

Bradley S. Tupi  
1470 Redfern Drive  
Pittsburgh, PA 15241  
May 2, 2020

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
400 North Street  
Harrisburg, Pennsylvania 17120

Re: Reliability Complaint  
Docket No. C-2019-3013785  
Tupi and Clyne v. West Penn Power

Dear Ms. Chiavetta:

Attached for filing is Complainants' Reply to West Penn Power's Answer to Motion to Compel Discovery and Impose Sanctions pursuant to 52 Pa. Code §§ 5.342(g), 5.349(d), 5.371 and 5.372. Copies have been served on opposing counsel and Administrative Law Judge Hoyer by email. Thank you.

Very truly yours,

  
Bradley S. Tupi

Attachment: Reply with Exhibit K

cc: Hon. Mark A. Hoyer, Deputy Chief Administrative Law Judge (by email w/encl)  
Margaret A. Morris, Esquire (by email w/encl)

**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' REPLY TO WEST PENN'S ANSWER  
TO MOTION TO COMPEL DISCOVERY AND IMPOSE SANCTIONS**

Filed by:  
Bradley S. Tupi & Ann Marie Clyne  
Complainants  
1470 Redfern Drive  
Pittsburgh, PA 15241  
[bradtupi@gmail.com](mailto:bradtupi@gmail.com)  
412-616-2715

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' REPLY TO WEST PENN'S ANSWER  
TO MOTION TO COMPEL DISCOVERY AND IMPOSE SANCTIONS**

Complainants served their Motion to Compel Discovery and Impose Sanctions pursuant to 52 Pa. Code §§ 5.342(g), 5.349(d), 5.371 and 5.372 on March 3, 2020. West Penn filed an Answer to the Motion on April 29, 2020. Complainants file this Reply to West Penn's Answer.

1. West Penn notes that Complainant Mr. Tupi practiced law for 41 years. Answer at 1. Mr. Tupi practiced commercial and environmental litigation in state and federal courts in various jurisdictions. He appeared in only one case before the PUC and, while certainly bound by the PUC's rules, is not experienced in PUC litigation procedure. Complainants should not be held to any different standard than other *pro se* complainants, and West Penn should not be allowed to avoid its discovery obligations because one of the Complainants is a retired lawyer.

2. Complainants served their First Set of Discovery Requests on November 21, 2019. **Exhibit E<sup>1</sup>**. West Penn served responses on December 11, 2019. **Exhibit F**. Due to deficiencies in West Penn's responses, Complainants emailed counsel on December 17, 2019, and January 1, 2020, seeking fuller responses and trying to avoid motion practice. **Exhibit K**. West Penn's counsel did not provide the requested information. Complainants incorporated the

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<sup>1</sup> Exhibits A through J were filed with Complainants' Motion. Exhibit K is attached to this Reply.

email requests for additional information into their Third Set of Discovery Requests, served on January 28, 2020. **Exhibit I.**

3. Meanwhile, 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.**

4. 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.**

#### **First Set of Discovery Demands**

5. West Penn claims “it has produced all documents in its possession in response to Requests 4 through [18] **which addressed specific outages that affected the Complainants.**” Answer at 2, emphasis added. The emphasized language shows the evasiveness of West Penn’s response. Complainants’ discovery requests not only asked for information about specific outages that affected Complainants, but also 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,** emphasis added. West Penn did not produce any documents showing its “efforts to prevent another such outage.”

6. Such evidence is important, because proof of numerous power outages and a lack of response by the electrical utility constitute a violation of Section 1501 of the Code, 66 Pa. C.S. § 1501. Emerald Art Glass v. Duquesne Light Co., PUC Docket No. C-00015494, 2002 WL 31060581 (Pa.P.U.C. June 14, 2002).

7. Documents about West Penn’s response efforts must exist, based on a document West Penn selected for production. The two-page “West Penn Power ERS

Complaint Action Plan,” **Exhibit F**, Document No. 0002-03, contains a “Reliability Improvement/Action Plan” that references various actions to improve reliability:

- 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.

