

Tori L. Giesler, Esq.
(610) 921-6658
(330) 315-9263 (Fax)

June 5, 2020

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Christopher L. Macey v. West Penn Power Company
Docket No. C-2019-3012705

Dear Secretary Chiavetta:

Enclosed please find the Reply of West Penn Power Company to the Exceptions of Christopher L. Macey. This document has been served on the Complainant as shown in the Certificate of Service.

Please contact me if you have any questions regarding this matter.

Very truly yours,



Tori L. Giesler

c: Per Certificate of Service
Office of Special Assistants (via email at ra-OSA@pa.gov)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Christopher L. Macey

v.

West Penn Power Company

:
:
:
:
:

Docket No. C-2019-3012705

**REPLY OF WEST PENN POWER COMPANY TO THE
EXCEPTIONS OF CHRISTOPHER L. MACEY**

Tori L. Giesler, Attorney No. 207742
Lauren M. Lepkoski, Attorney No. 94800
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, Pennsylvania 19612-6001
(610) 921-6658
(610) 921-6203
tgiesler@firstenergycorp.com
llepkoski@firstenergycorp.com

Counsel for West Penn Power Company

Date: June 5, 2020

TABLE OF CONTENTS

	Page
I. INTRODUCTION	2
II. REPLIES TO EXCEPTIONS	3
A. THE ALJ CORRECTLY DISMISSED THE COMPLAINT DUE TO THE COMPLAINANT’S FAILURE TO DEMONSTRATE THAT WEST PENN VIOLATED THE SETTLEMENT AGREEMENT. EXCEPTIONS, P. 2.	3
B. THE COMPLAINANT DID NOT CARRY HIS BURDEN TO DEMONSTRATE THAT WEST PENN FAILED TO PROVIDE REASONABLE SERVICE BY COMMUNICATING WITH THE COMPLAINANT. EXCEPTIONS, PP. 2-3.	5
C. THE COMPLAINANT FAILED TO DEMONSTRATE WEST PENN’S DECISION NOT TO TERMINATE SERVICE TO HIS RESIDENCE AFTER THE SMART METER WAS INSTALLED CONSITUTES UNREASONABLE SERVICE. EXCEPTIONS, P. 3.....	7
D. THE ALJ CORRECTLY IMPOSED AN ADVERSE INFERENCE BASED UPON THE COMPLAINANT’S DECISION NOT TO CALL HIS SPOUSE TO TESTIFY REGARDING HER MEDICAL AND HEALTH CONCERNS. EXCEPTIONS, PP. 3-4.....	8
III. CONCLUSION.....	9

I. INTRODUCTION

West Penn Power Company (“West Penn” or the “Company”), pursuant to 52 Pa. Code § 5.535, hereby respectfully submits these Replies to the Exceptions of Christopher L. Macey (“Complainant”). On May 6, 2020, Administrative Law Judge Conrad A. Johnson (the “ALJ”) issued an Initial Decision (“I.D.”), which dismissed the Complainant’s Amended Complaint¹ challenging the Company’s planned installation of a smart meter at the Complainant’s service location. The ALJ correctly held that the Complainant failed to demonstrate by a preponderance of evidence that West Penn provided unsafe or unreasonable service under 66 Pa.C.S. § 1501, or otherwise violated the Public Utility Code, a Commission order or regulation, or the Company’s Commission-approved tariff. I.D., p. 19. Specifically, the ALJ correctly found that the Complainant failed to demonstrate: (1) he was entitled to, or the Commission was authorized to impose, monetary damages (I.D., p. 13); (2) he was entitled to the removal of the smart meter and replacement of it with an analog meter; (3) West Penn failed to provide him reasonable service (I.D., pp. 14-18); and/or (4) West Penn should be assessed a fine or required to reprimand its employees (I.D., pp. 18-19). As such, the ALJ properly concluded that the Complainant failed to provide the substantial evidence required to meet his burden and dismissed the Amended Complaint.

On May 26, 2020, the Complainant filed his Exceptions to the I.D. Per the Secretarial Letter serving the I.D. on April 13, 2020, Complainant’s Exceptions were due on Tuesday, May

¹ At the outset, West Penn notes that this is the second complaint proceeding initiated by the Complainant against West Penn regarding the installation of a smart meter at his residence. *See Christopher L. Macey v. West Penn Power Company*, Docket No. C-2017-2628021. The Company and the Complainant agreed to settle the first Complaint, and a Certificate of Satisfaction was filed with the Commission at Docket No. C-2017-2628021 on January 16, 2019. In addition, the Settlement Agreement dated January 10, 2019, regarding the first Complaint at Docket No. 2-17-3628021 (“Settlement Agreement”) was entered into the record in this proceeding as West Penn Exhibit No. 2. *See* Tr. 58.

