

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

October 9, 2020

VIA E-FILING

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

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

Dear Secretary Chiavetta:

Attached please find the Main Brief on behalf of West Penn Power Company (“West Penn” or the “Company”) regarding the above-referenced matter. This document has been served on the all parties as shown in the Certificate of Service.

Please contact me if you have any questions.

Very truly yours,



Tori L. Giesler

krak
Enclosures

c: As Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MICHAEL JENNINGS

v.

WEST PENN POWER COMPANY

**:
:
:
:
:**

DOCKET NO. C-2018-3006031

**MAIN BRIEF
ON BEHALF OF
WEST PENN POWER COMPANY**

Tori L. Giesler, Attorney No. 207742
Lauren M. Lepkoski, Attorney No. 94800
2800 Pottsville Pike
P.O. Box 16001
Reading, Pennsylvania 19612-6001

Counsel for West Penn Power Company

Dated: October 9, 2020

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	STATEMENT OF THE CASE.....	1
III.	LEGAL STANDARDS	6
IV.	SUMMARY OF ARGUMENT	8
V.	ARGUMENT.....	10
	A. Background on Act 129 and the Company’s Smart Meter Deployment Plan	10
	B. The Complainant Failed to Meet His Burden of Proof that the Company Violated the Public Utility Code, a Commission Order, or a Commission Regulation	11
	1. The Installation of Smart Meters Is Required by Law	11
	2. The Installation of a Smart Meter Does Not Constitute Unreasonable or Inadequate Service.....	13
	3. The Company’s Installation of a Smart Meter Would Not Violate Section 1502 of the Public Utility Code.....	15
	4. The Company Is Authorized to Terminate the Complainant’s Electric Service If He Continues to Refuse the Smart Meter’s Installation.....	16
VI.	CONCLUSION	17
	Appendix A – Proposed Findings of Fact	
	Appendix B – Proposed Conclusions of Law	
	Appendix C – Proposed Ordering Paragraphs	

TABLE OF AUTHORITIES

Page

Pennsylvania Court Decisions

B & K Inc. v. Commonwealth Dep't of Highways, 398 Pa. 518, 159 A.2d 206 (1960)..... 15

Brown v. Commonwealth, 940 A.2d 610 (Pa. Cmwlth. 2008)..... 7

C.B. v. J.B., 65 A.3d 946 (Pa. Super. 2013)..... 12

Cuthbert v. City of Philadelphia, 417 Pa. 610, 209 A.2d 261 (1965)..... 15

Griesmer v. Hill, 36 Pa. Super. 69 (Pa. Super. 1908)..... 12

In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election, 843 A.2d 1223 (Pa. 2004) .. 12

Lyft, Inc. v. Pa. Pub. Util. Comm'n, 145 A.3d 1235 (Pa. Cmwlth. 2016) 6

Mid-Atlantic Power Supply Ass'n v. Pa. Pub. Util. Comm'n, 746 A.2d 1196
(Pa. Cmwlth. 2000)..... 15

Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n, 413 A.2d 1037 (Pa. 1980) 6

Pa. Bureau of Corrections v. City of Pittsburgh, 532 A.2d 12 (Pa. 1987)..... 6

Povacz v. Pa. PUC, Docket Nos. 492 C.D. 2019, *et al.*
(Pa. Cmwlth. Oct. 8, 2020) 8, 12-13, 16

Romeo v. Pa. PUC, 154 A.3d 422 (Pa. Cmwlth. 2017)..... 8

Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa. Cmwlth. 1990),
appeal denied, 602 A.2d 863 (Pa. 1992) 6-7

Whiteford v. Dep't of Transp., 728 A.2d 1127 (Pa. Cmwlth. 2001)..... 12

Pennsylvania Administrative Agency Decisions

Frompovich v. PECO Energy Co., Docket No. C-2015-2474602, 2018 Pa. PUC LEXIS
160 (Opinion and Order entered May 3, 2018)..... 7, 13

*Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania
Power Company and West Penn Power Company for Approval of Their Smart Meter
Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993,
M-2013-2341994 (Sec. Letter dated June 20, 2014) 9

<i>Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Smart Meter Deployment Plan</i> , Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994 (Order entered June 25, 2014)	11
<i>Kreider v. PECO Energy Co.</i> , Docket No. C-2015-2469655 (Order on Reconsideration entered Jan. 28, 2016)	7
<i>Kreider v. PECO Energy Co.</i> , Docket No. P-2015-2495064, (Order entered Sept. 3, 2015)	8
<i>Letter of Notification of Phila. Elec. Co. Relative to the Reconstructing and Rebuilding of the Existing 138 kV Line to Operate as the Woodbourne-Heaton 230 kV Line in Montgomery and Bucks Cntys.</i> , 1992 Pa. PUC LEXIS 160 (June 29, 1992) (Initial Decision) (“Woodbourne-Heaton”).....	7
<i>Pa. Pub. Util. Comm’n v. HIKO Energy, LLC</i> , 2015 Pa. PUC LEXIS 364 (I.D. entered Aug. 21, 2015)	7
<i>PPL Elec. Utils. Corp. v. Pa. PUC</i> , 912 A.2d 386 (Pa. Cmwlth. 2006)	17
<i>Povacz v. PECO Energy Co.</i> , 2019 Pa. PUC LEXIS 102 (Order entered Mar. 28, 2019).....	13
<i>Randall & Albrecht v. PECO Energy Co.</i> , 2019 Pa. PUC LEXIS 160 (Order entered May 9, 2019)	13
<i>Smart Meter Procurement and Installation</i> , Docket No. M-2009-2092655 (Order entered June 24, 2009)	8
<i>Springirth v. Nat’l Fuel Gas Distrib. Corp.</i> , 1991 Pa. PUC LEXIS 44 (Order entered Apr. 12, 1991).....	13
<i>Starr v. PECO Energy Co.</i> , Docket No. C-2015-2516061 (Order Entered Sept. 1, 2016).....	13
<i>Stenker v. The York Water Co.</i> , Docket No. C-871318 (Order entered July 27, 1987).....	13
<i>Sunstein Murphy v. PECO Energy Co.</i> , 2019 Pa. PUC LEXIS 159 (Order entered May 9, 2019)	13
<i>Waldron v. Phila. Elec. Co.</i> , 54 Pa. P.U.C. 98 (Order entered Mar. 14, 1980)	6

