

200 Brook Hollow Road
Mount Pleasant, PA 15666

March 23, 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 Ms. Lepkoski and Ms. Giesler:

Attached please find my **Response to 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,

A handwritten signature in black ink, appearing to read "Michael T. Jennings", with a long horizontal flourish extending to the right.

Michael T. Jennings

ssj
Enclosures

CC: ALJ Watson, via e-mail
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MICHAEL T. JENNINGS

v.

WEST PENN POWER COMPANY

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Docket No. C-2018-3006031

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

March 23, 2020

Michael T. Jennings, Complainant, hereby submits his **Response to Objections of West Penn Power Company to the Request for Subpoena Propounded by Michael T. Jennings dated March 18, 2020**, pursuant to 52 Pa. Code § 5.421(f). On March 16, 2020, during my Telephonic Prehearing Conference, Honorable Jeffery A. Watson stated he would allow the Complainant to file a subpoena for his Honor's consideration, which Complainant promptly filed on March 18, 2020.

1. BACKGROUND:

On March 11, 2019, Complainant served Interrogatories and Request for Production of Documents, Set I, to West Penn Power.

On March 30, 2019, Complainant received West Penn Power's responses to Interrogatories and Request for Production of Documents, Set I.

On May 13, 2019, Complainant served Interrogatories and Request for Production of Documents, Set II, to West Penn Power.

On June 8, 2019, Complainant received West Penn Power's, Respondent, responses to Interrogatories of Michael T. Jennings and Request for Production of Documents, Set II. West

Penn Power Company, Respondent, failed to answer the following questions in Interrogatories of Michael T. Jennings and Request for Production of Documents, Set II: 2, 3, 17, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 35, and 36, most questions pertained to ADA.

On June 12, 2019, pursuant to 52 Pa. Code § 5.342, Michael T. Jennings, Complainant, filed a Motion to Compel Discovery Responses, Set II, Nos. 2, 3, 20-29, 35, and 36 as West Penn Power, Respondent, *did not raise objections* to the Interrogatories of Michael T. Jennings and Request Production Documents, Set II.

On July 3, 2019 an Interim Order Granting in Part and Denying in Part Complainant's Motion to Compel Discovery Responses was entered which only granted that Respondent was directed to serve a full and complete response to Number 23 no later than August 1, 2019. Respondent's objections to Set II Interrogatory Nos. 2, 3, 20-22, 24-29, 35 and 36 were sustained, *even with no objections being filed by West Penn Power Company by the deadline of May 20, 2019.*

Complainant received Respondent's response to Interrogatory Number 23 on August 1, 2019 by e-filing and August 5, 2019 via first class mail.

On March 18, 2020, Complainant filed a Request for a Subpoena for Christine L. Walker, Senior Vice President and Chief Human Resources Officer for FirstEnergy Company, as allowed by ALJ Jeffrey A. Watson per his instructions in the Prehearing Conference on March 16, 2020. Ms. Walker can address the compliance aspect as it pertains to Complainant's case and West Penn Power's/FirstEnergy Service Corporation's compliance to State and Federal ADA laws.

2. Discussion

A. The Request for Complainant's Subpoena is Timely.

The Interim Order Providing for Third Revised Initial Litigation Schedule states the following concerning Subpoenas:

"Subpoenas

Any Party intending to subpoena a witness for the hearing is directed to review the procedures established in 52 Pa.Code § 5.421. Such Party shall submit its written application to the Presiding Officer **sufficiently in advance of the hearing date** so that the other Parties will have **the required ten (10) days' notice** to answer or object, and so that you will have enough time to receive the subpoena and serve it."

According to the Litigation Schedule, Complainant has submitted his written application to the Presiding officer **sufficiently in advance of the hearing date** so that the other Parties will have *more* than the required ten (10) days' notice.

