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May 1, 2019

**VIA E-FILING**

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

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MAY - 3 2019

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

RE: Eugene J. Bazan v. West Penn Power Company Docket No. C-2017-2640338  
STATUS REPORT ON COMPLAINT OF EUGENE J. BAZAN AGAINST WEST PENN  
POWER

Dear Secretary Chiavetta:

I am copying you on my filing with ALJ Jeffrey Watson of my STATUS REPORT ON COMPLAINT OF EUGENE J. BAZAN AGAINST WEST PENN POWER COMPANY, due by May 2 as per Judge Jeffrey A. Watson's Initial Litigation Schedule of December 27, 2018.

I have served a copy on First Energy/West Penn Power.

Sincerely,



Eugene J. Bazan  
Complainant

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITIES COMMISSION

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MAY - 3 2019

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

EUGENE J. BAZAN

Complainant

Vs

FIRST ENERGY/WEST PENN POWER

Respondent

C-2017-2640338

**STATUS REPORT OF EUGENE J. BAZAN IN COMPLAINT  
AGAINST WEST PENN POWER COMPANY**

TO THE HONORABLE ALJ Jeffrey A. Watson:

**Background**

On December 27, 2018 you submitted to me your Interim Order Establishing Initial Litigation Schedule In the case listed above.

Item 4 established May 2, 2019 as the date by which Parties shall file a Status Report with you and the Opposing Party, West Penn Power Company.

This submission is in fulfillment of our Status Report, which we are also E-Filing with the PUC Secretary.

## **STATUS REPORT IN COMPLAINT OF EUGENE J. BAZAN AGAINST WEST PENN POWER C-2017-2640338**

In this Status Report we cover the following:

- A. The Three Pillars of the PUC Litigation Procedure
- B. What We Have Learned Thus Far
- C. What Has Been Resolved and Not Resolved

### **A. The Three Pillars of the PUC Litigation Procedure**

#### **1. PREPONDERANCE OF EVIDENCE**

We ask ourselves the following question: when does evidence cross a threshold to be considered "a preponderance." We recall two recent cases from the automobile industry: General Motors problem with failed ignition safety switch; and the premature Takata air bag deployments.

Failed ignition safety switch. In 2015 GM agreed to pay a \$900 million dollar fine and agreed to appoint an independent safety monitor. The bad ignition safety switch caused 124 deaths and 273 injuries. Though the company knew as early as 2001 that something was wrong with the switch, they did nothing, and didn't initiate a recall program until 2014. 2.6 million cars were recalled. Before the settlement, GM knew of only 13 deaths. Another 350 death and 3,588 injury claims were rejected as being ineligible. 1/

Two questions: (1) when did the evidence cross the "preponderance" threshold; and (2) in whose mind(s) did the preponderance register? Answer: Somewhere on the scale of claims from 13 to 474 deaths, and from 0 to 3,861 injury claims. The number that was settled on – 124 deaths and 273 injury claims – does not include class action suits. Ultimately, almost 30 million cars were recalled in North America.

The tipping point in the case came through the efforts of one attorney, Lance Cooper, who sued GM on behalf of the family of one victim, and who obtained thousands of pages of documents, and took depositions from several GM employees.

A complicating factor was the conclusion of a special outside report done by attorney Anton Valukas. He found that the failure to fix the problem sooner was not due to a cover-up on the company's part, but rather due to "their failure to understand, quite simply, how the car was built." The report led to CEO Mary Barra firing 15 of her employees. Though Valukas' conclusion conflicts with employee reports of a cover-up, his findings can be taken to demonstrate that the complexities and consequences of electronic technology can escape the engineering mind. In a parallel manner, the complexities and consequences of another electronic technology, smart meters, can also escape the engineering mind.

Takata airbag. Until the Takata airbag recall, the GM recall was the largest recall event in the automotive industry. The Takata airbag recall dwarfs it. As of January 2019, the recall has affected 19 auto manufacturers of 37 million cars produced between 2002 and 2015.

