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June 10, 2019

VIA ELECTRONIC FILING

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

Re: Kim Betchy v. West Penn Power Company
Docket No. C-2018-3000257

Dear Secretary Chiavetta:

Attached please find the Main Brief on behalf of West Penn Power Company regarding the above-referenced matter. This document has been served on the all parties as shown in the Certificate of Service.

Please contact me if you have any questions.

Very truly yours,



Tori L. Giesler

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Enclosures

c: As Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

KIM BETCHY

v.

WEST PENN POWER COMPANY

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DOCKET NO. C-2018-3000257

**MAIN BRIEF
ON BEHALF OF
WEST PENN POWER COMPANY**

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Dated: June 10, 2019

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I. PROCEDURAL HISTORY

On or about February 20, 2018, the Complainant filed a Formal Complaint with the Pennsylvania Public Utility Commission (“Commission”) against West Penn Power Company (“West Penn” or the “Company”) regarding 140 Inwood Avenue, Carmichaels, Pennsylvania 15320 (“Service Location 1”) under Account No. 100094136684 (“Account”) and 150 Inwood Avenue, Carmichaels, Pennsylvania 15320 (“Service Location 2”), collectively (“Service Locations”) which was electronically served on the Company on March 6, 2018.

On March 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.

On April 9, 2018, the Complainant filed an answer to the Company’s Preliminary Objection.

On April 27, 2018, Administrative Law Judge (“ALJ”) Jeffrey A. Watson was assigned as the Presiding Officer in the above-captioned proceeding.

On May 4, 2018, ALJ Watson issued an Interim Order, which granted in part and denied in part the Company’s Preliminary Objections and referred the Formal Complaint for mediation review.

On May 18, 2018, a Telephone hearing Notice was issued which scheduled a telephonic hearing for June 27, 2018 before ALJ Watson.

On May 21, 2018, ALJ Watson issued a Prehearing Conference Order which converted the June 27, 2018 telephonic hearing to a prehearing conference.

On May 23, 2018, in accordance with 52 Pa. Code § 5.341, the Company forwarded to the Complainant interrogatories and document requests (“Company’s Discovery Requests, Set I”) 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.

On May 25, 2018, the Complainant filed several documents which were labeled as exhibits.

~~By letter dated May 31, 2018,~~ the Complainant provided objections and incomplete responses to the Company's Discovery Requests, Set I.

On June 6, 2018, the Complainant filed a letter which, *inter alia*, stated that she did not wish to proceed with mediation.

On June 14, 2018, in response to the Complainant's objections and lack of complete response to the Company's Discovery Requests, Set I, the Company filed a Motion to Compel.

On June 27, 2018, a prehearing conference was held in which the Complainant and counsel for the Company participated.

On June 27, 2018, based upon the Complainant's statements at the prehearing conference and in accordance with 52 Pa. Code § 5.341, the Company forwarded to the Complainant a second set of interrogatories and document requests ("Company's Discovery Requests, Set II") via first class mail. In its Discovery Requests, the Company sought additional information and documents related to the Complainant's allegations regarding the Company's smart meters.

On July 18, 2018, ALJ Watson issued an Interim Order Revising Litigation Schedule which set forth the revised schedule for discovery, the identification of witnesses, and filing of motions in this proceeding.

On July 18, 2018, ALJ Watson issued an Interim Order which granted the Company's Motion to Compel, dismissed the Complainant's objections and required the Complainant to provide full and complete responses to the Company's Discovery Requests, Set I, not later than July 30, 2018.

By letter dated July 27, 2018, the Complainant provided responses to the Company's Discovery Requests, Set I.

Also by letter dated July 27, 2018, the Complainant submitted a Request for Production of Documents directed to the Company.

On September 13, 2018, the Company provided notice of its factual and expert witnesses in accordance with the Interim Order Revising Litigation Schedule.

On September 18, 2018, the Company provided responses to the Complainant's Request for Production of Documents.

On October 1, 2018, counsel for the Company requested an extension of the written testimony deadline due to an injury sustained by one of its expert witnesses.

On October 1, 2018, ALJ Watson issued a Second Interim Order Revising Litigation Schedule which revised the litigation schedule which required the parties to submit written rebuttal testimony by October 19, 2018.

On October 11, 2018, ALJ Watson issued a letter to the Complainant returning her materials submitted by letter dated August 28, 2018 as they appear to be responses to discovery which are not to be provided to the presiding officer.

On October 15, 2018, the Complainant filed written rebuttal testimony.

On October 17, 2018, the Company filed a Petition for an extension of time to submit preserved testimony due to the continued unavailability of one of its expert witnesses due to his previous injury.

On October 19, 2018, ALJ Watson issued a Third Interim Order Revising the Litigation Schedule which extended to written rebuttal testimony deadline to December 10, 2018.

On December 10, 2018, the Company filed written rebuttal testimony of Dr. Christopher C. Davis, Ph.D., Dr. Mark Israel, M.D., and John Ahr on behalf of the Company.

On February 26, 2019, a Call-Out Evidentiary Hearing Notice was issued which scheduled a telephonic hearing for March 14, 2019.

On March 14, 2019, the Complainant and counsel for West Penn appeared at a telephonic hearing before ALJ Watson and hearing record was developed.

On March 18, 2019, ALJ Watson issued an Interim Order which admitted ALJ Exhibit 1, an undated formal complaint form regarding property identified as Service Location 2, and established a due date for main briefs of June 10, 2019. The Company submits this Main Brief pursuant to this Order.

II. LEGAL STANDARDS

Under Section 332(a) of the Public Utility Code, the Complainant maintains the burden of proof in this proceeding.¹ The first step in carrying the burden of proof is establishing a *prima facie* case that West Penn violated the Public Utility Code, the Commission's regulations, or a Commission order. Only if the Complainant establishes a *prima facie* case does it become the responsibility of the respondent to provide rebuttal evidence.² In order to establish a *prima facie* case, more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.³ Mere bald assertions, personal opinions or perceptions, when not substantiated by facts, do not constitute evidence.⁴

¹ 66 Pa.C.S. § 332(a); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Commw. 1990), alloc. den., 602 A.2d 863 (Pa. 1992).

