

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITIES COMMISSION**

EUGENE J. BAZAN	:	
	:	
Complainant	:	C-2017-2640338 :
	:	
Vs	:	
	:	
FIRST ENERGY/WEST PENN POWER	:	
	:	
Respondent	:	
	:	

**RESPONSE TO ANSWER OF WEST PENN POWER COMPANY TO
OUR MOTION TO COMPEL OF EUGENE J. BAZAN**

TO THE HONORABLE ALJ Jeffrey A. Watson:

Background

On March 25, 2019 Complainant Eugene J. Bazan submitted to West Penn Power (WPP) Interrogatory Set 6

On April 4, WPP objected to these interrogatories.

On April 11, we submitted to you our Motion to Compel Discovery on this set of Interrogatories Set 6, with copies to WPP and the PUC.

On April 16 WPP submitted to us and you by email their Answer to our Motion to Compel, with copy to the PUC.

We find little difference between WPP's Objections of April 4 and their Answer of April 16.

Herein is our **Response to Answer of WPP to our Motion to Compel**. We are emailing you on this Response, following WPP's example, presumably on the grounds of the time constraints under which you are laboring under Motions to Compel. We are copying WPP and E-filing with the PUC, and will follow up with paper copies to you and WPP.

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In their item 25 of their Answer, WPP cites the length of questioning in Interrogatory VI: 9 interrogatories with 49 subparts. By comparison, their own Set 1 Interrogatories contained 27 interrogatories with 52 subparts, much of it soliciting far more detail in terms of our response than those in our Interrogatory VI. In response to our Interrogatories III, question 5, WPP maintained it was “not aware of any inconsistencies” between Act 129 §2807(f) and the PUC’s Implementation Order of June 2009, thus requiring us to refine our discovery request to enable us to obtain the information we require to make our arguments at the time of the hearing.

In items 28, 31 and 32 of their Answer, West Penn Power argues that our Interrogatory VI necessitates “legal analysis”, “legal research and legal theories.” We respond as follows:

WPP alleges our Interrogatory VI is improper because, according to 52 PA Code S5.323(a), “The discovery may not include disclosure of the mental impressions of a party’s attorney or his conclusions, opinions, memoranda, notes, summaries, legal research or legal theories.” Their allegation misrepresents the intent of the code. We are not seeking to discover their “legal research or legal theories” which they will be using to prepare their defense. Rather we seek their responses to our questions in order for us to prepare for and present our case as per the rules of discovery in § 5.321. Scope, “a party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action....”

If West Penn Power alleges that it is required by law to install smart meters on all homes in their territory and we dispute this allegation, by what means other than through discovery can we identify the evidence on which they base this claim? Our very careful questions break everything down to make it as clear and simple as possible in order to identify where we have misunderstood the law and its implementation which West Penn Power alleges to follow. This does not call for “legal analysis” since there is nothing to analyze – merely very simple questions to respond to that are well within the capacity of WPP’s legal counsel to answer without “legal analysis”. WPP has the opportunity here to show us where we misunderstand the law since they allege – repeatedly in the documents they have filed - to be following it.

In their Answer to our Motion to Compel, item 29, WPP reiterates a litany of objections cited also in their original objection to our Interrogatories VI to which we now respond in more detail. WPP cites our discovery requests are “improper and objectionable to the extent that they seek information or documents that are...” (we break down the objections into items **a** through **f** below):

a) irrelevant and not reasonably calculated to lead to the discovery of admissible evidence;

Our response: As WPP has stated repeatedly in their responses to our documents that they are following the law (e.g., “following Act 129 and the June 5 Order”, “directed, *by law*,” [WPP’s italics] to install smart meters). our Interrogatory VI is clearly relevant. Furthermore, 52 PA Code § 5.321 Scope states, “It is not ground 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.” The purpose of our Interrogatory VI is to find the evidence that will either augment or undermine our position disputing WPP’s allegation of “following Act 129 and the June 5 Order” and, as such, is reasonably calculated to lead to the discovery of admissible evidence.

b) outside the scope of this proceeding;

