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VIA E-FILE

May 2, 2024

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

**REPLY TO WPP'S ANSWER TO REQUEST TO REOPEN THE PROCEEDING
FOR THE PURPOSE OF TAKING ADDITIONAL EVIDENCE**

(Eugene J. Bazan and Tania M. Slawecki v. West Penn Power Company
Docket # C-2017-2640338)

Dear Secretary Chiavetta:

Appended, please find our **REPLY TO WPP'S ANSWER TO REQUEST TO REOPEN THE PROCEEDING FOR THE PURPOSE OF TAKING ADDITIONAL EVIDENCE** to ALJ Mark Hoyer in the above referenced proceeding to file with the Pennsylvania Public Utility Commission. This document has been served by email on ALJ Mark Hoyer, presiding officer, and by email on Respondents Renner, Giesler, Meehan and Garcia as shown in the Certificate of Service, in accordance with Commission regulations.

Thank you for your assistance.

Sincerely,



Eugene J. Bazan,
Co-Complainant, pro se



Tania M. Slawecki,
Co-Complainant , pro se

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Eugene Bazan

v.

West Penn Power Company

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C-2017-2640338

VIA E-Serve

**REPLY TO WPP'S ANSWER TO REQUEST TO REOPEN THE PROCEEDING
FOR THE PURPOSE OF TAKING ADDITIONAL EVIDENCE**

(Eugene J. Bazan and Tania M. Slawewski v. West Penn Power Company
Docket # C-2017-2640338)

To the Honorable ALJ Mark A. Hoyer:

First Energy's Answer to our Petition to Reopen the Record in the above-referenced matter requires replies of our own. We find Ms. Giesler's Answer unsatisfactory at several levels but do agree on a couple of points in Part III-B should you grant our Petition. We follow her outline.

I. Reply to Comments in Respondent's Introduction and Background

- 1) In her Introduction and Background Ms. Giesler asserts that "the Complainants presented a full direct case on during the March 10, 2020 Evidentiary Hearing." That is not correct. Despite having in their possession our Expert Witness Testimony and three Factual Witness Testimonies for nine months, Ms. Giesler and her fellow respondents raised no questions of these, but waited until the March 10 hearing to launch a surprise objection. As we recall, the ALJ sustained these objections and we were not able to present our full case, nor in fact, any case based on our extensive evidence. If on the other hand, by stating we did present a "full direct case," is Ms. Giesler acknowledging that, despite the objections respondents raised, our Expert Witness and Factual Witness Testimonies were in fact entered into the record? We request, as earlier asked, clarification from the court. Rather than "a second bite at the apple," we are requesting a first bite.

- 2) Lacking any objections or even questions addressed by respondents to our testimonies during the preceding nine months, we had no reason to rely on or secure other expert testimonies. Since respondents objected to Dr. Slawewski's Expert Witness Testimony at that March 10 hearing we now wish to enter testimonies of other experts. We could not possibly have failed to present their testimonies which, from the respondents' lack of response, we concluded was not necessary. It is a plausible surmise in retrospect, based on the objections raised to our testimonies both Expert and Factual, that any additional expert testimonies would have met the same fate. The pattern of denying any probative evidence has been noted by other smart meter complainants, and is evident in our case.

- 3) We are not basing our Petition on the mere passage of time but on the fact that during these past four years additional evidence has become available that was not available at the time of the March 10 hearing. We could not possibly have failed to present that which was not then available. We submitted our exhibits on October 1, 2020 for the scheduled October 29 hearing, which was then cancelled. We were to use these as references for our cross examination of the respondents' expert witnesses. As we may wish to draw on some of these at a future hearing and cross examination, we append these in Appendix I. In addition, there are now more recent scientific publications relevant to the evidence we wish to present to the court. We are appending a preliminary list in Appendix II.

- 4) In her concluding paragraph in this section Ms. Giesler attempts to limit our Petition in two ways. In the first of these, she proposes that "Complainants may not present evidence or testimony upon information available to the Complainants as of the date of the first Evidentiary Hearing, *i.e.*, March 10, 2020." There is no such limitation stipulated in 52 PA Code § 5.571 and we therefore oppose this limitation. A careful reading of § 5.571 (b) requires the presentation of facts constituting grounds for reopening the proceeding, and that in subsidiary clause following the comma, (b) goes on to say that these facts may include "material changes of fact or law ... since the conclusion of the hearing."

Clearly, this is a move by respondents to limit such expert testimony which was available then, but not regarded as necessary as underscored in 1) above. The simple fact is that

there was widespread evidence way back then from multiple informed sources about the detrimental effects of RF-Electromagnetic Radiation (EMR) including that emanated by smart meters, much of which was not only available, but presented and referenced in Dr. Slawewski's Expert Witness Testimony. To claim that this evidence cannot be represented by other experts is tantamount to requiring, at a physics meeting for example, that experts cannot present evidence of gravity because such evidence was already available then. Evidence of gravity has been around for a long time. Evidence of RF-EMR harms has a long history going back to the 1930s. Ms. Giesler's objection to evidence is denying Complainants' due process of law.

