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January 16, 2020

VIA ELECTRONIC FILING

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

Re: Diana Sabatine v. West Penn Power Company
Docket No. C-2018-3002804

Dear Secretary Chiavetta:

Attached please find the Main Brief on behalf of West Penn Power Company regarding the above-referenced matter. This document has been served on the all parties as shown in the Certificate of Service.

Please contact me if you have any questions.

Very truly yours,

Tori L. Giesler/kbw

Tori L. Giesler

kbw
Enclosures

c: As Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DIANA SABATINE

v.

WEST PENN POWER COMPANY

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DOCKET NO. C-2018-3002804

**MAIN BRIEF
ON BEHALF OF
WEST PENN POWER COMPANY**

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Dated: January 16, 2020

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I. PROCEDURAL HISTORY

On or about June 18, 2018, Diana Sabatine (“Complainant”) filed a Formal Complaint with the Pennsylvania Public Utility Commission (“Commission”) to dispute the installation of a smart meter by West Penn Power Company (“West Penn” or “Company”) at 315 Possum Hollow Road, Latrobe, Pennsylvania 15650 (“Service Location”).

On July 9, 2018, the Company filed its Answer denying the material allegations within the Formal Complaint, as well as submitting Preliminary Objections.

On July 16, 2018, the Complainant filed a petition for extension of time for 120 days to file a reply to the Preliminary Objections and Answer and New Matter.

On July 24, 2018, a Motion Judge Assignment Notice was issued assigning Administrative Law Judge (“ALJ”) Jeffrey A. Watson as the Presiding Officer in this proceeding.

On July 25, 2018, the Company opposed the Complainant’s request for a 120-day extension to file a reply to the Preliminary Objections and Answer and New Matter.

The Complainant filed an Amended Formal Complaint which was dated July 27, 2018 and served on the Company on August 2, 2018.

On August 1, 2018, the Complainant filed a letter in response to the Company’s opposition of the Complainant’s request for a 120-day extension of time to file a reply to the Preliminary Objections and Answer and New Matter.

On August 7, 2018, ALJ Watson issued an Interim Order which granted in part the Complainant’s request for an extension of time to file a reply to the Preliminary Objections and Answer and New matter. ALJ Watson found that: (1) the Complainant’s request for an extension of time to file a reply to the Preliminary Objections and Answer and New Matter was rendered moot by the filing of the Amended Formal Complaint on July 27, 2018; (2) the Company’s

preliminary objections filed on July 9, 2018 were rendered moot by the filing of the Amended Formal Complaint on July 27, 2018; (3) the Company may file a responsive pleading, to include preliminary objections, answer and new matter to the amended formal complaint not later than August 24, 2018; and (4) in the event the Company files a responsive pleading(s) to the Amended Formal Complaint, the Complainant shall be permitted to file a response to the pleadings filed by Respondent not later than September 21, 2018 and provide copies to counsel for the Company, ALJ Watson, contemporaneously with the filing of the responsive pleadings with the Commission's Secretary.

On August 22, 2018, the Company filed its Answer and New Matter to the Amended Formal Complaint denying the material allegations. On the same day, the Company also filed Preliminary Objections to the Amended Formal Complaint.

On August 30, 2018, the Complainant filed a request for an extension of time to file a response to the Preliminary Objections and Answer and New Matter to the Amended Formal Complaint.

On September 17, 2018, the Complainant filed a renewed request for an extension of time to file a response to the Preliminary Objections and Answer and New Matter to the Amended Formal Complaint.

On September 21, 2018, the Complainant filed a response to the Company's Preliminary Objections to the Amended Formal Complaint as well as a response to the Company's Answer and New Matter to the Amended Formal Complaint.

On October 12, 2018, the Complainant filed a Notice and Petition for Judicial Determination of Jurisdiction.

On October 17, 2018, ALJ Watson issued an Interim Order which denied the Company's Preliminary Objections. That same day, ALJ Watson issued an Interim Order which established a litigation schedule.

On October 25, 2018, the Complainant filed a Petition for Interim Review of Law by Pennsylvania Commonwealth Court to Determine Jurisdiction. That same day, the Complainant filed a "settlement offer" which was directed to the Company and valid for twenty days.

On November 9, 2018, in accordance with 52 Pa. Code § 5.341, the Company issued to the Complainant interrogatories and document requests ("Discovery Requests") via first class mail. In its Discovery Requests, the Company sought information and documents related to the Complainant's allegations regarding the Company's smart meters.

