

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

BRADLEY S. TUPI and
ANN MARIE CLYNE,

Complainants,

Docket No. C-2019-3013785

vs.

WEST PENN POWER COMPANY,

Respondent.

COMPLAINANTS' MOTION TO COMPEL DISCOVERY AND IMPOSE SANCTIONS

NOTICE TO PLEAD

TO RESPONDENT:

**YOU ARE NOTIFIED TO FILE A
WRITTEN RESPONSE TO
COMPLAINANTS' MOTION TO
COMPEL DISCOVERY RESPONSES
WITHIN 20 DAYS OF SERVICE
PURSUANT TO 52 PA CODE § 5.103.**

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Complainant

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Complainants serve the following Motion to Compel Discovery and Impose Sanctions pursuant to 52 Pa. Code §§ 5.342(g), 5.349(d), 5.371 and 5.372, due to Respondent's ongoing failure to provide complete answers to Complainants' discovery requests. In support of this Motion, Complainants aver as follows:

BACKGROUND

1. Complainants filed their Formal Complaint on October 24, 2019, seeking to compel West Penn to rectify electric reliability problems on the Clifton Circuit, which serves Complainants' residence. Complainants (and many other West Penn customers) experienced 17 sustained outages in less than three years:

Date	Duration	Cause	Customers Affected
03/08/2017	366 minutes	Trees	15
05/05/2017	120 minutes	Forced Outage	1022
06/28/2017	182 minutes	Trees	208
07/11/2017	1481 minutes	Trees	784
09/05/2017	285 minutes	Trees	463
04/27/2018	122 minutes	Trees	980

09/09/2018	392 minutes	Trees	984
11/15/2018	35 minutes	Trees	419
12/10/2018	38 minutes	Unknown	979
05/20/2019	462 minutes	Trees	4
06/01/2019	235 minutes	Equipment Failure	972
07/23/2019	30 minutes	Planned Outage	191
08/05/2019	72 minutes	Line Failure	652
09/28/2019	949 minutes	Trees	31
10/06/2019	90 minutes	Unknown	976
10/25/2019	179 minutes	Trees	975
11/15/2019	117 minutes	Unknown	975

Source: West Penn Power's responses to Complainants' First Set of Discovery Requests, Documents No. 0004-37.

2. Complainants' research suggests that reliability has been an ongoing problem for West Penn. In an Implementation Plan filed with the Commission on November 30, 2015, West Penn claimed to have "developed a detailed Reliability Plan that will not only allow it to meet its twelve-month and three-year performance standards, but will also facilitate the Company's goal of meeting benchmark level performance in all three indices¹ by year-end 2018. The projects and initiatives identified in the Reliability Plan will be implemented during the period of 2016-2018." **Exhibit A**, First Energy Consolidated Implementation Plan at Appendix D, page 1, filed at Docket Nos. D-2013-2365991, 2365992, 2365993 and 2365994 (Nov. 30, 2015). Judging from the outages experienced by Complainants during 2017, 2018 and 2019, West Penn's efforts at improving its reliability performance have fallen short of its assurances to the Commission.

¹ The three indices are: System Average Interruption Frequency Index (SAIFI); System Average Interruption Duration Index (SAIDI); and Customer Average Interruption Duration Index (CAIDI).

3. Complainants are served by the Clifton Circuit, which originates at the Bethel Park Substation. West Penn's Quarterly Reliability Reports to the PUC identify the Clifton Circuit as one of the company's Worst Performing Circuits. **See Exhibit B**, First Energy's "Joint 2nd Quarter 2019 Reliability Report" to the PUC, Attachment A, page 37 (Clifton Circuit listed as 27th worst); **Exhibit C**, First Energy's "Joint 3rd Quarter 2019 Reliability Report" to the PUC, Attachment A, page 36 (Clifton Circuit listed as 16th worst); and **Exhibit D**, First Energy's "Joint 4th Quarter 2019 Reliability Report" to the PUC, Attachment A, page 31 (Clifton Circuit listed as 17th worst).

4. Complainants' Formal Complaint alleges that West Penn is not supplying power that is reasonably continuous and without unreasonable interruptions or delay. 66 Pa.C.S. § 1501. Complainants seek relief under 52 Pa. Code § 57.197 (reliability investigations and enforcement):

(a) For the Commission to initiate an investigation to determine whether West Penn is providing service to Complainants' home in accordance with §§ 57.193 and 57.194 (relating to transmission and distribution system reliability).

