

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

March 19, 2020

**VIA ELECTRONIC FILING**

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

**Re: Steve and Betty Magill v. West Penn Power Company**  
**Docket No. C-2018-3005818**

Dear Secretary Chiavetta:

Enclosed please find the answer of West Penn Power Company to the Motion to Stay filed by Betty and Steve Magill on March 10, 2020 with regard to the above-captioned matter.

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

Very truly yours,



Tori L. Giesler

Enclosures

c: As Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Steve and Betty Magill	:	
	:	
v.	:	Docket No. C-2018-3005818
	:	
West Penn Power Company	:	

---

**ANSWER OF WEST PENN POWER COMPANY TO THE  
MOTION TO STAY FILED BY  
STEVE AND BETTY MAGILL ON MARCH 10, 2020**

---

**TO ADMINISTRATIVE LAW JUDGE JEFFREY A. WATSON:**

Pursuant to 52 Pa. Code § 5.61, West Penn Power Company (“West Penn” or the “Company”) hereby files this Answer to the “Motion to Stay of Proceedings” (“Motion to Stay” or “Motion”), which was filed by Betty and Steve Magill (“Complainants”) on March 10, 2020, in the above-captioned proceeding. In the Motion to Stay, the Complainants request that the proceeding be stayed until at least one month after the Commonwealth Court issues its Order in *Povacz, et al. v. Pa. PUC*.<sup>1</sup> The Complainants also reference the ongoing issues with the coronavirus (“COVID-19”) in the Commonwealth as support for their requested stay.

As explained herein, West Penn does not oppose a temporary stay of the proceeding in light of the emergency situation involving COVID-19. In fact, through an Interim Order issued on March 16, 2020, Administrative Law Judge Jeffrey A. Watson (“ALJ”) already canceled the evidentiary hearings scheduled for March 31, 2020, and April 7, 2020, due to the Pennsylvania Public Utility Commission’s (“Commission”) hearing offices being closed for the time being.

---

<sup>1</sup> The *Povacz v. Pa. PUC* matter consists of three consolidated appeals. They are: (1) *Povacz v. Pa. PUC*, No. 492 C.D. 2019; (2) *Murphy v. Pa. PUC*, No. 606 C.D. 2019; and (3) *Randall, et al. v. Pa. PUC*, No. 607 C.D. 2019.

However, West Penn opposes the Complainants' request to stay this proceeding until at least one month after the Commonwealth Court issues its decision in *Povacz*. No reason exists to postpone the hearings in this case due to the *Povacz* appeal pending before the Commonwealth Court. This case has been in litigation for over 16 months and must finally proceed to hearings when the Commission's hearing offices reopen. Indeed, by the time the Court issues its decision in *Povacz*, it is unlikely that the Commission will have issued its final order in this case, particularly due to the current closure of the Commission's hearing offices. Moreover, nothing guarantees that the Court's decision in *Povacz* will be controlling of some or all of the issues in this case. Therefore, judicial economy demands that this case proceed toward evidentiary hearings and the development of a factual record when the Commission's hearing offices reopen.

For these reasons, and as explained in more detail herein, the Complainants' request to stay the proceeding until at least one month after the Commonwealth Court's ruling in *Povacz* should be rejected entirely.

In support of its Answer, West Penn states as follows:

## **I. INTRODUCTION**

1. Over 16 months ago, on November 6, 2018, West Penn was originally served with the Complainants' Formal Complaint.

2. On November 26, 2018, West Penn filed an Answer and New Matter to the Complaint as well as Preliminary Objections to the Complaint.

3. On January 2, 2019, a Notice was issued assigning the ALJ to rule on West Penn's Preliminary Objections.

4. On January 10, 2019, a Notice was issued scheduling a telephonic prehearing conference for January 31, 2019, before the ALJ.

5. On January 16, 2019, an Interim Order was issued denying the Company's Preliminary Objections. Also, an Interim Order was issued that established the initial litigation schedule for the proceeding.

6. On January 28, 2019, the Complainants advised that they were unavailable for the prehearing conference scheduled for January 31, 2019. In response, the ALJ canceled the January 31, 2019 prehearing conference.

