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October 17, 2019

VIA ELECTRONIC FILING

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

Re: Michael T. Jennings v. West Penn Power Company
Docket No. C-2018-3006031

Dear Secretary Chiavetta:

Enclosed please find the Petition for Protective Order 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

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Enclosures

c: As Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MICHAEL T. JENNINGS

V.

WEST PENN POWER COMPANY

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Docket No. C-2018-3006031

PETITION FOR PROTECTIVE ORDER

West Penn Power Company (the “Company” or “West Penn”) files this Petition pursuant to 52 Pa. Code § 5.423(b) for the entry of a Protective Order, in the form attached hereto as Exhibit A, to limit the disclosure of confidential and proprietary information (Confidential Information) produced in discovery or submitted for the record by any party in the above-referenced matter. In further support of this Petition, West Penn states as follows:

1. On November 14, 2018, Michael T. Jennings (“Complainant”) filed a Formal Complaint with the Pennsylvania Public Utility Commission (“Commission”) regarding 200 Brook Hollow Road, Mount Pleasant, Pennsylvania 15666 (“Service Location”) which was electronically served on the Company on November 15, 2018.
2. The Formal Complaint was assigned to Administrative Law Judge Jeffrey A. Watson (“ALJ Watson”).
3. On February 12, 2019, the Company propounded interrogatories upon the Complainant (the “Company’s Discovery Requests”) to which the Complainant partially responded to by letter dated March 2, 2019.
4. On September 20, 2019, the Complainant filed a Request for Entry of a Protective Order.
5. On September 30, 2019, ALJ Watson entered an Interim Order which directed, in part, that the parties shall confer on or before October 10, 2019 and attempt to agree or stipulate

to the terms of a protective order to address the disclosure and use of medical information and documentation and other sensitive information in this proceeding. Further, the parties were directed to submit a stipulated protective order or, in the event an agreement is not reached by the parties, either party may submit a request for a protective order and a proposed protective order on or before October 17, 2019.

6. The Company's Discovery Requests request the production of Confidential Information or documents containing Confidential Information. Additionally, in the course of this proceeding, the Company and Complainant may be requested to produce further information and documents that may be considered confidential. Accordingly, the entry of a Protective Order covering Confidential Information produced by any party in response to discovery and Confidential Information that parties may seek to introduce in evidence will facilitate the orderly and efficient progress of this proceeding.

7. The form of the Protective Order attached as Exhibit A is the same or similar to Protective Orders regularly entered in other proceedings for the Companies and other utilities.¹

8. On October 4, 2019, in an effort to comply with ALJ Watson's directive in the Interim Order issued September 30, 2019, the Company sent a copy of the proposed protective order to the Complainant for his review, which substantially mirrored that which the Complainant had proposed to the Company previously.

9. By letter dated October 7, 2019, the Complainant provided no comment or input regarding the draft protective order forwarded to the Complainant on October 4, 2019. Instead, the Complainant forwarded a copy of a signed stipulated protective agreement and requested that the company sign the agreement. However, as the Complainant has already requested a protective

¹ *E.g., Pa. P.U.C. v. West Penn Power Company*, Docket No. R-2016-253749, et al., Protective Order (June 22, 2016) (Administrative Law Judge Mary D. Long).

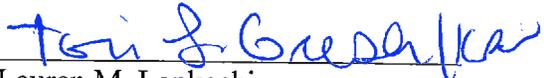
order from the Commission, the Company, while in agreement with moving forward with a stipulated protective agreement, has not signed the stipulated protective agreement proposed by the Complainant. Further, the stipulated protective agreement is not in the appropriate form for a protective order and, therefore, the Company has modified the Complainant's stipulated protective agreement to comply with the directive given in the Interim Order entered September 30, 2019, while keeping the substantive contents as proposed by the Complainant.

10. The Company avers that the proposed protective order would protect that information from production or use outside the bounds of this docketed proceeding.

WHEREFORE, for all of the foregoing reasons, this Petition should be granted and a Protective Order in the form attached hereto as Exhibit A should be issued.

Respectfully submitted,

Date: October 17, 2019


Lauren M. Lepkoski
Attorney No. 94800
Tori L. Giesler
Attorney No. 207742
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, Pennsylvania 19612-6001
(610) 921-6203
(610) 921-6658
llepkoski@firstenergycorp.com
tgiesler@firstenergycorp.com

Counsel for West Penn Power Company

EXHIBIT A

FORM OF PROTECTIVE ORDER

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MICHAEL T. JENNINGS

V.