² *Waldron v. Phila. Elec. Co.*, 54 Pa. P.U.C. 98 (Order entered Mar. 14, 1980).

³ *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

⁴ *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

Although the factual burden may shift during the course of a proceeding, the Complainant always maintains the overarching burden of proof in the proceeding. It is clearly established that the Complainant's "burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of the evidence."⁵ A preponderance of evidence is demonstrated where the evidence presented is more convincing, even by the smallest degree, than the evidence presented by the opposing party.⁶

In order for the Commission to sustain a formal complaint, the Complainant must demonstrate that an "act or thing done or omitted to be done by any public utility [is] in violation, or claimed violation, of any law which the Commission has jurisdiction to administer, or of any regulation or order of the commission."⁷ Section 1501 of the Public Utility Code states, in relevant part: "every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities."⁸ As part of formal complaint proceedings, the Commission evaluates the reasonableness of public utility service and facilities pursuant to Section 1501. In complaint proceedings similar to the instant proceeding, the Commission has held that the relevant legal standard is whether the installation of a smart meter constitutes unsafe or unreasonable service in violation of Section 1501 of the Public Utility Code.⁹

III. SUMMARY OF ARGUMENT

The Complainant wholly failed to meet her burden of proof that the installation of a smart meter at her Service Locations would constitute unreasonable service in violation of Section 1501

⁵ *Lansberry*, 578 A.2d at 602.

⁶ *Pa. Pub. Util. Comm'n v. HIKO Energy, LLC*, 2015 Pa. PUC LEXIS 364 (I.D. entered Aug. 21, 2015), *supra*.

⁷ 66 Pa.C.S. § 701.

⁸ 66 Pa.C.S. § 1501.

⁹ *Frompovich v. PECO Energy Co.*, 2018 Pa. PUC LEXIS 160 (Opinion and Order entered May 3, 2018); *Susan Kreider v. PECO Energy Co.*, Docket No. C-2015-2469655 (Order on Reconsideration entered January 28, 2016).

of the Public Utility Code or would otherwise violate the Public Utility Code, a Commission regulation or order.

West Penn has an absolute obligation to install smart meters at all of its customers' service locations under Act 129 of 2008 ("Act 129").¹⁰ Neither Act 129 nor subsequent Commission orders related to smart meter installation and deployment permit customers to "opt-out" from smart meter installation.¹¹ Further, both Act 129 and the Commission's Implementation Order require that electric distribution companies ("EDCs") install wireless smart meters with specific functionality.¹² West Penn's smart meters adhere to the requirements of Act 129 and the Commission. The smart meter components and deployment of smart meters in the West Penn territory were identified in West Penn's Smart Meter Deployment Plan, which was ultimately approved by the Commission on June 20, 2014.¹³ West Penn installed a smart meter at the Complainant's Service Locations in order to remain in compliance with Act 129, related Commission orders, and its Smart Meter Deployment Plan.

In addition, the Complainant failed to establish that the installation of a smart meter constitutes unreasonable service. The Complainant's baseless statements related to health, safety and privacy concerns should be rejected as unsupported allegations. The Complainant offered no evidence to support her allegations.

By contrast, the substantial evidence of record presented by the Company addresses the issues raised in this proceeding. The Company presented three witnesses in this proceeding. West

¹⁰ 66 Pa.C.S. § 2806.1, *et seq.*

¹¹ *Id.*; see *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009) ("Implementation Order").

¹² West Penn St. 1R at 4-5, 7.

¹³ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, and M-2013-2341994 (Sec. Letter dated June 20, 2014) (hereinafter, "Smart Meter Deployment Plan" or "SMDP").

Penn Statement No. 1R is the testimony of John C. Ahr. Mr. Ahr is employed by FirstEnergy Service Company with the title Advisor, Regulatory Compliance – Smart Meters. Mr. Ahr’s testimony fully explained the Company’s smart meter deployment plan smart meter safety, and the Complainant’s efforts to refuse a smart meter. In addition to Mr. Ahr’s testimony, West Penn St. 2R is the testimony of Dr. Christopher C. Davis. Dr. Davis is professor of electrical and computer engineering at the University of Maryland. Dr. Davis provided testimony on radio frequency fields and the safety of the Company’s smart meter implementation. Lastly, West Penn St. 3R is the testimony of Dr. Mark A. Israel. Dr. Israel, a medical doctor and professor at Dartmouth Medical School, testified that there was no reliable medical basis to support the Complainant’s medical claims.

In this proceeding, the Complainant presented three main categories of argument in opposition to the statutorily required installation of smart meters. First, the Complainant argues that West Penn is not statutorily required to install smart meters in its service territory. Second, the Complainant argues that smart meters present a threat to her health and safety. Lastly, the Complainant alleges that smart meters are a threat to her privacy. The Complainant’s arguments are contained in her testimony dated August 28, 2018, September 24, 2018, and December 14, 2018, and admitted into the record as Complainant Exhibits O, J, and A, respectively.¹⁴

The evidence of record weighs heavily against the Complainant’s allegations and assertions. In comparison to the Company’s expert testimony, the lay testimony and exhibits offered by the Complainant should carry little, if any, weight. Although the Pennsylvania Rules of Evidence are not strictly adhered to at the Commission, the Pennsylvania Supreme Court has unequivocally stated that any relaxation of the rules of evidence in administrative settings cannot

¹⁴ See Tr. 147-149. The parties agreed to admit only written testimony, in lieu of oral testimony, by stipulation. Tr. 140.

allow lay witnesses to testify to technical matters “without personal knowledge or specialized training.”¹⁵ Lay witness testimony only carries evidentiary weight where the witness has actually perceived the situation, and the opinion is not based on scientific, technical or specialized knowledge.¹⁶ As such, all lay testimony from the Complainant related to more specialized topics, including privacy and radio frequency, should be disregarded and given no evidentiary weight under the Pennsylvania Rules of Evidence.