(b) Based upon such investigation, for the Commission to enter an order directing West Penn to take reasonable corrective action as necessary to improve the reliability of electric service to Complainants' home, specifically, to trim trees, install underground service, and/or such other actions as may be necessary to provide reliable service.

(c) If West Penn fails to take appropriate corrective action within the period of time designated by the Commission, for the Commission to impose an appropriate penalty.

5. Complainants bear the burden of proof. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa.Cmwlt. 1990). Evidence as to the reliability of Complainants' electrical service is exclusively within West Penn's possession.

6. Complainants served three sets of Discovery Requests designed to obtain basic information about each of the frequent electrical outages that are the subject of this case. In each case, the Discovery Requests included requests for admissions, interrogatories and requests for production. In each case, West Penn's responses were incomplete or otherwise unsatisfactory. Hence this Motion.

7. Complainants served their First Set of Discovery Requests on November 21, 2019. **Exhibit E²**. West Penn served responses on December 11, 2019. **Exhibit F**. Due to deficiencies in West Penn's responses, Complainants served their Second Set of Discovery Requests on January 2, 2020. **Exhibit G**. West Penn served objections on January 13, 2020, and Responses on January 22, 2020. **Exhibit H**.

8. Complainants served their Third Set of Discovery Requests on January 28, 2020. **Exhibit I**. West Penn served objections on February 7, 2020, and Responses on February 18, 2020. **Exhibit J**.

MOTION FOR SANCTIONS REGARDING FIRST SET OF DISCOVERY REQUESTS

9. Complainants' First Set of Discovery Requests included questions designed to ascertain basic information about the outages and their causes. Requests No. 4 through 18 asked, for each outage: the location; the devices that opened the circuit; the time each outage began and ended; the local weather conditions; and West Penn's remedial measures following the outage. Importantly, each of these requests asked West Penn to "PRODUCE all Documents showing Your investigation of the outage, Your response to the outage, and Your efforts to prevent another such outage." **Exhibit E**.

10. West Penn responded to Requests No. 4 through 18 by producing a two-page report for each outage. **Exhibit F**. Most of these reports provided the outage location, the

² To eliminate unnecessary paper in this filing, Complainants' Exhibits include only those pages of the discovery pleadings necessary for a decision on this Motion.

devices that opened the circuit, the time the outage began and ended, the local weather conditions, and the remedial measures West Penn took to restore power. West Penn did not produce any documents showing its “efforts to prevent another such outage.” Complainants believe such documents must exist.

11. West Penn produced a two-page “West Penn Power ERS Complaint Action Plan.” **Exhibit F**, Document No. 0002-03. After listing the outages affecting Complainants, the document had a section entitled “Reliability Improvements/Action Plan.” That section referenced various actions:

- a. We started patrolling zone 1. . . .
- b. Tollgrade monitors will be installed. . . .
- c. Forestry is removing some off right-of-way trees. . . .
- d. 2014 Pole Inspection
- e. 2020 CRC OH Ckt inspection will be done
- f. 2018 Infrared. No repairs needed.
- g. 2017 cycle tree trimming. Next 2022.
- h. 2019 Reliability tree trimming.

12. One would expect each of these activities to have been accompanied by various communications, emails, contracts, and so on. One would expect each of the inspections to result in a report of some sort. One would expect photos and/or videos to have been generated. No such documents were produced.

13. Complainants request an Order pursuant to 52 Pa. Code §§ 5.349(d), 5.371 and 5.372 directing West Penn to make a more thorough search and a complete production of the documents sought by Discovery Requests 4 through 18.

14. Complainants live in a residential plan called Deerfield Manor. It consists of approximately 350 homes. When Complainants experience outages, most other Deerfield residents do not. Accordingly, Complainants made the following Discovery Requests:

20. IDENTIFY the house numbers of all residences in Deerfield Manor served by the Clifton Circuit and above-ground service.

ANSWER:

21. STATE whether You have received any complaints about the reliability of service in Deerfield Manor, aside from the Formal Complaint. If so:

- a. STATE the house numbers corresponding to the complaints;
- b. STATE whether the homes corresponding to the complaints had above-ground or underground electrical service; and
- c. PRODUCE any and all Documents relating to such complaints and Your evaluations of such complaints.

ANSWER:

Exhibit E.