8. It is impossible to believe that each and every one of these actions was accomplished without any orders, emails, reports, photos or other documentation. While Mr. Hindman’s Affidavit asserts that Mr. Hindman produced “all documents in West Penn’s business records **regarding the outages that impacted the Complainants’ service,**” Hindman Affidavit at ¶ 5 (emphasis added), Mr. Hindman does not affirm or deny whether West Penn has business records regarding the eight remedial actions listed above. The emphasized wording in Mr. Hindman’s Affidavit suggests that West Penn has unilaterally limited its production to documents affecting Complainants’ service only, and has withheld other relevant documents that Complainants have requested.

9. West Penn implicitly concedes that it has withheld relevant documents about the “Reliability Improvement/Action Plan” when it says: “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.” Answer at 2. But of course Complainants sought the documents through discovery; indeed, twice.

10. The First Set of Discovery Demands specifically 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* (emphasis added). In addition, Request No. 22 of the Third Set of Discovery Demands asked:

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.***

11. Complainants reiterate their request for 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, specifically with respect to documents reflecting West Penn’s efforts to prevent additional outages on the Clifton Circuit. In the alternative, Complainants request an Order that West Penn be precluded from offering any evidence at the hearing regarding its investigation of the outages complained of, its response to the outages, and its efforts to prevent other such outages.

12. Complainants’ Motion requested an order compelling West Penn to answer questions about service in Deerfield Manor, the residential plan in which Complainants live, because when Complainants experience outages, many other Deerfield residents do not. West Penn has refused to respond, claiming that its GIS system does not list house numbers.

Answer at 3.

13. The undersigned, Ms. Morris and Mr. Hindman had a conference call on February 24, 2020, to discuss issues with respect to West Penn's discovery responses. When the discussion turned to West Penn's above-ground service at a particular Deerfield Manor address, Mr. Hindman was able to identify that customer instantly. The Commission may take judicial notice of the fact that West Penn delivers its monthly invoices to its customers by mail, and therefore must know their addresses.

14. Complainants reiterate their request for 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.

#### **Second And Third Set of Discovery Demands**

15. For the most part, West Penn does not even attempt to defend the shortcomings in its responses to Complainants' Second and Third Set of Discovery Demands. Instead, it seeks to sidestep them with a technicality, arguing that a 10-day rule applies under 52 Pa. Code §§ 5.342(g): "If a motion to compel is not filed within 10 days of service of the objection, the objected to interrogatory will be deemed withdrawn."

16. There are two flaws in West Penn's strategy. First, 52 Pa. Code §§ 5.342(g) only pertains to interrogatories. Many of the discovery disputes here pertain to document requests, not interrogatories. Second, 52 Pa. Code §§ 5.349(d) (requests for documents), 5.371 (sanctions) and 5.372 (sanctions) do not contain such a 10-day rule. None of Complainants' discovery requests have been withdrawn, by rule or otherwise. Complainants respectfully request that the Commission address the Motion to Compel and Impose Sanctions on the merits.

17. Complainants reiterate their request for an Order pursuant to 52 Pa. Code §§ 5.342(g), 5.371 and 5.372 overruling West Penn's general objections to the Second and Third Sets of Discovery Requests, for the reasons stated in Complainants' Motion.

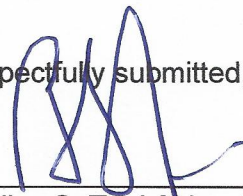
18. Complainants reiterate their request for an Order pursuant to 52 Pa. Code §§ 5.342(g), 5.371 and 5.372 compelling West Penn to make full and complete responses to Requests 35 and 36 in the Second Set of Discovery Requests, for the reasons stated in Complainants' Motion.

19. Complainants reiterate their request for an Order pursuant to 52 Pa. Code §§ 5.371 and 5.372 compelling a more thorough search and a complete production of the information and documents requested by Requests 22, 23, 25, 26, 27, 29, 32, 33 and 34 in the Third Set of Discovery Requests, for the reasons stated in Complainants' Motion.

WHEREFORE, Complainants respectfully request that the Pennsylvania Public Utility Commission grant relief pursuant to 52 Pa. Code §§ 5.342(g), 5.349(g), 5.371 and 5.372, for the reasons stated in Complainants' Motion, and grant such other relief as the Administrative Law Judge deems just pursuant to 52 Pa. Code § 5.372(a)(4).