7. On March 5, 2019, an Interim Order was issued, which scheduled a telephonic prehearing conference for April 29, 2019.

8. On March 11, 2019, the Complainants filed a letter requesting extensions of the due dates for their: (1) responses to West Penn's interrogatories; and (2) submission of witness identification and summary of witnesses' testimony.

9. On March 27, 2019, the ALJ issued an Interim Order extending the due dates for both the Complainants' discovery responses and their submission of witness identification and summary of witnesses' testimony until April 22, 2019.

10. On April 29, 2019, the ALJ issued an Interim Order Rescheduling Prehearing Conference, which canceled the prehearing conference and stated that the prehearing conference would be rescheduled for a later date.

11. On April 30, 2019, a Notice was issued that scheduled a telephonic prehearing conference for May 9, 2019.

12. On May 7, 2019, the ALJ issued a Second Interim Order Rescheduling Prehearing Conference, which rescheduled the May 9, 2019 telephonic prehearing conference for June 26, 2019. Also, a Notice was issued consistent with the Second Interim Order Rescheduling Prehearing Conference.

13. On May 9, 2019, the ALJ issued an Interim Order Extending Revised Litigation Schedule at Request of Complainants, which made further adjustments to the procedural schedule.

14. On June 26, 2019, the prehearing conference was held as scheduled.

15. On June 27, 2019, the ALJ issued a Prehearing Order Revising Litigation Schedule.

16. On September 6, 2019, West Penn filed a status report in accordance with the June 27, 2019 Prehearing Order. In that status report, the Company provided the dates that West Penn was available for in-person hearings in Pittsburgh, Pennsylvania.

17. On September 24, 2019, the ALJ issued a Prehearing Order Further Revising Litigation Schedule.

18. On October 25, 2019, West Penn filed a status report pursuant to the September 24, 2019 Prehearing Order. The Company explained in that status report that the parties could not find any mutually-agreeable hearing dates in January 2020 or February 2020. Accordingly, West Penn provided several dates in March 2020 that the Company was available for hearings, specifically, March 10, 17, 19, 26, 27, or 31. However, at the time of submitting the report, West Penn had not heard back from the Complainants on those dates in March 2020. In the report, the Company also listed the dates in January, February, and April 2020 that the Company was available for hearings.

19. On November 13, 2019, a Notice was issued scheduling an in-person evidentiary hearing for March 31, 2020, in Pittsburgh, Pennsylvania.

20. On February 4, 2020, a Notice was issued scheduled another in-person evidentiary hearing for April 7, 2020, in Pittsburgh, Pennsylvania.

21. On March 10, 2020, the Complainants filed a Motion to Stay Proceedings, requesting that the hearings be continued until at least one month after the Commonwealth Court's disposition of the *Povacz* appeal.

22. On March 16, 2020, the ALJ issued an Interim Order Continuing Hearing, which continued the in-person hearings scheduled for March 31 and April 7, 2020. In the Interim Order, the ALJ explained that the Commission hearing office in Pittsburgh would be closed on the hearing dates.

23. West Penn herein submits this Answer in opposition to the Complainants' Motion to Stay.

## **II. ANSWER TO THE COMPLAINANTS' MOTION TO STAY**

24. The Complainants' Motion to Stay should be denied.

25. As explained previously, the ALJ already issued an Interim Order on March 16, 2020, which canceled the evidentiary hearings scheduled for March 31, 2020, and April 7, 2020, due to the emergency situation involving COVID-19.

26. Although West Penn does not oppose a temporary stay of the proceeding due to the COVID-19 emergency, the Company opposes the Complainants' request to continue the hearings until at least one month after the Commonwealth Court's ruling in *Povacz, et al. v. Pa. PUC*.

27. As alleged support, the Complainants contend that their requested stay should be granted in the "interest of judicial economy and fairness to all parties" because "[e]xpenditures and time will have been wasted in the event the Commonwealth Court rules in favor of Maria Povacz." (Motion to Stay ¶¶ 1-4.)