Pennsylvania Statutes & Regulations

52 Pa. Code § 56.81(3)	17
66 Pa.C.S. § 101.....	8
66 Pa.C.S. § 332(a)	5

66 Pa.C.S. § 701.....	6
66 Pa.C.S. § 1406(a)(4)	17
66 Pa.C.S. § 1501.....	<i>passim</i>
66 Pa.C.S. § 1502.....	2, 16-17
66 Pa.C.S. § 2806.1, et seq.	7
66 Pa.C.S. § 2807(f).....	9, 10
66 Pa.C.S. § 2807(f)(1).....	11
66 Pa.C.S. § 2807(f)(2).....	9

I. INTRODUCTION

On November 15, 2018, West Penn Power Company (“West Penn” or the “Company”) was served with the above-captioned Formal Complaint filed by Michael Jennings (“Complainant”) with the Pennsylvania Public Utility Commission (“Commission”). In his Complaint, the Complainant contests West Penn’s planned installation of a smart meter at his property located at 200 Brook Hollow Road, Mount Pleasant, PA 15666 (“Service Location”).

As explained in this Main Brief, the Complainant failed to sustain his burden of proof that installing the smart meter on his property would constitute a violation of the Public Utility Code or any Commission regulation or order. Therefore, the Commission should dismiss the Complaint in its entirety and with prejudice.

II. STATEMENT OF THE CASE

On November 15, 2018, West Penn was served with the Complainant’s Formal Complaint that was filed with the Commission.

On December 5, 2018, the Company filed its Answer and New Matter denying the material allegations in the Formal Complaint. On the same day, the Company also filed a Preliminary Objection to the Formal Complaint.

On December 15, 2018, the Complainant filed an Answer to the Company’s Preliminary Objection.

On January 3, 2019, a Notice was issued assigning Administrative Law Judge Jeffrey A. Watson (“ALJ”) to preside over this proceeding.

On January 25, 2019, the ALJ issued an Interim Order denying the Company's Preliminary Objection. The ALJ also issued Interim Orders: (1) establishing an initial litigation schedule; and (2) scheduling a prehearing conference.

On January 28, 2019, the Commission issued a Notice scheduling a prehearing conference for February 19, 2019. The Complainant later sent an email to the Secretary's Bureau requesting that the prehearing conference be canceled.

On February 12, 2019, the ALJ issued Interim Orders: (1) canceling the prehearing conference; and (2) revising the initial litigation schedule.

On February 13, 2019, a Notice was issued canceling the February 19, 2019 prehearing conference.

On February 14, 2019, the Secretary's Bureau sent a letter to the Complainant and West Penn containing the Complainant's *ex parte* request to cancel the prehearing conference.

On March 28, 2019, the Complainant filed a letter identifying his fact and expert witnesses and providing summaries of their expected testimony.

On April 3, 2019, the Complainant filed a Motion to Compel regarding his first set of discovery requests. The Company served its responses to the first set of discovery requests later that day.

On May 26, 2019, the Complainant filed a Motion for Extension of Time to serve his and his witnesses' written direct testimony.

On June 3, 2019, the Complainant filed an Emergency Petition for Extension of Time to Secure a Replacement Expert Witness.

On June 6, 2019, the Complainant filed a Motion for Extension of Time to serve the written direct testimony of Laura Sunstein Murphy.

On June 12, 2019, the Complainant filed a Motion to Compel regarding his second set of discovery requests.

On June 14, 2019, the Complainant filed a Petition for Extension of Time to serve his and his witnesses' written direct testimony.

On June 17, 2019, the Company filed an Answer to the Complainant's June 12, 2019 Motion to Compel.

On June 25, 2019, the Complainant filed a Response to the Company's June 17, 2019 Answer to the Motion to Compel.

On July 2, 2019, the ALJ issued an Interim Order revising the initial litigation schedule for the second time.

On July 3, 2019, the ALJ issued an Interim Order granting in part and denying in part the Complainant's June 12, 2019 Motion to Compel.

On August 12, 2019, the ALJ issued an Interim Order revising the initial litigation schedule for the third time.

On September 23, 2019, the Complainant filed a "Request for Entry of a Protective Order."

On September 30, 2019, the ALJ issued an Interim Order directing the parties to submit a stipulated protective order or file their own proposed protective orders.

Petitions for Protective Order were filed by West Penn and the Complainant on October 17, 2019.

On October 24, 2019, the ALJ issued a Protective Order.

On November 22, 2019, the Complainant filed a revised identification of fact and expert witnesses.

On November 25, 2019, the Complainant served his written direct testimony and exhibits.

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

On December 20, 2019, West Penn filed an Answer in opposition to the Motion to Stay.

On December 29, 2019, the Complainant filed a status report.

On December 31, 2019, the Company filed a status report.

On January 1, 2020, the Complainant filed responses to the Company's status report and to the Company's Answer in opposition to the Motion to Stay.

On January 14, 2020, the ALJ issued an Interim Order directing the parties to file updated status reports.

On January 21, 2020, the Complainant submitted a letter requesting an Americans with Disabilities Act ("ADA") accommodation.

On January 27, 2020, the Complainant filed an updated status report.

On January 29, 2020, the Company filed its updated status report.

On February 3, 2020, a Notice was issued scheduling in-person evidentiary hearings for July 23 and 24, 2020.

On February 4, 2020, the Complainant filed a letter requesting that the hearings be rescheduled.

On February 7, 2020, the Complainant filed another letter about his request to schedule the hearings.

On March 5, 2020, the ALJ issued a Second Interim Order Scheduling a Prehearing Conference. A Notice also was issued scheduling a prehearing conference for March 16, 2020.