Dated: May 2, 2020

Respectfully submitted,



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Bradley S. Tupi & Ann Marie Clyne  
1470 Redfern Drive  
Pittsburgh, PA 15241  
[bradtupi@gmail.com](mailto:bradtupi@gmail.com)  
412-616-2715

# **EXHIBIT K**

**Emails to Counsel  
dated December 17, 2019  
and January 1, 2020**

**bradtupi@gmail.com**

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**From:** bradtupi@gmail.com  
**Sent:** Tuesday, December 17, 2019 2:05 PM  
**To:** 'Margaret A. Morris, Esquire'  
**Subject:** RE: Tupi v. West Penn Power Resending Discovery Responses

I must have misunderstood you, then. I was expecting documents in addition to the PDFs. In that case, please consider this as our Deficiency Letter in re West Penn Power Discovery Responses.

Items 20-25: "Deerfield Manor" was defined in the discovery requests, so whether it is a "recognized subdivision in the Company's business records" is beside the point. We have specified the streets in the subdivision, so West Penn Power should be able to respond. Please make substantive responses. Thank you.

Brad Tupi  
Pittsburgh  
[bradtupi@gmail.com](mailto:bradtupi@gmail.com)  
412-616-2715

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**From:** Margaret A. Morris, Esquire <[mmorris@regerlaw.com](mailto:mmorris@regerlaw.com)>  
**Sent:** Tuesday, December 17, 2019 1:51 PM  
**To:** bradtupi@gmail.com  
**Subject:** RE: Tupi v. West Penn Power Resending Discovery Responses  
**Importance:** High

Please see attached.

*Margie Morris*

<b>REGER   RIZZO   DARNALL</b> <small>Attorneys at Law</small>	Cira Centre, 13th Floor 2929 Arch Street Philadelphia, Pa 19104 Phone: 215.495.6500 Fax: 215.495.6600 Web: <a href="http://www.regerlaw.com">www.regerlaw.com</a>	Margaret A. Morris, Esquire <a href="mailto:mmorris@regerlaw.com">mmorris@regerlaw.com</a> Direct: 215.495.6524 Cell: 215.870.5785
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**From:** [bradtupi@gmail.com](mailto:bradtupi@gmail.com) [<mailto:bradtupi@gmail.com>]  
**Sent:** Tuesday, December 17, 2019 1:40 PM  
**To:** Margaret A. Morris, Esquire  
**Subject:** RE: Tupi v. West Penn Power

Ms. Morris,

I have received West Penn's discovery responses, but not the documents. You mentioned they were coming by first class mail. Maybe they will arrive today.

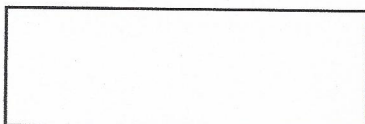
Brad Tupi  
Pittsburgh  
[bradtupi@gmail.com](mailto:bradtupi@gmail.com)  
412-616-2715

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**From:** Margaret A. Morris, Esquire <[mmorris@regerlaw.com](mailto:mmorris@regerlaw.com)>  
**Sent:** Wednesday, December 11, 2019 4:33 PM  
**To:** [bradtupi@gmail.com](mailto:bradtupi@gmail.com)  
**Subject:** RE: Tupi v. West Penn Power

Consistent with our call this afternoon, please advise regarding scheduling a call per the Interim Order once you have reviewed the Discovery responses which have been sent to you. Thank you.

*Margie Morris*



Cira Centre, 13th Floor  
2929 Arch Street  
Philadelphia, Pa 19104  
Phone: 215.495.6500  
Fax: 215.495.6600  
Web: [www.regerlaw.com](http://www.regerlaw.com)

Margaret A. Morris, Esquire  
[mmorris@regerlaw.com](mailto:mmorris@regerlaw.com)  
Direct: 215.495.6524  
Cell: 215.870.5785

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**From:** [bradtupi@gmail.com](mailto:bradtupi@gmail.com) [<mailto:bradtupi@gmail.com>]  
**Sent:** Wednesday, December 11, 2019 3:45 PM  
**To:** Margaret A. Morris, Esquire  
**Subject:** Tupi v. West Penn Power

Ms. Morris,

Our discovery demands (copy attached) were served via email on November 21, so your client's responses are due today. When should we expect to receive them?

Also, the PUC directed you to arrange a conference. See order dated November 25. We have not heard from you. Please advise. Thank you.