In sum, the Complainant failed to establish by a preponderance of the evidence that West Penn violated a Commission statute, regulation, or order. Specifically, the Complainant has not met her burden of proof that the installation of a smart meter constitutes unreasonable service by the Company. Accordingly, West Penn urges the Commission to dismiss the Complaint with prejudice.

IV. ARGUMENT

A. The Complainant Failed to Meet her Burden of Proof that West Penn Violated the Public Utility Code, a Commission Order, or a Commission Regulation.

1. The Installation of Smart Meters is Required by Law.

On October 15, 2008, Act 129 was signed into law and codified as part of the Public Utility Code (“Code”).¹⁷ Act 129 required EDCs with at least 100,000 customers, such as West Penn, to file a smart meter technology procurement and installation plan (“SMP Plan”) with the Commission for approval.¹⁸ Specifically, Section 2807(f)(2) of the Code directed EDCs to furnish smart meter technology as follows: 1) upon request from a customer that agrees to pay the cost of

¹⁵ *Gibson v. W.C.A.B.*, 861 A.2d 938, 947 (Pa. 2004) (holding Rules of Evidence 602, 701 and 702 generally applicable in agency proceedings).

¹⁶ Pa.R.E. 701.

¹⁷ 66 Pa.C.S. § 101, *et seq.*

¹⁸ 66 Pa.C.S. § 2807(f); *see also* West Penn Exh. JCA 1 at 4-7.

the smart meter at the time of the request; 2) in new building construction; and 3) in accordance with a depreciation schedule not to exceed fifteen years.¹⁹

Under Act 129, West Penn has an absolute obligation to install smart meters at all of its customers' service locations. Neither Act 129 nor subsequent Commission orders related to smart meter installation and deployment permit customers to "opt-out" from smart meter installation. West Penn's Smart Meter Deployment Plan, approved by the Commission, explicitly states that no opt-out option is available.²⁰ As explained by Company witness John C. Ahr, West Penn's Commission-approved Smart Meter Deployment Plan ("SMDP") calls for 98.5% of the Company's smart meter installation to be completed by 2019, with the remaining 1.5% of meters being installed by the end of 2022.²¹ The Commission-approved SMDP mandates 100% of its meters to be replaced with smart meters. Allegations by the Complainant to the contrary should be disregarded.

Pursuant to Section 2807(f) of the Public Utility Code, West Penn filed their Petition for Approval of Smart Meter Technology Procurement and Installation Plan on August 14, 2009 ("2009 SMP Plan").²² The Commission issued an Order on June 30, 2011 approving the unopposed Amended Joint Petition for Settlement of All Issues regarding the 2009 SMP Plan.²³ Subsequent to the filing of the 2009 SMP Plan, West Penn became affiliated with FirstEnergy Corp.'s Pennsylvania Electric Distribution Companies (Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Companies, together with West Penn referred to hereafter as "the Companies"). On December 31, 2012, the Companies filed their Joint

¹⁹ 66 Pa.C.S. § 2807(f)(2).

²⁰ *Smart Meter Deployment Plan*, at 9.

²¹ West Penn St. No. 1R at 10-11.

²² *Petition of West Penn Power Company d/b/a Allegheny Power for Expedited Approval of its Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123951 (Petition dated Aug. 14, 2009)

²³ *Petition of West Penn Power Company d/b/a Allegheny Power for Expedited Approval of its Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123951 (Order dated June 30, 2011).

Petition for Approval of their Smart Meter Deployment Plan, in which they requested that the Commission: (1) find that their proposed Deployment Plan satisfies the requirements of Act 129 and the Commission's Implementation Order; (2) approve the Companies' proposed procurement and deployment of approximately 2.1 million smart meters, over 98% of which should be installed by the end of 2019; (3) authorize the Companies to continue to recover smart meter costs; and (4) authorize the Companies to create a regulatory asset for their investment in their existing meters to be replaced by smart meters.²⁴ On June 16, 2014, the Companies submitted their revised Smart Meter Deployment Plan,²⁵ which *intra alia* accelerated the smart meter deployment schedule laid out in their original Deployment Plan. Under the Revised Deployment Plan, the FirstEnergy Companies proposed to deploy 170,000 smart meters by the end of 2015.²⁶ In its June 25, 2014 Opinion and Order, the Commission recognized the benefits of early deployment of smart meters and approved the revised Smart Meter Deployment Plan, stating:

[T]his Commission has already observed the benefits of early deployment. We find that the use of Penn Power as a case study may help the Companies identify other more cost-effective meter deployment strategies that can then be leveraged by FirstEnergy's other operating companies. If deployment and operational savings prove very positive, FirstEnergy may also be able to further accelerate smart meter deployment, thus enabling an option to enhance customer savings even more.²⁷

²⁴ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994 (Petition filed December 31, 2012).

²⁵ See West Penn Exhibit JCA-1.

²⁶ West Penn Exhibit JCA-1 at 13.

²⁷ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994 (Opinion and Order entered June 25, 2014 at 16).

In this proceeding, the Complainant argues that the law allows that a smart meter may be deployed at her Service Locations only upon her express request and consent.²⁸ In her August 28, 2018 testimony, the Complainant analyzes Act 129 and concludes, “Upon request from a customer that agrees to pay the cost of the smart meter at the time of the request. **I did not agree nor did I make a request at any time.**”²⁹ The Complainant further argues, “that the smart meters were never (MANDATORY)...this is not necessary since the smart meters were never MANDATED...nothing is more important than the fact that the smart meters were never MANDATED.”³⁰

The Complainant points to Section 2807(f)(2)(i) of the Code for the proposition that the deployment of smart meters for individual customers should occur only upon request of the individual customer.³¹ By extension, the Complainant appears to contend that Act 129 allows an overall “opt-out” for customers to reject installation of a smart meter. At the outset, West Penn points out that Commission precedent is uniform that the Commission cannot grant exceptions to the statutory directive that smart meters be installed by allowing customers to “opt-out.” Neither the Company’s Commission-approved Smart Meter Deployment Plan nor Act 129 permit such opt-outs to occur.³²

The Complainant’s interpretation of Section 2807(f) of the Code is incorrect. Section 2807(f)(2)(i) provides:

(2) Electric distribution companies shall furnish Smart Meter technology as follows:

²⁸ Complainant’s Exhibits O, J, A.