Also, during the Prehearing Conference held telephonically on March 16, 2020, ALJ Jeffrey A. Watson clearly stated he would allow the Complainant to request a subpoena for Christine L. Walker, Senior Vice President and Chief Human Resources Officer for FirstEnergy Company.

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

The Complainant's case is directly based upon accommodations under State and Federal Americans with Disability (ADA) laws and West Penn Power Company's/FirstEnergy's failure to provide accommodation under these laws for his family. West Penn Power Company avers they are in compliance with ADA, yet deliberately did not answer pertinent ADA interrogatories.

The theme throughout West Penn's responses to the interrogatories Complainant propounded was "Act 129 requires the installation of smart meters at every service location served by West Penn, *without exception for any reason.*" Ms. Walker can address the issue of "without exception for any reason" as it pertains to compliance with ADA.

C. The Commission is Bound to Comply with Public Utility Code 66 Pa. C.S.A. § 1501, § 1502 and ADA and is Charged with Enforcing its Precepts

The Commission's scope, as defined in Title 66 Pa. C.S.A. Public Utilities, Chapter 14 § 1401, is "... to protecting responsible customers of public utilities." I, Michael T. Jennings, Complainant, am a responsible customer of West Penn Power Company. As a responsible customer of West Penn Power Company, Complainant made a reasonable special needs request for accommodations from FirstEnergy's and West Penn Power Company's executives which was ignored. Consequently, the Complainant is now in the formal complaint process.

"Title 66 Chapter 15. Service and Facilities

Subchapter A. General Provisions

Subchapter Heading. The heading of Subchapter A was added November 26, 1978, P.L.1245, No.297, effective in 60 days.

1501. Character of service and facilities.

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay. Such service and facilities shall be in conformity with the regulations and orders of the commission. Subject to the provisions of this part and the regulations or orders of the commission, **every public utility may have reasonable rules and regulations governing the conditions under which it shall be required to render service.** Any public utility service being furnished or rendered by a municipal corporation beyond its corporate limits shall be subject to regulation and control by the commission as to service and extensions, with the same force and in like manner as if such service were rendered by a public utility. The commission shall have sole and exclusive jurisdiction to promulgate rules and regulations for the allocation of natural or artificial gas supply by a public utility.

§ 1502. Discrimination in service.

No public utility shall, as to service, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to service, either as between localities or as between classes of service, but this section does not prohibit the establishment of reasonable classifications of service.”¹

The ADA and HUD hotlines both stated that the PA Public Utility Commission and the utilities they serve, i.e. West Penn Power, et al, are quasi-state and -local entities and are required to abide by Title II of ADA law. The law defines a public entity as “**Any department, agency, special purpose district or other instrumentality of a State or Local government**” (Americans With Disabilities Act of 1990, Pub. L. No. 101-336, 104 Stat. 328 (1990).) “Any” and “other” would certainly include the PA Public Utility Commission as they are a part of Pennsylvania’s State government that regulates the utilities that operate within the State.² The Commission “...was created by the Pennsylvania Legislative Act of March 31, 1937 (and the Public Utility Law of May 28, 1937)...”³

The Commission’s **Mission Statement** reads, “The Pennsylvania Public Utility Commission balances the **needs of consumers** and utilities; ensures **safe** and reliable utility service at reasonable rates; **protects the public interest**; educates consumers to make independent and informed utility choices; furthers economic development; and fosters new technologies and competitive markets in an environmentally sound manner.”⁴ [Emphasis added.]

As a public entity, the Commission is subject to Title II of the ADA which applies to

¹ Retrieved from <http://www.legis.state.pa.us/WU01/LI/LI/CT/HTM/66/66.HTM>

² Retrieved from http://www.puc.pa.gov/about_puc.aspx

³ Ibid.

⁴ Ibid.

