

Tori L. Giesler, Esq.
(610) 921-6658
(330) 315-9263 (Fax)

610-929-3601

January 16, 2019

VIA ELECTRONIC FILING

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

Re: John Zolko v. West Penn Power Company
Docket No. C-2018-3003190

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,



Tori L. Giesler

kbw
Enclosures

c: As Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JOHN ZOLKO

v.

WEST PENN POWER COMPANY

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Docket No. C-2018-3003190

NOTICE TO PLEAD

TO: John Zolko

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: January 16, 2019



Tori L. Giesler, Esquire
Lauren M. Lepkoski, Esquire

**BEFORE THE
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Docket No. C-2018-3003190

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

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

West Penn Power Company (“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 John Zolko (“Complainant”) to provide full and complete responses to interrogatories and document requests issued by the Company on November 20, 2018. In support thereof, the Company avers as follows:

I. BACKGROUND

1. On July 2, 2018, the Complainant filed a Formal Complaint with the Pennsylvania Public Utility Commission (“Commission”) regarding 3812 School Road, Murrysville, PA 15668 (“Service Location”) under Account No. 100095060354 (“Account”) which was electronically served on the Company on July 6, 2018.

2. On July 26, 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. By letter dated August 8, 2018, the Complainant requested an extension of time to file a response to the Preliminary Objections.

4. On August 20, 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 24, 2018, ALJ Watson issued an Interim Order which granted the Complainant’s request for an extension of time to file a response to the Company’s Preliminary Objections.

6. On November 2, 2018, ALJ Watson issued an Interim Order which denied the Company’s Preliminary Objections.

7. On November 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. The Complainant did not file any objection to the Discovery Requests and has not provided any responses or the requested documents by the due date. To date, no response to the Discovery Requests or telephone call has been received from the Complainant.

II. MOTION TO COMPEL

10. 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).

11. 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).

12. 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.

13. 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 in his Formal Complaint. 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 he did in his Formal Complaint. If the Complainant needed more time to answer the Company's Discovery Requests, he could have contacted the Company to request an extension.

14. 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.

15. 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.

16. As a result of the Complainant's failure to provide any response to the Company's Discovery Requests, which demonstrates his lack of cooperation and willingness to participate in this proceeding as required under the Commission's regulations, the Formal Complaint in this proceeding should be dismissed in its entirety.

17. 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.


18. In the event the Complainant is directed by the Commission to respond to the Company's Discovery Requests, but fails to, 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 Complaint of John Zolko.

Respectfully submitted,

Dated: January 16, 2019



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
(610) 921-6658
llepkoski@firstenergycorp.com
tgiesler@firstenergycorp.com

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 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:

John Zolko
3812 School Road
Murrysville, PA 15668

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

Dated: January 16, 2019



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FirstEnergy Service Company
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