²⁹ Complainant Exh. O (Emphasis added).

³⁰ Complainant Exh. J.

³¹ See Complainant Exh O; see also Complainant Exh. J at 7.

³² West Penn Exh. JCA-1 at 9, 48; see, e.g., *Lutherschmidt v. Metropolitan Edison Company*, Docket No. C-2010-2200353 (Final Order entered March 25, 2011); *Negley v. Metropolitan Edison Company*, Docket No. C-2010-2205305 (Initial Decision dated January 3, 2011 became final without Commission action on March 3, 2011).

(i) Upon request from a customer that agrees to pay the cost of the Smart Meter at the time of the request.³³

Company witness Mr. Ahr rebutted Ms. Betchy's interpretation by testifying that a customer does not have the ability to "opt-out" of having a smart meter installed at his or her home under the Company's Revised Deployment Plan.³⁴ Specifically, Mr. Ahr testified that the Company's Smart Meter Deployment Plan, as approved by the Commission, provides for all customers to receive smart meters on or before December 31, 2022.³⁵ This full deployment is broken into two parts. The great majority of customers (98.5%) will receive smart meters by mid-2019, with the remaining 1.5% of customers to receive installation by December 31, 2022.³⁶ Mr. Ahr's testimony is consistent with the FirstEnergy Companies' Commission-approved Smart Meter Deployment Plan, which provides in pertinent part:

The Full-Scale Deployment Stage will commence upon resolution of all problems encountered during the Solution Validation Stage and will continue until all meters are installed on or before December 31, 2022. During this stage, the remainder of the smart meter infrastructure will be concurrently built in each of the Companies' respective service territories, starting with the most populated areas first. All remaining smart meters will be installed during this Stage at an anticipated meter installation rate of 1,900 meters per day, five days per week, and potentially ramping up to 3,000 meters per day if circumstances and conditions warrant. At this pace, the Companies expect to install approximately 98.5% of all meters by mid-2019, with the remaining 1.5% of the meters being installed thereafter through December 31, 2022. The 1.5 % of the installations represent those installations that may require alternative communication solutions or difficult to reach locations such as remote hunting cabins. Any similar situations discovered in Penn Power's service territory are included in the 1.5% estimate and will be addressed in the time frame discussed above.³⁷

³³ 66 Pa.C.S. § 2807(f)(2)(i).

³⁴ West Penn St. 1R at 10-11

³⁵ *Id.*

³⁶ *Id.*

³⁷ West Penn Exhibit JCA-1, pp. 47-48.

As Mr. Ahr explained, there is no provision for less than 100 percent smart meter deployment. Specifically, Mr. Ahr testified that “Clearly, this plan requires West Penn to install smart meters at all customer service locations.”³⁸

West Penn installed smart meters at the Complainant’s Service Locations.³⁹ With respect to the Company’s deployment timeframe, Mr. Ahr explained that the Company cannot manually read the Complainant’s meters because the Company will deploy smart meters for all its customers in the Complainant’s area served by West Penn. Mr. Ahr further testified that, from a practical perspective, West Penn must have a uniform means of reading all customers’ meters.⁴⁰

The Complainant raised a broad, though ill-specified opposition to the legal validity of Act 129. She referred to dialogue in the General Assembly’s legislative history of Act 129 for her proposition that smart meter deployment is invalid.⁴¹ In particular, the Complainant pointed to the Pennsylvania Legislative Journal of the Senate of Wednesday, October 8, 2008, in which Senators discussed House Bill 2200, which would eventually become the smart meter statute at 66 Pa.C.S. § 2806.1, *et seq.* The Complainant points to a single statement of Senator Vincent Fumo concerning smart meter legislation.⁴² That certain comments by a single Senator could be interpreted as supportive of an opt-out to smart meter installation is simply irrelevant. The final version of Act 129 that was signed into law by the Pennsylvania legislature does not contain an

³⁸ West Penn St. 1R at 10-11.

³⁹ The Complainant’s initial Formal Complaint was received by the Company on March 6, 2018. The initial Formal Complaint addressed account number 100094136684, at 140 Inwood Avenue, Carmichaels, Pennsylvania, the Complainant’s primary residence. *See* Tr. 77. A second, undated complaint was submitted by the Complainant regarding the meter installed at 150 Inwood Avenue, Carmichaels, Pennsylvania. At hearing on March 14, 2019, the March 6, 2018 Formal Complaint was amended to contain the averments raised by the Complainant in her undated second complaint. Tr. at 80. As explained in Mr. Ahr’s testimony, the Company installed a smart meter at 140 Inwood Avenue on April 6, 2016 due to the meter being damaged. *Id.* at 13. The Company installed a smart meter at 150 Inwood Avenue on April 10, 2018, however there had been no service at that location since December 7, 2017. *Id.* at 16.

⁴⁰ *Id.* at 11.

⁴¹ Complainant Exhibit O.

⁴² Complainant Exhibit O; Complainant Exhibit J.

“opt-out” provision. As indicated by the affirmative votes of the House and Senate members in favor of Act 129, any legislative commentary that is inconsistent with the final version of the law should be disregarded.

2. — ~~The Installation of a Smart Meter Does Not Constitute Unreasonable or Inadequate Service.~~

Although Ms. Betchy alleged multiple health and safety concerns related to smart meters, she failed to provide any reliable evidence in support of her allegations. By contrast, West Penn offered extensive expert testimony to rebut the Complainant’s allegations. The Complainant failed to establish even a bare minimum of her burden of proof to show that the deployment of smart meters is unreasonable or constitutes inadequate utility service.