Our response: WPP, in its own Interrogatory Set 1 to us, asked (Question 13c), “Is it your position that Act 129 of 2008 does not require the utility to install smart meters throughout its service territory?” Thus, they affirm by their own Interrogatory Set 1 that our Interrogatory VI is within the scope of this proceeding. This question posed by WPP also reveals that questioning us about our understanding of Act 129, “appears reasonably calculated to lead to the discovery of admissible evidence...” (52 PA Code § 5.321) in further support of our response to (a) above.

c) vague ambiguous, unlimited in time, scope or subject;

Our response: Each question is quite clear, specific and very limited in time, scope and subject, contrary to WPP’s assertion.

d) overly broad, unduly burdensome, oppressive, or calling for unbounded discovery;

Our response: Each question is very narrow in scope and most can be answered by a simple “no” or, if yes, we seek a simple explanation – there is nothing oppressive, burdensome or unbounded about these questions. They are very straightforward reading comprehension type questions, like the kind one gets in high school.

e) protected from disclosure by attorney-client privilege, the attorney/representative work product doctrine, or any other privilege or protection from disclosure recognized by law;

Our response: First, as WPP asserts it is following the law, it does not require any special privileges or protections. Second, the claim of protection by attorney-client privilege is ludicrous: the attorneys working on this case are not attorneys from an outside firm under contract to WPP, but in-house employees of WPP/First Energy. If these attorney employees can claim attorney-client privilege, cannot also linemen employees? Meter reader employees? Secretary employees? Upper management

employees? This fanciful notion propounded by WPP attorneys denies Complainant the ability to get to the bottom of any and all matters.. Third, the law (Act 129) has already been passed. It does not require further work, privileges or protections. If WPP can assert it is “following Act 129 and the June 5 Order” and both of these documents are in the public domain, there are no other relevant work products, privileges or protections that need to be invoked to respond to our Interrogatories VI.

f) not in possession, custody, or control of the Company or documents in the public domain or otherwise available to the Complainants through alternative or less burdensome means.

Our response: Our Interrogatory VI does not seek any information beyond possession, control or custody of WPP as the documents cited in our Interrogatory VI are in the public domain. Availing ourselves of the documents is insufficient to address the dispute that is before us with WPP.

In items 30 and 33, WPP argues our Interrogatories VI seeks “legal conclusions” from them, and yet item 33 goes on to state that, “each of these documents are public documents that speak for themselves.” Since the documents “speak for themselves” but remain unclear to us, it should be no trouble for WPP to respond to our Interrogatories VI and do not necessitate the alleged “legal conclusions.” In other words, proper laws should be understandable in plain English, and where there is confusion, should admit of clarification in plain English. This is what we seek from WPP: plain English.

Conclusion and Request

Throughout this proceeding, during present discovery, and at the time of the hearing, we are acting on our right to file a complaint setting forth “any act or thing done by any public utility in violation, or claimed violation, of any law which the commission has jurisdiction to administer, or of any regulation or order of the commission.” (Public Utility 66 Pa.C.S. § 701). In WPP’s New Matter filing of January 18, 2018 it asserts that “the Company has not violated the Public Utility Code or the orders or regulations of the Commission. In fact, the Company’s action have been in compliance with Act 129 and the June 5 Order.”

In so stating, and in also stating multiples times that they are following the law, as per Act 129, and as the law is superior to orders, it is proper to bring into these proceedings discovery questions that allow us to obtain evidence that WPP is following the law as it asserts. Despite WPP’s claim that the public documents “speak for themselves”, there is clearly a discrepancy between WPP’s and our understanding of Act 129, and it is essential for our arguments that we identify wherein, exactly, lies the discrepancy, which is at the heart of our dispute. We have put considerable effort into our Interrogatory VI to make it simple for both parties to turn discovery into satisfactory resolution.

Therefore, as WPP's continued objections prevent us from being able to meet our burden of proof at the time of the hearing, we respectfully request its objections and answer be dismissed and our Motion to Compel be granted.

Respectfully Yours,

A handwritten signature in black ink that reads "Eugene J. Bazan". The signature is written in a cursive style with a large initial "E" and a long, sweeping underline.

Eugene J. Bazan
PO Box 24
Lemont, PA 16851

April 18, 2019