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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, 2nd Floor  
Harrisburg, PA 17120

**Re: Michael T. Jennings v. West Penn Power Company**  
**Docket No. C-2018-3006031**

Dear Mr. Jennings:

Attached please find the Objections of West Penn Power Company to the Request for Subpoena Propounded by Michael T. Jennings in the above-referenced matter. This document has been served as shown in the Certificate of Service.

Please contact me if you have any questions.

Very truly yours,



Tori L. Giesler

Enclosures

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>MICHAEL T. JENNINGS</b>	:	
	:	
v.	:	<b>DOCKET NO. C-2018-3006031</b>
	:	
<b>WEST PENN POWER COMPANY</b>	:	

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**OBJECTIONS OF WEST PENN POWER COMPANY  
TO THE REQUEST FOR SUBPOENA PROPOUNDED BY  
MICHAEL T. JENNINGS**

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West Penn Power Company (“West Penn” or the “Company”) hereby submits these Objections to the Request for Subpoena propounded by Michael T. Jennings (the “Complainant”) dated March 18, 2020, pursuant to 52 Pa. Code § 5.421(f). As explained below, West Penn objects to the Request for Subpoena because it is untimely and procedurally improper, it seeks information that is not relevant to the issues raised in the above-captioned matter, and the Commission lacks jurisdictions over the Complainant request to subpoena information related to the Company’s practices under the Americans with Disabilities Act (“ADA”). In support thereof, West Penn states as follows:

**I. BACKGROUND**

On November 14, 2018, the Complainant filed the above-captioned Formal Complaint with the Commission. West Penn was electronically served with the Formal Complaint on November 15, 2018.

On December 5, 2018, the Company filed an Answer and New Matter to the Formal Complaint. The Company also filed Preliminary Objections to the Formal Complaint on that date.

The Complainant filed an Answer to the Preliminary Objections on December 15, 2018.

A Motion Judge Assignment Notice was issued by the Commission on January 3, 2019, and assigned the Administrative Law Judge Jeffrey A. Watson (the “ALJ”) to this proceeding.

On January 25, 2019, the ALJ issued: (1) an Interim Order Denying Preliminary Objections; (2) an Interim Order Establishing Litigation Schedule; and (3) an Interim Order Scheduling a Prehearing Conference. Material to this Objection, the Interim Order Establishing Litigation Schedule dated January 25, 2019, required the parties to identify any fact or expert witnesses it intended to call to testify on or before March 29, 2019.

On February 12, 2019, the ALJ issued an Interim Order Revising the Litigation Schedule, and an Interim Order Cancelling the Prehearing Conference Scheduled for February 19, 2019. Importantly, the Interim Order Revising the Litigation Schedule dated February 12, 2019, maintained the date on or before which the parties were required to identify witnesses as March 29, 2019.

On March 28, 2019, the Complainant filed a letter identifying his witnesses in this proceeding. The Complainant did not identify Christine L. Walker, the individual that is the subject to his Request for Subpoena, as a potential witness.

On May 26, 2019, the Complainant filed a Motion for Extension of Time to Provide Direct Testimony. The Complainant did not identify Christine L. Walker, the individual that is the subject to his Request for Subpoena, as a potential witness in this Motion.

On May 31, 2019, the Complainant filed an “Emergency Request” revising his previously filed Motion for Extension of Time to Provide Direct Testimony. The Complainant did not identify Christine L. Walker, the individual that is the subject to his Request for Subpoena, as a potential witness in this filing.

On June 6, 2019, the Complainant filed another Motion for Extension of Time to Provide Direct Testimony. Again, the Complainant did not identify Christine L. Walker, the individual that is the subject to his Request for Subpoena, as a potential witness in this Motion.

On July 2, 2019, the ALJ issued an Interim Order Providing for Second Revised Initial Litigation Schedule. This Interim Order, *inter alia*, revised the deadlines for the service of Complainant's direct testimony. However, and importantly, this Interim Order did not extend the March 29, 2019 deadline for the identification of witnesses.

A Protective Order was issued on October 24, 2019.

On November 22, 2019, the Complainant submitted a Revised Identification of Factual and Expert Witnesses. Once again, the Complainant did not identify Christine L. Walker, the individual that is the subject to his Request for Subpoena, as a potential witness.

On March 16, 2020, the Complainant filed a Letter of Clarification of Telephonic Participation of My Witnesses. Therein, the Complainant clarified his witnesses were only available to telephonically participate in evidentiary hearings. However, the Complainant did not identify Christine L. Walker, the individual that is the subject to his Request for Subpoena, as a potential witness.

On March 18, 2020, the Complainant filed the instant Request for Subpoena. The instant Request is the first instance since the Complainant identified his witnesses in accordance with the Interim Orders dated January 25 and February 12, 2019—almost one year ago—that the Complainant has identified his intent to call Christine L. Walker as a witness in this proceeding.

Under 52 Pa. Code § 5.421(f), a party may object to an application for a subpoena within 10 days.

For the reasons explained below, the Request for Subpoena should be quashed. The Complainant's attempt to identify an additional witness at this stage of the proceeding is untimely and procedurally improper, and violates the Interim Orders dated January 25 and February 12, 2019, which required the Complainant to identify all potential witnesses on or before March 29, 2019. In addition, the matters and information that the Complainant avers are the subject of the Request for Subpoena are irrelevant to the instant litigation and inquire into matters that the Commission lacks jurisdiction over. Therefore, in accordance with the Commission's regulations, West Penn hereby objects to the Request for Subpoena.