15. Deerfield Manor was defined in the Discovery Requests as follows:

- E. "Deerfield Manor" shall mean that plan of homes located in Upper St. Clair Township at the southwest corner of Boyce Road and Washington Road and consisting of Redfern Drive, Candlewood Drive, Hollow Tree Drive, Turnberry Drive, Merry Oak Lane, Quail Hill Drive, Pinetree Drive, Fairgreen Drive, Cedarvue Drive, Thorntree Drive, Gloucester Drive, Williamsburg Circle and Circle Drive.

Exhibit E.

16. West Penn responded, "Deerfield Manor is not a recognized subdivision in the Company's business records." ***Exhibit F.*** This was a non-responsive answer. Having been provided the streets that make up Deerfield Manor, surely West Penn could have identified those customers with above-ground service and those who have filed complaints about the reliability of their electrical service.

17. Complainants request an Order pursuant to 52 Pa. Code §§ 5.342(g), 5.349(d), 5.371 and 5.372 compelling West Penn to make full and complete responses to Requests 20 and 21 of the First Set of Discovery Requests.

**MOTION TO OVERRULE "GENERAL OBJECTIONS"
TO SECOND SET OF DISCOVERY REQUESTS**

18. West Penn's Responses to Complainants' Second Set of Discovery Requests began with a number of "general" objections, which were then incorporated by reference into

the responses to various individual Discovery Requests. **Exhibit H.** West Penn's approach departed from the Commission's regulations, which require objections to identify the interrogatory, or the part thereof, deemed objectionable, the specific ground for the objection, and the facts and circumstances purporting to justify the objection. See 52 Pa. Code §§ 5.342(c)(2) & (3).

19. West Penn's general objections were without merit.

20. West Penn's first general objection objected to the "Instructions" to the extent they purported to impose discovery obligations beyond those required by the Rules. But the Second Set of Discovery Requests did not contain any "Instructions." **Exhibit G.** West Penn offered no explanation as to how anything in the Discovery Requests would have expanded West Penn's discovery obligations. This objection should be overruled.

21. West Penn's second general objection objected to the "Instructions" to the extent the definitions do not accurately state the definition set forth in the Commission's 2018 Reliability Report. **Exhibit H.** Again, the Discovery Requests did not contain any "Instructions." **Exhibit G.** West Penn's second general objection should be overruled.

22. West Penn's third general objection objected to each Discovery Request to the extent the information requested would have required West Penn to conduct an unreasonable investigation. **Exhibit H.** But West Penn did not identify any Discovery Request that would have required an unreasonable investigation. This objection should be overruled.

23. West Penn's fourth general objection objected to each Discovery Request to the extent the requested information sought proprietary materials without a protective order. **Exhibit H.** But West Penn did not identify any Discovery Request that would have required production of any proprietary materials. This objection should be overruled.

24. Complainants request an Order pursuant to 52 Pa. Code §§ 5.342(g), 5.371 and 5.372 overruling West Penn's general objections to the Second Set of Discovery Requests.

**MOTION FOR SANCTIONS REGARDING
SECOND SET OF DISCOVERY REQUESTS**

25. Complainants' Second Set of Discovery Requests, ***Exhibit G***, included questions designed to learn how West Penn has responded to customer reliability problems with overhead service in the past. One of the items of relief requested in the Formal Complaint is that West Penn consider the installation of underground service to remedy the repeated outages. If West Penn has previously installed underground electrical service in response to complaints from customers experiencing poor electrical reliability with overhead service, then Complainants have every right to know, if for no other reason than to show that such a remedy would not be unreasonable. And if West Penn has never installed underground electrical service in response to complaints from customers experiencing poor electrical reliability with overhead service, then it is not burdensome for West Penn to say so.

26. Request No. 35 asked:

35. STATE whether You have ever installed underground electrical service in response to complaints from customers experiencing poor electrical reliability with overhead service. If so:
- a. STATE the name and address of each such customer;
 - b. STATE the service locations where underground service was installed;
 - c. STATE whether the customers in question had filed a formal complaint with the PUC and, if so, the docket number.

ANSWER:

Exhibit G.

27. West Penn responded only with objections:

In addition to its General Objections, West Penn objects to the extent that the Request is overly broad, unlimited as to time and unduly burdensome. West Penn objects to the extent that the requested information contains confidential customer information. West Penn objects to the extent the term "poor electrical reliability" is not defined.

Exhibit H.

28. We agree the request should have stated a time frame. We would suggest "within the last five years." West Penn complained that the request was unlimited as to time, but

offered no information pertaining to any time frame, even the time frame West Penn deems reasonable. The request is not burdensome if the answer is “No.”