28. The Complainants' assertion that a stay is necessary to save the time and resources of the parties to this proceeding is misplaced. The parties have already expended

substantial time and resources in following the schedule established by the ALJ's Prehearing Orders.

29. For instance, the deadlines for the identification of factual and expert witnesses have passed. On March 15, 2019, May 30, 2019, and July 10, 2019, West Penn submitted its: (1) list of factual witnesses and summary of expected testimony; and (2) list of expert witnesses along with expert reports and summary of expert testimony. The Complainants identified both fact and expert witnesses on July 10, 2019.

30. In addition, under the September 24, 2019 Prehearing Order, discovery was set to conclude on October 21, 2019. On October 21, 2019, the Complainants attempted to serve their first set of discovery requests; however, the questions themselves were not attached. Mrs. Magill provided the questions via electronic mail on the evening of October 24, 2019, which consisted of 96 interrogatories and requests for production of documents. West Penn served answers to those discovery requests on November 4, 2019. Also, West Penn previously propounded discovery requests on the Complainants on January 17, 2019, and the Complainants served their answers on February 9, 2019. Therefore, discovery has concluded.

31. As such, the Complainants' assertion that the parties will save time and resources by continuing the proceeding is incorrect. The proceeding is well underway and ready to proceed to the evidentiary hearings.

32. Furthermore, the Complainants' reliance on smart meter appeals being stayed pending the Commonwealth Court's disposition of *Povacz, et al. v. Pa. PUC* lacks merit. (See Motion to Stay ¶ 3.)

33. By the time the Commonwealth Court issues its decision in *Povacz*, it is unlikely that the Commission will have issued its final order in this case, especially given that the Commission's hearing offices have been closed due to the COVID-19 outbreak.

34. Moreover, the Complainants' request presumes that the Court's ruling will be dispositive, or at least have an impact, on the instant proceeding. However, nothing guarantees that the Court's decision in *Povacz* will be controlling of some or all of the issues in this case.

35. Additionally, the factual record in the *Povacz* appeal was previously established before the Commission. On the other hand, the Complainants here are attempting to unduly delay the establishment of a complete factual record. Nothing supports the Complainants' request to unnecessarily postpone the evidentiary hearings.

36. Therefore, judicial economy demands that this case, which was initiated over 16 months ago, proceed toward evidentiary hearings and the development of a factual record when the Commission's hearing offices reopen.

37. Finally, to the extent that the Complainants have concerns about holding in-person hearings when the Commission's hearing offices reopen, West Penn is amenable to having telephonic evidentiary hearings instead.

38. Based on the foregoing, the Complainants' Motion to Stay should be denied.

### III. CONCLUSION

For the reasons set forth above, Betty and Steve Magill's Motion to Stay should be denied, and the in-person hearings should be scheduled without further delay when the Pennsylvania Public Utility Commission's hearing offices reopen.

Respectfully submitted,



---

Lauren M. Lepkoski  
Attorney No. 94800  
Tori L. Giesler  
Attorney No. 207742  
FirstEnergy Service Company  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, Pennsylvania 19612-6001  
(610) 921-6203  
(610) 921-6658  
[llepkoski@firstenergycorp.com](mailto:llepkoski@firstenergycorp.com)  
[tgiesler@firstenergycorp.com](mailto:tgiesler@firstenergycorp.com)

Date: March 19, 2020

Attorneys for West Penn Power Company

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Steve and Betty Magill

:

:

v.

:

Docket No. C-2018-3005818

:

West Penn Power Company

:

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the answer of West Penn Power Company to the Motion for Stay filed by Steve and Betty Magill on March 10, 2020 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 mail, as follows:

Steve and Betty Magill  
Sgm265@hotmail.com

Administrative Law Judge Jeffrey A. Watson  
[Jeffwatson@pagov.com](mailto:Jeffwatson@pagov.com)

Dated: March 19, 2020



---

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](mailto:llepkoski@firstenergycorp.com)  
[tgiesler@firstenergycorp.com](mailto:tgiesler@firstenergycorp.com)