By letter dated November 19, 2018, the Complainant objected to all of the Company's Discovery Requests. The Complainant objected on the grounds that: (a) the Interim Order issued by ALJ Watson on October 28, 2018¹ states that the "Complainant bears the burden of proof and must demonstrate by a preponderance of the evidence that the Respondent violated its tariff, the Public Utility Code or a Commission order or regulation, and that he is entitled to the relief requested in the Complaint; (b) the Complainant filed a Notice and Petition for Judicial Determination of Jurisdiction which remains pending; (c) Act 129 of 2008 is being misinterpreted by the Commission and the Company; (d) the "vagueness" of the Discovery Requests; (e) that it is "impossible" for the Complainant to obtain relief from the Commission and therefore must appeal to a higher court of law.

¹ The Interim Order Establishing Initial Litigation Schedule was issued on October 17, 2018.

On November 30, 2018, in response to the Complainant's objections to the Company's Discovery Requests, the Company filed with the Commission a Motion to Compel Responses to Interrogatories and Document Requests.

By letter dated November 29, 2018, the Complainant filed a Motion for Stay wherein the Complainant requested, *inter alia*, a 90 day stay of all proceeding while she pursued "moving" the "civil complaint to an Article III Court of Record as described by the Constitution for these united states of America."

By letter dated December 1, 2018, the Complainant provided responses to the Company's Discovery Requests.

By letter dated December 8, 2018, the Complainant filed an Objection to Respondent's Request for Motion to Compel.

On December 27, 2018, ALJ Watson issued an Interim Order Denying Petition for Review of Law by Pennsylvania Commonwealth Court to Determine Jurisdiction.

On December 27, 2018, ALJ Watson issued an Interim Order Denying "Notice and Petition for Judicial Determination of Jurisdiction" Filed by Complainant on October 11, 2018.

On December 27, 2018, ALJ Watson issued an Interim Order which denied the Complainant's Motion to Stay.

On December 27, 2018, an Interim Order Granting Respondent's Motion to Compel the Complainant to provide responses to the Company's Discovery Requests propounded by the Company was issued. The Order denied the Complainant's objections and directed the Complainant to serve upon the Company full and complete responses to all of the Company's Discovery Requests no later than January 31, 2019.

On January 9, 2018, the Complainant submitted a First Amended Notice and Petition for Judicial Determination of Jurisdiction, a Second Amended Notice and Petition for Judicial Determination of Jurisdiction and a Third Amended Notice and Petition for Judicial Determination of Jurisdiction.

On January 10, 2019, the Company submitted its witness notification to the ALJ and Complainant as directed by the ALJ in his October 17, 2018 Interim Order, which established a litigation schedule. That same day, the Complainant submitted a request to ALJ Watson for a 60 day extension of time to submit her factual and expert testimony, which the Company objected to.

On January 29, 2019, the ALJ issued three separate Interim Orders denying the Complainant's First Amended Notice And Petition For Judicial Determination Of Jurisdiction, the Complainant's Second Amended Notice And Petition For Judicial Determination Of Jurisdiction; and the Complainant's Third Amended Notice And Petition For Judicial Determination Of Jurisdiction.

On January 30, 2019, the ALJ issued an Interim Order, which revised the initial litigation schedule and provided the Complainant until February 19, 2019 to submit her factual and expert witnesses.

On January 31, 2019, the Complainant served responses to the Company's Discovery Requests to the Company.

On February 5, 2019, the Complainant filed a "Fourth Amended Notice and Petition to Challenge Jurisdiction."

Also, on February 5, 2019, the Complainant propounded Interrogatories and Request for Production of Documents (Set 2) upon the Company ("Complainant's Set 1 Discovery Requests").

On February 8, 2019, the Complainant provided supplemental responses to the Company's Discovery Requests.

On February 26, 2019, the Complainant propounded Interrogatories and Request for Production of Documents (Set 2) upon the Company ("Complainant's Set 2 Discovery Requests").

On February 27, 2019, the Company responded to Complainant's Set 1 Discovery Requests.

On March 7, 2019, the Company submitted an objection to one question in Complainant's Set 2 Discovery Requests.

On March 18, 2019, the Company responded to Complainant's Set 2 Discovery Requests.