“... **all services, programs, and activities** provided or made available...”⁵ by the Commission. In determining what constitutes a service, program, or activity, the US Court of Appeals for the Ninth Circuit Court, *City of Los Angeles v. AECOM Services*, No. 15-56606, D.C. No. 2:13-cv-04057-SJO-PJW has explained “...the broad language of Title II brings within its scope ‘**anything a public entity does.**’” *Lee v. City of Los Angeles*, 250 F.3d 668, 691 (9th Cir. 2001).”⁶ In addition, “A public entity **may not directly or through contractual, licensing, or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified individuals with disabilities to discrimination on the basis of disability.**” (28 CFR 35, §35.130(b)(3)).⁷ [Emphasis added.]

Further, “A public entity shall make reasonable modifications in policies, practices, or procedures when the **modifications are necessary to avoid discrimination on the basis of disability...**”⁸ As a public entity, the Commission is subject to Title II of the ADA. Because the Commission regulates West Penn Power, the provisions in Title II prohibit the Commission from approving, causing or allowing West Penn Power’s discriminatory treatment of a customer with a disability.

West Penn Power cannot be in compliance with PUC regulations 52 Pa. Code § 1501 and § 1502; 052 Pa. Code § 57.194; Title II or Title III of the ADA; or Section 504 of the Rehabilitation Act of 1973 (1 disability) as they state “without exception for any reason.” An accommodation would be a reason, and therefore, West Penn Power is not offering safe accommodations as required by the ADA, federal law. Act 129, a state law, does not absolve West Penn Power or the Commission from complying with the ADA.

⁵ Retrieved from https://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm#a35102

⁶ Retrieved from <https://cdn.ca9.uscourts.gov/datastore/opinions/2017/04/24/15-56606.pdf>

⁷ Retrieved from https://www.ada.gov/regs2010/titleII_2010/titleII_2010_regulations.htm#a35130

⁸ *Ibid.*

Therefore, the Commission should be enforcing Federal ADA laws as mandated in the above references, along with Pennsylvania Human Relations Act, which states:

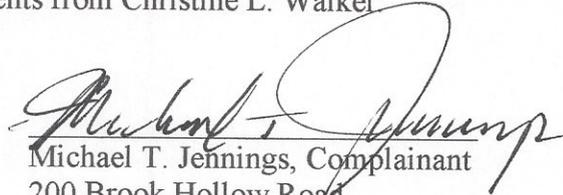
- (p.1) The term "**handicap or disability**", with respect to a person, means:
- (1) a physical or mental impairment which substantially **limits one or more of such person's major life activities**;
 - (2) a **record of having such an impairment**; or
 - (3) being regarded as having such an impairment, but such term does not include current, illegal use of or addiction to a controlled substance, as defined in section 102 of the Controlled Substances Act (Public Law 91-513, 21 U.S.C. § 802).⁹

Complainant's family meets the definition of disability set forth in the PA Human Relations Act and Ms. Walker will be able to answer compliance questions concerning West Penri Power's failure to accommodate Complainant's family which should be enforced by the Commission.

III. CONCLUSION

WHEREFORE, Michael T. Jennings, Complainant, respectfully requests that the Presiding Administrative Law Judge and the Pennsylvania Public Utility Commission grant his request for a subpoena for both testimony and documents from Christine L. Walker

Dated: March 23, 2020


Michael T. Jennings, Complainant
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ssj

cc: As Per Certificate of Service
Rosemary Chiavetta, Esq. Public Utility Commission
Lauren Lepkoski, Tori Giesler, FirstEnergy Service Co.

⁹ <https://www.phrc.pa.gov/Resources/Law-and-Legal/Pages/The-Pennsylvania-Human-Relations-Act.aspx>

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MICHAEL T. JENNINGS

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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 my **Response to the Objections of West Penn Power Company to the Request for Subpoena** upon the individuals listed below, in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant.)

Service by e-filing and email:

Administrative Law Judge Jeffrey A. Watson
jeffwatson@pa.gov

Lauren Lepkoski
llepkoski@firstenergycorp.com

Tori Giesler
tgiesler@firstenergycorp.com

Dated: March 23, 2020



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