

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

January 30, 2019

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 Amended 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/kbw

Tori L. Giesler

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 Amended 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:

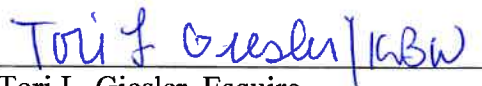
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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: January 30, 2019


Tori L. Giesler, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

ROBERT PONZETTO

v.

WEST PENN POWER COMPANY

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Docket No. C-2018-3002145

**AMENDED 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 Amended 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.

11. On December 26, 2018, the Company filed a Motion to Dismiss the above-captioned Formal Complaint due to Complainant’s failure to respond to the Company’s Discovery Requests or respond to ALJ Watson’s November 7, 2018 Order granting the Company’s Motion to Compel.

12. Since the filing of that Motion to Dismiss, the Complainant has further failed to adhere to the deadlines set within ALJ Watson's October 15, 2018 Interim Order setting a procedural schedule. Specifically, identification of any witnesses to be presented in this matter, along with a summary of the testimony they are expected to provide, was required to be served on the parties and the presiding officer no later than January 10, 2019. To date, no such notice has been provided by the Complainant.

II. MOTION TO DISMISS

13. 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).

14. 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).

15. 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.

16. 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.

17. 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.

18. 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.

19. The Complainant's failure to provide any response to the Company's Discovery Requests as ordered by ALJ Watson on November 7, 2018 or identify witnesses to be presented at a hearing in this matter as ordered by ALJ Watson on October 15, 2018 demonstrates 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 in its entirety the Complaint of Robert Ponzetto.

Respectfully submitted,

Dated: January 30, 2019

Tori L. Giesler / KOW
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



2800 Pottsville Pike
PO Box 16001
Reading, PA 19612-6001

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

August 20, 2018

VIA FIRST CLASS MAIL

Robert J. Ponzetto
931 Maple Drive
Greensburg, PA 15601

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

Dear Mr. Ponzetto:

Enclosed please find the Interrogatories and Requests for Production of Documents (Set I) to Robert J. Ponzetto. Pursuant to 52 Pa. Code §§ 5.341 and 5.349, *et seq.*, your answers are due within twenty days of service of this letter (September 10, 2018). In addition, any objections are due within ten days of service of this letter (August 30, 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**

ROBERT J. PONZETTO

v.

WEST PENN POWER COMPANY

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Docket No. C-2018-3002145

**INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS OF
WEST PENN POWER COMPANY TO ROBERT J. PONZETTO, SET I**

West Penn Power Company hereby propounds these Interrogatories and Requests for Production of Documents (Set I) to Robert J. Ponzetto (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 September 10, 2018 and objections within 10 days August 30, 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: August 20, 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 Robert J. Ponzetto 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-2018-3002145.

H. As used herein, the terms “service location,” “property,” or “home” refer to your service address of 931 Maple Drive, Greensburg, Pennsylvania 15601.

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 ROBERT J.
PONZETTO, SET I**

1. Do you believe the installation of a smart meter at your property would create or worsen health issues for a member of your household?

2. If the answer to question 1 is yes, please provide the following information for each household member:
 - a. Name;

 - b. Age;

 - c. The specific health issues that you believe would be experienced after the smart meter is installed;

 - d. Whether the household member is already experiencing the specific health issues;

 - e. Whether the household member has experienced the specific health issues 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 issue, and if so, the name, address, and phone number of the medical professional and the date of the visit(s) to the medical professional.

 - h. Whether a medical professional has determined that the installation of a smart meter would create or worsen the specific health issue.

3. Please explain how the installation of a smart meter would create or worsen health issues for your household members. Be as specific as possible.
4. Please provide the following information in support of your position that health issues at your household would be created or worsened by the installation of a smart meter.
 - a. Please identify each document you rely on in support of your position.
 - b. Do you intend to rely on these documents at the time of the hearing in this proceeding?
 - c. Please describe in detail all information you have to support this position.
 - d. Do you have any relevant educational or work background that qualifies you to assert this position?
 - e. Is yes, please identify the relevant educational or work background that qualifies you to assert this position.
5. Would you consider yourself a medical professional?
 - a. If yes, please identify your medical professional title, relevant educational experience, and relevant work experience.
6. To your knowledge, has a smart meter been installed by the Company at your property?
7. Please describe in detail how you believe a smart meter operates.

8. In your complaint, you state that “[i]t has been scientifically proven that EMF’s cause health hazzards [sic].” Please provide the following information related to this statement:
 - a. Please define “EMF” as it is used in the context of this statement.
 - b. What documents do you rely on in support of this statement?
 - c. Do you intend to rely on these documents at the time of the hearing in this proceeding?
 - d. Please describe in detail the information you have to support this statement.
 - e. Do you have any relevant educational or work background that qualifies you to make this statement?
 - f. If yes, please identify the relevant educational or work background that qualifies you to make this statement.
9. Please list the specific issues you intend to raise at the hearing in this proceeding.
10. Please identify the legal support, including specific citations, for each issue identified in question 9.
11. Please list the factual support for each issue identified in question 9.
12. 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 contact information 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.
13. Would any witness identified in question 12 be offered as an expert?
- a. If yes, provide the curriculum vitae of the witness and state the scope of the testimony of the expert witness.
14. 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.
15. 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 ROBERT J. PONZETTO, SET I**

16. Please provide copies of all documentation supporting your position that the health issues of your household would be created or worsened by the installation of a smart meter.
17. Please provide copies of all documentation associated with visits by members of your household to a medical professional related to the health issues identified in question 2.
18. 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.
19. Please provide copies of the "medical papers" referenced in your complaint.
20. Please provide a copy of all proposed exhibits you intend to submit for the hearing in this proceeding.
21. Please provide copies of all documentation you are relying upon in support of your positions in this proceeding.
22. 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**

ROBERT J. PONZETTO

v.

ROBERT J. PONZETTO COMPANY

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Docket No. C-2018-3002145

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 Robert J. Ponzetto 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:

Robert J. Ponzetto
931 Maple Drive
Greensburg, PA 15601

Dated: August 20, 2018



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

**BEFORE THE
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CERTIFICATE OF SERVICE

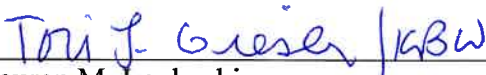
I hereby certify that I have this day served a true copy of the Amended Motion to Dismiss of West Penn Power Company upon the individual listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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: January 30, 2019



Lauren M. Lepkoski
Tori L. Giesler
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