

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

October 31, 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:

On October 11, 2019, West Penn Power Company (“West Penn”) was served with notice of the filing of exceptions by the Complainant in the above-referenced proceeding. In response, West Penn offers this letter as its brief reply to exceptions. Rather than filing an exception to a specific finding of fact or conclusion of law, Ms. Betchy, the Complainant, states as her exceptions that she does “not agree” with the findings in “report” which West Penn believes to be the Initial Decision rendered by Administrative Law Judge (“ALJ”) Jeffrey A. Watson and states that there were “no proven facts” and no independent research studies. West Penn avers that 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 Ms. Betchy was further reminded at the telephonic hearing that she bore the burden of proof.⁵ Ms. Betchy offered only her own lay testimony at the hearing in this matter and offered no expert testimony. Any testimony of a lay witness related to technical or specialized knowledge should be excluded and given no evidentiary weight.⁶ Meanwhile, West Penn offered

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).

⁵ Tr. 85.

⁶ *See Gibson v. W.C.A.B.*, 861 A.2d 938, 947 (Pa. 2004).

the testimony of three expert witnesses who clearly rebutted the opinion testimony of Ms. Betchy. Additionally, the Complainant was given an opportunity to file a brief to support her allegations and failed to do so.

Further, Ms. Betchy has attached several items which she classifies as “exhibits.” These documents were not admitted into the record at the hearing. Section 5.431 of the Commission’s regulations⁷ provides that after the record is closed, additional matters may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion. At no time prior to the issuance of the Initial Decision or the filing of Exceptions did the Complainant file a petition to reopen the record to introduce any of the alleged “evidence” that is contained in her Exceptions. Even if the Commission considered the Complainant’s Exception as a request to reopen the record, the evidence submitted by the Complainant is not newly discovered evidence which would justify granting such relief. A petition seeking to reopen the record may be entertained as a petition for reconsideration, under the provisions of 66 Pa.C.S. § 703(g), if the newly discovered evidence was not in existence, or was not discoverable through the exercise of due diligence, prior to the expiration of the time within which to file a petition for rehearing.⁸ The Complainant is attempting to present additional materials which were clearly available at the time of the hearing. If she believed that these materials would have assisted in her case, she should have pursued this matter during the hearing. The hearing has concluded, and it is now too late to attempt to introduce evidence that was clearly available to Ms. Betchy at the time of hearing. In accordance with *Duick*, the Commission should not entertain the alleged facts referenced in and attached to the Complainant’s Exceptions after the record closed. Therefore, the Complainant’s Exceptions regarding these issues should be denied.

Lastly, Ms. Betchy states that her complaint was based upon her lack of “consent” to install the smart meter and release her “data usage.” Both of these allegations were presented by the Complainant at hearing and both were fully evaluated by ALJ Watson in his well-reasoned Initial Decision. There is no provision in the Code, the Commission’s regulations or orders that provides that an electric distribution customer may “opt out” of smart installation.⁹ West Penn’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.¹⁰

ALJ Watson found in his well-reasoned Initial Decision that the Complainant has not met the burden of proving that West Penn violated the Public Utility Code, a Commission order or regulations by failing to provide reasonable and adequate service.¹¹ The findings of facts and conclusions of law in the Initial Decision are based on substantial record evidence. The exceptions filed by Ms. Betchy, attempted to introduce non-record evidence and raising either irrelevant

⁷ 52 Pa. Code § 5.431.

⁸ *Duick v. Pennsylvania Gas and Water Co.*, Docket No. C-R0597001 (Order entered December 17, 1982).

⁹ *Povacz v. PECO Energy Company*, Docket No. C-2012-2317176 (Opinion and Order entered January 24, 2013).

¹⁰ See West Penn Ex. JCA-2.

¹¹ ID at 28.

Rosemary Chiavetta, Secretary

October 31, 2019

Page 3

points or repeating positions that ALJ Watson soundly rejected based on the record evidence, are without merit.

For these reasons, the Initial Decision should be approved and Ms. Betchy's case should be dismissed with prejudice.

Please contact me if you have any questions regarding this matter.

Very truly yours,



Tori L. Giesler

krak

c: Per Certificate of Service
Office of Special Assistants (via email at ra-OSA@pa.gov)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

KIM BETCHY

v.

WEST PENN POWER COMPANY

:
:
:
:
:

DOCKET NO. C-2018-3000257

CERTIFICATE OF SERVICE

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

Kim Betchy
140 Inwood Avenue
Carmichaels, PA 15320
kbetchy@gmail.com

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

Dated: October 31, 2019



Lauren M. Lepkoski
Tori L. Giesler
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, Pennsylvania 19612-6001
(610) 921-6203
(610) 921-6658
llepkoski@firstenergycorp.com
tgiesler@firstenergycorp.com

Counsel for West Penn Power Company