause or contribute to an adverse health condition for any member of your household.
24. Please provide copies of all documentation associated with visits by members of your household to a medical professional related to the health conditions identified in question 2.
25. Please provide copies of all documentation you intend to refer to at the hearing in this proceeding related to the impact of smart meters on a person's health.
26. For each cellular telephone used by a member of your household, please provide a complete copy of the bills you received from your cellular telephone provider for the past 12 months.
27. Please provide copies of all documentation resulting from your "considerable amount of research on the harmful effects of EMF radiation on the human body."
28. Please provide copies of all documentation supporting your position that your household may opt out of smart meter installation.
29. Please provide copies of all documentation you intend to refer to at the hearing in this proceeding supporting your position that a household may opt out of smart meter installation.

30. Please provide a copy of all proposed exhibits you intend to submit for the hearing in this proceeding.
31. Please provide copies of all documentation you are relying upon in support of your positions in this proceeding.
32. Please provide copies of all documentation that you referenced, referred to, or otherwise relied upon in preparing your responses to these discovery requests.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**LOWELL WATTS** :  
 :  
 **v.** : **Docket No. C-2018-3002477**  
 :  
 **WEST PENN POWER COMPANY** :  
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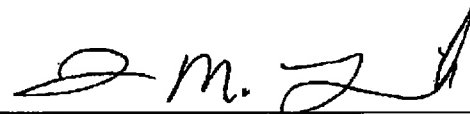
**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the Interrogatories and Requests for Production of Documents of West Penn Power Company to Lowell Watts 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:

Lowell Watts  
141 Elk Avenue  
Kane, PA 16735

Dated: September 14, 2018



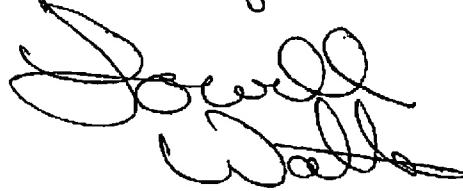
Lauren M. Lepkoski  
FirstEnergy Service Company  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, Pennsylvania 19612-6001  
(610) 921-6203  
llepkoski@firstenergycorp.com

10-3-18

Dear Lauren,

I Received your letter dated Sept 14 2018  
~~requesting answers to various questions.~~ - Please  
note, I filed for a hearing with the PUC,  
not you. I Lowell watts, a man respectfully  
deny answering your legal questions and would  
appreciate a hearing date in front of the P.U.C.

respectfully,



RECEIVED

OCT 08 2018

LEGAL DEPT.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**LOWELL WATTS**

**v.**

**WEST PENN POWER COMPANY**

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**Docket No. C-2018-3002477**

**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:

Lowell Watts  
141 Elk Avenue  
Kane, PA 16735

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: January 10, 2019

Tori L. Giesler | KBW  
Lauren M. Lepkoski  
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[tgiesler@firstenergycorp.com](mailto:tgiesler@firstenergycorp.com)