Brad Tupi  
[bradtupi@gmail.com](mailto:bradtupi@gmail.com)  
412-616-2715

**From:** bradtupi@gmail.com  
**Sent:** Wednesday, January 1, 2020 5:28 PM  
**To:** 'Margaret A. Morris, Esquire'  
**Subject:** RE: Tupi v. West Penn Power: Second Deficiency Notice

Dear Counsel,

On December 17, 2019, we emailed you about deficiencies in West Penn Power's responses to Items 20 through 25 in our First Set of Discovery Demands. We trust you received our email. When might we expect updated responses?

We have identified additional deficiencies with respect to Items 4 through 18 in our First Set of Discovery Demands. The deficiencies have to do with the specific locations of the conditions responsible for the outages.

Discovery Demand 4(a) asked West Penn to state the specific location on the Clifton Circuit where the Trees caused the outage on July 11, 2017 ("07/11/2017 - 8 hrs. - Trees"). West Penn responded by referring to a Document bearing Bates No. 0010-11. That Document only identifies the "Cause Pole" as Pole No. 728523 and the Facility Location as "Bethel Park." Please state the street address where the outage was caused.

Discovery Demand 5(a) asked West Penn to state the specific location on the Clifton Circuit where the Trees caused the first outage on September 5, 2017 ("09/05/2017 - 1 hr. - Trees"). West Penn responded by referring to a Document bearing Bates No. 0012-13. That Document only identifies the location by reference to pole and facility numbers, which are incomprehensible to laymen. Please state the street address where the outage was caused.

Discovery Demand 6(a) asked West Penn to state the specific location on the Clifton Circuit where the Trees caused the second outage on September 5, 2017 ("09/05/2017 - 16 minutes - Trees"). West Penn responded by referring to a Document bearing Bates No. 0012-13. That Document only identifies the location by reference to pole and facility numbers, which are incomprehensible to laymen. Please state the street address where the outage was caused.

Discovery Demand 7(a) asked West Penn to state the specific location on the Clifton Circuit where the Trees caused the outage on April 27, 2018 ("04/27/2018 - 2 hrs. - Trees"). West Penn responded by referring to a Document bearing Bates No. 0014-15. That Document only identifies the "Cause Pole" as Pole No. 742606 and the Facility Location as "Bethel Park." Please state the street address where the outage was caused.

Discovery Demand 8(a) asked West Penn to state the specific location on the Clifton Circuit where the Trees caused the outage on September 9, 2018 ("09/09/2018 - 5 hrs. - Trees"). West Penn responded by referring to a Document bearing Bates No. 0016-17. That Document only identifies the "Cause Pole" as Pole No. 716863 and the Facility Location as "Bethel Park." The specific location seems to be at. Please state the street address where the outage was caused.

Discovery Demand 9(a) asked West Penn to state the specific location on the Clifton Circuit where the Trees caused the outage on November 15, 2018 ("11/15/2018 - 35 Minutes - Trees"). West Penn responded by referring to a Document bearing Bates No. 0018-19. That Document only identifies the location by reference to pole and facility numbers, which are incomprehensible to laymen. Please state the street address where the outage was caused.

Discovery Demand 10(a) asked West Penn to state the specific location on the Clifton Circuit where the Trees caused the outage on December 10, 2018 ("12/10/2018 - 38 Minutes - Trees"). West Penn responded by

referring to a Document bearing Bates No. 0020-21. That Document only identifies the Facility Location as "Bethel Park." Please state the street address where the outage was caused.

Discovery Demand 11(a) asked West Penn to state the specific location on the Clifton Circuit where the Trees caused the outage on May 21, 2018 ("05/21/2019 - 9 hrs. - Trees"). West Penn responded that the outage was on May 21, 2019, and referred to a Document bearing Bates No. 0022-23. That Document only identifies the "Cause Pole" as No. 742638. Please provide the street address where that pole is located.

Discovery Demand 12(a) asked West Penn to state the specific location on the Clifton Circuit where the Trees caused the outage on June 1, 2019 ("06/01/2019 - 4 hrs. - Equipment Failure"). West Penn responded by referring to a Document bearing Bates No. 0024-25. That Document only identifies the "Cause Pole" as Pole No. 742626 and the Facility Location as "Bethel Park." Please state the street address where the outage was caused.

Discovery Demand 13(a)-(b) asked West Penn to state the purpose and geographic scope of the Planned Outage on July 23, 2019 ("07/23/2019 - 30 Minutes - Planned Outage"). West Penn responded by referring to a Document bearing Bates No. 0026-27. That Document states neither the purpose nor the geographic scope of the Planned Outage. Please supplement Your response.

