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November 22, 2019

VIA ELECTRONIC FILING

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

Re: Jan and Jack Milburn v. West Penn Power Company
Docket No. C-2018-3002756

Dear Secretary Chiavetta:

Enclosed please find the Motion of West Penn Power Company to Strike the Main Brief of Jan and Jack Milburn with regard to the above-captioned matter. This document has been served on the Complainants 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**

JAN AND JACK MILBURN

v.

WEST PENN POWER COMPANY

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Docket No. C-2018-3002756

NOTICE TO PLEAD

TO: Jan and Jack Milburn

Pursuant to 52 Pa. Code § 5.103(c), you are hereby notified that, if you do not file a written response denying or correcting the enclosed Motion to Strike of West Penn Power Company within **twenty (20) days** from the service of the Notice, the facts set forth by West Penn Power Company in the Motion may be deemed to be true, thereby requiring no other proof. All pleadings, such as a Reply to Motion, must be filed with the Secretary of the Pennsylvania Public Utility Commission, with a copy service to counsel for West Penn Power Company, and where applicable, the Administrative Law Judge presiding over the case.

File with:


Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

With a copy to:

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

Lauren M. Lepkoski
Tori L. Giesler
West Penn Power Company
2800 Pottsville Pike
P.O. Box 16001
Reading, Pennsylvania 19612-6001

Date: November 22, 2019


Lauren M. Lepkoski, Esquire
Tori L. Giesler, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JAN AND JACK MILBURN

v.

WEST PENN POWER COMPANY

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Docket No. C-2018-3002756

**MOTION OF WEST PENN POWER COMPANY TO STRIKE
THE MAIN BRIEF OF JAN AND JACK MILBURN**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

West Penn Power Company (“West Penn Power” or the “Company”) by and through its attorneys, Lauren M. Lepkoski and Tori L. Giesler, and pursuant to 52 Pa. Code § 5.103, hereby files this Motion to Strike the Main Brief of Jan and Jack Milburn (“Complainants”) for their failure to comply with 52 Pa. Code § 5.501-5.502 as well as Administrative Law Judge (“ALJ”) Jeffrey A. Watson’s Interim Order entered July 23, 2019. In support thereof, the Company avers as follows:

I. BACKGROUND

1. On or about June 14, 2018, the Complainants filed a Formal Complaint with the Pennsylvania Public Utility Commission (“Commission”) to dispute the installation of a smart meter by the Company at 114 Mountain Road, Ligonier, Pennsylvania 15658 (“Service Location”).

2. On July 5, 2018, the Company filed its Answer denying the material allegations within the Formal Complaint, as well as submitting Preliminary Objections.

3. On August 22, 2018, a Motion Judge Assignment Notice was issued assigning ALJ Watson as the Presiding Officer in this proceeding.

4. On August 30, 2018, ALJ Watson issued a Preliminary Order denying the Company’s Preliminary Objections.

5. On October 16, 2018, ALJ Watson issued an Interim Order Establishing Procedural Schedule.

6. On May 3, 2019, an Interim Order Scheduling Prehearing Conference was issued scheduling a prehearing conference for June 18, 2019.

7. On June 18, 2019, the Company and Complainants attended the scheduled prehearing conference.

8. On June 19, 2019, an Interim Order Confirming Requirements for Evidentiary Hearing was issued requiring the Company and Complainants to provide their proposed exhibits and other documentary materials for hearing by no later than July 10, 2019 and scheduling an evidentiary hearing for July 16, 2019.

9. On July 16, 2019, an evidentiary hearing was held in this matter. The Complainants presented their case through their own testimony only. The Complainants presented no documentary evidence. West Penn presented its case through the testimony of Mr. John Ahr. Additionally, the Company introduced Exhibits PD-1, PD-2, PD-3, PD-4, PD-5, JCA-1, JCA-2, and JCA-3 Private.

10. On July 23, 2019, an Interim Order Setting Briefing Schedule was issued requiring the parties to submit any briefs in this matter on or before September 30, 2019.

11. On September 30, 2019, the Company timely filed its Main Brief and served ALJ Watson and the Complainants in accordance with the Interim Order Setting Briefing Schedule.