29. West Penn complained that the requested information contained confidential customer information, but offered no explanation how a customer’s name, address or PUC filing could be considered confidential. **Exhibit H.** To the contrary, names and addresses are public information. The request did not seek social security numbers or any other private information.

30. West Penn complained that the term “poor electrical reliability” was undefined, **Exhibit H**, which strains credulity given West Penn’s familiarity with the subject.

31. Complainants asked about other customers’ complaints about reliability of service on the Clifton Circuit:

36. STATE whether any other customers on the Clifton Circuit have, within the last five years, filed formal complaints with the PUC complaining about poor service reliability. If so:

- a. STATE each such customer’s name and address;
- b. STATE the PUC docket number for each case; and
- c. STATE the disposition of each case.

ANSWER:

Exhibit G.

32. If other customers have complained about poor electrical reliability on the Clifton Circuit, have filed PUC cases, and have obtained relief, this information might influence the Commission in deciding this case, particularly if West Penn has failed to take adequate measures to prevent recurring problems. The answers might also inform the relief to be afforded Complainants. But again, West Penn responded only with objections:

In addition to its General Objections, West Penn objects to the request for information that extends beyond the three-year statute of limitations from the date the liability arose. 66 Pa.C.S. § 3314(a). West Penn objects to the extent that the requested information contains confidential customer information. West Penn objects to the extent the term “poor electrical reliability” is not defined. West Penn objects that the information requested is publicly available on the PUC website, www.puc.pa.gov and imposes unnecessary cost and burden on West Penn if required to answer.

Exhibit H.

33. West Penn's objection that the information extends beyond the three-year statute of limitations is nonsensical. The question pertains to whether other customers on the Clifton Circuit have filed complaints about reliability problems, not whether those customers could file timely claims now.

34. West Penn complained that the requested information contained confidential customer information, **Exhibit H**, but offered no explanation how a customer's name, address or PUC filing could be considered confidential. Indeed, the confidentiality claim is contradicted by West Penn's argument that the information can be obtained at the PUC website.

35. West Penn complained that the term "poor electrical reliability" was undefined, **Exhibit H**, which strains credulity given West Penn's familiarity with the subject.

36. West Penn asserts that the requested information is available at the PUC website, but Complainants have no idea how to determine which PUC filings would pertain to the reliability of Clifton Circuit. West Penn, of course, can do so with little difficulty. And if the answer is "None," then there is no burden on West Penn whatsoever, and West Penn's response might be considered disingenuous.

37. In an effort to overcome West Penn's objections, Complainants asked a similar question as Request No. 33 of the Third Set of Discovery Requests (**Exhibit I**, discussed below). Once again, West Penn responded only with objections.

38. Complainants request an Order pursuant to 52 Pa. Code §§ 5.342(g), 5.371 and 5.372 compelling West Penn to make full and complete responses to Requests 35 and 36 in the Second Set of Discovery Requests.

MOTION TO OVERRULE "GENERAL OBJECTIONS" TO THIRD SET OF DISCOVERY REQUESTS

39. West Penn's Responses to Complainants' Third Set of Discovery Requests, **Exhibit J**, began with the same "general" objections as West Penn's Responses to Complainants' Second Set of Discovery Requests.

40. For the reasons set forth above in paragraphs 18 to 24, the general objections are without merit. Complainants request an Order pursuant to 52 Pa. Code §§ 5.342(g), 5.371 and 5.372 overruling West Penn's general objections to the Third Set of Discovery Requests.

**MOTION FOR SANCTIONS REGARDING
THIRD SET OF DISCOVERY REQUESTS**

41. Discovery Request 22 asked for production of documents:

22. The First Set of Discovery Demands asked You to produce "all Documents showing Your Investigation of the outage, Your response to the outage, and Your efforts to prevent another such outage." You produced only Documents bearing Bates Nos. 0001-37.

- a. Please confirm that You have no Documents showing any efforts to prevent additional outages on the Clifton Circuit; otherwise, produce the Documents.
- b. Please confirm that you have no photographs relating to the outages; otherwise, produce the photographs.

ANSWER:

Exhibit I.