26, 2020, and any Replies to Exceptions would be due ten (10) days after the due date for Exceptions.

As explained herein, the Exceptions are without merit and should be denied. Accordingly, the Company respectfully requests that the Commission deny the Exceptions and adopt the I.D. without modification.²

II. REPLIES TO EXCEPTIONS

A. THE ALJ CORRECTLY DISMISSED THE COMPLAINT DUE TO THE COMPLAINANT'S FAILURE TO DEMONSTRATE THAT WEST PENN VIOLATED THE SETTLEMENT AGREEMENT. EXCEPTIONS, P. 2.

The Complainant first argues³ that West Penn violated the Settlement Agreement and installed a smart meter on his residence. Exceptions, p. 2 (Numbers 1 and 4). Specifically, the Complainant argues that “[w]hen the smart meter was installed, the new utility pole was in place in a location visible to the installer) and the contractor was in the process of completing the preparation work.” Exceptions, p. 1 (Number 4).

The I.D. correctly concluded that the West Penn did not violate the Settlement Agreement, because the installation of the smart meter on the Complainant's residence resulted from the Complainant's failure to timely install a new meter pole. I.D., pp. 15-16. Under the Settlement

² The Complainant failed to number his Exceptions as required by the Commission's regulations. *See* 52 Pa. Code § 5.533(b) (stating “[e]ach exception must be numbered”). However, West Penn notes that the principal issues raised in the Complainant's exceptions are his assertions that West Penn: (1) disregarded its obligations set forth in the Settlement Agreement associated with the resolution of the first Complaint proceeding at Docket No. C-2017-262802; (2) did not reasonably communicate with the Complainant regarding the location and installation of a smart meter pursuant to the Settlement Agreement; (3) did not provide adequate notice regarding the timing of the installation of the smart meter; (4) violated the Settlement Agreement by installing the smart meter on his residence after the Complainant failed to have a new utility pole located and installed on his property; (5) did not terminate service to his residence at his request after the smart meter was installed; and (6) misrepresented that a smart meter was installed on the residence after the new smart meter was installed. *See* Exceptions, pp. 2-3. In addition, it appears that Mr. Macey excepts to the I.D.'s finding that his failure to request his spouse to testify regarding her medical and health concerns entitled West Penn to an adverse inference that her testimony would not have been favorable to his case. *See* Exceptions, pp. 3-4. West Penn addresses each of these arguments below.

³ West Penn notes that the Complainant's Exceptions do not contain a single citation to record evidence or legal authority in support of any of the arguments advanced therein.

Agreement between West Penn and Mr. Macey, the parties agreed that the smart meter would be located on a new meter pole located away from the Complainant's residence. *See* West Penn Exhibit No. 2, p. 1. Importantly, however, the Settlement Agreement explicitly stated that "...should you elect to relocate the meter service at your property and resolve your formal complaint, the relocation **must be completed by May 15, 2018.**" *See* West Penn Exhibit No. 2, p. 1 (emphasis in original).⁴ As such, in order for the Complainant to have the meter installed at the new location, he had to have an electrician complete the installation of the new meter pole before May 15, 2019.

The evidence demonstrates that the Complainant dragged his feet and failed to satisfy his obligations under the Settlement Agreement. Importantly, the Complainant was provided all of the information necessary to hire an electrician to install a new utility pole on the Complainant's property, but away from his residence, as early as February 2018.⁵ West Penn witness Mr. Curcio provided un rebutted testimony that he staked the location for the pole on February 16, 2018.⁶ Furthermore, Mr. Curcio also testified that he staked the location for the pole a second time, on April 10, 2019.⁷ In addition, the Complainant admitted that he had received a quote for the work from Valley Electric as early as September 25, 2018.⁸

Despite having ample opportunity, information and time to have the meter pole installed at the staked-out location of the Complainant's choosing, the Complainant failed to have the work completed on time.⁹ Rather, the pole was installed on July 22, 2019, but the Complainant's contractor had failed to complete the additional work necessary to make it ready for have a meter

⁴ Although the Settlement Agreement contained the date "May 15, 2018," the agreement is dated January 10, 2019, and the record evidence demonstrates the parties understood this date to mean "May 15, 2019." *See* Tr. 40-41, 54.