On March 9, 2020, the Complainant filed a letter about the prehearing conference, in which he noted that his telephone number had changed. He also filed a "Motion to Compel Rebuttal Testimony from West Penn Power's Experts."

On March 16, 2020, the Complainant filed a letter requesting clarification on the participation of his witnesses.

On March 17, 2020, a Notice was issued canceling the prehearing conference scheduled for March 16, 2020.

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

On March 19, 2020, the Company filed Objections to the Request for Subpoena.

On March 23, 2020, the Complainant filed a Response to the Company's Objections.

On May 1, 2020, the Company served its written rebuttal testimony and exhibits.

On June 29, 2020, the Complainant filed a letter requesting confirmation that the hearings would be held in person.

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

On July 7, 2020, the ALJ issued an Interim Order denying the Complainant's Request for Subpoena. Moreover, the ALJ issued an Interim Order converting the in-person hearings to telephonic hearings. The Commission also issued a Corrected Hearing Notice converting the hearings accordingly.

On July 15, 2020, the Complainant served new versions of his own written direct testimony and exhibits.

On July 22, 2020, the Company filed an Answer in opposition to the Complainant's Motion in Limine.

On July 23, 2020, the ALJ issued an Interim Order denying the Complainant's request for disqualification of the ALJ. The ALJ also issued an Interim Order denying the Complainant's Motion in Limine.

Also on July 23, 2020, West Penn filed a Notice of Appearance.

On July 23 and 24, 2020, the telephonic evidentiary hearings were held as scheduled. At the conclusion of the hearing on July 24, 2020, the parties agreed to file Main Briefs by October 9, 2020.

III. LEGAL STANDARDS

Under Section 332(a) of the Public Utility Code, the Complainant has the burden of proof in this proceeding.¹ The first step in carrying the burden of proof is establishing a *prima facie* case that the Company violated the Public Utility Code, the Commission's regulations, or a Commission order. Only if the Complainant establishes a *prima facie* case does it become the responsibility of the Company to provide rebuttal evidence.² To establish a *prima facie* case, more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.³ Mere bald assertions, personal opinions or perceptions, when not substantiated by facts, do not constitute evidence.⁴

Although the factual burden may shift during the course of a proceeding, the Complainant always has the overarching burden of proof in the proceeding. It is clearly established that the Complainant's "burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of the evidence."⁵ A preponderance of evidence is demonstrated where the evidence presented is more convincing, even by the smallest degree, than the evidence presented by the opposing party.⁶

¹ 66 Pa.C.S. § 332(a); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990), appeal denied, 602 A.2d 863 (Pa. 1992).

² *Waldron v. Phila. Elec. Co.*, 54 Pa. P.U.C. 98 (Order entered Mar. 14, 1980).

³ *Lyft, Inc. v. Pa. Pub. Util. Comm'n*, 145 A.3d 1235, 1240 (Pa. Cmwlth. 2016) (citing *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980)).

⁴ *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

⁵ *Lansberry*, 578 A.2d at 602.

⁶ See *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008); *Pa. Pub. Util. Comm'n v. HIKO Energy, LLC*, 2015 Pa. PUC LEXIS 364 (I.D. entered Aug. 21, 2015) (citing *Lansberry*, 578 A.2d at 602).

For the Commission to sustain a formal complaint, the Complainant must demonstrate that an “act or thing done or omitted to be done by any public utility [is] in violation, or claimed violation, of any law which the Commission has jurisdiction to administer, or of any regulation or order of the commission.”⁷ Section 1501 of the Public Utility Code states, in relevant part, that “every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities.”⁸ As part of formal complaint proceedings, the Commission evaluates the reasonableness of public utility service and facilities pursuant to Section 1501. In complaint proceedings similar to the instant proceeding, the Commission has held that the relevant legal standard is whether the installation of a smart meter constitutes unsafe or unreasonable service in violation of Section 1501 of the Public Utility Code.⁹

In addition, a person does not sustain his or her burden of proof in an electric and magnetic field exposure case when the record evidence, “taken as a whole, leads to the ultimate finding and conclusion that the scientific studies at present are inconclusive.”¹⁰ Rather, the person must demonstrate by a preponderance of the evidence that such exposure actually causes adverse health effects.¹¹ Specifically, in smart meter-related matters, the Commission has held that “[t]he Complainant will have the burden of proof during the proceeding to demonstrate, by a preponderance of the evidence, that [the utility] is responsible or accountable for the problem described in the Complaint.”¹²

⁷ 66 Pa.C.S. § 701.

⁸ 66 Pa.C.S. § 1501.

⁹ *Frompovich v. PECO Energy Co.*, 2018 Pa. PUC LEXIS 160, at *86-88 (Order entered May 3, 2018); *Kreider v. PECO Energy Co.*, Docket No. C-2015-2469655 (Order on Reconsideration entered Jan. 28, 2016).

¹⁰ *Letter of Notification of Phila. Elec. Co. Relative to the Reconstructing and Rebuilding of the Existing 138 kV Line to Operate as the Woodbourne-Heaton 230 kV Line in Montgomery and Bucks Cntys.*, 1992 Pa. PUC LEXIS 160, at *210-11 (June 29, 1992) (Initial Decision) (“*Woodbourne-Heaton*”).

¹¹ *Id.* at *211.

¹² *Kreider v. PECO Energy Co.*, Docket No. P-2015-2495064, p. 18 (Order entered Sept. 3, 2015); *see also Romeo v. Pa. PUC*, 154 A.3d 422, 429 (Pa. Cmwlth. 2017) (finding that the smart meter complainant should have a hearing to try to prove his claim through “the testimony of others as well as other evidence that goes to that issue”).

IV. SUMMARY OF ARGUMENT

The Complainant wholly failed to meet his burden of proof that the installation of a smart meter at his Service Location would constitute unreasonable service in violation of Section 1501 of the Public Utility Code or would otherwise violate the Public Utility Code or any Commission regulation or order.

