

April 29, 2020

Via Electronic Filing

Rosemary Chiavetta, Esquire
Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Docket No. C-2019-3013785
Bradley S. Tupi and Ann Marie Clyne v. West Penn Power Company
Answer of West Penn to Motion to Compel and Sanctions**

Dear Secretary Chiavetta:

Attached for filing is the Answer of West Penn Power Company (Respondent) to the Motion to Compel and Sanctions filed Bradley S. Tupi and Ann Marie Clyne (Complainants) in the above-referenced proceeding.

A copy of the Answer has been forwarded to the Complainants in the manner indicated on the attached Certificate of Service.

If there are any questions, please contact me.

Very truly yours,

Reger Rizzo & Darnall LLP

Margaret A. Morris

Margaret A. Morris

MAM/co
Enclosures

cc: The Honorable Mark A. Hoyer, PA Public Utility Commission [w/encls.]
Teresa K. Harrold, Esquire, FirstEnergy Service Company [w/encls.]
Bradley S. Tupi and Ann Marie Clyne [w/encls.]

**Re: Docket No. C-2019-3013785
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the person(s) listed below, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Via Electronic Mail

Bradley S. Tupi
Ann Marie Clyne
bradtupi@gmail.com

Dated: April 29, 2020

Margaret A. Morris
Margaret A. Morris, Esquire

Motion at ¶¶ 9-13. In support of their request the Complainants state that they “would expect” as a result of any outage experienced by the Complainants that there would be “various communications, emails, contracts, and so on” as well as “a report of some kind” and “photos and/or videos to have been generated. No such documents were produced.”

West Penn avers that it has produced all documents in its possession in response to Requests 4 through 8 which addressed specific outages that affected the Complainants. *See* Affidavit of M. Shawn Hindman provided as Attachment 1. Furthermore, in response to Set 2, Request 22, the sole photo (Bates No. 0061) that related to the October 25, 2019 outage was provided as well as the only document (Bates No. 0040-0060) that references the actions taken. Regardless of what the Complainants “expect” there are no such emails, contracts, report, and photos and/or videos related to the specific outages related to Requests 4 through 8.

By way of further answer, West Penn responded to Requests 1 through 3, which requested the Respondent to identify outages experienced during the identified time period. West Penn produced Bates No. 002-003 which contained the outage history for the Clifton Circuit for the requested time period. That document also contained a section entitled “Reliability Improvement/Action Plan.” The Complainants never requested any further information, clarification or documents related to Requests 1 through 3. It is improper for the Complainants to infer that the Respondent has not produced documents when the Complainants did not seek that information through Discovery. Such inference/allegation is not in good faith and is an abuse of the discovery process. A complete copy of West Penn’s Responses and Certificate of Service to Set 1 is provided as Attachment 2.

The Complainants request an order compelling West Penn to make “more full and complete responses” to Requests 20 and 21. Motion at ¶¶ 14-17. The Complainants opine that since they provided the streets that make up Deerfield Manor, West Penn can “surely” identify the house numbers for all residences with above-ground service. The Company’s mapping system reflects its facilities and does not list house numbers. See, Attachment 1. The Complainants’ request to have West Penn create such a list, when the information is not contained in its business records, is an abuse of the discovery process.

Motion to Overrule “General Objections”-Set 2

The Complainants request an order overruling West Penn’s general objections to the Second Set of Discovery. Motion at ¶¶ 18-24. The Complainants’ request is moot. Pursuant to 52 Pa Code § 5.342(g), a motion to compel must be filed within 10 days of service of the objection. If a motion to compel is not filed within 10 days of service of the objection, the objected to interrogatory will be deemed withdrawn. A complete copy of West Penn’s timely filed Objections and Certificate of Service to Set 2 is provided as Attachment 3.

Motions for Sanctions-Set 2 Responses

The Complainants request an order compelling West Penn to “make full and complete responses” to Requests 35 and 36. Motion at ¶¶ 25-38. The Complainants’ requests are moot. The Respondent timely filed its Objections to Requests 35 and 36. Pursuant to 52 Pa Code § 5.342(g), a motion to compel must be filed within 10 days of service of the objection. If a motion to compel is not filed within 10 days of service of the objection, the objected to interrogatory will be deemed withdrawn. See, Attachment 3.

Motion to Overrule “General Objections”-Set 3

The Complainants request an order overruling West Penn’s general objections to the Third Set of Discovery. Motion at ¶¶ 39-40. The Complainants’ request is moot. Pursuant to 52 Pa Code § 5.342(g), a motion to compel must be filed within 10 days of service of the objection. If a motion to compel is not filed within 10 days of service of the objection, the objected to interrogatory is deemed withdrawn. A complete copy of West Penn’s timely filed Objections and Certificate of Service to Set 3 is provided as Attachment 4.