According to Consumer Reports, "there have been 15 deaths due to this problem in the U.S. Worldwide, NHTSA reports there have been at least 23 deaths and 300 injuries." 2/

What is striking about this recall is the proportionately smaller number of deaths and injuries that triggered the recall. Taking a simple ratio of deaths to total number of cars, we get 124/2,600,000 in the first case and 15/37,000,000 in the second. In both cases, the threshold for crossing the preponderance of evidence barrier is not just low, but extremely low: less than 0.005% in the first case and less than 0.00005% in the second.

These two incidents lead us to ask: "what is the preponderance of evidence level under which the PUC and the utilities operate?"

Putting this differently, when hazard to life and property are involved, the threshold in the two cases used here is low – extremely low.

By contrast, the utilities together with the PUC have set the preponderance of evidence bar so high that, for First Energy companies, the complaints of over 5,000 customers count for nothing. Zero.

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1/ GM ignition switch: [https://en.wikipedia.org/wiki/General\\_Motors\\_ignition\\_switch\\_recalls](https://en.wikipedia.org/wiki/General_Motors_ignition_switch_recalls). Timeline from NPR: <https://www.npr.org/2014/03/31/297158876/timeline-a-history-of-gms-ignition-switch-defect>. NBC news: <https://www.nbcnews.com/storyline/gm-recall/gm-appoint-monitor-pay-900m-fine-over-faulty-ignition-switches-n429136>.

2/ Takata airbag failure: <https://www.consumerreports.org/car-recalls-defects/takata-airbag-recall-everything-you-need-to-know/>

## 2. RESPONDENT HAS NOT VIOLATED ANY CODE, COMMISSION REGULATION OR ORDER

Not violating any code, commission regulation or order is not the same as following each and every one. 3/ We put this distinction aside for the moment to turn to the more important aspect of this second "pillar," namely that not violating any code, commission or order trumps evidence of any kind. In other words, if West Penn Power is not violating anything, there is no amount of evidence that can be brought against it, even a preponderance, as long as the delimiters are "any code, commission regulation or order." Inside this self-erected protective bubble, West Penn Power can sustain any amount of criticism because, by definition, it is not breaking any code, commission regulation or order. An outsider might conclude, "How convenient."

In short, not violating any code, commission regulation or order eliminates any necessity to consider evidence of any kind. Thus, a complainant who brings even a preponderance of evidence fares no better than one who adduces merely a smidgen of same. From the PUC's point of view, there is no difference between these two cases. Something amiss here.

In our expert witness testimony we focused on studies that show an effect, not those that don't. We follow the precautionary principle which takes its cue from carrying a caged canary into the coal mine with you. The dangers are known, but the warning signs undetectable except to the supersensitive canary. Similarly, Pennsylvanians are getting damaged by microwave radiation coming from smart meters. Some express this via the varied symptoms of Electromagnetic Hyper Sensitivity (EHS). These individuals are our canaries. We should pay attention. What we, collectively, are facing is a rerun of the smoking and lung cancer debacle of an earlier era, and the denials by industry in the face of mounting and overwhelming evidence to the contrary. Before the smoking-lung cancer connection we had asbestos, agent orange, and thalidomide. Liability will settle on the agents of the current damage caused by radio frequency radiation, as it is now settling on Monsanto-Bayer's product Roundup. Monsanto-Bayer just lost its second lawsuit, and the third is now underway. 4/ The parallels among all these cases are striking.

To nail this point home in another way, consider the requirement of pharmaceutical manufacturers that they list, in advertisements and in product inserts, all side effects. Consumers understand that probabilities are involved, that not all, and in many cases, perhaps only a few percent of users will suffer from any given listed side effects. Nothing similar to side effects, hazards, or triggers for ailments accompanied the product "insert" (PR) that went out to West Penn Power customers prior to deployment of smart meters. All was rosy. Dominant concerns voiced within the aware public were dismissed. That full color card that West Penn Power sent out to customers? None of our neighbors, colleagues, or friends recall ever getting one. Only one of these was even aware she had received a smart meter.

Not violated any code, commission regulation or order? Worse than that. You, West Penn Power, broke the law.

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3/ This distinction is a variant of that between type I and type II errors in statistics – in this case, the difference between not wanting to get caught for doing something wrong versus going beyond the call of duty and obligation to prevent harm or damage.