Pursuant to Section 1501 of the Code, public utilities have a duty to maintain safe, adequate and reasonable service and facilities and to make repairs, changes, and improvements that are necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Section 1501 of the Code provides, in pertinent part:

§ 1501. Character of service and facilities

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission.⁴³

The Complainant failed to demonstrate that the installation of a smart meter at her residence would constitute unreasonable or inadequate service under Section 1501. Ms. Betchy

⁴³ 66 Pa.C.S. § 1501.

makes multiple assertions without any evidentiary support. For example, Ms. Betchy testified that, “There is an EMERGENCY SITUATION involving an IMMEDIATE THREAT to PUBLIC HEALTH or SAFETY. The smart meter is a threat to my health and safety.”⁴⁴ The Complainant further asserts that, “Electromagnetic and Radio Frequency energy contamination from smart meters exceeds allowable safe and healthful limits for domestic environments as determined by the EPA and other scientific programs.”⁴⁵ Ms. Betchy also alleges that there are, “research studies that were conducted by the internet Harvard Medical Doctors and independent studies, Professors and so on.”⁴⁶ In response to Company witness Dr. Mark A. Israel’s testimony concerning Ms. Betchy’s health claims, Ms. Betchy testified, “[H]e is giving his opinion based off of the other reports with in this circle. He claims that he did not find any studies in regards to symptoms of ones health issues from a smart meter, there are over 2,0000, scientific researched studies and findings on this subject.”⁴⁷ To the extent the Complainant has presented an argument against the health and safety of smart meters, it is premised solely on hearsay and should be given no weight.

In response to the Complainant’s concerns about smart meter emissions, West Penn presented the testimony of Dr. Christopher C. Davis, a Professor of Engineering and Professor of Electrical and Computer Engineering at the University of Maryland, where he teaches in Physics and Electrical Engineering, including Electromagnetics (which includes radio frequency (RF) electromagnetics) and Bioelectromagnetics.⁴⁸ Among his many research interests and activities, Dr. Davis has served on the Institute of Electrical and Electronics Engineers (“IEEE”) Committee on Man and Radiation and as Chair of its Subcommittee on Radio Frequency Fields, which consists

⁴⁴ Complainant Exh. O.

⁴⁵ Complainant Exh. O (page 3 of 3).

⁴⁶ Complainant Exh. J.

⁴⁷ Complainant Exh. A.

⁴⁸ West Penn St. 2R.

of experts who examine the scientific research on radio frequency fields and evaluate the IEEE exposure guidelines.⁴⁹

Dr. Davis' testimony provided an explanation of Radio Frequency fields that result from West Penn's smart meters.⁵⁰ Dr. Davis testified that West Penn provided him the specifications for its Itron smart meters at issue in this proceeding, and used those specifications to calculate the radio frequency field levels from the meters. The Itron meters have two radios, a LAN radio and a ZigBee radio.⁵¹

The total daily time of radio frequency signaling from those meters is 190.2 seconds over the course of 24 hours, with individual signal durations of less than 150 milliseconds.⁵² As Dr. Davis explained, the radio frequency field levels from the Itron meters more than comply with the FCC safety standards for the radios in the meter. The FCC safety standards are based on the average exposure over 30 minutes. The 30-minute average for the LAN radio is 62,000 times smaller than the FCC's safety standards and the 30-minute average for the ZigBee radio is 527,000 smaller than the FCC's safety standards.⁵³

As Dr. Davis explained, radio frequency fields from the Itron meters are the same types of radio frequency fields used for radio communications by many common everyday devices, such as radios, cellphones, garage door openers, baby monitors, Wi-Fi, and other wireless communications devices.⁵⁴

Dr. Davis concluded his analysis of West Penn's smart meters as follows⁵⁵:

Q. Have you formed any overall expert opinions about the radio frequency fields from West Penn's Itron meters?

⁴⁹ *Id.* at 3.

⁵⁰ West Penn St. 2R at 7-12.

⁵¹ *Id.* at 12.

⁵² *Id.* at 8.

⁵³ *Id.* at 13.

⁵⁴ *Id.* at 13.

⁵⁵ *Id.* at 14-15.

A. Yes, based on my education, training and experience in physics, biophysics, chemistry, electrical engineering, electromagnetics, bioelectromagnetics, and radio frequency bioelectromagnetics and dosimetry, my review of the scientific research on radio frequency fields, and my calculations of radio frequency field levels, I have formed the following opinions:

The levels of radio frequency fields from West Penn's Itron meters are extremely low and many times lower than the radio frequency fields people commonly encounter from everyday sources.

There is no reliable scientific basis in physics, biophysics, bioelectromagnetics, or radio frequency bioelectromagnetics to conclude that the very low levels of radio frequency fields from West Penn's Itron meters can or will cause any adverse thermal or non-thermal biological effects in people.

Given the extensive testimony provided by Dr. Davis, West Penn submits that the Complainant's allegations regarding the health impacts of smart meters must be rejected.

To address the specific medical harms claimed by the Complainant in this proceeding, West Penn presented Dr. Mark A. Israel, M.D. Dr. Israel is the Executive Director of the Israel Cancer Research Fund, an international charitable fund supporting medical and scientific research, and a Professor at Dartmouth Medical School.⁵⁶ Dr. Israel reviewed the Complainant's Formal Complaint, exhibits, discovery answers, and testimony to assess the medical claims being made.⁵⁷

Dr. Israel evaluated the Complainant's claims of blurred vision based on well established research studies. After completing his review of the Complainant's claim, he concluded as follows⁵⁸:

There are two well done studies of radio frequency fields and human vision: Schmid 2005 and Irlenbusch 2007. Those studies should have detected blurred vision if it occurred, but both found no effect of radio frequency fields on human vision. Moreover, I did not find a collection of studies that are overall consistent in showing that

⁵⁶ West Penn St. 3R at 1.

⁵⁷ *Id.*

⁵⁸ *Id.* at 8.

radio frequency fields affect human vision. Therefore, I do not agree with the statement by the Complainant's ophthalmologist that there are "practical problems with 'smart meters'" and do not agree that there is any basis to remove or not install West Penn's smart meter at the Complainant's house. It is my expert medical opinion that there is no reliable medical basis to conclude that radio frequency fields from West Penn's smart meters affect human vision.