42. West Penn responded by producing document nos. 0040-60 and 0061.

Exhibit J. Document 0040-60 is a PowerPoint presentation delivered to the Upper St. Clair Township Board of Commissioners on January 27, 2020, following citizens' complaints of poor electrical service. Much of it is irrelevant to this case. Pages 0041-45 pertains to West Penn's response to storms and other major events. The outages in this case were not caused by storms or other major events. Pages 0048-51 deal with outages on the McLaughlin and Brookville Circuits, which are not involved in this case. For the reasons outlined in Paragraphs 11 and 12 of this Motion, Complainants expect West Penn would have various communications, emails, contracts, reports, photos and/or videos regarding its efforts to prevent outages on the Clifton Circuit.

43. Complainants request an Order pursuant to 52 Pa. Code §§ 5.371 and 5.372 compelling a more thorough search and a complete production of the documents requested by Request 22.

44. Complainants asked for information about inspections of the Clifton Circuit:

23. From January 1, 2017 to date, identify all inspections of the Clifton Circuit that You have performed, what those inspections showed, and produce all Documents regarding those inspections.

ANSWER:

Exhibit I.

45. West Penn answered by reference to certain pages of the PowerPoint presented to the Upper St. Clair Commissioners. ***Exhibit J.*** Most of the referenced information did not pertain to the Clifton Circuit. West Penn objected to the Discovery Request as “overly broad and unduly burdensome,” because the “Clifton Circuit is 13.7 miles and serves 975 customers.”

Exhibit J.

46. If West Penn has performed no inspections of the Clifton Circuit since January 1, 2017, that would certainly be revealing. And it would not be burdensome for West Penn to say so. On the other hand, if West Penn has performed inspections of the Clifton Circuit since January 1, 2017, those inspections are relevant to this case, because West Penn Power is required to furnish and maintain adequate, efficient and reasonable service and make such repairs, changes, alterations, substitutions, extensions and improvements in or to the service and facilities as necessary or proper for the accommodation, convenience and safety of patrons. West Penn should have various communications, emails, contracts, reports, photos and/or videos regarding its inspections of the Clifton Circuit.

47. Complainants request an Order pursuant to 52 Pa. Code §§ 5.371 and 5.372 compelling a more thorough response and a complete production of the documents requested by Request 23.

48. West Penn blames many of the outages in this case on trees. West Penn’s Answer to the Formal Complaint says it performed “reliability tree trimming,” yet it refused to provide information about that tree trimming:

25. Your Answer to Paragraph 4 of the Formal Complaint states that You performed “reliability tree trimming” in 2019. State the following:
- a. Whether the “reliability tree trimming” in 2019 was on the Clifton Circuit;
 - b. If so, using Your GIS capabilities, show where the “reliability tree trimming” in 2019 was done; and
 - c. Produce all Documents pertaining to the “reliability tree trimming” in 2019, including the orders to the trimming company, reports from the trimming company, and Your internal Documents regarding the reasons for the “reliability tree trimming.”

ANSWER:

Exhibit I.

49. West Penn answered by reference to certain pages of the PowerPoint presented to the Upper St. Clair Commissioners. ***Exhibit J.*** The referenced information did not pertain to 2019 reliability trimming on the Clifton Circuit. West Penn also objected to the Discovery Request as “overly broad and unduly burdensome,” because the “Clifton Circuit is 13.7 miles and serves 975 customers.” ***Exhibit J.***

50. If West Penn indeed performed reliability trimming on the Clifton Circuit in 2019, West Penn should have business records such as communications, emails, contracts, reports, photos and/or videos regarding its activities. None were produced.

51. Complainants request an Order pursuant to 52 Pa. Code §§ 5.371 and 5.372 compelling a more thorough response and a complete production of the information and documents requested by Request 25.

52. West Penn’s Answer to the Formal Complaint says it performed an “infrared inspection” in 2018, yet West Penn refused to provide any business records about the inspection:

26. Your Answer to Paragraph 4 of the Formal Complaint states that You performed an “infrared inspection” in 2018. State the following:
- a. Whether the “infrared inspection” in 2018 was on the Clifton Circuit;
 - b. If so, using Your GIS capabilities, show where the “infrared inspection” in 2018 was done; and
 - c. Produce all Documents pertaining to the “infrared inspection” in 2018, including the orders to the personnel doing the work, reports

from those who did the work, and Your internal Documents regarding the reasons for the “infrared inspection.”

ANSWER:

Exhibit I.

53. West Penn answered by reference to pages 0056 and 0058 of the PowerPoint presented to the Upper St. Clair Commissioners. ***Exhibit J.*** The referenced pages mentioned infrared inspections, but provided no other information. West Penn also objected to the Discovery Request as “overly broad and unduly burdensome,” because the “Clifton Circuit is 13.7 miles and serves 975 customers.” ***Exhibit J.***

54. If West Penn indeed performed an infrared inspection on the Clifton Circuit in 2018, West Penn should have business records such as communications, emails, contracts, reports, photos and/or videos regarding that inspection. None were produced.