West Penn maintains that it must install smart meters at all of its customers' service locations under Act 129 of 2008 ("Act 129").¹³ Neither Act 129 nor subsequent Commission orders related to smart meter installation and deployment permit customers to "opt-out" from smart meter installation.¹⁴ Further, both Act 129 and the Commission's *Implementation Order* require that electric distribution companies ("EDCs") install wireless smart meters with specific functionalities. As evidenced by the Commission's approval of the Company's Smart Meter Deployment Plan,¹⁵ West Penn's smart meters adhere to the requirements of Act 129 and the Commission's *Implementation Order*.¹⁶ Therefore, West Penn must install a smart meter at the Complainant's Service Location so that the Company remains in compliance with Act 129, related Commission orders, and its Commission-approved Smart Meter Deployment Plan.

¹³ 66 Pa.C.S. § 2806.1, *et seq.* The Commonwealth Court recently issued a decision on October 8, 2020, in *Povacz v. Pa. PUC*, in which the Court held, among other things, that the Commission has the authority to grant "reasonable" and "appropriate" smart meter accommodations to customers without proof of harm. *See Povacz v. Pa. PUC*, Docket Nos. 492 C.D. 2019, *et al.* (Pa. Cmwlth. Oct. 8, 2020). However, the period for the Commission and PECO Energy Company ("PECO") to appeal that decision to the Pennsylvania Supreme Court has not expired. *See Pa.R.A.P. 1113(a)* (setting for the 30-day deadline for a party to file a petition for allowance of appeal with the Supreme Court). The Supreme Court also has discretion in whether to review the Commonwealth Court's decision. *See Pa.R.A.P. 1114(a)-(b)*. Therefore, it is unclear at this time whether the Commonwealth Court's decision will be binding precedent and, if so, what the potential impact of the Court's decision on the instant proceeding would be. Thus, at this time, the Company still takes the position that it is required by Act 129 to install smart meters for all of its customers.

¹⁴ *Id.*; *see Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009) ("*Implementation Order*").

¹⁵ *See* WPP Exhibit JCA-1 ("Smart Meter Deployment Plan") (containing a copy of West Penn's Final "Smart Meter Deployment Plan," approved by the Commission at Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994 (filed June 16, 2014).

¹⁶ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, and M-2013-2341994 (Sec. Letter dated June 20, 2014).

Furthermore, the Complainant failed to establish that the installation of a smart meter would constitute unreasonable service. In his testimony, the Complainant expressed general concerns about the alleged effects on health that could be caused by the smart meters' radio frequency ("RF") fields.¹⁷ He also questioned whether the Company could legally terminate his electric service in response to his refusal to grant West Penn access to his property in order to replace the Company's meter.¹⁸ However, the Complainant never presented any credible or convincing evidence to support his allegations.

By contrast, West Penn witness John C. Ahr directly rebutted the Complainant's allegations and testified that West Penn's smart meters are safe. As explained by Mr. Ahr, West Penn's smart meters comply with all safety requirements and standards established by various entities, including the Federal Communications Commission ("FCC"), the American National Standards Institute ("ANSI"), and Underwriters Laboratories ("UL"). Moreover, the meter manufacturer, Itron, Inc., enlisted certified personnel to perform the required testing. Such personnel would have been aware of any deficiencies if the smart meters failed to pass those standards.

In addition, the Complainant's argument that the Company's installation of the smart meter would constitute unreasonably discriminatory service in violation Section 1502 of the Public Utility Code is without merit. West Penn is installing the smart meters for all of the Company's customers. Therefore, the Company is treating the Complainant like all of its other customers.

Lastly, regarding termination of service, the Company has explicit authority under the Public Utility Code, the Commission's regulations, and its Commission-approved tariff to terminate service when a customer refuses to provide the Company access to replace its meter.

¹⁷ See Complainant Statement No. 1, p. 4.

¹⁸ See Complainant Statement No. 1, p. 92.

Thus, the Complainant failed to establish by a preponderance of the evidence that West Penn's installation of the smart meter would violate a Commission statute, regulation, or order. Accordingly, the Complaint should be dismissed with prejudice.

V. ARGUMENT

A. Background on Act 129 and the Company's Smart Meter Deployment Plan

On October 15, 2008, Act 129 was signed into law and codified as part of the Public Utility Code.¹⁹ Act 129 required EDCs with at least 100,000 customers, such as West Penn, to file a smart meter technology procurement and installation plan ("SMP Plan") with the Commission for approval.²⁰ Specifically, Section 2807(f)(2) of the Code directed EDCs to furnish smart meter technology as follows: (1) upon request from a customer that agrees to pay the cost of the smart meter at the time of the request; (2) in new building construction; and (3) in accordance with a depreciation schedule not to exceed fifteen years.²¹

On December 31, 2012, West Penn, Metropolitan Edison Company, Pennsylvania Electric Company, and Pennsylvania Power Company (collectively referred to hereafter as "the Companies") filed their Joint Petition for Approval of their Smart Meter Deployment Plan, in which they requested that the Commission: (1) find that their proposed Deployment Plan satisfies the requirements of Act 129 and the Commission's Implementation Order; (2) approve the Companies' proposed procurement and deployment of approximately 2.1 million smart meters, over 98% of which should be installed by the end of 2019; (3) authorize the Companies to continue to recover smart meter costs; and (4) authorize the Companies to create a regulatory asset for their

¹⁹ 66 Pa.C.S. § 101, *et seq.*

²⁰ 66 Pa.C.S. § 2807(f).