12. On November 4, 2019, the Complainants filed their Main Brief with the Commission, bearing a cover letter dated October 31, 2019, and served a copy to ALJ Watson and the Company.

II. MOTION TO STRIKE

13. The Complainants' Main Brief was filed with the Commission on November 4, 2019, more than a month after the deadline established by the Interim Order Setting Briefing Schedule.

14. While the Complainants are lay persons and not lawyers, they are still required to abide by the Commission's rules of practice and procedure. *See, e.g., Commonwealth v. Lyons*, 833 A.2d 245, 251-52 (Pa. Super. Ct. 2003).¹

15. The Interim Order Setting Briefing Schedule clearly advised in Ordering Paragraph No. 1 that failure to comply with the provisions of the Interim Order "may result in the failure to consider the brief filed."

16. In accordance with 52 Pa. Code § 5.502(f), main briefs "shall be filed and served within the time fixed by the presiding officer."

17. Further, in accordance with 52 Pa. Code § 5.502(g), late-filed briefs, which are briefs not filed and served on or before the dates fixed by the presiding officer, "will not be accepted except by special permission." The Complainants neither requested nor received permission to late-file their Main Brief.

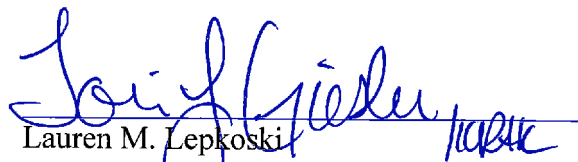
18. Throughout the Complainants' Main Brief, they also refer to extra-record materials and information to support their arguments. If the Commission does not grant West Penn's Motion to Strike the entirety of the Complainants' untimely Main Brief, it would be appropriate for the Commission to strike or explicitly disregard any portion of the Complainants' brief that relies on

¹ Apart from being untimely, the Complainants' Main Brief does not adhere to the Commission's regulations regarding the content and form of briefs, nor did the Complainants comply with requirements for the filing and service of briefs as outlined in 52 Pa. Code §§ 5.501 and 5.502 or the Interim Order Setting Briefing Schedule in that it does not include: 1) any findings of fact with specific references to the testimony or exhibit that supports each such proposed finding; 2) proposed conclusions of law with legal citations to the authority allegedly supporting each such proposal; 3) proposed ordering paragraphs; or 4) specific legal authority, and citations thereto, to support the Complainants' arguments or discussion.

material or information that is not in the evidentiary record. *See* 52 Pa. Code § 5.431 (forbidding additional matter from being relied upon after the record is closed unless allowed upon motion for good cause shown); *see e.g., Joint Application of Verizon Communications, Inc. and MCI, Inc. for Approval of Agreement and Plan of Merger*, 2006 Pa. PUC LEXIS 22, Docket Nos. A-310580F0009, A-310752F0006, A-310364F0003, A-312025F0005, A-310407F0003, A-310401F0006 (Opinion and Order entered Jan. 11, 2006) (adopting Initial Decision which included the ALJ's decision to grant a motion to strike portions of a party's brief that contained extra-record information).

WHEREFORE, West Penn Power Company respectfully requests that the Commission strike, in its entirety, the Main Brief of Jan and Jack Milburn. In the alternative, if the Commission does not strike the Complainants' untimely Main Brief in its entirety, West Penn Power Company respectfully requests that the Commission strike or explicitly disregard any arguments within the Complainants' brief that reference or rely upon extra-record information or materials.

Respectfully submitted,



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Counsel for West Penn Power Company

Dated: November 22, 2019

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JAN AND JACK MILBURN

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CERTIFICATE OF SERVICE

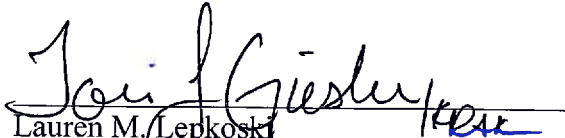
I hereby certify that I have this day served a true copy of the Motion to Dismiss of West Penn Power Company upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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

Jan and Jack Milburn
114 Mountain Road
Ligonier, PA 15658
janjackmil@gmail.com

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

Dated: November 22, 2019


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