⁵ *See* Tr. 16, 27, 28, 81.

⁶ Tr. 81.

⁷ Tr. 85-86.

⁸ Tr. 28.

⁹ Tr. 30-31.

installed upon it.¹⁰ As such, on August 16, 2019, the Company lawfully installed the smart meter, with the ZigBee radio turned off, on the Complainant's residence.¹¹

Moreover, West Penn notes that, despite not being required under the Settlement Agreement to do so, it provided the Complainant with additional time to have the work completed.¹² The Complainant specifically indicated in e-mail correspondence to the Company that the work would be completed during the week of July 12, 2019.¹³ After West Penn voluntarily provided that extension of time, Mr. Macey failed to make further contact requesting additional time to have the work completed and his contractor failed to complete the necessary work. Therefore, contrary to Mr. Macey's assertions, West Penn did not violate the Settlement Agreement when it installed the smart meter on his residence after the deadline for Mr. Macey to have the necessary work completed for its relocation passed.

For these reasons, the Complainant's Exceptions should be denied.

B. THE COMPLAINANT DID NOT CARRY HIS BURDEN TO DEMONSTRATE THAT WEST PENN FAILED TO PROVIDE REASONABLE SERVICE BY COMMUNICATING WITH THE COMPLAINANT. EXCEPTIONS, PP. 2-3.

The Complainant next asserts that West Penn did not adequately communicate with him for three reasons. First, the Complainant asserts that the construction/preparation of the new meter location was delayed because West Penn was unresponsive to his requests for information. Exceptions, p. 2 (Number 2). Second, the Complainant asserts that West Penn failed to provide advance notice of the smart meter installation. Exceptions, p. 2 (Number 3). Third, the Complainant argues that West Penn misrepresented whether a smart meter had been installed, after

¹⁰ Tr. 46-47.

¹¹ Tr. 56.

¹² Tr. 55-56.

¹³ Tr. 55-56.

the August 16, 2019 installation. Exceptions, p. 4 (Number 6). Each of these arguments misrepresents record evidence and is without merit.

As to the Complainant's first argument, the I.D. properly concluded that West Penn provided the Complainant the information needed for installation of the new meter pole and afforded him ample time to have it installed. I.D., p. 16. As noted above, the West Penn witness Mr. Curcio testified that he staked the new location for the meter on two separate occasions: once on February 16, 2018, and a second time on April 10, 2019.¹⁴ Moreover, Mr. Macey himself testified that he had been in contact with a contractor as early as September 2018 to complete the work.¹⁵ And, when the Complainant communicated to the Company that his contractor was delayed in completing the work, the Company voluntarily extended the deadline for the completion of the work.¹⁶

With respect to the Complainant's second argument, West Penn witness Mr. Ahr testified that the Company has the right to access a customer's premise to exchange an analog meter with a smart meter under Rule 9 of its tariff.¹⁷ Furthermore, the Mr. Ahr testified that there is no legal obligation for the Company to provide advance notice to enter onto a customer's premise.¹⁸ The Complainant cites no record evidence or legal authority to the contrary and, therefore, this argument should be rejected.

The Complainant's third argument is similarly without merit and the record evidence demonstrates West Penn did not "lie" about a smart meter being installed on the Complainant's residence. The Complainant appears to be referring to an e-mail from counsel for West Penn to

¹⁴ Tr. 81, 85-85.

¹⁵ Tr. 28.

¹⁶ Tr. 55-56.

¹⁷ Tr. 61-62.

¹⁸ Tr. 62.

the Complainant dated August 16, 2019, which indicated no smart meter had been installed on his residence.¹⁹ However, the Complainant admitted that counsel for West Penn directly contacted him after sending that e-mail to clarify that a smart meter had been installed.²⁰ As such, Mr. Macey failed to demonstrate that West Penn's communications and subsequent clarifications regarding the installation of a meter on his residence constitute unreasonable service.

For these reasons, the Complainant's Exceptions should be denied.

C. THE COMPLAINANT FAILED TO DEMONSTRATE WEST PENN'S DECISION NOT TO TERMINATE SERVICE TO HIS RESIDENCE AFTER THE SMART METER WAS INSTALLED CONSTITUTES UNREASONABLE SERVICE. EXCEPTIONS, P. 3.