²¹ 66 Pa.C.S. § 2807(f)(2).

investment in their existing meters to be replaced by smart meters.²² On June 16, 2014, the Companies submitted their revised Smart Meter Deployment Plan, which *intra alia* accelerated the smart meter deployment schedule laid out in their original Deployment Plan.²³ Under the Revised Deployment Plan, the FirstEnergy Companies proposed to deploy 170,000 smart meters by the end of 2015.²⁴ In its June 25, 2014 Opinion and Order, the Commission recognized the benefits of early deployment of smart meters and approved the revised Smart Meter Deployment Plan, stating:

[T]his Commission has already observed the benefits of early deployment. We find that the use of Penn Power as a case study may help the Companies identify other more cost-effective meter deployment strategies that can then be leveraged by FirstEnergy's other operating companies. If deployment and operational savings prove very positive, FirstEnergy may also be able to further accelerate smart meter deployment, thus enabling an option to enhance customer savings even more.²⁵

B. The Complainant Failed to Meet His Burden of Proof that the Company Violated the Public Utility Code, a Commission Order, or a Commission Regulation

1. The Installation of Smart Meters Is Required by Law

Under Act 129, West Penn maintains that it has an absolute obligation to install smart meters for all of its customers, including the Complainant.²⁶ Section 2807(f) of the Public Utility Code prescribes that EDCs, like West Penn, must file smart meter plans and “**shall** furnish smart

²² *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994 (Petition filed December 31, 2012).

²³ See WPP Exhibit JCA-1.

²⁴ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994, p. 8 (Order entered June 25, 2014).

²⁵ *Id.*, p. 16.

²⁶ For a discussion about the Commonwealth Court's recent decision in *Povacz v. Pa. PUC*, Docket Nos. 492 C.D. 2019 and the potential impact of that decision and any subsequent appeal by the Commission and PECO Energy Company, please see footnote 13, *supra*.

meter technology” in any of the following situations: (1) “[u]pon request from a customer that agrees to pay the cost of the smart meter at the time of the request”; (2) “[i]n new building construction”; and (3) “[i]n accordance with a depreciation schedule not to exceed 15 years.” 66 Pa.C.S. § 2807(f)(1)-(2) (emphasis added).²⁷ In interpreting the smart meter provisions of Act 129, the Commission declared that EDCs must “deploy smart meters system-wide” because of the requirement that smart meters be deployed “in accordance with a depreciation schedule not to exceed 15 years.”²⁸ The Commission also “recognize[d] that deployment of smart meters on a piecemeal or individual basis could involve greater costs than a systematic system-wide deployment.”²⁹ Therefore, West Penn continues to believe that it must install the new smart meters for every customer in its service territory, including the Complainant.

In addition, nothing in Act 129 permits a customer to “opt-out” of a smart meter installation. The Complainant himself even agreed during cross-examination that Act 129 contains no opt-out.³⁰ Further, the Commission has found in several other cases that Act 129 contains no such opt-out language.³¹ Specifically, in *Starr*, the Commission observed that it has “rejected similar claims that the installation of smart meters is not mandatory or that an opt-out is permissible

²⁷ Importantly, Pennsylvania courts have held in several cases that the word “shall” means “must.” *See Whiteford v. Dep’t of Transp.*, 728 A.2d 1127, 1131 (Pa. Cmwlth. 2001) (“[T]he word ‘shall’ denotes a mandatory, not discretionary instruction.”) (citations omitted); *C.B. v. J.B.*, 65 A.3d 946, 952 (Pa. Super. 2013) (finding that “[t]he use of ‘shall’ means . . . must” and that to hold otherwise “would be to flout the legislative will”); *In re Canvass of Absentee Ballots of Nov. 4, 2003 Gen. Election*, 843 A.2d 1223, 1233 (Pa. 2004) (“[W]e are not compelled to pretend that ‘shall’ means ‘may’ under Section 3146.6(a).”); *Griesmer v. Hill*, 36 Pa. Super. 69 (Pa. Super. 1908) (“This provision is mandatory, and not directory merely. It means what it says. The word ‘shall’ means ‘shall’ [The defendant] not only may but ‘must.’”).

²⁸ *Implementation Order*, p. 14.

²⁹ *Id.*, pp. 9, 14; *see also Springirth v. Nat’l Fuel Gas Distrib. Corp.*, 1991 Pa. PUC LEXIS 44, at *1-3, 6, 16-17 (Order entered Apr. 12, 1991) (dismissing complaint of customer seeking to make installation of automated meter reading devices optional, noting that the Commission previously found in another case that “[t]he customer should not be given the option of refusing installation of equipment” because “[t]o permit customer discretion in this area would be inefficient and uneconomical”) (quoting *Stenker v. The York Water Co.*, Docket No. C-871318 (Order entered July 27, 1987)).

³⁰ *See* July 23, 2020 Hearing Transcript, p. 204.

³¹ *See, e.g., Starr v. PECO Energy Co.*, Docket No. C-2015-2516061, p. 11 (Order Entered Sept. 1, 2016) (footnote omitted).

under Act 129.”³² Only the General Assembly can amend Act 129 to add an opt-out provision. Notably, although bills have been proposed in the General Assembly to add such an opt-out (see, e.g., House Bill 1564 of 2017-2018 Session), they have never been enacted. Thus, a customer cannot opt-out of the smart meter installation under Act 129.³³

Moreover, West Penn must comply with the relevant Commission orders directing the Company to deploy the new smart meters. Nothing in Act 129 or the Commission’s related orders permit customers to “opt-out” from smart meter installation. In fact, West Penn’s Smart Meter Deployment Plan, approved by the Commission, explicitly states that no opt-out option is available.³⁴ Therefore, the Company’s Commission-approved Smart Meter Deployment Plan mandates that all of West Penn’s meters must be replaced with smart meters.

For these reasons, the Complainant has failed to demonstrate that he can legally opt-out of the smart meter’s installation under Act 129 and related Commission orders.

