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July 22, 2020

**VIA ELECTRONIC FILING**

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

**Re: Michael T. Jennings v. West Penn Power Company**  
**Docket No. C-2018-3006031**

Dear Secretary Chiavetta:

Enclosed please find West Penn Power Company's Answer to the Motion in Limine of Michael T. Jennings to Exclude Respondent's Expert Exhibits and Testimonies with regard to the above-captioned matter.

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

Very truly yours,



Tori L. Giesler

kbw  
Enclosures

c: As Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>MICHAEL T. JENNINGS</b>	:	
	:	
v.	:	<b>DOCKET NO. C-2018-3006031</b>
	:	
<b>WEST PENN POWER COMPANY</b>	:	

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**ANSWER OF WEST PENN POWER COMPANY  
TO THE MOTION IN LIMINE OF MICHAEL T. JENNINGS  
TO EXCLUDE RESPONDENT’S EXPERTS’ EXHIBITS AND TESTIMONIES**

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West Penn Power Company (“West Penn” or the “Company”) hereby submits these Answer to the Motion in Limine Of Michael T. Jennings (the “Complainant”) to Exclude Respondent’s Experts’ Exhibits And Testimonies (the “Motion”) dated July 2, 2020, pursuant to 52 Pa. Code § 5.103(c). As explained below, the Complaint has failed to demonstrate that any of the testimony or exhibits identified in the Motion are inadmissible under the Commission’s regulations. In support thereof, West Penn states as follows:

**I. BACKGROUND**

On November 14, 2018, the Complainant filed the above-captioned Formal Complaint with the Commission. West Penn was electronically served with the Formal Complaint on November 15, 2018.

On December 5, 2018, the Company filed an Answer and New Matter to the Formal Complaint. The Company also filed Preliminary Objections to the Formal Complaint on that date.

The Complainant filed an Answer to the Preliminary Objections on December 15, 2018.

A Motion Judge Assignment Notice was issued by the Commission on January 3, 2019, and assigned the Administrative Law Judge Jeffrey A. Watson (the “ALJ”) to this proceeding.

On January 25, 2019, the ALJ issued: (1) an Interim Order Denying Preliminary Objections; (2) an Interim Order Establishing Litigation Schedule; and (3) an Interim Order Scheduling a Prehearing Conference. Material to this Objection, the Interim Order Establishing Litigation Schedule dated January 25, 2019, required the parties to identify any fact or expert witnesses it intended to call to testify on or before March 29, 2019.

On February 12, 2019, the ALJ issued an Interim Order Revising the Litigation Schedule, and an Interim Order Cancelling the Prehearing Conference Scheduled for February 19, 2019. Importantly, the Interim Order Revising the Litigation Schedule dated February 12, 2019, maintained the date on or before which the parties were required to identify witnesses as March 29, 2019.

On March 28, 2019, the Complainant filed a letter identifying his witnesses in this proceeding.

On March 29, 2019, West Penn Power provided notice and summaries of testimony for its factual and expert witnesses. The notice identified John C. Ahr, Dr. Christopher Davis and Dr. Mark Israel as West Penn's witnesses.

On May 26, 2019, the Complainant filed a Motion for Extension of Time to Provide Direct Testimony.

On May 31, 2019, the Complainant filed an "Emergency Request" revising his previously filed Motion for Extension of Time to Provide Direct Testimony.

On June 3, 2019, the Complainant filed answer Motion for Extension of Time To Secure a Replacement expert witness.

On June 6, 2019, the Complainant filed another Motion for Extension of Time to Provide Direct Testimony.

On July 2, 2019, the ALJ issued an Interim Order Providing for Second Revised Initial Litigation Schedule. This Interim Order, *inter alia*, revised the deadlines for the service of Complainant's direct testimony.

On August 12, 2019, the ALJ issued a Third Revised Initial Litigation Schedule.

A Protective Order was issued on October 24, 2019.

On November 22, 2019, the Complainant submitted a Revised Identification of Factual and Expert Witnesses.

On November 25, 2019, the Complainant served his Direct Testimony and the testimonies of his expert and factual witnesses.

On November 29, 2019, the Complainant filed a letter with the Commission alleged that certain confidential information was improperly handled.

On December 13, 2019, the Complainant filed a Motion to Stay.

On December 30, 2019, the Complainant filed a Status Report.