4/ "Ghostwriting Science, Corporate Malfeasance Lead to \$80M Jury Decision in Second Roundup Cancer Trial." Posted on Friday, March 29th 2019 at 12:15 pm. Written By: Jefferey Jaxen. [http://www.greenmedinfo.com/blog/ghostwriting-science-corporate-malfeasance-lead-80m-jury-decision-second-roundup-?utm\\_source=Daily+Greenmedinfo.com+Email+List&utm\\_campaign=229b96779f-roundup&utm\\_medium=email&utm\\_term=0\\_193c8492fb-229b96779f-91505645&ct=t\(roundup\)&mc\\_cid=229b96779f&mc\\_eid=53612fe722](http://www.greenmedinfo.com/blog/ghostwriting-science-corporate-malfeasance-lead-80m-jury-decision-second-roundup-?utm_source=Daily+Greenmedinfo.com+Email+List&utm_campaign=229b96779f-roundup&utm_medium=email&utm_term=0_193c8492fb-229b96779f-91505645&ct=t(roundup)&mc_cid=229b96779f&mc_eid=53612fe722)

### 3. MANDATED TO INSTALL SMART METERS BY ACT 129

Pennsylvania is one of the few states that, in Act 129, followed the Federal legislation authorizing smart meters with opt-in language. The language of §2807 (f) (i) is quite clear, reflecting the intentions and concerns of legislators who passed it. Smart meters were to be furnished "Upon request from a customer that agrees to pay the cost of the smart meter at the time of the request." The plain English meaning of this provision is evident to a preponderance of customers who have voiced opposition to having a smart meter installed on their homes.

This plain English meaning followed precedence. In the Public Utilities Code Title 66 Subchapter O. **ADVANCED METER DEPLOYMENT** we find under § 57.255 (a) that an EDC's responsibilities regarding advanced metering kick in "Upon written request from both a customer and the EGS of that customer, the EDC shall make available and install for use a qualified advanced meter or meter-related device."

This plain English meaning became transmogrified in the hands of the PUC, turning an opt-in to mandated deployment, skipping lightly over the opt-out language now prevalent in at least 40 other states. This feat of administrative legerdemain is, to put it mildly, breathtaking.

§ 57.258, Record retention and reporting requirements, stipulates under (a) that " An EDC shall maintain the following records" including under (3) "The date of advanced meter purchase request by customer and supplier and date of installation." When requested to provide the dates of these requests we received the reply, "West Penn Power Company is unaware of such a request." 5/

The smart meter surcharge on bills represents another example of violation of Act 129. Customers are forced to pay for this surcharge even though they have not requested a smart meter or agreed to pay for it at the time of the request. 6/

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5/ Eugene J. Bazan Request for Production of Documents Set 2, No. 1, March 7, 2019.

6/ This PUC site states that utilities will show a smart meter surcharge on your bill as a separate line item or in your electric utility's base rate (my underlining).  
[http://www.puc.state.pa.us/general/consumer\\_ed/pdf/13\\_smart%20meters.pdf](http://www.puc.state.pa.us/general/consumer_ed/pdf/13_smart%20meters.pdf)

## **B. What We Have Learned Thus Far**

What we have learned thus far is that smart meters are more hazardous to our collective health, homes, and the environment than we initially thought; cost more (financially and environmentally) than we were led to believe; did not pass the cost-benefit expectations of backers; exacerbate climate change with their overall increased energy use as determined by life-cycle analysis; and violate privacy as guaranteed in our Federal and State Constitutions.

In our Expert Witness Testimony we focused on safety issues, including hazards to human health, and found that chronic exposure to low-level microwave radiation from wireless devices, including smart meters, has been found to cause insomnia, headaches, tinnitus and hearing loss, neuro-psychiatric effects, anxiety and depression, heart arrhythmias, fatigue, confusion, memory problems, and dizziness. In addition, dirty electricity can exacerbate diabetes and in general interferes with molecular signaling in the body, which can cause a host of adverse effects. In addition, we referred to studies documenting damage to insects and animals.