2. The Installation of a Smart Meter Does Not Constitute Unreasonable or Inadequate Service.

The Complainant maintains that the installation of the smart meter would violate Section 1501 of the Public Utility Code, 66 Pa.C.S. § 1501. At the hearing, the Complainant presented his written testimony in support of his allegations, substantial portions of which were stricken.³⁵ The

³² *Id.*; see *Frompovich v. PECO Energy Co.*, 2018 Pa. PUC LEXIS 160, at *11-13 (Order entered May 3, 2018); *Povacz v. PECO Energy Co.*, 2019 Pa. PUC LEXIS 102, at *156-59 (Order entered Mar. 28, 2019), *affirmed in part, vacated in part, and remanded*, *Povacz v. Pa. PUC*, Docket Nos. 492 C.D. 2019, *et al.* (Pa. Cmwlth. Oct. 8, 2020); *Sunstein Murphy v. PECO Energy Co.*, 2019 Pa. PUC LEXIS 159, at *157-59 (Order entered May 9, 2019), *affirmed in part, vacated in part, and remanded*, *Povacz v. Pa. PUC*, Docket Nos. 492 C.D. 2019, *et al.* (Pa. Cmwlth. Oct. 8, 2020); *Randall & Albrecht v. PECO Energy Co.*, 2019 Pa. PUC LEXIS 160, at *145-48 (Order entered May 9, 2019), *affirmed in part, vacated in part, and remanded*, *Povacz v. Pa. PUC*, Docket Nos. 492 C.D. 2019, *et al.* (Pa. Cmwlth. Oct. 8, 2020).

³³ See footnote 13. Although the Commonwealth Court found in *Povacz v. Pa. PUC* that Act 129 does not require smart meters for all customers, it remains to be seen if the Court’s decision will be binding precedent or whether the Supreme Court will review the Commonwealth Court’s decision.

³⁴ WPP Exhibit JCA-1, p. 6.

³⁵ See Complainant Statement No. 1; July 23, 2020 Hearing Transcript, pp. 216, 218, 227, 237-39, 243, 245-46, 249-53.

Complainant testified that he has health concerns about the smart meters because of: (1) his family's alleged "unique medical vulnerabilities"; and (2) his belief that the emission of the smart meter's RF fields "would create an unsafe and healthy condition in [his] home and on [his] property."³⁶ Therefore, according to the Complainant, he should be permitted to opt out of the smart meter's installation.³⁷

The Complainant's claims are unfounded and should be rejected entirely. Nothing in the record demonstrates that the Complainant possesses the requisite technical expertise to testify about these alleged health issues. In fact, the Complainant expressly stated at the hearing that he was not offering himself as an expert.³⁸ The Complainant also presented absolutely no credible evidence in support of his claims, aside from expressing his concerns about the alleged adverse health effects that could be caused by the smart meters' RF fields.³⁹ Such bald assertions, personal opinions, or perceptions do not constitute evidence.⁴⁰ Further, testimony consisting of guesses, conjecture, or speculation cannot prove a party's claims.⁴¹ Thus, the Complainant failed to establish a *prima facie* case that the smart meter's installation would violate Section 1501 of the Public Utility Code, and his testimony should be completely disregarded.

Even assuming *arguendo* that the Complainant established a *prima facie* case, his evidence was fully rebutted by West Penn. At the hearing, the Company presented the testimony of John C. Ahr, who has a degree in electrical engineering and has worked for subsidiaries of FirstEnergy Corp. or its predecessor companies for over 36 years in various positions, including: (1) Director

³⁶ Complainant Statement No. 1, p. 4.

³⁷ See Complainant Statement No. 1, p. 4.

³⁸ See July 23, 2020 Hearing Transcript, p. 237.

³⁹ See, e.g., Complainant Statement No. 1, p. 4.

⁴⁰ See *Mid-Atlantic Power Supply Ass'n v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000) (citation omitted).

⁴¹ See *Cuthbert v. City of Philadelphia*, 417 Pa. 610, 209 A.2d 261 (1965); *B & K Inc. v. Commonwealth Dep't of Highways*, 398 Pa. 518, 159 A.2d 206 (1960).

of System Operations; (2) Director of Energy Procurement; (3) Director of Meter Reading and Collections; (4) Manager, Regulatory Compliance for Smart Meters; and (5) his current position of Advisor in Regulatory Compliance for Smart Meters.⁴²

Mr. Ahr testified that West Penn's smart meters are safe.⁴³ As explained by Mr. Ahr, West Penn's smart meters comply with all safety requirements and standards established by various entities, including the FCC, ANSI, and UL.⁴⁴ Moreover, the meter manufacturer, Itron, Inc., enlisted certified personnel to perform the required testing.⁴⁵ Mr. Ahr explained that these "individuals are aware of product behavior and therefore able to detect product anomalies, if any, during all ANSI testing," which the meters passed.⁴⁶ Therefore, the health and safety concerns raised by the Complainant are without merit.

Based on the foregoing, the Complainant failed to sustain his burden of proof that the installation of the smart meter would constitute unreasonable or inadequate service under Section 1501 of the Public Utility Code. Therefore, the Complaint should be dismissed with prejudice.

3. The Company's Installation of a Smart Meter Would Not Violate Section 1502 of the Public Utility Code

The Complainant also erroneously claims that the Company's installation of a smart meter would constitute discriminatory service under Section 1502 of the Public Utility Code.⁴⁷ In actuality, Section 1502 prohibits unreasonable discrimination of service "as between localities or as between classes of service" within a single public utility's service territory.⁴⁸

⁴² WPP Statement No. 1R, pp. 1-2.

⁴³ WPP Statement No. 1R, pp. 12-13.

⁴⁴ WPP Statement No. 1R, pp. 12-13.

⁴⁵ WPP Statement No. 1R, p. 12.

⁴⁶ WPP Statement No. 1R, p. 12.

⁴⁷ See Complainant Statement No. 1, pp. 4-5.

⁴⁸ 66 Pa.C.S. § 1502.

Here, West Penn is installing the smart meters for all of its customers, including the Complainant.⁴⁹ Therefore, the Company is treating the Complainant no differently than its other customers. In fact, to grant the Complainant an exemption would arguably be granting him an unreasonable preference over similarly-situated customers in his rate class.⁵⁰ Thus, the Complainant's argument that the installation of a smart meter would violate Section 1502 of the Public Utility Code should be rejected.⁵¹

4. The Company Is Authorized to Terminate the Complainant's Electric Service If He Continues to Refuse the Smart Meter's Installation

The Complainant also questions the legality of West Penn's ability to terminate service if he continues to refuse the smart meter's installation.⁵² Rule 9 of West Penn's Commission-approved tariff expressly states that the Company shall have reasonable access to the customer's premises for, among other reasons, "removing or exchanging any or all equipment belonging to the Company," such as the Company's meters.⁵³ It is well-established that public utilities' tariffs have the force and effect of law and are binding on the utilities and their customers.⁵⁴ Therefore, a customer is required to grant the Company reasonable access to the property to replace the existing meter.