On April 12, 2019, the Complainant filed what was labeled as a "Status Report"; however, the letter did not provide a Status Report. Instead, the letter questioned the need of a Status Report until ALJ Watson ruled on the Complainant's "Fourth Amended Notice and Petition to Challenge to Jurisdiction." That same day, the Company provided a Status Report to the ALJ and the Complainant.

On April 30, 2019, ALJ Watson issued an Interim Order denying the Complainant's "Fourth Amended Notice and Petition to Challenge Jurisdiction." On the same day, ALJ Watson issued an Prehearing Conference Order and the Commission issued a Hearing Notice, which scheduled a prehearing conference on June 4, 2019 at 9:00 a.m.

On June 4, 2019, a prehearing conference was held. The Complainant did not attend the prehearing conference.

On June 5, 2019, ALJ Watson issued an Interim Order revising the initial litigation schedule, based on the prehearing conference that was held on June 4, 2019.

On June 21, 2019, West Penn filed a Motion to Dismiss the Formal Complaint based on the Complainant's failure to abide by the Interim Orders of ALJ Watson, including her failure to appear at the prehearing conference scheduled on June 4, 2019.

On June 25, 2019, the Complainant filed an Objection to Respondent's Motion to Dismiss.

On September 3, 2019, ALJ Watson issued an Interim Order denying West Penn's Motion to Dismiss without prejudice and scheduling a telephonic hearing for October 30-31, 2019.

On October 30, 2019, the parties participated in the scheduled telephonic hearing. The Complainant presented only herself as a witness and entered Complainant's Exhibit A and B, which were a copy of Act 129 and select portions of Public Law 109-58, respectively.² West Penn presented its case through the testimony of Company Witness John Ahr, who sponsored Exhibits JCA-1, PD-1, PD-2, PD-3, and PD-4.³

On October 30, 2019, ALJ Watson issued an Interim Order setting a briefing schedule and ordering that the parties may, but are not required to, file briefs on or before January 3, 2020. The Interim Order further provided that no reply briefs would be permitted.

On December 30, 2019, the Complainant filed a Request for Extension for Brief, which requested that a 60-day extension of the deadline to file briefs be granted.

In accordance with ALJ Watson's October 30, 2019 Interim Order, West Penn hereby submits its Main Brief in the above-referenced matter.

² See Hearing Tr. 35:24-67:2 (Sabatine Testimony)

³ See Hearing Tr. 68:17-117:5 (Ahr Testimony)

II. LEGAL STANDARDS

Under Section 332(a) of the Public Utility Code, the Complainant maintains the burden of proof in this proceeding.⁴ 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.⁵ 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.⁶ Mere bald assertions, personal opinions or perceptions, when not substantiated by facts, do not constitute evidence.⁷

Although the factual burden may shift during the course of a proceeding, the Complainant always maintains the overarching burden of proof in the proceeding. It is clearly established that the Complainant's "burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of the evidence."⁸ A preponderance of evidence is demonstrated where the evidence presented is more convincing, even by the smallest degree, than the evidence presented by the opposing party.⁹

In order for the Commission to sustain a formal complaint, the Complainant must demonstrate that an "act or thing done or omitted to be done by any public utility [is] in violation, or claimed violation, of any law which the Commission has jurisdiction to administer, or of any regulation or order of the commission."¹⁰ Section 1501 of the Public Utility Code states, in

⁴ 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).

⁵ *Waldron v. Phila. Elec. Co.*, 54 Pa. P.U.C. 98 (Order entered Mar. 14, 1980).

⁶ *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

⁷ *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

⁸ *Lansberry*, 578 A.2d at 602.

⁹ *Pa. Pub. Util. Comm'n v. HIKO Energy, LLC*, 2015 Pa. PUC LEXIS 364 (I.D. entered Aug. 21, 2015), *supra*.

¹⁰ 66 Pa.C.S. § 701.

relevant part: “every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities....”¹¹ As part of formal complaint proceedings, the Commission evaluates the reasonableness of public utility service and facilities pursuant to Section 1501. In complaint proceedings similar to the instant proceeding, the Commission has held that the relevant legal standard is whether the installation of a smart meter constitutes unsafe or unreasonable service in violation of Section 1501 of the Public Utility Code.¹²

III. SUMMARY OF ARGUMENT

The Complainant has wholly failed to meet her burden of proof to demonstrate that the installation of a smart meter at her service location would constitute unreasonable service in violation of Section 1501 of the Public Utility Code or would otherwise violate the Public Utility Code, a Commission regulation or order.

