

gene bazan

Box 24 Lemont, PA 16851
814/234-0836 Genebazan@aol.com

December 18, 2019

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

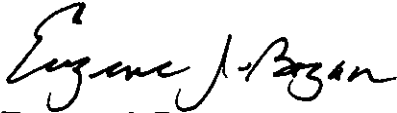
RE: Eugene J. Bazan v. West Penn Power Company Docket No. C-2017-2640338

Dear Secretary Chiavetta:

I am copying you on my filing with ALJ Jeffrey A. Watson on December 14, 2019 of our
REPLY TO INTERIM ORDER DENYING MOTION TO REOPEN DISCOVERY.

I have also copied Attorney Tori Giesler of West Penn Power this same date.

Sincerely,



Eugene J. Bazan
Complainant

RECEIVED

DEC 18 2019

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITIES COMMISSION**

EUGENE J. BAZAN	:	
	:	
Complainant	:	C-2017-2640338 :
	:	
Vs	:	
	:	
FIRST ENERGY/WEST PENN POWER	:	
	:	
Respondent	:	
	:	

REPLY TO INTERIM ORDER DENYING MOTION TO REOPEN DISCOVERY

TO THE HONORABLE ALJ Jeffrey A. Watson:

I have four points to take up with you in reply to your December 9, 2019 "Interim Order Denying Motion to Reopen Discovery."

Point 1. My Request for Discovery

Your Interim Order omits two exchanges I had with your office concerning my October 1 request for Discovery on West Penn Power's Expert Witness Rebuttal Testimony:

- (1) My phone conversation with your assistant Dan on October 9, 2019;
- (2) The confirming email to you on this phone conversation with Dan of October 9, 2019 (enclosed).

These key exchanges are best discussed by focusing on my Status Report, the key part which I repeat here for your convenience:

B. Recent Chronology

1. Complainant submitted corrected Expert Witness Testimony of Dr. Tania Slawecki on July 22, 2019.
2. Complainant received WPP's Interrogatories and Requests for Production of Documents (Set II) in a letter dated August 7, 2019.
3. On August 19, 2019, Complainant objected to questions 1-6 and 11 in the above-mentioned letter and answered questions 7-10 in our letter of August 27, 2019.
4. We did not hear any more on Interrogatories and concluded that WPP had ended discovery by the September 9, 2019 date set in your timetable.
5. On October 1, 2019 complainant requested from you, Judge Watson, the opportunity to open discovery on WPP's written rebuttal testimony of its witnesses including associated exhibits and documents which the witnesses intend to use, as soon as we received these. We notified you of our intent to do so, and requested you to authorize this if it is necessary. We wished for an amount of time for our discovery comparable to

that which you afforded West Penn Power. We copied WPP on this request, and e-Filed with the PUC.

6. In your letter dated October 7, 2019 you, Judge Watson, wrote that I had not verified my copying WPP on this request. In fact, I had done so in the Certificate of Service.
7. On October 9, 2019 I spoke with your legal assistant Dan to clarify this matter (in item 6 above), pointing out that I had noted my copying WPP and e-Filing with the PUC. Dan reviewed my correspondence, agreed with me, and said there was nothing more I had to do. I sent you a confirmatory email on this matter, on which I also copied WPP attorneys Giesler and Lepkoski.
8. As of this [October 12] mailing, we awaited WPP's submittal of their Written Rebuttal Testimony and associated exhibits and documents.

Paragraph 3 of page 2 of your December 9 Motion to Deny Discovery omits the clarification mentioned in point 7 above: my conversation with Dan and the confirming email I sent to you (attached). Thus, I had satisfied the requirement for notifications.

Still, your letter draws the conclusion that "No request to open discovery was made by Complainant subsequent to the service of the written rebuttal testimony by Respondent upon Complainant." This is a misleading construction, given the facts adduced above. True, no request was made subsequent, etc., as the request was made before Respondent served Rebuttal testimony; that is, I was anticipating WPP's Rebuttal testimony. I rather doubt that your denial rests on my requesting discovery before, rather than after, Respondent submitted its Rebuttal testimony.