In addition, West Penn is expressly permitted to terminate a customer's electric service if it is denied such reasonable access and prevented from replacing its meter. Both the Public Utility Code and the Commission's regulations provide that "[f]ailure to permit access to meters, service

⁴⁹ See Section V.B.1., *supra*.

⁵⁰ See 66 Pa.C.S. § 1502.

⁵¹ Again, as explained in footnote 13, *supra*, the impact of the Commonwealth Court's decision in *Povacz v. Pa. PUC*, remains unclear. Further, even if the Company were required to grant the Complainant an accommodation to the smart meter installation, West Penn would still be bound to Section 1502 of the Public Utility Code and not grant an accommodation that would be unreasonable preferential to the Complainant. See 66 Pa.C.S. § 1502.

⁵² See Complainant Statement No. 1, p. 22.

⁵³ Rule 9, Electric Pa. P.U.C. No. 40, Original Page 46.

⁵⁴ See *PPL Elec. Utils. Corp. v. Pa. PUC*, 912 A.2d 386, 402 (Pa. Cmwlth. 2006) (citing 66 Pa.C.S. § 1303 and *Pa. Elec. Co. v. Pa. PUC*, 663 A.2d 281, 284 (Pa. Cmwlth. 1995)).

connections or other property of the public utility for the purpose of replacement, maintenance, repair or meter reading” is grounds for terminating service.⁵⁵ As a result, if a customer denies the Company access to replace its meter, West Penn has a legal right to issue a termination notice to a customer, including the Complainant.

Based on the foregoing, the Complainant failed to sustain his burden of proof that: (1) the installation of the smart meter would constitute unreasonable or inadequate service under Section 1501 of the Public Utility Code; (2) the Company’s installation of a smart meter would constitute unreasonably discriminatory service in violation of Section 1502 of the Public Utility Code; and (3) the Company is not legally authorized to terminate the Complainant’s service if he continues to refuse the smart meter’s installation. Therefore, the Complaint should be dismissed with prejudice.

VI. CONCLUSION

WHEREFORE, West Penn Power Company respectfully requests that the Formal Complaint of Michael Jennings be dismissed with prejudice.

Respectfully submitted,

Dated: October 9, 2020



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

⁵⁵ See 66 Pa.C.S. § 1406(a)(4); 52 Pa. Code § 56.81(3).

llepkoski@firstenergycorp.com
tgiesler@firstenergycorp.com

Counsel for West Penn Power Company

APPENDIX A

PROPOSED FINDINGS OF FACT

1. West Penn's Commission-approved Smart Meter Deployment Plan called for 98.5% of the Company's smart meter installation to be completed by 2019, with the remaining 1.5% of meters being installed by the end of 2022.⁵⁶

2. On December 31, 2012, the Companies filed their Joint Petition for Approval of their Smart Meter Deployment Plan, in which they requested that the Commission: (1) find that their proposed Deployment Plan satisfies the requirements of Act 129 and the Commission's Implementation Order; (2) approve the Companies' proposed procurement and deployment of approximately 2.1 million smart meters, over 98% of which should be installed by the end of 2019; (3) authorize the Companies to continue to recover smart meter costs; and (4) authorize the Companies to create a regulatory asset for their investment in their existing meters to be replaced by smart meters.⁵⁷

3. On June 16, 2014, the Companies submitted their revised Smart Meter Deployment Plan,⁵⁸ which *intra alia* accelerated the smart meter deployment schedule laid out in their original Deployment Plan.

4. In this proceeding, West Penn presented the testimony of John C. Ahr.⁵⁹

5. Mr. Ahr has a degree in electrical engineering and has worked for FirstEnergy Corp. or its predecessor companies for over 36 years in various positions, including: (1) Director of System Operations; (2) Director of Energy Procurement; (3) Director of Meter Reading and

⁵⁶ WPP Exhibit JCA-1, pp. 10-11.

⁵⁷ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, M-2013-2341994 (Petition filed December 31, 2012).

⁵⁸ See WPP Exhibit JCA-1.

⁵⁹ See WPP Statement No. 1R.

Collections; (4) Manager, Regulatory Compliance for Smart Meters; and (5) his current position of Advisor in Regulatory Compliance for Smart Meters.⁶⁰

6. West Penn's smart meters comply with all safety requirements and standards established by various entities, including the FCC, ANSI, and UL.⁶¹

7. Itron, Inc., who is the smart meters' manufacturer, enlisted certified personnel to perform the required testing. Such personnel would have been aware of any deficiencies if the smart meters failed to pass those standards.⁶²

8. The Complainant refused, and continue to refuse, the Company's installation of the smart meter at his Service Location.⁶³

⁶⁰ WPP Statement No. 1R, pp. 1-2.

⁶¹ WPP Statement No. 1R, pp. 12-13.

⁶² WPP Statement No. 1R, p. 12.

⁶³ *See, e.g.*, Complainant Statement No. 1, p. 4.

APPENDIX B

PROPOSED CONCLUSIONS OF LAW

1. Under Section 332(a) of the Public Utility Code, the Complainant has the burden of proof in this proceeding.⁶⁴

2. The first step in carrying the burden of proof is establishing a *prima facie* case that West Penn violated the Public Utility Code, the Commission's regulations, or a Commission order. Only if the Complainant establishes a *prima facie* case does it become the responsibility of the Company to provide rebuttal evidence.⁶⁵

3. In order to establish a *prima facie* case, more is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.⁶⁶

4. Mere bald assertions, personal opinions or perceptions, when not substantiated by facts, do not constitute evidence.⁶⁷

5. A party's burden of proof is met by establishing a preponderance of the evidence, which requires proof by a greater weight of the evidence.⁶⁸

6. A preponderance of evidence is demonstrated where the evidence presented is more convincing, even by the smallest degree, than the evidence presented by the opposing party.⁶⁹

7. For the Commission to sustain a formal complaint, the complainant must demonstrate that an "act or thing done or omitted to be done by any public utility [is] in violation,

⁶⁴ 66 Pa.C.S. § 332(a); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990), appeal denied, 602 A.2d 863 (Pa. 1992).

