

VIA ELECTRONIC FILING

January 8, 2020

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

**REPLY TO ROBERT YOUNG'S OBJECTIONS TO SUBPOENAS FOR MR. ROONEY
& MS. PIZZINGRILLI**
(Eugene J. Bazan v. West Penn Power Company, Docket # C-2017-2640338)

Dear Secretary Chiavetta:

I am copying you on my letter to ALJ Jeffrey Watson in which I reply to Robert Young's Objections to Subpoenas for two individuals, Mr. Shane Rooney and Ms. Kim Pizzingrilli in the above referenced matter. My Certificate of Service is also enclosed.

Sincerely,



Eugene J. Bazan,
Complainant

ITEM 2. Mr. Young next asserts “the testimony sought by the Complainant is inadmissible under the deliberative process, attorney/client and attorney work product privileges.” Here Mr. Young cites *Commonwealth v. Vartan*, 733 A.2d 1258 (Pa. 1999); and *Leber v. Stretton*, 928 A.2d 262 (Pa. Super. 2007). I break these privileges into two components below.

1. Inadmissible under the deliberative process privilege. Citing from *Commonwealth v. Vartan* at 1264

[f]or the deliberative process privilege to apply, certain requirements must be met. First, the communication must have been made before the deliberative process was completed. Secondly, the communication must be deliberative in character. It must be a direct part of the deliberative process in that it makes recommendations or expresses opinions on legal or policy matters. Information that is purely factual, even if decision-makers used it in their deliberations is usually not protected.

I make the following points:

- a. There is nothing deliberative about the MADRI presentation. The deliberative process of passing Act 129 was already completed.
 - b. If by the deliberative process, Mr. Young is referring to the yet-to-be officially adopted PUC Implementation Order of June 2009, again there is no conflict here: it is clear from the document, presented at the Mid-Atlantic Distributed Resources Initiative (funded by the U.S. DOE) that, unlike the PA PUC, MADRI is a coordinating body. Its participants talk, share ideas. By contrast, the Commissioners deliberate among themselves in their official capacity back in Harrisburg. Pizzingrilli and Rooney were merely making a progress report. We find no evidence that there was anything confidential or deliberative about this presentation.
 - c. This presentation is, therefore, a summary of facts of Act 129, and the facts of implementation. It is not protected.
2. Inadmissible under the attorney/client and attorney work product privileges. Citing, we gather, from *Leber v. Stretton*.

I make the following points:

- a. *Leber v. Stretton* is primarily about judges and judicial conduct, not about attorney/client and attorney work product privileges. Ms. Pizzingrilli and Mr. Rooney are not judges, nor, we assume, were they at the MADRI meeting making a presentation to judges. *Leber v. Stretton* closes as follows:

¶ 29 In short, a judicial officer may not be compelled to testify, and his or her deliberative process may not be inquired into, when a plaintiff in a defamation case challenges the truthfulness of statements made by a defendant where the subject matter of the alleged defamation had been judicial conduct.

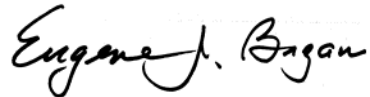
- b. *Leber v. Stretton*, citing other cases, regards as improper, inquiring into, making motions to, or subjecting to cross-examination, interior motives and influences that lead to the decisions made by decision-makers, whether they be judges as in *Leber v. Stretton*, or jurymen, who also make decisions in legal matters.
- c. While Ms. Pizzingrilli was a Commissioner at the time of this presentation and therefore a decision-maker, the objective of our subpoena is not to inquire into her

interior thinking, motives, or influences in her capacity as a decision-maker. We will merely be looking at the facts as she and Mr. Rooney presented them.

- d. Mr. Rooney was neither a judge, nor a juryman, nor a commissioner at the time of this presentation. We will not be inquiring into his interior thinking, motives, or influences in his capacity as an attorney for the PUC. During the subpoena we will merely be looking at the facts as he and Ms. Pizzigrilli presented them.

Accordingly, we respectfully request that you put aside Mr. Young's objections and grant us the subpoenas.

Sincerely,

A handwritten signature in black ink that reads "Eugene J. Bazan". The signature is written in a cursive, flowing style.

Eugene J. Bazan
Complainant
January 8, 2020

CERTIFICATE OF SERVICE

I certify that I have this day sent this letter to ALJ Jeffrey A. Watson dated January 8, 2020 with copies sent by first class mail to the persons listed below:

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E-filed with Rosemary Chiavetta

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Dated January 8, 2020



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Docket No. C-2017-2640338