WEST PENN POWER COMPANY

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Docket No. C-2018-3006031

PROTECTIVE ORDER

Upon request of Michael T. Jennings (“Complainant”) for a Protective Order:

IT IS ORDERED THAT:

1. The Petition is hereby granted and this Protective Order is issued to establish procedures for the protection of all materials and information identified in Paragraphs 2 and 3 below, which are or will be filed with the Pennsylvania Public Utility Commission (“Commission”), produced in discovery, or otherwise presented during the above-captioned proceeding and all proceedings consolidated with it. All persons now or hereafter granted access to the materials and information identified in Paragraphs 2 and 3 of this Protective Order, including the Complainant and West Penn Power Company (the “Company”), shall use and disclose such information only in accordance with this Order.

2. The information subject to this Protective Order is all correspondence, documents, data, personal health information, studies, and other materials to be furnished by Complainant’s medical providers pursuant to the Company’s interrogatories to the Complainant as to the family health conditions, and which the Complainant’s medical providers may provide to the Company pursuant to a release signed by the Complainant or household members, in whatever form produced, stored or contained, including computerized memory, magnetic, electronic or optical media, furnished in this proceeding that the producing party believes to be of a confidential nature

and are so designated by being stamped "CONFIDENTIAL" protected material. Such materials are referred to in this Protective Order as "Confidential Information." When a statement or exhibit is identified for the record, the portions thereof that constitute Confidential Information shall be designated as such for the record.

3. Confidential Confidential Subject to the terms of this Protective Order, Confidential Information shall be provided to counsel for a party who meets the criteria of a "Reviewing Representative" as set forth below. Such counsel shall use or disclose the Confidential Information only for purposes of preparing or presenting evidence, testimony, cross-examination, argument, or settlement discussions in this proceeding. To the extent required for participation in this proceeding, such counsel may allow others to have access to Confidential Information only in accordance with the conditions and limitations set forth in this Protective Order.

4. Nothing in this Protective Order precludes the use by the Commission and its staff, consistent with this Protective Order, of Confidential Information produced in this proceeding and made part of the record.

5. Before the Company discloses any Confidential Information to anyone, (1) the Company shall secure written assurance from each of such potential persons to whom disclosure may be made that he or she will maintain the confidentiality of the Confidential Information and not disclose the Confidential Information further except in preparation for the above-mentioned Proceeding; (2) the Company shall provide Jennings with a list of Company experts to whom the Company intends to disclose the Confidential Information; and (3) signatures of such experts on Appendix A, that they agree to the terms of this Agreement shall be furnished to the Complainant before the Company discloses any Confidential Information to any Company expert.

6. The Company shall use its best efforts to safeguard the Confidential Information and not disclose any Confidential Information except as provided herein. The Company agrees to give the Complainant written notice within five days of the Company's discovery of any unintentional disclosure of the Confidential Information and the Company shall cooperate with Jennings to rectify, to the extent possible, any damage to Jennings for unintentional disclosure of Confidential Information. The Complainant retains the right to challenge the adequacy of the Company's written assurances that Confidential Information will not be jeopardized.

7. Information deemed "CONFIDENTIAL" protected material shall be provided to a "Reviewing Representative." For purposes of "CONFIDENTIAL" protected material, a "Reviewing Representative" is a person who has signed a Non-Disclosure Certificate and is:

- i. A party of record;
- ii. An attorney who has formally entered an appearance in this proceeding on behalf of a party; or
- iii. An attorney, paralegal, or other employee associated for purposes of this case with an attorney described in subparagraph (ii) above.

8. Confidential Information shall be treated by the parties and by the Reviewing Representative in accordance with the terms of this Protective Order, which are hereby expressly incorporated into the certificate that must be executed. Confidential Information shall be used as necessary, for the conduct of this proceeding and for no other purpose. Confidential Information shall not be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person's responsibilities in this proceeding.

9. (a) A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Confidential Information pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure

Certificate in the form provided in Appendix A, provided, however, that if an attorney or expert qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under the attorney's instruction, supervision or control need not do so. A copy of each executed Non-Disclosure Certificate shall be provided to counsel for the party asserting confidentiality prior to disclosure of any Confidential Information to that Reviewing Representative.