Through the PUC website, and reviewing complaints to West Penn Power from January 2017 to April 2018, we found that the number 1 complaint among customers was power surges passing through the meter and damaging house wiring, frying electronic equipment, and

damaging appliances. When asked what studies has First Energy commissioned by independent laboratories on the safety of smart meters, either in general, or specifically on the ITRON meter it installs, particularly addressing the following hazards: (a) fire or explosions; (b) power surges passed through to the house side of the meter; (c) non-ionizing non-thermal microwave radiation, WPP replied, "West Penn Power Company has not commissioned any independent laboratory studies on the safety of smart meter." 7/

The number 2 complaint to West Penn Power was overbilling. As an example of this overbilling, we will be adding to our factual testimony a signed statement from Mark and Joyce Stewart, for whom West Penn Power is their electricity provider. The conclusion we draw from the overbilling complaints confirms what engineers have affirmed, namely that smart meters measure electricity use differently from analog meters, and as a consequence, can record a higher level of kilowatt hours used than would be the case for an analog meter. Customers end up being subjected to the equivalent of an unapproved rate hike.

When we asked what studies has First Energy undertaken comparing the incidence in complaints of overbilling after smart meters were installed to the incidence of complaints of overbilling before smart meters were installed WPP responded, "No such studies have been performed." The rest of the reply represents dissimulation in our view: "Where concerns regarding the accuracy of consumption being recorded is at issue, meter tests are routinely performed." Multiple tests of meters which measure kilowatt hours differently does not and cannot get to the bottom of the complaint as to why electricity bills are higher. 8/

We defined what can get to the bottom of overbilling complaints in another interrogatory where we asked whether First Energy commissioned a study by an independent laboratory comparing the readings of a smart meter with the reading of an analog meter in real house settings using a variety of electrically powered appliances and equipment, including compressors, motors and other inductive loads. WPP's reply was "No." 9/

The only resolution WPP offers to dissident customers, along with other utilities, is to mount the meter it is offering, an ITRON meter, on a pole in another part of the property. Talking to other customers offered this resolution, we learned that cost, borne by the customer, ranges from estimates of \$1,500 to \$10,000.

By contrast, and in response to consumer backlash over its opt-out meter, 40% of which were found to be transmitting, DTE Energy of Michigan has arranged for Landis Gyr to produce an electric utility meter built on their Focus AXRe platform specifically configured for customers requesting an opt-out meter. This meter will have. no switched mode power supply, no wireless transmitting antennae, and will be incapable of measuring interval data. While this represents an improvement, it is not clear whether this new meter has a proper surge protector and whether it measures kilowatt hour usage differently from an analog meter.

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7/ Eugene J. Bazan Interrogatory Set 4 No. 5 March 7, 2019.

8/ Eugene J. Bazan Interrogatory Set 4 No. 7 March 7, 2019.


9/ Eugene J. Bazan Interrogatory Set 4 No. 8 March 7, 2019.

### **C. What Has Been Resolved and Not Resolved**

As of May 1 the following items remain unresolved:

- 1) Following WPP's objections to our Interrogatories #6, we submitted to Judge Watson a Motion to Compel WPP to answer Interrogatories #6, to which WPP Answered, to which we sent a Response on April 18th. We have not heard from Judge Watson his decision.
- 2) WPP's response to our requests for all documents and exhibits they will be using at the hearing, as per our Interrogatory Set 4, No. 6; Request for Production of Documents Set 2 no. 2, 3; Request for Production of Documents Set 1, No. 6,7,8,9.
- 3) Response from WPP's Expert Witnesses to our Expert Witness testimony, which we submitted electronically April 14 and mailed April 15.

Respectfully submitted,



Eugene J. Bazan  
PO Box 24  
Lemont, PA 16851

May 1, 2019

**CERTIFICATE OF SERVICE**

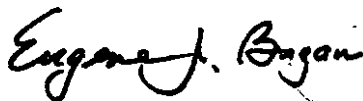
I certify that I have this day sent a letter dated May 1, 2019 to ALJ Jeffrey Watson containing my STATUS REPORT ON COMPLAINT OF EUGENE J. BAZAN AGAINST WEST PENN POWER, due by May 2 as per Judge Jeffrey A. Watson's Initial Litigation Schedule of December 27, 2018.

I have served a copy on First Energy/West Penn Power this same day.

Service via E-Filing to the person listed below:

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

Dated May 1, 2019



Eugene J. Bazan  
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Docket No. C-2017-2640338

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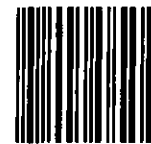
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