55. Complainants request an Order pursuant to 52 Pa. Code §§ 55.349(d), .371 and 5.372 compelling a more thorough response and a complete production of the information and documents requested by Request 26.

56. Paragraph 4 of West Penn’s Answer to the Formal Complaint says it “continues to study and implement viable circuit improvements to improve the Circuit’s reliability performance,” so Complainants asked for information about the “viable circuit improvements”:

27. Your Answer to Paragraph 4 of the Formal Complaint states: “The Company avers it continues to study and implement viable circuit improvements to improve the Circuit’s reliability performance.”

- a. Identify all actions You have taken since January 1, 2017, in Your effort “to study and implement viable circuit improvements to improve the Circuit’s reliability performance.”
- b. Produce all Documents regarding Your efforts “to study and implement viable circuit improvements to improve the Circuit’s reliability performance.”

ANSWER:

Exhibit I.

57. West Penn answered by reference to the PowerPoint presented to the Upper St. Clair Commissioners. ***Exhibit J.*** Most of the referenced information did not pertain to the

Clifton Circuit. West Penn also objected to the Discovery Request as “overly broad and unduly burdensome,” because the “Clifton Circuit is 13.7 miles and serves 975 customers.” **Exhibit J.**

58. If West Penn has indeed continued to study and implement viable reliability improvements on the Clifton Circuit, West Penn should be able to list them, describe them, and produce business records about them, such as such as communications, emails, contracts, reports, photos and/or videos. None were produced.

59. Complainants request an Order pursuant to 52 Pa. Code §§ 5.342(g), 5.349(d), 5.371 and 5.372 compelling a more thorough response and a complete production of the information and documents requested by Request 27.

60. Paragraph 4 of West Penn’s Answer to the Formal Complaint says West Penn has “limited ability to maintain or remove the vegetation” with respect to off right-of-way trees. So Complainants asked for information about West Penn’s efforts in this regard:

29. From January 1, 2017 to date, have You asked any property owners for permission to do any trimming of trees outside the right-of-way to enhance the reliability of the Clifton Circuit? If so,

- a. State whether permission was granted or denied;
- b. If permission was granted, using Your GIS capabilities, show the locations where trimming off the right-of-way was performed.

ANSWER:

Exhibit I.

61. Despite raising the subject in its Answer, West Penn refused to provide responsive information. It simply objected to the Discovery Request as “overly broad and unduly burdensome,” because the “Clifton Circuit is 13.7 miles and serves 975 customers.”

Exhibit J.

62. West Penn’s filings with the PUC indicate that West Penn is well aware of the service interruptions caused by off-ROW trees. In its Joint 4th Quarter Reliability Report filed with the PUC on January 31, 2020, West Penn listed “Trees off ROW – tree” as the leading cause of outages; 42.79%. **Exhibit D** at 14.

63. West Penn represented to the PUC that it was taking action to address the problem:

To reduce outages caused by trees, West Penn performs cycle-based tree trimming which removes selected incompatible trees within the clearing zone corridor, removes certain defective limbs that are overhanging primary conductors, controls selected incompatible brush, and removes off-ROW priority trees. West Penn's options under the law are strictly limited when it comes to all forms of off right-of-way tree management. However, West Penn is legally permitted to identify priority off-ROW trees that are dead, dying, diseased, leaning, and significantly encroaching the corridor and remove those trees when customer consent is obtained or easement rights permit. West Penn is very active in pursuing this option, where available. Trees identified as a potential cause of a future outage are removed to prevent an interruption of electrical service to West Penn's customers. West Penn increased its focus on off-ROW tree removals in the third and fourth quarter of 2019.

Exhibit D at 15.

64. Given that off-ROW trees are the leading cause of Complainants' outages, given that off-ROW trees are the leading cause of outages throughout West Penn's system, and given that West Penn promised the PUC it would be "very active" in addressing this problem "in the third and fourth quarter of 2019," it is unsatisfactory for West Penn to contend here that it is too burdensome for the company to produce information about its activities to address off-ROW trees affecting reliability of the Clifton Circuit.

65. Complainants request an Order pursuant to 52 Pa. Code §§ 5.342(g), 5.349(d), 5.371 and 5.372 compelling a complete response to Request 29.