Dr. Israel further reviewed all of the medical claims and found there to be no medical basis to conclude that West Penn's smart meters were the cause of any such issues.⁵⁹ Upon fully reviewing the medical claims of Ms. Betchy, Dr. Israel concluded⁶⁰:

Q. Have you formed an expert opinion about whether the radio frequency fields from a West Penn smart meter at the Complainant's house caused, contributed to, or exacerbated, or will cause, contribute to or exacerbate any of the medical conditions identified in the Complainant's Formal Complaint, exhibits, discovery answers, and direct testimony and exhibits?

A. Yes, I have.

Q. What is that opinion?

A. Based on my medical education, training, and experience, and my evaluation of the scientific studies, **in my expert opinion there is no reliable medical basis to conclude that radio frequency fields from West Penn's smart meters at the Complainant's house caused, contributed to, or exacerbated or will cause, contribute to or exacerbate, any of the medical conditions identified in by Ms. Betchy in her Formal Complaint, exhibits, discovery answers, or direct testimony and exhibits.**

Ms. Betchy also raised generic concerns related to privacy. Company witness Ahr responded to the Complainant's concerns about privacy, testifying that the only information that is accessible to the Company through a smart meter is the customer's electricity use and how it

⁵⁹ West Penn St. 3R at 8-17.

⁶⁰ *Id.* at 17-18 (emphasis added).

increases or decreases over the course of a day.⁶¹ He further noted that smart meters do not provide the Company with information about what appliances are being used or what is consuming electricity within the home, but only communicate total electric usage.⁶²

The Company also presented its Commission-approved Privacy Policy.⁶³ The Company's Privacy Policy explains the type of customer information that can be transmitted through smart meters and addresses the security protocols in place to protect against unauthorized access to a customer's usage information. The policy states that West Penn will not share sensitive customer information, including the customer's name, address, usage levels, Social Security number, driver's license number, employer identification number, date of birth, credit card number, passport number, or bank account number with third parties without the customer's consent.⁶⁴ The Privacy Policy explains the security protections in place when a customer's usage data is transmitted across the smart meter network. The smart meter network includes several security protections to prevent against the unauthorized access of a customer's usage data including encryption, firewalls, password protection and continuous security monitoring.⁶⁵

Finally, the Complainant made a few vague allegations related to the fire risk of smart meters.⁶⁶ The Complainant failed to produce any reasonable or substantial evidence regarding this claim. Having failed to present any competent evidence into the record that West Penn's installed smart meters cause fires or otherwise present a fire hazard, the Complainant's claim must be rejected.⁶⁷

⁶¹ West Penn St. 1R at 11-13.

⁶² *Id.*

⁶³ West Penn Exh. JCA-2.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ See Complainant Exh. J (where Complainant alleges, "[S]everal independent studies that smart meters do catch on fire and that they do burn homes down.")

⁶⁷ See, e.g., *Frompovich v. PECO Energy Co.*, 2018 Pa. PUC LEXIS 160, *90.

Despite failing to support her allegations with any reliable evidence, the Company still rebutted each of the Complainant's allegations related to the Company's smart meters. The Complainant wholly failed to demonstrate that the installation of a smart meter at her service locations would constitute unreasonable or inadequate service under Section 1501 of the Public Utility Code.

3. All Hearsay and Lay Health and Safety Testimony was Properly Objected to and Excluded and May Not be Relied Upon in this Matter.

Ms. Betchy introduced a number of exhibits, which were properly objected to and excluded as hearsay. Further, the Complainant attempted to offer testimony related to health and safety issues without any expert credentials on these issues. As a lay witness, Ms. Betchy was not qualified to testify or offer exhibits related to any issues outside of her direct personal knowledge. All of the foregoing testimony and exhibits carry no evidentiary weight and, where applicable, were properly objected to and excluded.

According to Pennsylvania Rule of Evidence 701,⁶⁸ a lay witness is limited to giving opinion testimony that is rationally based on the witness's own perceptions. Specifically, Rule 701 provides as follows:

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is: (a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Although the Pennsylvania Rules of Evidence are not strictly adhered to at the Commission, the Pennsylvania Supreme Court has unequivocally stated that any relaxation of the rules of evidence

⁶⁸ Pa.R.E. 701.

in administrative settings cannot allow lay witnesses to testify to technical matters “without personal knowledge or specialized training.”⁶⁹ Lay witness testimony only carries evidentiary weight where the witness has actually perceived the situation, and the opinion is not based on scientific, technical or specialized knowledge.⁷⁰ In this case, the bulk of the Complainant’s testimony and exhibits related to issues outside the scope of her personal knowledge and were based on hearsay. All such testimony and exhibits, where objected to, were properly excluded upon objection. To the extent such testimony was not objected to, such testimony should carry insignificant weight that cannot support the Complainant’s burden of proof in this proceeding.

West Penn presented extensive expert testimony in support of its position that its smart meter deployment is safe, reasonable and adequate. The Complainant, on the other hand, failed to present any credible or relevant evidence to support her allegations that smart meter deployment is unsafe or violates Section 1501 of the Public Utility Code. In view of the Complainant’s failure to support her position, much less fulfill her burden of proof, the Complaint should be denied and dismissed with prejudice.

⁶⁹ *Gibson v. W.C.A.B.*, 861 A.2d 938, 947 (Pa. 2004) (holding Rules of Evidence 602, 701 and 702 generally applicable in agency proceedings).

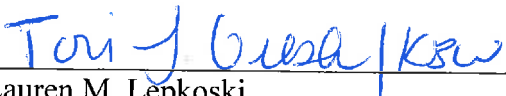
⁷⁰ Pa.R.E. 701.

V. **CONCLUSION**

WHEREFORE, West Penn Power Company respectfully requests that Administrative Law Judge Jeffrey Watson recommend that the Pennsylvania Public Utility Commission dismiss the Formal Complaint of Kim Betchy with prejudice.