(b) Attorneys and outside experts qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with this Protective Order.

10. The parties shall designate data or documents as constituting or containing Confidential Information by stamping the documents "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" protected material. Where only part of data compilations or multi-page documents constitutes or contains Confidential Information, the parties, insofar as reasonably practicable within discovery and other time constraints imposed in this proceeding, shall designate only the specific data or pages of documents which constitute or contain Confidential Information.

11. The Commission and all parties will consider and treat the Confidential Information as within the definition of "confidential proprietary information" in Section 102 of the Pennsylvania Right-to-Know Law of 2008, 65 P.S. § 67.102 and subject to the exemptions from disclosure provided in the Pennsylvania Right-to-Know Act (65 P.S. § 67.101 et seq.) until such information is found by a tribunal with jurisdiction to be not confidential or subject to one or more exemptions.

12. Any public reference to Confidential Information by a party or its Reviewing Representative shall be to the title or exhibit reference in sufficient detail to permit persons with

access to the Confidential Information to understand fully the reference and not more. The Confidential Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.

13. The part(s) of any record of this proceeding containing Confidential Information, including but not limited to all exhibits (including discovery responses made part of the record), writings, testimony, cross examination, and argument, and including reference thereto as mentioned in Paragraph 12 above, shall be sealed for all purposes, including administrative and judicial review, unless such Confidential Information is released from the restrictions of this Protective Order, either through the agreement of the parties to this proceeding or pursuant to an order of the Commission.

14. The parties shall retain the right to question or challenge the confidential or Confidential nature of Confidential Information and to question or challenge the admissibility of Confidential Information. If a party challenges the designation of a document or information as Confidential, the producing party retains the burden of demonstrating that the designation is appropriate.

15. The parties shall retain the right to object to the production of Confidential Information on any proper ground, to refuse to produce Confidential Information pending the adjudication of the objection, and to seek additional measures of protection of Confidential Information beyond those provided in this Protective Order.

16. Within 30 days after a Commission final order is entered in the above-captioned proceedings, or in the event of appeals, within thirty days after appeals are finally decided, the receiving party, upon request, shall either destroy or return to the producing party all copies of all documents and other materials not entered into the record, including notes, which contain any

Confidential Information. In the event that a receiving party elects to destroy all copies of documents and other materials containing Confidential Information instead of returning the copies of documents and other materials containing Confidential Information to the producing party, upon request, the receiving party shall certify in writing to the producing party that the Confidential Information has been destroyed.

Date: _____

Jeffrey A. Watson
Administrative Law Judge

APPENDIX A

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MICHAEL T. JENNINGS

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Docket No. C-2018-3006031

ACKNOWLEDGMENT OF
PROTECTIVE ORDER

TO WHOM IT MAY CONCERN:

The undersigned, Laurin Lepkaski (NAME) is
Attorney (TITLE), in the Proceeding as defined in the Protective Order. The undersigned has read and understands the Protective Order granted in the Proceeding, which Protective Order deals with the treatment of Confidential Information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Protective Order.

Laurin Lepkaski
NAME

2800 Pottsville Pike
Ridley, PA 19612-0001
ADDRESS

FirstEnergy Service Company
EMPLOYER

DATE: 10/17/19

APPENDIX A

BEFORE THE
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Docket No. C-2018-3006031

ACKNOWLEDGMENT OF
PROTECTIVE ORDER

TO WHOM IT MAY CONCERN:

The undersigned, Toni L. Giesler (NAME) is
Attorney (TITLE), in the Proceeding as defined in the Protective Order. The undersigned has read and understands the Protective Order granted in the Proceeding, which Protective Order deals with the treatment of Confidential Information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Protective Order.

Toni L. Giesler
NAME

2800 Pottsville Pike
Reading PA 19605
ADDRESS

FirstEnergy Service Company
EMPLOYER

DATE: 10/17/19

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Petition 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:

Michael T. Jennings
200 Brook Hollow Road
Mount Pleasant, PA 15666
Lilmac2@zoominternet.net

Administrative Law Judge Jeffrey A. Watson
Pennsylvania Public Utility Commission
Office of Administrative Law Judge
301 5th Avenue, Suite 220
Pittsburgh, PA 15222
jeffwatson@pa.gov

Dated: October 17, 2019



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