On December 31, 2019, West Penn filed a Status Report.

On January 1, 2020, the Complainant filed a letter response to West Penn's Status Report dated December 31, 2019.

On January 14, 2020, the ALJ issued an Interim Order Requiring the Parties To File Updated Status Reports.

On January 21, 2020, the Complainant filed a letter requesting accommodations from the Commission under the Americans With Disabilities Act (the "ADA").

On January 27, 2020, the Complainant filed an Updated Status Report.

On January 29, 2020, West Penn filed an Updated Status Report.

On March 5, 2020, the ALJ issued a Second Interim Order Scheduling Prehearing Conference. The Commission relatedly issued a Notice of Telephonic Prehearing Conference.

On March 16, 2020, the Complainant filed a Letter of Clarification of Telephonic Participation of My Witnesses. Therein, the Complainant clarified his witnesses were only available to telephonically participate in evidentiary hearings.

On March 18, 2020, the Complainant filed a Request for Subpoena.

On March 19, 2020, West Penn filed an Objection to the Request for Subpoena.

On March 23, 2020, the Complainant filed a Reply to the Objection to Request for Subpoena.

On May 1, 2020, West Penn served its rebuttal testimony. West Penn's rebuttal testimony included the testimonies and exhibits of Mr. John C. Ahr, Dr. Mark A. Israel, and Dr. Christopher C. Davis, i.e., the witnesses previously identified by the Company.

On July 2, 2020, the Complainant filed the instant Motion in Limine.

On July 15, 2020, Complainant filed a letter and certificate of service indicating he had served revised direct testimony and new exhibits. Complainant also filed a letter and certificate of service indicating the exhibits he intended to offer as evidence at hearing.

On July 17, 2020, the Company filed a letter identified the rebuttal testimony and exhibits of Mr. John C. Ahr, Dr. Mark A. Israel, and Dr. Christopher C. Davis as the evidence it intends to present at hearing.

For the reasons explained below, the Motion in Limine should be denied should be quashed. The Complainant's Motion is meritless and contrary to the Commission's regulations regarding the receipt and admissibility of evidence, and the Pennsylvania rules of evidence. Furthermore, Complainant has failed to demonstrate that the objected to exhibits and testimony

(a) are irrelevant, (b) are hearsay for which no exception exists, (c) lack authenticity or (d) are inherently unreliable. Therefore, the Complainant's Motion should be denied.

## **II. ANSWER TO MOTION**

### **A. THE COMPLAINANT HAS FAILED TO DEMONSTRATE ANY OF THE IDENTIFIED TESTIMONIES OR EXHIBITS CONSTITUTE INADMISSIBLE HEARSAY FOR WHICH NO EXCEPTION EXISTS.**

None of the exhibits or testimonies identified by the Complainant constitute inadmissible hearsay<sup>1</sup> that is not subject to a hearsay exception. Complainant alleges that the following exhibits or portions of West Penn's testimony constitute hearsay:

- West Penn Exhibits JCA-1 (Smart Meter Deployment Plant) and JCA-2 (Current Customer Contact).
- West Penn Exhibits CD-1 (The Electromagnetic Specurum), CD-2 (Radio Frequency Fields from WPP Itron Meters Compared to FCC Safety Standard), CD-3 (Peak Radio Frequency Fields from WPP Itron Meters Compared to FCC Standard), CD-4 (RF from Common Sources Compared to Exposure Close to AMI Meter), CD-5 (Comparison of RF from UHF TV to AMI Meter At Jennings Property).
- West Penn Exhibits MI-1 (Public Health Reviews RF Fields and Claimed Heath Effects), MI-2 (State Health Agency & PUC Reviews of Smart Meters and Health), MI-3 (Public Health Reviews RF Fields and Claimed Electromagnetic Hypersensitivity), and MI-4 (Lack of Scientific Objectivity and Reliability in BioInitiative Report).