West Penn has an absolute obligation to install smart meters at all of its customers’ service locations under Act 129 of 2008 (“Act 129”).¹³ Neither Act 129 nor subsequent Commission orders related to smart meter installation and deployment permit customers to “opt-out” from smart meter installation.¹⁴ Further, both Act 129 and the Commission’s Implementation Order require that electric distribution companies (“EDCs”) install wireless smart meters with specific functionality. West Penn’s smart meters adhere to all of the requirements of Act 129 and the Commission. The smart meter components and deployment of smart meters in the West Penn territory were identified in the Company’s Smart Meter Deployment Plan, which was ultimately

¹¹ 66 Pa.C.S. § 1501.

¹² *Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602 (Opinion and Order entered May 3, 2018); *Susan Kreider v. PECO Energy Co.*, Docket No. C-2015-2469655 (Order on Reconsideration entered January 28, 2016).

¹³ 66 Pa.C.S. § 2806.1, *et seq.*

¹⁴ *Id.*; see *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009) (“Implementation Order”); Respondent Ex. PD-2.

approved by the Commission on June 5, 2014.¹⁵ West Penn must install a smart meter at the Complainant's Service Location in order to remain in compliance with Act 129, related Commission orders, and its Smart Meter Deployment Plan.

In sum, the Complainant failed to establish by a preponderance of the evidence that West Penn violated a Commission statute, regulation, or order. Specifically, the Complainant has not met her burden of proof to establish that the installation of a smart meter constitutes unreasonable service by the Company. Accordingly, West Penn urges the Commission and the Presiding Officer to dismiss the Complaint with prejudice.

IV. ARGUMENT

A. **The Complainant failed to meet her burden of proof to demonstrate that West Penn violated the Public Utility Code, a Commission Order, or a Commission regulation.**

Under Act 129, West Penn has an absolute obligation to install smart meters at all of its customers' service locations. Neither Act 129 nor subsequent Commission orders related to smart meter installation and deployment permit customers to "opt-out" from smart meter installation. West Penn's Smart Meter Deployment Plan, approved by the Commission, explicitly states that no opt-out option is available.¹⁶

On October 15, 2008, Act 129 was signed into law and codified as part of the Public Utility Code ("Code").¹⁷ Act 129 required EDCs with at least 100,000 customers, such as West Penn, to file a smart meter technology procurement and installation plan ("SMP Plan") with the

¹⁵ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, and M-2013-2341994 (Opinion and Order dated June 5, 2014) (hereinafter, "Smart Meter Deployment Plan"); see Respondent Exhibit PD-4.

¹⁶ *Smart Meter Deployment Plan* p. 9; Respondent Ex. JCA-1.

¹⁷ 66 Pa.C.S. § 101, *et seq.*

Commission for approval.¹⁸ Specifically, Section 2807(f)(2) of the Code directed EDCs to furnish smart meter technology as follows: 1) upon request from a customer that agrees to pay the cost of the smart meter at the time of the request; 2) in new building construction; and 3) in accordance with a depreciation schedule not to exceed fifteen years.¹⁹

On December 31, 2012, West Penn, along with FirstEnergy Corp.'s other EDCs in Pennsylvania (collectively, the "Companies"), filed their Joint Petition for Approval of their Smart Meter Deployment Plan, in which they requested that the Commission: (1) find that their proposed Deployment Plan satisfies the requirements of Act 129 and the Commission's Implementation Order; (2) approve the Companies' proposed procurement and deployment of approximately 2.1 million smart meters, over 98% of which should be installed by the end of 2019; (3) authorize the Companies to continue to recover smart meter costs; and (4) authorize the Companies to create a regulatory asset for their investment in their existing meters to be replaced by smart meters.²⁰ On March 19, 2014, the Companies submitted their revised Smart Meter Deployment Plan,²¹ which *intra alia* accelerated the smart meter deployment schedule laid out in their original Deployment Plan.

In this proceeding, the Complainant's only argument is that Act 129 does not require the mandatory installation of smart meters for all customers. In support of this argument, the Complainant points only to the language of Act 129, which she argues, without support, does not require mandatory installation of smart meters.²² But this argument has been squarely rejected by

¹⁸ 66 Pa.C.S. § 2807(f).

