

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

July 21, 2020

VIA ELECTRONIC FILING

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

Re: Diana Sabatine v. West Penn Power Company
Docket No. C-2018-3002804

Dear Secretary Chiavetta:

Enclosed please find the Reply of West Penn Power Company to the Exceptions of Diana Sabatine. 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**

Diana Sabatine

v.

West Penn Power Company

:
:
: Docket No. C-2018-3002804
:
:

**REPLY OF WEST PENN POWER COMPANY TO THE
EXCEPTION OF DIANA SABATINE**

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

Date: July 21, 2020

Counsel for West Penn Power Company

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I. INTRODUCTION

West Penn Power Company (“West Penn” or the “Company”), pursuant to 52 Pa. Code § 5.535, hereby respectfully submits this Reply to the Exception of Diana Sabatine (“Complainant”). On April 21, 2020, the Pennsylvania Public Utility Commission (“Commission”) issued Administrative Law Judge Jeffrey A. Watson’s (“ALJ”) Initial Decision (“ID”), which dismissed the Complainant’s Formal Complaint 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 meet her burden of proof that: (1) installing the smart meter would be unsafe or unreasonable service in violation of Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501; or (2) the Company has violated any Commission regulation, Commission order, or provision of the Public Utility Code. (ID, pp. 1, 11-15.) The ALJ also properly determined that there is no provision to “opt-out” of a smart meter installation under Pennsylvania law and rejected the Complainant’s other legal arguments. (ID, pp. 1, 10-11, 14-15.)

On July 10, 2020, West Penn was served with the Complainant’s Exception to the ID.¹ Much of the Complainant’s filing consists of various “notices,” “demands,” and “declarations” that have no legal effect. Therefore, West Penn’s instant Reply focuses on the only cognizable issues raised in her Exceptions—that she should have been permitted to audio record the hearing and that a copy of the hearing transcript should have been sent to her for free.²

¹ By Secretarial Letter dated May 13, 2020, the Commission granted the Complainant’s request to extend the due date for Exceptions to the ID. Accordingly, the due date for Exceptions was extended from May 11, 2020, until July 10, 2020.

² The Complainant failed to number the Exceptions as required by the Commission’s regulations. *See* 52 Pa. Code § 5.533(b) (stating “[e]ach exception must be numbered”). Given the substantial overlap with these issues, West Penn is treating both of these issues as a single Exception.

As explained herein, the Complainant's Exception is without merit and should be denied. Accordingly, the Company respectfully requests that the Commission deny the Exception and adopt the well-reasoned ID without modification.

II. REPLY TO EXCEPTION

A. REPLY TO EXCEPTION NO. 1 – THE COMPLAINANT ERRONEOUSLY CLAIMS THAT SHE SHOULD HAVE BEEN PERMITTED TO AUDIO RECORD THE HEARING AND BEEN SENT A COPY OF THE HEARING TRANSCRIPT FOR FREE

In her Exception, the Complainant never disputes any of the ALJ's critical findings in the ID, including that she failed to sustain her burden of proof that the installation of the smart meter would violate the Public Utility Code, a Commission regulation, or a Commission order. (*See* ID, pp. 1, 11-15; Complainant's Exceptions, pp. 1-11.) Instead, the Complainant asserts that she should have been permitted to audio record the hearing and been sent a copy of the hearing transcript for free. (Complainant's Exception, pp. 4-10.) The Complainant cites the Pennsylvania Supreme Court's decision in *Wilson v. Blake*, 381 A.2d 450 (Pa. 1977) as alleged support for her position that she should have been allowed to make an audio recording of the hearing. (Complainant's Exceptions, pp. 4-7.) The Complainant also contends that "without access to the Record," she has been denied due process. (Complainant's Exceptions, p. 6.)

The Complainant's arguments completely lack merit. First, the Complainant was not permitted to audio record the hearing. Section 5.251(a) of the Commission's regulations states that "hearings will be stenographically reported by the Commission's official reporter." 52 Pa. Code § 5.251(a). Importantly, "the hearing transcript will be a part of the record and the sole official transcript of the proceeding." *Id.* § 5.251(b) (emphasis added). As a result, although court reporter can make an electronic recording of the hearing, no one else is permitted to do so. *See id.* §§ 5.251-5.252. Therefore, consistent with these regulations, the ALJ explained at the

hearing that “the only recording in this matter is performed by the official court reporter” and that “[n]o one else is permitted to record this proceeding.”³ (Tr. 17.)

In addition, the Complainant’s reliance on the Supreme Court’s decision in *Wilson v. Blake* is misplaced. It was a criminal case, where the Supreme Court held that Rule 141 of the Pennsylvania Rules of Criminal Procedure enabled the defendants to make a tape recording at their preliminary hearing. *Wilson*, 381 A.2d 450, 452. Yet, the instant proceeding is not a criminal case, and Rule 141 of the Pennsylvania Rules of Criminal Procedure does not apply. Rather, the Commission’s own regulations govern who may make a recording of the hearing. Thus, the Complainant properly was barred by the Commission’s regulations from making an audio recording of the hearing.

Second, the Complainant was required to pay for a copy of the hearing transcript. Under Section 5.254(a) of the Commission’s regulations, “[a] party or other person desiring copies of the transcript may obtain copies from the official reporter upon payment of the fees fixed therefore.” 52 Pa. Code § 5.254(a) (emphasis added). Accordingly, nothing entitled the Complainant to a free copy of the hearing transcript.

Similarly, the Complainant was not denied “access to the Record” due to this requirement. If the Complainant did not want to pay the cost of the transcript, she could have, as explained by the ALJ, “read the transcript and view the transcript at the Commission office.” (Tr. 119-20.) While this may have been more inconvenient than receiving a free copy of the hearing transcript, it is indisputable that the Complainant had access to the transcript and that the ALJ provided instructions to the Complainant on how to obtain such access.


³ Obviously, the Complainant could have taken contemporaneous notes, as parties often do, during the evidentiary hearing. Nothing in the Complainant’s Exception indicates whether she availed herself of that option.

For these reasons, the Commission should deny the Complainant's Exception No. 1 and adopt the ID without modification.

III. CONCLUSION

WHEREFORE, for all the foregoing reasons, as well as those more fully explained in the Initial Decision of Administrative Law Judge Jeffrey A. Watson, the Company respectfully requests that the Pennsylvania Public Utility Commission deny the Exceptions filed by Diana Sabatine 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
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