The Complainant next argues in his Exceptions that the Company provided unreasonable service by failing to turn off the electric power to his residence until the smart meter was removed. Exceptions, p. (Number 5). However, the record evidence demonstrates that Mr. Macey's behavior on August 16, 2019, and failure to explicitly include this request in a subsequent filing is the reason why the power was not shut off.

The I.D. properly concluded the Mr. Macey's animated behavior likely caused the shutoff not to occur. I.D., pp. 16-17. Although Mr. Macey may have made this request of the service worker that came to his residence to install the smart meter on August 16, 2019, his volatile behavior resulted in the worker being instructed by their supervisor to leave his property.²¹ Mr. Macey continued to berate and threaten counsel for West Penn on August 16, 2019,²² and subsequently filed a Petition for Emergency Relief with the Commission. Importantly, however,

¹⁹ Tr. 100-101.

²⁰ Tr. 103-104.

²¹ Tr. 31-32.

²² Tr. 32-33.

Mr. Macey did not include in the August 19, 2019 Petition for Emergency Relief filed at Docket Nos. C-2017-2628021 and P-2019 -3012296 a request that the power be shut off at his house.²³

Mr. Macey's own decisions and actions resulted in the power to his residence not being shut off. As such, his Exceptions should be denied.

D. THE ALJ CORRECTLY IMPOSED AN ADVERSE INFERENCE BASED UPON THE COMPLAINANT'S DECISION NOT TO CALL HIS SPOUSE TO TESTIFY REGARDING HER MEDICAL AND HEALTH CONCERNS. EXCEPTIONS, PP. 3-4.

The Complainant also argues that the I.D. improperly imposed an adverse inference regarding his wife's medical and health concerns, because "a disputed claim of a physiological condition...was not argued in the course of the hearing." Exceptions, p. 3. Rather, Mr. Macey asserts that he did not ask his spouse to testify regarding her medical and health concerns because "he was asking the court to take punitive action against the Respondent for poor service and breach of settlement agreement." Exceptions, pp. 3-4. This argument is without merit.

The I.D. correctly analyzed and disposed of his claims that the installation of a smart meter by West Penn would result in unsafe or unreasonable service due to the Complainant's wife's alleged medical condition. I.D., pp. 17-18. Importantly, the Complainant's own testimony put his wife's health and medical concerns at issue in this proceeding. For example, the Complainant testified at hearing that he sought to have the power shut off at his residence because he wanted to protect his wife.²⁴ He further asserted that "West Penn power was fully aware of the health concerns of my wife."²⁵ Furthermore, the Complainant testified as to his wife's alleged health condition at hearing,²⁶ and specifically indicated that after the smart meter was attached to his

²³ Tr. 35-36.

²⁴ Tr. 33.

²⁵ Tr. 20

²⁶ Tr. 14 ("My wife suffers from electromagnetic hypersensitivity, and the purpose of putting the smart meter down on the street away from the dwelling was to alleviate any pain and suffering that she would receive from the radiation of the smart meter.").

house, his wife “took ill and was sleep deprived.”²⁷ Despite levying these allegations, the Complainant did not call his wife to testify regarding health alleged health and medical conditions.²⁸ Therefore, the I.D. correctly disposed of the Complainant’s claims imposed an adverse inference that the Complainant’s wife’s testimony would not have been favorable.

For these reasons, the Complainant’s Exceptions should be denied.

III. CONCLUSION

WHEREFORE, for all the foregoing reasons, as well as those more fully explained in the Initial Decision of Administrative Law Judge Conrad A. Johnson, the Company respectfully requests that the Pennsylvania Public Utility Commission deny the Exceptions filed by Christopher L. Macey and adopt the Initial Decision without modification.

Respectfully submitted,



Tori L. Giesler, Attorney No. 207742
Lauren M. Lepkoski, Attorney No. 94800
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, Pennsylvania 19612-6001
(610) 921-6658
(610) 921-6203
tgiesler@firstenergycorp.com
llepkoski@firstenergycorp.com

Counsel for West Penn Power Company

Date: June 5, 2020

²⁷ Tr. 15.

²⁸ Tr. 8.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Christopher L. Macey

v.

West Penn Power Company

:
:
: **Docket No. C-2019-3012705**
:
:

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Reply of West Penn Power Company to the Exceptions of Christopher L. Macey upon the individuals 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:

Christopher L. Macey
Macey201@comcast.net
Chris.Macey@RescoProducts.com

Administrative Law Judge Conrad A. Johnson
cojohnson@pa.gov

Dated: June 5, 2020



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
tgiesler@firstenergycorp.com

Counsel for West Penn Power Company