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<sup>1</sup> Hearsay is an out-of-court statement offered to prove the truth of the matter asserted. Pa.R.E. 801; *Bonegre v. Workers' Compensation Appeal Board (Bertolini's)*, 863 A.2d 68, 72 (Pa. Cmwlth. 2004). Ordinarily, hearsay evidence is inadmissible unless some exception applies. Pa.R.E. 802. The hearsay rule is somewhat relaxed in proceedings before administrative agencies. *Rox Coal Co. v. Workers' Comp. Appeal Bd. (Snizaski)*, 570 Pa. 60, 807 A.2d 906 (2002). The Commonwealth Court established what is commonly called the "Walker Rule" to apply to the use of hearsay evidence during administrative proceedings:

- (1) Hearsay evidence, properly objected to, is not competent evidence to support a finding;
- (2) Hearsay evidence, admitted without objection, will be given its natural probative effect and may support a finding, if it is corroborated by any competent evidence in the record, but a finding of fact based solely on hearsay will not stand.

*Walker v. Unemployment Comp. Bd. of Review*, 367 A.2d 366, 370 (Pa. Cmwlth. 1976). The "Walker Rule" has been affirmed by the Pennsylvania Supreme Court. *Rox Coal Co. v. Workers' Comp. Appeal Bd. (Snizaski)*, 570 Pa. 60, 807 A.2d 906 (2002).

Complainant objects to the aforementioned exhibits as hearsay, on essentially three grounds: (1) the proposed exhibits contain statements not made by the sponsoring witness (*see, e.g.*, objections to West Penn Exhibits JCA-2 and MI-1); (2) the proposed exhibit is not a peer reviewed study *see, e.g.*, objections to West Penn Exhibit JCA-1, CD-1, and MI-2); and (3) the proposed exhibit contains additional hearsay statements regarding medical and scientific issues, *i.e.*, constitutes “hearsay within hearsay” (*see, e.g.*, objections to West Penn Exhibit MI-5 through MI-5). However, each of these grounds without merit.

As an initial matter, the Complainant fails to show how any of the objected to materials constitute an out-of-court statement offered to prove the truth of the matter asserted. *See Pa.R.E. 801*. Importantly, several of the exhibits prepared by West Penn’s witnesses are specifically not out of court statements. For instance, Exhibits CD-1 through CD-5 are representative exhibits prepared by Dr. Davis, Dr. Davis’s testimony discusses the contents of the exhibits and Dr. Davis will be present at the hearing and subject to cross-examination regarding the contents of these exhibits. Similarly, Exhibits MI-1 through MI-4 are representative exhibits prepared by Dr. Israel, contrary to Complainant’s assertions, Dr. Israel’s testimony discusses the contents of the exhibits and Dr. Israel will be present at the hearing and subject to cross-examination regarding the contents of these exhibits.

With respect to all three categories of the Complainant’s hearsay objections to the exhibits of Dr. Davis and Dr. Israel, a well-recognized an exception to the hearsay rule is that an expert may express an opinion that is based on material not in evidence, including other expert opinions, where such material is of a type customarily relied on by experts in his or her profession. *See Lower Makefield Twp. v. Lands of Dalgewicz*, 4 A.3d 1114, 1122 (Pa. Cmwlth. 2010), *affirmed*, 67 A.3d 772 (Pa. 2013); *Collins v. Cooper*, 746 A.2d 615, 618 (Pa. Super. 2000); *Primavera v.*

*Celotex Corp.*, 608 A.2d 515, 520-21 (Pa. Super. 1992); Pa.R.E. 703. An expert may base his or her opinion on facts made known to the expert; “[t]hat those facts were in part hearsay does not invalidate the expert’s opinion. See *Steinhauer v. Wilson*, 485 A.2d 477, 479 (Pa. Super. 1984). However, Pennsylvania Rule of Evidence 705 requires an expert to disclose to the fact-finder the facts or data on which the opinion is based. Pa.R.E. 705 (“If an expert states an opinion the expert must state the facts or data on which the opinion is based.”).

Here, both Dr. Davis and Dr. Israel are qualified to provide expert opinions within their respective fields of study and the Complainant has failed to demonstrate otherwise.<sup>2</sup> Moreover, both Dr. Davis and Dr. Israel have been repeatedly found to be qualified to render expert opinions in proceeding before this Commission. As such, both Dr. Davis and Dr. Israel may rely on the identified exhibits as an exception to the hearsay rule even if the ALJ determines that these exhibits constitute hearsay, which they do not. Moreover, both Dr. Davis and Dr. Israel are required to disclose the facts or data upon which their opinions are based, *see* PA.R.E. 705, which is precisely what each of the identified exhibits does.