## **II. OBJECTIONS**

### **A. The Request for Subpoena is Untimely and Procedurally Improper.**

In the Request for Subpoena, the Complainant identifies, for the first time, his intent to call Christine L. Walker as a witness in this proceeding. In the Interim Orders dated January 25 and February 12, 2019, the Complainant was required to identify all potential factual and expert witnesses on or before March 29, 2019.

At no point before filing the Request for Subpoena did the Complainant identify Christine L. Walker as a possible witness in this proceeding. Although the Complainant initially identified witnesses in accordance with the Interim Orders dated January 25 and February 12, 2019, by a letter dated March 28, 2019, it is important to recognize that the Complainant made numerous additional filings related to the identification of his witnesses. As noted above, in none of these filings identifying his witnesses or requesting additional time to serve testimony did the Complainant identify Ms. Walker as a potential witness. The Complainant's attempt to identify Ms. Walker as a witness, almost a year after the deadline for such identification has passed, is untimely, procedurally improper and violates the ALJ's Orders dated January 25 and February 12, 2019.

Based on the foregoing, West Penn objects to the Request for Subpoena and requests that it be quashed as untimely and procedurally improper.

**B. The Information and Materials Sought by the Request for Subpoena are Irrelevant to this Proceeding.**

In addition to its procedural defects, the Request for Subpoena seeks information and materials related to the Company's compliance with the ADA. The Request for Subpoena seeks the testimony of Ms. Christine L. Walker, Senior Vice President and Chief Human Resources Officer for FirstEnergy Company, the parent of West Penn. The Complainant avers that Ms. Walker's testimony "would be relevant to my case concerning Americans with Disabilities Act (ADA) compliance and related issues on the State and Federal levels." Request for Subpoena at

1. Paragraph 2 of the Subpoena provides as follows:

2. And bring with you the following: Company policy manuals covering ADA compliance for its customers, including how ADA compliance is handed for disabled customers who do not want to be exposed to a "smart" meter, and/or who have been advised by their physicians to avoid exposure to a "smart" meter.

The Request for Subpoena seeks testimony, information and materials that are irrelevant and immaterial to, and outside the scope of, the instant proceeding. In this proceeding, the Complainant must that the installation of a smart meter at his residence 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. Information related to the Company's ADA policies, and/or compliance therewith, is irrelevant because it completely lacks probative value regarding whether the installation of a smart meter at his residence 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. Indeed, a claim under

the ADA does not make it more or less likely that the Company has violated the Public Utility Code, a Commission regulation or order; the ADA is an entirely separate statutory scheme that is irrelevant to the provision of public utility service in Pennsylvania. Moreover, as explained below, the Commission lacks jurisdiction over claims under the ADA.

Furthermore, the Complainant has failed to demonstrate in his Request for Subpoena that the information and materials sought by the Subpoena fall within the purview of Ms. Walker. The Complainant has not shown that Ms. Walker is responsible for the Company's compliance programs related to regulatory customers. Ms. Walker's title is Senior Vice President and Chief Human Resources Officer for FirstEnergy Service Company; her title evidences no responsibility for the Company's compliance programs related to regulatory customers.

Based on the foregoing, West Penn objects to the Request for Subpoena as irrelevant and immaterial to, and outside the scope of, the instant proceeding. Therefore, the Request for Subpoena should be quashed.

**C. The Commission Lacks Jurisdiction Over Claims Under the ADA.**

It is well-established that the Commission lacks subject matter jurisdiction to interpret and enforce the Americans with Disabilities Act ("ADA"). See *Frompovich v. PECO Energy Co.*, 2018 Pa. PUC LEXIS 160, at \*69 (Order entered May 3, 2018). As the Commission, held in *Frompovich*:

[I]t is beyond the jurisdiction of Commission to determine whether the Complainant has a disability or a cause of action under the American with Disabilities Act. See I.D. at 18. If Ms. Frompovich believes that she has a valid ADA claim against PECO, she must work through the federal courts or one of the federal enforcement agencies, which include the Department of Labor, the Equal Employment Opportunity Commission, the Department of Transportation, the Federal Communications Commission or the Department of Justice, but not this Commission.

*Frompovich*, 2018 Pa. PUC LEXIS at \*69.

The Complainant avers that Ms. Walker’s testimony “would be relevant to my case concerning Americans with Disabilities Act (ADA) compliance and related issues on the State and Federal levels.” Request for Subpoena at 1. Paragraph 2 of the Subpoena further represents that the Complainant seeks information and materials related to ADA compliance for the Company’s customers. *See* Request for Subpoena ¶ 2. Indeed, the Request for Subpoena appears to be based solely upon the Complainant’s desire to litigate a claim under the ADA.

However, the Commission lacks jurisdiction over claims under the ADA. As explained in *Frompovich*, if the Complainant believes he has a valid ADA claim against the Company, the Commission is not the appropriate forum for this claim. Therefore, the Request for Subpoena, which is based solely on the Complainant’s claims under the ADA, should be denied.

### **III. CONCLUSION**

WHEREFORE, West Penn Power Company objects to the Request for Subpoena dated March 18, 2020, and requests that the Pennsylvania Public Utility Commission quash the Request for Subpoena.

Respectfully submitted,

Dated: March 19, 2020



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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)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**MICHAEL T. JENNINGS**

**v.**

**WEST PENN POWER COMPANY**

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**Docket No. C-2018-3006031**

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the Objections of West Penn Power Company to the Request for Subpoena Propounded by Michael T. Jennings upon the individual 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:

Michael T. Jennings <a href="mailto:Lilmac2@zoominternet.net">Lilmac2@zoominternet.net</a>	Administrative Law Judge Jeffery Watson <a href="mailto:jeffwatson@pa.gov">jeffwatson@pa.gov</a>
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Dated: March 19, 2020



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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)  
Counsel for West Penn Power Company