*Via electronic service only due to Emergency Order at M-2020-3019262*

**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, Bureau :

Of Investigation & Enforcement : :

v. : C-2021-3024913

:

West Penn Power Company :

**PREHEARING ORDER**

On March 26, 2021, the Commission’s Bureau of Investigation and Enforcement (BIE) filed a Complaint against West Penn Power Company, alleging violations of the Public Utility Code and requesting a civil penalty. BIE alleged that on April 12, 2018, a conductor owned by West Penn Power fell into the wooded property of Terry and Frances Colton, causing a brush fire. After the fire was extinguished Terry Colton came into contact with the conductor and was killed. BIE further alleged violations of the Public Utility Code because, among other things, of West Penn’s failure to properly inspect and maintain the right-of-way and manage the vegetation within the right-of-way. In total, BIE requests a civil penalty in the amount of approximately $3.4 million.

West Penn Power filed an Answer denying the material allegations of the Complaint, New Matter, and Preliminary Objections on May 17, 2021.[[1]](#footnote-1) By letter dated May 21, 2021, BIE requested an extension to June 7, 2021, to file an Answer to West Penn Power’s Preliminary Objections.

By notice dated May 27, 2021, the Complaint was assigned to me. BIE’s extension request was granted. BIE filed a response to the Preliminary Objections and also filed an Answer to West Penn Power’s New Matter on June 7, 2021.

By Interim Order entered on June 11, 2021, West Penn Power’s Preliminary Objections were dismissed. A notice was issued scheduling a prehearing conference for July 14, 2021.

The prehearing conference convened as scheduled. Attorney Kourtney Myers appearing on behalf of BIE. Attorney Tori Giesler appeared on behalf of West Penn Power. The parties reported that settlement discussions were ongoing. This order memorializes matters discussed and agreed to at the prehearing conference.

THEREFORE,

IT IS ORDERED:

1. That discovery shall be **completed** no later than **January 26, 2022**. **All motions to compel must contain a certification of counsel of the informal discovery undertaken and their efforts to resolve their discovery disputes informally.**

2. That the parties have agreed to the following litigation schedule:

|  |  |
| --- | --- |
| Date | Event |
| November 12, 2021 | Written Direct Testimony Due In-Hand |
| December 17, 2021 | Written Rebuttal Testimony Due In-Hand |
| January 18, 2022 | Written Surrebuttal Testimony Due In-Hand |
| January 26-27, 2022 | Evidentiary Hearings and oral rejoinder[[2]](#footnote-2) |

The parties are reminded of the Commission’s requirements for the preparation and filing of written testimony. 52 Pa.Code §§ 5.412 and 5.412a. Written testimony must be accompanied by all exhibits to which it relates. Technical terms and concepts are to be clearly defined and explained in the testimonies and briefs. **No written testimony will be admitted into evidence unless accompanied by a verification or affidavit of the witness**.

Parties serving prepared testimony in proceedings pending before the Commission pursuant to 52 Pa.Code § 5.412(f) shall be required, within thirty (30) days after the final hearing in an adjudicatory proceeding to either eFile with or provide to the Secretary’s Bureau a Compact Disc (CD) containing all testimony furnished to the court reporter during the proceeding, consistent 52 Pa.Code § 5.412a.

3. That the above-stated dates are in-hand dates for service on the parties and the presiding Administrative Law Judge (ALJ). All service of documents shall be in electronic form so long as the subject email is received by the date due. **Until further notice, there is no requirement to follow electronic service by sending a hard copy of the same material via first-class mail postage prepaid to the parties designated on the Service List or by express mail service.** The email addresses of the presiding ALJ is: [malong@pa.gov](mailto:malong@pa.gov).

4. That any provisions of this prehearing order may be modified upon motion and good cause shown by any party.

Date: July 14, 2021 /s/

Mary D. Long

Administrative Law Judge

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1. West Penn Power was granted extensions of time to file its answer which were unopposed by BIE. [↑](#footnote-ref-1)
2. The format and location for the evidentiary hearing will be established at a later date, pending the status of Commonwealth buildings following the COVID-19 pandemic. [↑](#footnote-ref-2)