With respect to the Complainant’s objection that Exhibit JCA-2 constitutes hearsay because “Mr. Ahr was not present during the phone conversations and Ms. Pagan and Ms. McDevitt were not called as witnesses for the evidentiary hearing,” Exhibit JCA constitutes a record of a regularly conducted activity (i.e., a business record) and is an exception to the rule against hearsay. *See* Pa.R.E. 803(6). The customer contacts record is made and updated at the time by the individuals involved in each of the customer contacts, is kept in the course of West Penn’s regularly conducted business (indeed, such contacts exist for *all customer contacts between*

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<sup>2</sup> *See* Pa.R.E. 702. “The test to be applied when qualifying an expert witness is whether the witness has any reasonable pretension to specialized knowledge on the subject under investigation.” *Miller v. Brass Rail Tavern*, 664 A.2d 525, 528 (Pa. 1995).

*a customer and West Penn*), and made as a part of this practice. To the extent that the Commission requires evidence in addition to Mr. Ahr's direct testimony regarding this record, Mr. Ahr is qualified to provide such additional evidence at the hearing.

In addition, Complainant's assertion that certain of the exhibits constitute inadmissible hearsay because they "are not peer review studies," is without merit. Complainant points to no requirement under the rules of evidence applicable to hearsay, the Commission's regulations and Pennsylvania law, that requires a document been demonstrated to be a "peer reviewed study" in order to overcome the rule against hearsay. Indeed, no such requirement exists.

Finally, the Complainant's hearsay within hearsay argument should also be denied. As noted above, an expert may rely on otherwise inadmissible materials to form and express an expert opinion. Each of these exhibits merely states the facts or data upon which their opinions are based.

For these reasons, the Complainant's to the exhibits identified above as constituting hearsay and/or hearsay within hearsay should be denied.

**B. THE COMPLAINANT HAS FAILED TO DEMONSTRATE THAT ANY OF THE IDENTIFIED EXHIBITS OR TESTIMONY ARE OTHERWISE INADMISSIBLE UNDER THE COMMISSION'S REGULATIONS OR THE PENNSYLVANIA RULES OF EVIDENCE.**

Complainant further objects to the admission of certain of the Company's testimonies and exhibits for additional reasons under the Pennsylvania Rules of Evidence, including relevance,<sup>3</sup>

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<sup>3</sup> See Pa.R.E. 401 ("Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action."); *Ecker v. Amtrak*, 2015 Phila. Ct. Com. Pl. LEXIS 98 (Mar. 13, 2015), *affirmed*, 2015 Pa. Super. Unpub. LEXIS 3615 (Pa. Super. 2015); *Parr v. Ford Motor Co.*, 109 A.3d 682 (Pa. Super. 2014), *appeal denied*, 2015 Pa. LEXIS 1150 (Pa. 2015). Even if evidence is relevant, such evidence may be excluded "if its probative value is outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." *Parr*, 109 A.3d at 697 (quoting Pa.R.E. 403).

authenticity,<sup>4</sup> and inherent unreliability.<sup>5</sup> Complainant has failed to demonstrate that any of the Company's exhibits are inadmissible on these grounds.

First, Complainant asserts the contents of many of the proposed exhibits are irrelevant because they: (a) are irrelevant to Complainant's case on the subject of health effects and request for an accommodation under the ADA (*see, e.g.*, Exhibits JCA-1, CD-1 through CD-5); and (b) does not address radio frequency ("RF") fields from the AMI meters used by West Penn (*see* Exhibits MI-1 through 4). Complainant objects to all of the Company's testimony and exhibits as irrelevant. However, each piece of testimony and exhibit is relevant because it tends to make the Complainant's claims in this proceeding less true.

Mr. Ahr's rebuttal testimony and Exhibit JCA-1 go directly to whether the West Penn or the Commission has the authority to offer the Complainant the relief that he seeks (i.e., an opt-out from West Penn's Smart Meter Deployment Plan). Furthermore, Mr. Ahr provides necessary testimony regarding the development and review of the Company's Smart Meter Deployment plan, which goes directly to the issue of whether West Penn has provided the Complainant with reasonable service under Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501.

Dr. Davis's rebuttal testimony and Exhibits CD-1 through CD-5 go directly to whether the West Penn's smart meters expose the Complainant to unreasonable or unsafe levels of RF fields.