66. The PUC measures reliability by three metrics: System Average Interruption Frequency Index (SAIFI); System Average Interruption Duration Index (SAIDI); and Customer Average Interruption Duration Index (CAIDI). Each of these metrics is a mathematical calculation. West Penn performs these calculations for its quarterly reliability reports to the PUC.

67. In Discovery Request 32, Complainants asked for the following CAIDI, SAIFI and SAIDI information:

32. With reference to West Penn's CAIDI, SAIFI and SAIDI scores: Does West Penn have the capability to compute such scores for a particular customer? If so, provide the CAIDI, SAIFI and SAIDI scores for Your service to Complainants from January 1, 2017, to date.

ANSWER:

Exhibit I.

68. West Penn replied, "West Penn Power does not compile such statistics at the customer level." Upon information and belief, West Penn's Reliability Engineer could easily calculate these scores for Complainants' residence. The scores would offer objective measures as to whether West Penn has delivered power that is reasonably continuous and without unreasonable interruptions or delay. 66 Pa.C.S. § 1501.

69. Complainants request an Order pursuant to 52 Pa. Code §§ 5.342(g), 5.371 and 5.372 compelling a complete response to Request 32.

70. Discovery Request 33 asked about Clifton Circuit reliability complaints since January 1, 2017:

33. STATE whether any other customers on the Clifton Circuit have, since January 1, 2017, filed formal complaints with the PUC complaining about poor service reliability. If so:

- a. STATE each such customer's address;
- b. STATE the PUC docket number for each case; and
- c. STATE the disposition of each case.

ANSWER:

Exhibit I.

71. West Penn responded only with objections:

In addition to its General Objections, West Penn objects to the extent that the Request is overly broad, unlimited as to time and unduly burdensome. West Penn objects to the extent that the requested information contains confidential customer information. West Penn objects to the extent the term "poor electrical reliability" is not defined. The Requested information is not relevant to the underlying Complaint and would not be admissible at hearing and thus the Request will not lead to the discovery of admissible evidence.

Exhibit J.

72. West Penn's objections should be overruled. If other customers have complained about poor electrical reliability on the Clifton Circuit, have filed PUC cases, and

have obtained relief, this information might influence the Commission in deciding this case, particularly if West Penn has failed to take adequate measures to prevent recurring problems. The answers might also inform the relief to be afforded Complainants.

73. West Penn's objection that the request is unlimited as to time is simply incorrect. The Discovery Request by its terms is limited to complaints filed since January 1, 2017, which is the same period of time involved in the outages complained of in this case.

74. West Penn's objection that the requested information contained confidential customer information should be overruled for the simple reason that if a customer files a formal complaint with the PUC, that customer's name, address and PUC filing are matters of public record. They cannot be considered confidential.

75. West Penn's complaint that the term "poor electrical reliability" was undefined strains credulity given West Penn's familiarity with the subject.

76. West Penn's relevancy objection should also be overruled. Pursuant to PUC regulations, "[a] party may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action. 52 Pa. Code § 5.321(c). "Relevancy should be interpreted broadly and liberally, and any doubts regarding the relevancy of subject matter should be resolved in favor of relevancy." Koken v. One Beacon Ins. Co., 911 A. 2d 1021, 1025 (Pa. Commw. Ct. 2006). The party contending discovery is not relevant has the burden of proving irrelevancy. Id. West Penn has not done so.

77. To the extent other customers have complained about poor electrical reliability on the Clifton Circuit, have filed PUC cases, and have obtained relief, this information might influence the Commission in deciding this case, particularly if West Penn has failed to take adequate measures to prevent recurring problems. West Penn has failed to meet its burden of demonstrating that the information sought is irrelevant, particularly when Commission precedent requires any doubt as to relevancy to be resolved in favor of relevancy.

78. Finally, Complainants asked West Penn questions about any expert witnesses it intends to call at the hearing:

34. Pursuant to 52 Pa. Code § 5.324, STATE the full name, address, and telephone number of each person You expect to call to testify as an expert witness at any hearing in this case. For each expert witness:

- a. STATE the subject matter on which the expert is expected to testify;
- b. STATE the substance of the facts and opinions to which the expert is expected to testify; and
- c. STATE a summary of the grounds for each expert opinion.

ANSWER:

35. Produce the report of any expert You intend to call to testify on Your behalf at any hearing in this case.

ANSWER:

Exhibit I.