Motions for Sanctions-Set 3 Responses

The Complainants request an order compelling West Penn to make a “more thorough search and a complete production of the documents” sought in Request 22. Motion at ¶¶ 41-43. The Complainants’ request is moot. The Respondent timely filed its Objections to Request 22. Pursuant to 52 Pa Code § 5.342(g), a motion to compel must be filed within 10 days of service of the objection. If a motion to compel is not filed within 10 days of service of the objection, the objected to interrogatory is deemed withdrawn. See, Attachment 4.

By way of further answer, West Penn avers that it has produced all documents in its possession. See, Attachment 1. Furthermore, in response to Set 2, Request 22, the sole photo (Bates No. 0061) that related to the October 25, 2019 outage was provided as well as the only document (Bates No. 0040-0060) that references the actions taken. Regardless of what the Complainants “expect” there are no such emails, contracts, report, and photos and/or videos in West Penn’s possession.

The Complainants request an order compelling West Penn to make a “more thorough search and a complete production of the documents” sought in Request 23. Motion at ¶¶ 44-47. The Complainants’ request is moot. The Respondent timely filed its Objections to Request 23. Pursuant to 52 Pa Code § 5.342(g), a motion to compel must be filed within 10 days of service of the objection. If a motion to compel is not filed within 10 days of service of the objection, the objected to interrogatory is deemed withdrawn. See, Attachment 4.

The Complainants request an order compelling West Penn to make a “more thorough search and a complete production of the documents” sought in Request 25. Motion at ¶¶ 48-51. The Complainants’ request is moot. The Respondent timely filed its Objections to Request 25. Pursuant to 52 Pa Code § 5.342(g), a motion to compel must be filed within 10 days of service of the objection. If a motion to compel is not filed within 10 days of service of the objection, the objected to interrogatory is deemed withdrawn. See, Attachment 4.

The Complainants request an order compelling West Penn to make a “more thorough search and a complete production of the document” sought in Request 26. Motion at ¶¶ 52-55. The Complainants’ request is moot. The Respondent timely filed its Objections to Request 26. Pursuant to 52 Pa Code § 5.342(g), a motion to compel must be filed within 10 days of service of the objection. If a motion to compel is not filed within 10 days of service of the objection, the objected to interrogatory is deemed withdrawn. See, Attachment 4.

The Complainants request an order compelling West Penn to make a “more thorough search and a complete production of the documents sought in Request 27. Motion at ¶¶ 56-59. West Penn avers that it has produced all documents in its possession. See, Attachment 1. Furthermore, in response Request 27, West Penn provided Bates Nos. 0040-0060.

The Complainants request an order compelling West Penn to “a complete response” to Request 29. Motion at ¶¶ 60-65. The Complainants’ request is moot. The Respondent timely filed its Objections to Request 29. Pursuant to 52 Pa Code § 5.342(g), a motion to compel must be filed within 10 days of service of the objection. If a motion to compel is not filed within 10 days of service of the objection, the objected to interrogatory is deemed withdrawn. See, Attachment 4.

The Complainants request an order compelling West Penn to provide “a complete response” to Request 32 arguing that the Company’s engineer “could easily calculate the scores for their residence.” Motion at ¶¶ 66-69. The Company responded that it does not compile such statistics at an individual customer level. By way of further answer, the Complainants’ Set 3 definitions for SAIFI, CAIDI and SAIDI, define those scores as reflecting the system average or customer-wide average. A mathematical calculation specifically for the Complainants’ residence can not be performed consistent with the definition of the metrics provided.

The Complainants request West Penn’s objection to Request 33 be overruled. Motion at ¶¶ 70-77. The Complainants’ request is moot. The Respondent timely filed its Objections to Request 33. Pursuant to 52 Pa Code § 5.342(g), a motion to compel must be filed

within 10 days of service of the objection. If a motion to compel is not filed within 10 days of service of the objection, the objected to interrogatory is deemed withdrawn. See, Attachment 4.

The Complainants request an order compelling West Penn to provide expert reports from Messrs. Reedy and Hindman, or to file direct testimony, or to supplement the response to Request 34. Motion at ¶¶ 78-82. West Penn avers that it has, in good faith, responded to Request 34. It should be noted that the Complainants filed “A Notice to Appear,” dated February 21, 2020, for Mr. Hindman stating that they will call Mr. Hindman as part of their “case in chief.” The Complainants, to the extent they believe that further information is required, can utilize the discovery process and ask specific questions.

By way of further answer, West Penn avers that it does not object to the filing of written direct testimony so long as that directive is applicable to both the Complainants and the Respondent.

WHEREFORE, Respondent, West Penn Power Company, requests that the Motion to Compel and Motion for Sanctions filed by Bradley S. Tupi & Ann Marie Clyne be denied in its entirety. In the alternative, if written direct testimony is directed, that it be applicable to both parties.

Respectfully submitted,

Date: April 29, 2020

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