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<sup>4</sup> See Pa.R.E. 901(a) ("To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is."). Indeed, "[w]hen a party offers evidence contending either expressly or impliedly that the evidence is connected with a person, place, thing, or event, the party must provide evidence sufficient to support a finding of the contended connection." Pa.R.E. 901, cmt. (citing *Commonwealth v. Hudson*, 414 A.2d 1381 (Pa. 1980); *Commonwealth v. Pollock*, 606 A.2d 500 (Pa. Super. 1992)).

<sup>5</sup> See *Blum v. Merrell Dow Pharms., Inc.*, 705 A.2d 1314, 1325 (Pa. Super. 1997) (excluding expert testimony because the "analysis was so flawed as to render [the expert's] conclusions unreliable and therefore inadmissible"), *affirmed*, 764 A.2d 1 (Pa. 2000).

His testimony and each of these exhibits demonstrates that the RF emitted from West Penn's AMI meter are less than the FCC's safety standards, less than the RF emitted by other common sources and less than another source of RF (i.e., Complainant's television) at Complainant's residence. All of this information tends to demonstrate Complainant is not exposed to dangerous levels of RF by West Penn's AMI meter and, therefore, West Penn is not providing unreasonable or unsafe service under Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501.

Similarly, Dr. Israel's testimony goes directly to the Complainant's health claims. Dr. Israel's testimony tends to demonstrate that the Complainant will suffer adverse health effects from the Company's AMI meter based upon his review of the Complainant's medical records and a wealth of medical research. As such, all of this information is relevant West Penn's assertion that it will not provide the Complainant with unreasonable or unsafe service by installing an AMI meter at the Complainant's residence under Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501.

Although Complainant tries to avoid the relevance of these materials by arguing that he seeks an accommodation under the ADA, this argument should be rejected because, even if true, the Commission has no jurisdiction to act under the ADA. *See Frompovich v. PECO Energy Co.*, 2018 Pa. PUC LEXIS 160, at \*69 (Order entered May 3, 2018). As the Commission, held in *Frompovich*:

[I]t is beyond the jurisdiction of Commission to determine whether the Complainant has a disability or a cause of action under the American with Disabilities Act. See I.D. at 18. If Ms. Frompovich believes that she has a valid ADA claim against PECO, she must work through the federal courts or one of the federal enforcement agencies, which include the Department of Labor, the Equal Employment Opportunity Commission, the Department of Transportation, the Federal Communications Commission or the Department of Justice, but not this Commission.

*Frompovich*, 2018 Pa. PUC LEXIS at \*69. For all of these reasons, the Complainant has failed to demonstrate that West Penn's rebuttal testimony and exhibits are irrelevant and the Motion should be denied.

Second, the Complainant asserts that Dr. Israel's exhibits lack authenticity because "[t]here is not source list for who create the chart" and "[t]he proposed exhibit appears to be a selectively compiled list of statements." Motion at 13-15. Dr. Israel's rebuttal testimony makes clear that he prepared each of these exhibits, based on his review of relevant literature. Moreover, Dr. Israel is specifically required to disclose the facts and data underlying his opinions, which these exhibits do. Neither of the Complainant's grounds for objecting on the basis of authenticity has merit and these objections should be denied.

Third, the Complainant appears to object to all of the Company's testimony and exhibits, except for Exhibit JCA-2, as being inherently unreliable. Importantly, however, Complainant must demonstrate that these materials are so flawed as to render them unreliable, in order to exclude them on this ground. *See Blum v. Merrell Dow Pharms., Inc.*, 705 A.2d 1314, 1325 (Pa. Super. 1997), *affirmed*, 764 A.2d 1 (Pa. 2000). None of the grounds advanced by the Complainant meet this standard.

In particular, the Complainant points to no aspect of Mr. Ahr's testimony or exhibits that are so significantly flawed as to be considered inherently unreliable. Rather, Complainant merely attempts to point to Mr. Ahr's employment and training. Motion at 10. The Complainant is free to explore both of these issues on cross examination, however, neither demonstrates that Mr. Ahr's testimony is inadmissible.