Point 2. Closing of Discovery Limited

Further, your closing paragraph states that discovery was previously closed in this matter. Well, yes. You closed it on September 9, 2019 for Respondent, not for Complainant (point 4, page 2, June 28, 2019 Prehearing Order Establishing Litigation Schedule). It was to give myself the same right to discovery which you extended to the Respondent verbally during the Prehearing Conference on June 26 that led me to make the request in the first place.

Point 3. Rights to Submitting Further Testimony Reserved

In your opening paragraph you attribute to me a sentence I do not have the legal acumen to make, so I am modifying it as follows: "Complainant has provided to Respondent all of his written direct testimony, for his fact and expert witnesses, along with copies of all exhibits or documents those witnesses intend to offer, authenticate, sponsor, or rely upon, which he now has, reserving his right to supplement his fact and expert witnesses, and his exhibits and documents as further information becomes available and circumstances warrant."

Point 4. Reasons to Schedule Hearing After January 1

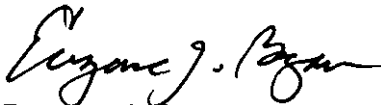
Complainant's request that "the hearing in this matter be set after January 1, 2020" was to allow sufficient time for us to conduct discovery, which, lacking your timely decision on our request, has precluded our being able to do under the present litigation schedule. Your denial of our discovery request at this late date results in a position for us that is biased and unfair, denying us due process.

Our October 1 request to open discovery on WPP's Rebuttal Testimony, the consequence of which would change the litigation schedule, was posted on our docket as a Petition for Extension of the Litigation Schedule. Such labeling, in addition to being misleading of the circumstances, fails to acknowledge the fact that in its October 15 Status Report, West Penn Power reported that their expert witnesses were not available during November, that West Penn Power concurred with a proposed hearing date after January 1, 2020 and that as a result Complainant and Respondent worked out the present schedule.

Close

I recognize, that with your busy calendar, you depend on Complainants to correct the record.

Respectfully Yours,

A handwritten signature in black ink that reads "Eugene J. Bazan". The signature is written in a cursive style with a small "TV" mark above the first letter of the first name.

Eugene J. Bazan
PO Box 24
Lemont, PA 16851

December 14, 2019

C-2017-2640338 Note to ALJ Watson

Wed, Oct 9, 2019 11:23 am

genebazan (genebazan@aol.com) To: you (Bcc) + 3 more Details

Dear Judge Watson:

This is to confirm my phone conversation this morning, October 9, with your legal assistant Dan, who took my call regarding your letter of October 7, noting that I had not submitted to other parties in the case copies of my Request for Discovery of West Penn Power's Written Rebuttal Testimony.

Apparently my sentence on my Certificate of Service stating that I had done so escaped someone's attention.

Dan assured me that there was nothing more I had to do, and that I did not have to resubmit my request.

Thank you for your kind attention to this matter.

Sincerely,
Eugene J. Bazan

CERTIFICATE OF SERVICE

I certify that I have this day sent a letter dated December 18, 2019, noting our submittal to you of our **REPLY TO INTERIM ORDER DENYING MOTION TO REOPEN DISCOVERY** in our complaint against First Energy and its affiliate West Penn Power Company.

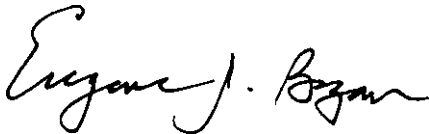
Service by First Class Mail to the person listed below:

Jeffrey A. Watson, ALJ
Office of Administrative Law Judge
301 Fifth Ave., Suite 220, Piatt Place
Pittsburgh, PA 15222

Copied:

WPP attorney Tori Giesler
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612-6001

Dated December 18, 2019

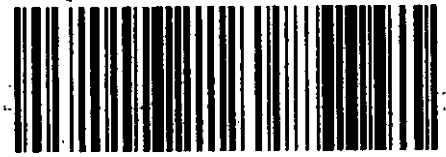


Eugene J. Bazan
PO Box 24
Lemont, PA 16851
Docket No. C-2017-2640338

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DEC 18 2019
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

CERTIFIED MAIL

G. Bazan
PO Box 24
Lemont, PA 16851



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

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