79. West Penn identified two experts, both of whom are West Penn employees.

West Penn provided only sketchy information as to the anticipated substance of their testimony:

RESPONSE

Zak Reedy:

Overview of the reliability of Clifton Circuit
WPP is compliant with Code, PUC regulations and orders
See Bates Nos. 0040-0060

Shawn Hindman:

Outages experienced by Complainants
WPP timely investigated, repaired and restored service
See Bates Nos. 0002-0037

Exhibit J.

80. The response is inadequate. 52 Pa.Code § 5.324 provides the following with respect to discovery of expert testimony:

(a) Consistent with Pa.R.C.P. 4003.5 (relating to discovery of expert testimony trial preparation material), discovery of facts known and opinions held by an expert, otherwise discoverable under § 5.321 (relating to scope), including that acquired or developed in anticipation of litigation or for hearing, may be obtained as follows:

(1) A party may through interrogatories require both of the following:

(i) That the other party identify each person whom the party expects to call as an expert witness at hearing and to state the subject matter on which the expert is expected to testify.

(ii) That the other party have each expert so identified state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion. **The party answering the interrogatories may file as the answer a report of the expert, have the interrogatories answered by the expert or provide written direct testimony of the expert.** The answer, separate report or testimony shall be signed by the expert and shall be deemed to be provided under oath in accordance with section 333(d) of the act (relating to prehearing procedures).

Emphasis added.

81. This rule, providing for West Penn either to file an expert report, have the interrogatories answered by the expert, or provide written direct testimony of the expert, contemplates more comprehensive information than West Penn has provided here.

82. Complainants request an Order pursuant to 52 Pa. Code §§ 5.324(a)(1)(ii), 5.342(g), 5.371 and 5.372 compelling West Penn to provide expert reports from Messrs. Reedy and Hindman, or to file their direct testimony, or to supplement its response to Discovery Request 34 so as to provide a comparable level of detail.

WHEREFORE, Complainants respectfully request that the Pennsylvania Public Utility Commission grant this Motion and provide relief pursuant to 52 Pa. Code §§ 5.342(g), 5.349(g), 5.371 and 5.372 as follows:

1. Compel West Penn to respond fully to Complainants' First Set of Discovery Requests, Request Nos. 4-18, 20 and 21;
2. Overrule West Penn's four general objections to Complainants' Second Set of Discovery Requests;
3. Compel West Penn to respond fully to Discovery Requests 35 and 36 in the Second Set of Discovery Requests, consistent with this Motion;
4. Overrule West Penn's four general objections to Complainants' Third Set of Discovery Requests;

5. Compel West Penn to respond fully to Discovery Requests 22, 23, 25, 26, 27, 29, 32, 33, 34 and 35 in the Third Set of Discovery Requests, consistent with this Motion; and

6. Grant such other relief as the Administrative Law Judge deems just pursuant to 52 Pa. Code § 5.372(a)(4).

Dated: March 3, 2020
With Notice to Plead: April 9, 2020

Respectfully submitted,

/s/ Bradley S. Tupi
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**EXHIBITS TO MOTION TO COMPEL DISCOVERY AND IMPOSE SANCTIONS
(All Served March 3 with Original Motion)**

Exhibit	Description
A	Excerpt from First Energy Consolidated Implementation Plan at Appendix D, page 1, filed at Docket Nos. D-2013-2365991, 2365992, 2365993 and 2365994 (Nov. 30, 2015).
B	Excerpt from First Energy's "Joint 2nd Quarter 2019 Reliability Report" to the PUC, Attachment A, page 37.
C	Excerpt from First Energy's "Joint 3rd Quarter 2019 Reliability Report" to the PUC, Attachment A, page 36.
D	Excerpt from First Energy's "Joint 4th Quarter 2019 Reliability Report" to the PUC, Attachment A, page 31.
E	Pertinent Portions of Complainants' First Set of Discovery Requests, November 21, 2019.
F	Pertinent Portions of West Penn's Responses to Complainants' First Set of Discovery Requests, December 11, 2019.
G	Pertinent Portions of Complainants' Second Set of Discovery Requests, January 2, 2020.
H	Pertinent Portions of West Penn's Objections and Responses to Complainants' Second Set of Discovery Requests, January 22, 2020.
I	Pertinent Portions of Complainants' Third Set of Discovery Requests, January 28, 2020.
J	Pertinent Portions of West Penn's Objections and Responses to Complainants' Third Set of Discovery Requests, February 18, 2020.