Respectfully submitted,

Dated: June 10, 2019



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APPENDIX A

PROPOSED FINDINGS OF FACT

1. Act 129 of 2008 required electric distribution companies with more than 100,000 customers to adopt smart meter deployment plans.⁷¹

2. Act 129 provides a list of required smart meter functionality, which was supplemented by Commission order.⁷²

3. West Penn's Commission-approved Smart Meter Deployment Plan called for 98.5% of the Company's smart meter installation to be completed by 2019, with the remaining 1.5% of meters being installed by the end of 2022.⁷³

4. West Penn's Smart Meter Technology Procurement and Installation Plan was filed on August 14, 2019.⁷⁴

5. The Commission determined that West Penn's Smart Meter Deployment Plan was compliant with Act 129 and ultimately approved the smart meter deployment plan on June 25, 2014.⁷⁵

6. Ms. Betchy offered only lay witness testimony at the hearings in this matter.

7. The Company presented three witnesses in this proceeding. West Penn Statement No. 1R is the testimony of John C. Ahr. Mr. Ahr is employed by FirstEnergy Service Company with the title Advisor, Regulatory Compliance – Smart Meters. Mr. Ahr's testimony fully explained the Company's smart meter deployment plan smart meter safety, and the Complainant's efforts to refuse a smart meter.

⁷¹ West Penn St. 1R at 4; West Penn Exh. JCA 1 at 4-7.

⁷² West Penn St. 1R at 4-5, 7.

⁷³ West Penn St. No. 1R at 10-11.

⁷⁴ *Petition of West Penn Power Company d/b/a Allegheny Power for Expedited Approval of its Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123951 (Petition dated Aug. 14, 2009)

⁷⁵ West Penn St. 1R at 9.

8. West Penn St. 2R is the testimony of Dr. Christopher C. Davis. Dr. Davis is professor of electrical and computer engineering at the University of Maryland. Dr. Davis provided testimony on radio frequency fields and the safety of the Company's smart meter implementation.

9. West Penn St. 3R is the testimony of Dr. Mark A. Israel. Dr. Israel, a medical doctor and professor at Dartmouth Medical School, testified that there was no reliable medical basis to support the Complainant's medical claims.

10. On December 31, 2012, the Companies filed their Joint Petition for Approval of their Smart Meter Deployment Plan, in which they requested that the Commission: (1) find that their proposed Deployment Plan satisfies the requirements of Act 129 and the Commission's Implementation Order; (2) approve the Companies' proposed procurement and deployment of approximately 2.1 million smart meters, over 98% of which should be installed by the end of 2019; (3) authorize the Companies to continue to recover smart meter costs; and (4) authorize the Companies to create a regulatory asset for their investment in their existing meters to be replaced by smart meters.⁷⁶

11. On June 16, 2014, the Companies submitted their revised Smart Meter Deployment Plan,⁷⁷ which *intra alia* accelerated the smart meter deployment schedule laid out in their original Deployment Plan.

12. West Penn installed smart meters at the Complainant's Service Locations.⁷⁸

⁷⁶ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994 (Petition filed December 31, 2012).

⁷⁷ See West Penn Power Exhibit JCA-1.

⁷⁸ West Penn Power St. 1R at 13-16.

13. West Penn must have a uniform means of reading all customers' meters.⁷⁹

14. West Penn provided Company witness Davis with the specifications for its Itron smart meters at issue in this proceeding and used those specifications to calculate the radio frequency field levels from the meters.⁸⁰

15. Itron meters have two radios, a LAN radio and a ZigBee radio.⁸¹

16. The total daily time of radio frequency signaling from those meters is 190.2 seconds over the course of 24 hours, with individual signal durations of less than 150 milliseconds.⁸²

17. The radio frequency field levels from Itron meters more than comply with the FCC safety standards for the radios in the meter. The FCC safety standards are based on the average exposure over 30 minutes. The 30-minute average for the LAN radio is 62,000 times smaller than the FCC's safety standards and the 30-minute average for the ZigBee radio is 527,000 smaller than the FCC's safety standards.⁸³

18. Radio frequency fields from Itron meters are the same types of radio frequency fields used for radio communications by many common everyday devices, such as radios, cellphones, garage door openers, baby monitors, Wi-Fi, and other wireless communications devices.⁸⁴

19. There is no reliable scientific basis in physics, biophysics, bioelectromagnetics, or radio frequency bioelectromagnetics to conclude that the very low levels of radio frequency fields

⁷⁹ West Penn St. 1R at 11.

⁸⁰ West Penn St. 2R at 12.

⁸¹ *Id.* at 12.

⁸² *Id.* at 8.

⁸³ *Id.* at 13.

⁸⁴ *Id.* at 13.

from West Penn's Itron meters can or will cause any adverse thermal or non-thermal biological effects in people.⁸⁵

20. There is no reliable medical basis to conclude that radio frequency fields from West Penn's smart meters affect human vision.⁸⁶

21. There is no medical basis to conclude that West Penn's smart meters were the cause of any of the medical claims of the Complainant.⁸⁷

22. There is no reliable medical basis to conclude that radio frequency fields from West Penn's smart meters at the Complainant's house caused, contributed to, or exacerbated or will cause, contribute to or exacerbate, any of the medical conditions identified by the Complainant.⁸⁸

23. The only customer information that is accessible to the Company through a smart meter is the customer's electricity use and how it increases or decreases over the course of a day.⁸⁹

24. Smart meters do not provide the Company with information about what appliances are being used or what is consuming electricity within the home, but only communicate total electric usage.⁹⁰

25. The Company's Privacy Policy explains the type of customer information that can be transmitted through smart meters and addresses the security protocols in place to protect against unauthorized access to a customer's usage information.⁹¹

⁸⁵ *Id.* at 14-15.

⁸⁶ West Penn St. 3R at 8.

⁸⁷ West Penn St. 3R at 8-17.

⁸⁸ *Id.* at 17-18.

⁸⁹ West Penn St. 1R at 11-13.

⁹⁰ *Id.*

⁹¹ West Penn Exh. JCA-2.