Discovery Demand 13(f) asked West Penn to produce all Documents showing Your reasons for the Planned Outage. West Penn only produced the Document bearing Bates No. 0026-27. Please supplement Your response with Documents sufficient to allow Complainants to understand the purpose for the Planned Outage.

Discovery Demand 14(a) asked West Penn to state the specific location on the Clifton Circuit where the Line Failure occurred to cause the outage on August 5, 2019 ("08/05/2019 - 1 hr. 12 min. - Line Failure"). West Penn responded by referring to a Document bearing Bates No. 0028-29. That Document only identifies the "Cause Pole" as "Fuse Installation 456269-WP55 25T" and the Facility Location as "Bethel Park." Please state the street address where the line failure occurred.

Discovery Demand 15(a) asked West Penn to state the specific location on the Clifton Circuit where Trees caused the first outage on September 29, 2019 ("09/29/2019 (1) - 4 hrs. 41 min. - Trees Off ROW - Tree"). West Penn responded that the outage was on September 28, 2019, and referred to a Document bearing Bates No. 0030-31. That Document identifies the "Cause Pole" as "OH Transformer 120508-WP55 C" and identifies no Facility Location. Please state the street address where the transformer is located.

Discovery Demand 16(a) asked West Penn to state the specific location on the Clifton Circuit where Trees caused the second outage on September 29, 2019 ("09/29/2019 (2) - 15 hrs. 49 min. - Trees Off ROW - Limb"). West Penn responded that the outage was on September 28, 2019, and referred to a Document bearing Bates No. 0030-31. That Document identifies the "Cause Pole" as "OH Transformer 120508-WP55 C" and identifies no Facility Location. Please state the street address where the transformer is located.

Discovery Demand 17(a) asked West Penn to state the specific location on the Clifton Circuit where an Open Breaker caused the outage on October 6, 2019 ("10/06/2019 - 1 hr. 30 min. - Open Breaker"). West Penn responded that the outage was on September 28, 2019, and referred to a Document bearing Bates No. 0032-33. That Document identifies the date of the outage as October 6, 2019. That Document identifies the location only as "Bethel Park." Please supplement Your response to state the street address where the Open Breaker occurred.

Discovery Demand 18(a) asked West Penn to state the specific locations on the Clifton Circuit where each outage identified in response to Discovery Demand No. 3 occurred. Discovery Demand No. 3 asked West Penn for outages in addition to those previously disclosed. West Penn responded by referring to Documents bearing Bates Nos. 0003-37. We interpret this to mean 0034-37. Those Documents do not identify any specific locations for the outages on October 25, 2019, or November 15, 2019. Please supplement Your responses to state the street address where the cause of each outage occurred.

Thank you for your anticipated cooperation.

Brad Tupi  
Pittsburgh  
[bradtupi@gmail.com](mailto:bradtupi@gmail.com)  
412-616-2715

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

BRADLEY S. TUPI and  
ANN MARIE CLYNE,

Complainants,

Docket No. C-2019-3013785

vs.

WEST PENN POWER COMPANY,

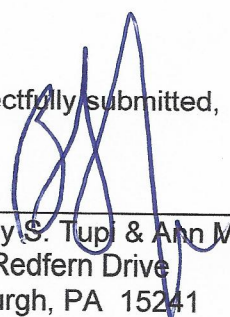
Respondent.

**CERTIFICATE OF SERVICE**

I certify that I have served Complainants' Reply to West Penn Power's Answer to Motion to Compel Discovery and Impose Sanctions pursuant to 52 Pa. Code §§ 5.342(g), 5.349(d), 5.371 and 5.372 by email directed to counsel below on this 2nd day of May, 2020:

Margaret A. Morris, Esquire  
Reger Rizzo & Darnall LLP  
Cira Centre, 13th Floor  
2929 Arch Street  
Philadelphia, PA 19104  
[mmorris@regerlaw.com](mailto:mmorris@regerlaw.com)

Respectfully submitted,



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Bradley S. Tupi & Ann Marie Clyne  
1470 Redfern Drive  
Pittsburgh, PA 15241  
[bradtupi@gmail.com](mailto:bradtupi@gmail.com)  
412-616-2715