Relatedly, the Complainant attempts to argue Exhibits CD-1 through CD-5 have "no identified creator or source listed for the chart making the exhibit unreliable." The Complainant

simply ignores Dr. Davis's testimony; Dr. Davis prepared these exhibits and explains the underlying information in his testimony. *See generally* West Penn St. 2R. Complainant further argues that Dr. Davis's testimony is "biased." *See* Motion at 12-13. However, any alleged bias, which Complainant has not demonstrated exist, does not demonstrate the Dr. Davis's analysis is fundamentally flawed.

Furthermore, the Complainant claims Dr. Israel's testimony and exhibits are unreliable because the documents are "only selective, incomplete portions of other documents which are copied and pasted, and are not official, full copies of each article representing each quote." Motion at 13-16. Importantly, Exhibits MI-1 through MI-5 are necessary to disclose the facts and information relied upon by Dr. Israel in reaching his conclusions, which are more fully explained in his testimony. Complainant further argues that Dr. Israel is "biased." *See* Motion at 16-17. However, these grounds for bias do not undermine the analysis conducted by Dr. Israel such that it is inadmissible.

For these reasons, the Complainant has failed to demonstrate West Penn's testimony exhibits should be excluded because they are irrelevant, lack authenticity, and/or inherently unreliable.

**C. COMPLAINANT HAS FAILED TO DEMONSTRATE ANY OF THE ADDITIONAL GROUNDS OFFERED JUSTIFY EXCLUSION OF WEST PENN'S TESTIMONIES OR EXHIBITS.**

Complainant further submits through the Motion that West Penn's testimony and exhibits constitute the provision of "medical advice" without a license. *See* Motion 8-9 and 12-13. Complaint even goes so far to assert that should the testimony of Mr. Ahr and Dr. Davis be admitted into the record, that they "could be personally liable" or subject to criminal penalties. *See* Motion 8-9 and 12-13. This argument should be rejected for two reasons. First, neither Mr. Ahr nor Dr. Davis are providing the Complainant with medical advice. Neither Mr. Ahr nor Dr.

Davis has entered into a doctor-patient relationship with the Complainant, and neither propose “treatment” for the Complainant. Second, neither Mr. Ahr nor Dr. Davis provide medical opinion testimony; Mr. Ahr provides testimony regarding the development and implementation of the Company’s Smart Meter Deployment Plan and the Company’s contacts with the Complainant and Dr. Davis renders a scientific opinion as to the level of RF exposure resulting from West Penn’s AMI meter. Complainant’s unfounded assertion that either of these witnesses are providing medical advice is absurd and should be rejected.

The Complainant further argues that Dr. Israel is providing medical advice “to folks who are not his patients.” Motion at 17. Dr. Israel is not providing medical advice to the Complainant. He is, however, rendering an expert opinion as to whether West Penn’s AMI meter will cause or exacerbate adverse health effects, based on his medical review of the Complainant and relevant academic and medical literature. Any assertion by the Complainant that Dr. Israel is providing him with medical advice, or that such provision renders his testimony inadmissible, should be denied.

Finally, FirstEnergy that many of the Complainant’s arguments (if not all of the substance of its Motion) specifically go to the weight, rather than the admissibility of West Penn’s evidence. For example, Complainant’s repeated claims of bias, or references to allegedly contrary evidence (*see, e.g.*, Motion at 14 (citing Exhibit EEEE), 1718 (citing statement by Dr. Anthony B. Miller) go directly to the weight of West Penn’s evidence. The Complainant’s attempt to attack the conclusions of Dr. Davis or Dr. Israel based upon his perceived flaws in their analysis similarly go to weight instead of admissibility. The ALJ is well equipped to consider such arguments on brief, based upon the evidence admitted into the record. As such, the ALJ should deny the

Complainants Objections, admit West Penn's exhibits and attribute to them the appropriate weight that they are due.

**III. CONCLUSION**

WHEREFORE, West Penn Power Company requests that the Pennsylvania Public Utility Commission deny the Motion in Limine of Michael T. Jennings.

Respectfully submitted,

Dated: July 22, 2020



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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**MICHAEL T. JENNINGS**

v.

**WEST PENN POWER COMPANY**

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**Docket No. C-2018-3006031**

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of West Penn Power Company's Answer to the Motion to in Limine of Michael T. Jennings to Exclude Respondent's Expert Exhibits and Testimonies 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:

Michael T. Jennings  
lilmac2@zoominternet.net

Administrative Law Judge Jeffrey A. Watson  
jeffwatson@pa.gov

Dated: July 22, 2020



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