26. West Penn does not share sensitive customer information, including the customer's name, address, usage levels, Social Security number, driver's license number, employer identification number, date of birth, credit card number, passport number, or bank account number with third parties without the customer's consent.⁹²

27. The smart meter network includes several security protections to prevent against the unauthorized access of a customer's usage data including encryption, firewalls, password protection and continuous security monitoring.⁹³

⁹² *Id.*

⁹³ *Id.*

APPENDIX B

PROPOSED CONCLUSIONS OF LAW

1. Under Section 332(a) of the Public Utility Code, the Complainant maintains the burden of proof in this proceeding.⁹⁴

2. The first step in carrying the burden of proof is establishing a prima facie case that West Penn violated the Public Utility Code, the Commission's regulations, or a Commission order. Only if the Complainant establishes a prima facie case does it become the responsibility of the Company to provide rebuttal evidence.⁹⁵

3. In order to establish a prima facie case, more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Mere bald assertions, personal opinions or perceptions, when not substantiated by facts, do not constitute evidence.⁹⁶

4. A party's burden of proof is met by establishing a preponderance of the evidence, which requires proof by a greater weight of the evidence.⁹⁷

5. A preponderance of evidence is demonstrated where the evidence presented is more convincing, even by the smallest degree, than the evidence presented by the opposing party.⁹⁸

6. In order for the Commission to sustain a formal complaint, the Complainant must demonstrate that an "act or thing done or omitted to be done by any public utility [is] in violation,

⁹⁴ 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Commw. 1990), alloc. den., 602 A.2d 863 (Pa. 1992).

⁹⁵ *Waldron v. Phila. Elec. Co.*, 54 Pa. P.U.C. 98 (Order entered Mar. 14, 1980); *Replogle v. Pa. Elec. Co.*, 54 Pa. PUC 528 (Order entered Oct. 9, 1980).

⁹⁶ *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987); *Mid-Atlantic Power Supply Assoc. v. Pa. Public Utility Comm'n*, 746 A.2d 1196, 1200 (Pa. Commw. Ct. 2000).

⁹⁷ *Lansberry*, 578 A.2d at 602.

⁹⁸ *Pa. Pub. Util. Comm'n v. HIKO Energy, LLC*, 2015 Pa. PUC LEXIS 364 (I.D. entered Aug. 21, 2015); see also *Se-Ling Hosiery*, *supra*.

or claimed violation, of any law which the Commission has jurisdiction to administer, or of any regulation or order of the commission.”⁹⁹

7. As part of formal complaint proceedings, the Commission evaluates the reasonableness of public utility service and facilities pursuant to Section 1501 of the Public Utility Code. Section 1501 states, in relevant part: “every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities....”¹⁰⁰

8. In similar complaint proceedings, the Commission has held that the relevant legal standard is whether the installation of a smart meter constitutes unsafe or unreasonable service in violation of Section 1501 of the Public Utility Code.¹⁰¹

9. Neither Act 129 nor subsequent Commission orders related to smart meter installation and deployment permit customers to “opt-out” from smart meter installation.¹⁰²

10. The Complainant failed to establish that the Company’s installation of a smart meter at the Complainant’s service location would violate Act 129 or any related Commission orders.¹⁰³

11. A lay witness may only provide testimony related to his or her direct knowledge or experience.¹⁰⁴

⁹⁹ 66 Pa.C.S. § 701.

¹⁰⁰ 66 Pa.C.S. § 1501.

¹⁰¹ *Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602 (Opinion and Order entered May 3, 2018); *Susan Kreider v. PECO Energy Co.*, Docket No. C-2015-2469655 (Order on Reconsideration entered January 28, 2016).

¹⁰² 66 Pa.C.S. § 2806.1, *et seq.*; *see Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009).

¹⁰³ *See id.*; *see also Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West West Penn Company For Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, and M-2013-2341994 (Sec. Letter dated June 20, 2014).

¹⁰⁴ Pa.R.E. 701.

12. The Company owns, maintains, furnishes and installs its electric meters. It is within the Company's sole and exclusive discretion to install the meters and related equipment it deems reasonable and appropriate to provide service to customers.¹⁰⁵

13. The Company has the absolute right to access a customer's premises to remove or exchange any or all Company equipment including a meter.¹⁰⁶

14. The Company is permitted to terminate a customer's electric service for denying access to the meter.¹⁰⁷

15. Any testimony of a lay witness related to technical or specialized knowledge should be excluded and given no evidentiary weight.¹⁰⁸

16. The hearsay evidence presented in this case was properly objected to and excluded and may not support any findings of fact.¹⁰⁹

17. The Complainant failed to sustain her burden of proof that the installation of a smart meter would constitute unsafe or unreasonable service by the Company.

¹⁰⁵ Electric Pa. P.U.C. No. 81, Original Page 45, issued May 1, 2015; effective May 3, 2015.

¹⁰⁶ *Id.*

¹⁰⁷ 66 Pa. C.S. § 1406; 52 Pa. Code § 56.81; Electric Pa. P.U.C. No. 81, Original Page 60, issued May 1, 2015; effective May 3, 2015.

¹⁰⁸ See *Gibson v. W.C.A.B.*, 861 A.2d 938, 947 (Pa. 2004).

¹⁰⁹ *Walker v. Unemployment Comp. Bd. of Review*, 367 A.2d 366, 370 (Pa Commw. Ct. 1976).

APPENDIX C

PROPOSED ORDERING PARAGRAPHS

1. The formal complaint of Kim Betchy filed against West Penn Power Company at the above-referenced docket is dismissed with prejudice.
2. This matter shall be marked as closed.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

KIM BETCHY

v.

WEST PENN POWER COMPANY

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:
:
:

DOCKET NO. C-2018-3000257

CERTIFICATE OF SERVICE

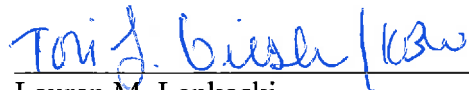
I hereby certify that I have this day served a true copy of the Main Brief of West Penn Power Company upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by electronic and First Class Mail, postage prepaid, as follows:

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Administrative Law Judge Jeffrey A. Watson
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Dated: June 10, 2019



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