¹⁹ 66 Pa.C.S. § 2807(f)(2) (emphasis added); *see also* Respondent Ex. 1R at 6:6-18 (Ahr Rebuttal Testimony).

²⁰ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994, Smart Meter Deployment Plan, filed December 31, 2012; *see* Respondent Ex. JCA-1.

²¹ *See* Respondent Ex. JCA-1.

²² *See* Hearing Tr. 37:2-13 (Sabatine Direct)

the Commission. In fact, Commission precedent is uniform that the Commission cannot grant exceptions to the statutory directive that smart meters be installed by allowing customers to “opt-out.” Neither the Company’s Commission-approved Smart Meter Deployment Plan nor Act 129 permit such opt-outs to occur.²³ The Commission has recently reaffirmed this conclusion, holding in a similar complaint proceeding that (1) there is no provision in the Code, Commission regulations or Orders that allows a customer to “opt-out” of a smart meter installation; (2) there is Commission precedent that no opt-out provision exists in current Pennsylvania law; and (3) the EDC is legally required to install smart meters by Act 129 and Commission Orders.²⁴

Put simply, there is no legitimate dispute in this proceeding that Act 129 does not provide for customers to opt-out of smart meter installation. And there is no basis to conclude that West Penn’s refusal to allow the Complainant to opt-out of smart meter installation is in any way a violation of the Company’s Smart Meter Deployment Plan or other Commission order. As such, the Complainant’s argument must fail.

²³ *Smart Meter Deployment Plan*, pp. 9 and 48; *see, e.g., Lutherschmidt v. Metropolitan Edison Company*, Docket No. C-2010-2200353 (Final Order entered March 25, 2011); *Negley v. Metropolitan Edison Company*, Docket No. C-2010-2205305 (Initial Decision dated January 3, 2011 became final without Commission action on March 3, 2011).

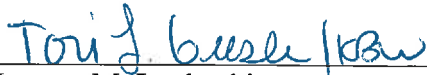
²⁴ *Evangeline Hoffman-Lorah v. PPL Electric Utilities Corporation*, Docket No. C-2018-2644957 (Order entered May 23, 2019).

V. **CONCLUSION**

WHEREFORE, West Penn Power Company respectfully requests that Administrative Law Judge Jeffrey Watson recommend that the Pennsylvania Public Utility Commission dismiss the Formal Complaint of Diana Sabatine with prejudice.

Respectfully submitted,

Dated: January 16, 2020



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APPENDIX A

PROPOSED FINDINGS OF FACT

1. Act 129 of 2008 required electric distribution companies with more than 100,000 customers to adopt smart meter deployment plans.²⁵
2. Act 129 provides a list of required smart meter functionality.²⁶
3. West Penn's Smart Meter Technology Procurement and Installation Plan was approved by the Commission on June 30, 2011.²⁷
4. The Commission determined that West Penn's Smart Meter Deployment Plan was compliant with Act 129 and ultimately approved the smart meter deployment plan on June 5, 2014.²⁸
5. The Smart Meter Deployment Plan identifies Itron as West Penn's smart meter vendor and network provider.²⁹
6. The Smart Meter Deployment Plan explicitly states that there is "no opt-out for customers."³⁰
7. West Penn's smart meter deployment plan requires the Company to deploy smart meters at 100% of its customer service locations. 98.5% of smart meters must be installed by mid-2019. The remaining 1.5% of smart meters, which are located in hard-to-access locations, such as remote hunting cabins, must be installed by 2022.³¹
8. The Complainant offered only lay witness testimony at the hearings in this matter.
9. West Penn offered testimony by Company employee, John Ahr.

²⁵ Hearing Tr. 74:21-24 (Ahr Direct).

²⁶ Hearing Tr. 83:5-9 (Ahr Direct).

²⁷ Hearing Tr. 89:17-22 (Ahr Direct).

²⁸ Hearing Tr. 93:7-12 (Ahr Direct); Respondent Ex. PD-4.

²⁹ Respondent Ex. PD-4; Hearing Tr. 97:19-24 (Ahr Direct).

³⁰ Respondent Ex. JCA-1.

³¹ Respondent Ex. JCA-1; Hearing Tr. 99:19-101:10 (Ahr Direct).