⁶⁵ *Waldron v. Phila. Elec. Co.*, 54 Pa. P.U.C. 98 (Order entered Mar. 14, 1980); *Replogle v. Pa. Elec. Co.*, 54 Pa. PUC 528 (Order entered Oct. 9, 1980).

⁶⁶ *Lyft, Inc. v. Pa. Pub. Util. Comm'n*, 145 A.3d 1235, 1240 (Pa. Cmwlth. 2016) (citing *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980)).

⁶⁷ *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12, 14 (Pa. 1987); *Mid-Atlantic Power Supply Ass'n. v. Pa. Pub. Util. Comm'n*, 746 A.2d 1196, 1200 (Pa. Cmwlth. 2000).

⁶⁸ *Lansberry*, 578 A.2d at 602.

⁶⁹ See *Brown v. Commonwealth*, 940 A.2d 610, 614 n.14 (Pa. Cmwlth. 2008); *Pa. Pub. Util. Comm'n v. HIKO Energy, LLC*, 2015 Pa. PUC LEXIS 364 (I.D. entered Aug. 21, 2015) (citing *Lansberry*, 578 A.2d at 602).

or claimed violation, of any law which the Commission has jurisdiction to administer, or of any regulation or order of the commission.”⁷⁰

8. As part of formal complaint proceedings, the Commission evaluates the reasonableness of public utility service and facilities pursuant to Section 1501 of the Public Utility Code. Section 1501 states, in relevant part, that “every public utility shall furnish and maintain adequate, efficient, safe and reasonable service and facilities.”⁷¹

9. In similar complaint proceedings, the Commission has held that the relevant legal standard is whether the installation of a smart meter constitutes unsafe or unreasonable service in violation of Section 1501 of the Public Utility Code.⁷²

10. Section 1502 of the Public Utility Code prohibits unreasonable discrimination of service “as between localities or as between classes of service” within a single public utility’s service territory.⁷³

11. By installing the smart meters for all of its customers, the Company is treating the Complainant the same as those other customers. Therefore, its installation of the smart meter would not violate Section 1502 of the Public Utility Code.

12. Neither Act 129 nor subsequent Commission orders related to smart meter installation and deployment permit customers to “opt-out” from smart meter installation.⁷⁴

⁷⁰ 66 Pa.C.S. § 701.

⁷¹ 66 Pa.C.S. § 1501.

⁷² *Frompovich v. PECO Energy Co.*, Docket No. C-2015-2474602 (Opinion and Order entered May 3, 2018); *Kreider v. PECO Energy Co.*, Docket No. C-2015-2469655 (Order on Reconsideration entered Jan. 28, 2016).

⁷³ 66 Pa.C.S. § 1502.

⁷⁴ *See* 66 Pa.C.S. § 2807; *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009).

13. The Complainants failed to establish that the Company's installation of a smart meter at the Complainant's Service Location would violate Act 129 or any related Commission orders.⁷⁵

14. The Company owns, maintains, furnishes and installs its electric meters. It is within the Company's sole and exclusive discretion to install the meters and related equipment it deems reasonable and appropriate to provide service to customers.⁷⁶

15. A lay witness may only provide testimony related to his or her direct knowledge or experience.⁷⁷

16. Any testimony of a lay witness related to technical or specialized knowledge should be excluded and given no evidentiary weight.⁷⁸

17. The Complainant failed to sustain his burden of proof that the installation of a smart meter would violate the Public Utility Code, a Commission order, or a Commission regulation.

18. Rule 9 of West Penn's Commission-approved tariff expressly states that the Company shall have reasonable access to the customer's premises for, among other reasons, "removing or exchanging any or all equipment belonging to the Company," such as the Company's meters.⁷⁹

19. Public utilities' tariffs have the force and effect of law and are binding on the utilities and their customers.⁸⁰

⁷⁵ See *id.*; see also *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Company for Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, and M-2013-2341994 (Sec. Letter dated June 20, 2014).

⁷⁶ Rule 8, Supplement 26 to Electric Pa. P.U.C. No. 40, Second Revised Page 41.

⁷⁷ Pa.R.E. 701.

⁷⁸ See *Gibson v. W.C.A.B.*, 861 A.2d 938, 947 (Pa. 2004).

⁷⁹ Rule 9, Electric Pa. P.U.C. No. 40, Original Page 46.

⁸⁰ See *PPL Elec. Utils. Corp. v. Pa. PUC*, 912 A.2d 386, 402 (Pa. Cmwlth. 2006) (citing 66 Pa.C.S. § 1303 and *Pa. Elec. Co. v. Pa. PUC*, 663 A.2d 281, 284 (Pa. Cmwlth. 1995)).

20. Under both the Public Utility Code and the Commission's regulations, West Penn is expressly permitted to terminate a customer's service if it is denied reasonable access to a customer's property and prevented from replacing its meter.⁸¹

21. If the Complainant continues to deny West Penn reasonable access to the property for the purpose of replacing the Company's meter, West Penn is legally authorized to issue a termination notice to the Complainant.

⁸¹ See 66 Pa.C.S. § 1406(a)(4); 52 Pa. Code § 56.81(3).

APPENDIX C

PROPOSED ORDERING PARAGRAPHS

1. The formal complaint of Michael Jennings filed against West Penn Power Company at the above-referenced docket is dismissed with prejudice.
2. This matter shall be marked as closed.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

MICHAEL JENNINGS

v.

WEST PENN POWER COMPANY

:
:
:
:
:

DOCKET NO. C-2018-3006031

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Main Brief of West Penn Power Company upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by email as follows:

Michael T. Jennings
Lilmac2@zoominternet.net

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

Dated: October 9, 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