APPENDIX B

PROPOSED CONCLUSIONS OF LAW

1. Under Section 332(a) of the Public Utility Code, the Complainant maintains the burden of proof in this proceeding.³²

2. The first step in carrying the burden of proof is establishing a prima facie case that Penelec 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 Company to provide rebuttal evidence.³³

3. 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. Mere bald assertions, personal opinions or perceptions, when not substantiated by facts, do not constitute evidence.³⁴

4. A party's burden of proof is met by establishing a preponderance of the evidence, which requires proof by a greater weight of the evidence.³⁵

5. A preponderance of evidence is demonstrated where the evidence presented is more convincing, even by the smallest degree, than the evidence presented by the opposing party.³⁶

6. In order for the Commission to sustain a formal complaint, the Complainants must demonstrate that an "act or thing done or omitted to be done by any public utility [is] in violation,

³² 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950); *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).

³³ *Waldron v. Phila. Elec. Co.*, 54 Pa. P.U.C. 98 (Order entered Mar. 14, 1980); *Replogle v. Pa. Elec. Co.*, 54 Pa. PUC 528 (Order entered Oct. 9, 1980).

³⁴ *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987); *Mid-Atlantic Power Supply Assoc. v. Pa. Public Utility Comm'n*, 746 A.2d 1196, 1200 (Pa. Commw. Ct. 2000).

³⁵ *Lansberry*, 578 A.2d at 602.

³⁶ *Pa. Pub. Util. Comm'n v. HIKO Energy, LLC*, 2015 Pa. PUC LEXIS 364 (I.D. entered Aug. 21, 2015); see also *Se-Ling Hosiery*, *supra*.

or claimed violation, of any law which the Commission has jurisdiction to administer, or of any regulation or order of the commission.”³⁷

7. As part of formal complaint proceedings, the Commission evaluates the reasonableness of public utility service and facilities pursuant to Section 1501 of the Public Utility Code. Section 1501 states, in relevant part: “every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities....”³⁸

8. In similar complaint proceedings, the Commission has held that the relevant legal standard is whether the installation of a smart meter constitutes unsafe or unreasonable service in violation of Section 1501 of the Public Utility Code.³⁹

9. Neither Act 129 nor subsequent Commission orders related to smart meter installation and deployment permit customers to “opt-out” from smart meter installation.⁴⁰

10. The Complainant failed to establish that the Company’s installation of a smart meter at the Complainant’s service location would violate Act 129 or any related Commission orders.⁴¹

11. The Company owns, maintains, furnishes and installs its electric meters. It is within the Company’s sole and exclusive discretion to install the meters and related equipment it deems reasonable and appropriate to provide service to customers.⁴²

³⁷ 66 Pa.C.S. § 701.

³⁸ 66 Pa.C.S. § 1501.

³⁹ *Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602 (Opinion and Order entered May 3, 2018); *Susan Kreider v. PECO Energy Co.*, Docket No. C-2015-2469655 (Order on Reconsideration entered January 28, 2016).

⁴⁰ 66 Pa.C.S. § 2806.1, *et seq.*; *see Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009).

⁴¹ *See id.*; *see also Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penelec Company For Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, and M-2013-2341994 (Sec. Letter dated June 20, 2014).

⁴² Electric Pa. P.U.C. No. 81, Original Page 45, issued May 1, 2015; effective May 3, 2015.

12. The Company has the absolute right to access a customer's premises to remove or exchange any or all Company equipment including a meter.⁴³

13. The Company is permitted to terminate a customer's electric service for denying access to the meter.⁴⁴

14. The Complainant failed to sustain her burden of proof that the installation of a smart meter would constitute unsafe or unreasonable service by the Company.

⁴³ *Id.*

⁴⁴ 66 Pa. C.S. § 1406; 52 Pa. Code § 56.81; Electric Pa. P.U.C. No. 81, Original Page 60, issued May 1, 2015; effective May 3, 2015.

APPENDIX C

PROPOSED ORDERING PARAGRAPHS

1. The formal complaint of Diana Sabatine filed against West Penn Power Company at the above-referenced docket is dismissed with prejudice.
2. This matter shall be marked as closed.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

DIANA SABATINE

v.

WEST PENN POWER COMPANY

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:
:
:
:

Docket No. C-2018-3002804

CERTIFICATE OF SERVICE

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

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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
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Dated: January 16, 2020



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