- 5) As to Ms. Giesler's second point, requesting permission to respond to our direct case in full, including through written testimony, we have no objection. We find it odd that respondent is requesting now what they did not bother to do previously when they tacitly accepted Dr. Slawewski's Expert Witness Testimony and our three Factual Witness Testimonies by NOT responding, but waiting until the March 10, 2020 hearing to cast objections. On this second point, we request clarification on what Ms. Giesler means by the word "direct" in "direct case," whether it has a legal meaning, and what limitation this word presents.
- 6) Footnote 3 asserts the Company's interest in presenting its Direct Case, which Ms. Giesler writes, it did not do "in full" without clarifying, as complainants requested earlier, who are the Company's expert witnesses, including whether it will be replacing Dr. Davis, who passed away. Is the Company asking to open the evidentiary record to accommodate a replacement expert witness? What does "in full" include?

II. Reply to Comments in Procedural History

- 7) Ms. Giesler omits the following important items in her chronicle.
 - a) December 16, 2019. Petition to Subpoena two witnesses, Kim Pizzingrilli (then PUC Commissioner) and Shane Rooney (then PUC attorney in the Law Bureau), "to be available for cross-examination at the time of our hearing on February 7, 2020" on the PUC's 2009 Implementation Order, later rejected by the ALJ ostensibly based on a note from Mr. Rooney's boss at the PUC, Robert Young. Mr. Young's objections were based

on specious interpretations of case law as noted in our reply of January 8, 2020. The transformation of § 2807(f)(2) in Act 129 from opt in to mandate started here with the Implementation Order.

- b) The gap in time of over seven months between the March 10, 2020 hearing and later dates for the second hearing, including the last date of October 29, 2020 was due to scheduling problems that had nothing to do with the Complainants but rested with either the PUC or the respondents.
- c) October 1, 2020. As per ALJ Watson's Interim Order of August 18, 2020, complainants submitted the exhibits we will refer to when questioning the Respondent's witnesses during the hearing scheduled for October 29, 2020. Due to filing size limitations, we divided our exhibits into four parts requiring four transmissions, and included a list of all four parts on the next page of the October 1, 2020 filing.
- d) October 8, 2020. The reason for the stay – namely the decision of the Commonwealth Court in Povacz I upholding, for a variety of reasons, that Act 129 did not mandate smart meters – and the subsequent appeal by respondents (PUC and PECO) to the PA Supreme Court in Povacz II.

III. Reply to Comments in Argument

- 8) In **Argument A** Ms. Giesler claims complainants offer no compelling reasons to reopen the evidentiary record. We treat these claims briefly:
 - a) Complainants aver that Povacz II only applies to the particular factual record before the Povacz court and therefore does not preclude review based upon a substantially different record. We maintain that our facts are substantially different from those presented in Povacz, and information is available to us now that was not available at the time Povacz, et. al. was heard in the PUC's administrative law court. We are entitled to present facts relevant to our case which may differ from those on which the PA Supreme Court has based its decision.
 - b) In III-A-3 Ms. Giesler claims that the complainants' petition does not allege any specific "new scientific evidence," but then she goes on to say that such new scientific evidence "is of no importance to the Commission's resolution of the complaint."

- c) Nonetheless, thinking due process of law means something, we list in Appendix II articles documenting “material changes of fact ... alleged to have occurred since the conclusion of the hearing.” Had we these articles for our March 10, 2020 we would have included these as additional exhibits to further bolster our case.
- d) Not only is science never settled, neither is the law. We now turn to “material changes of ... law alleged to have occurred since the conclusion of the hearing.” There are two material changes of relevance to the current case: first, the transition from § 2807(f)(2) as an opt-in law to a mandate (no opt out); and second, the transition from reasoning and decision in Povacz I to Povacz II. The first transition hangs on the role of the Implementation Order in undermining both the law and the legislative intent as documented in the Assembly Journals of that time. The second transition illustrates the way in which a reading of other parts of the PUC codes for utilities coupled with a careful plain English reading of the law in Povacz I gets channeled into the narrow cul de sac of a Section 1501 violation in Povacz II, with its two impossible to meet if not unlawful criteria for proving such violation. To denigrate, as Ms. Giesler does, that “Complainants seem to wish to litigate the factual record of Povacz II ... is not relevant” is in stark contrast with the fact that throughout history law is born, refined and corrected through litigation. If not litigation, what does Ms. Giesler think she is doing?
- e) In III-A-2 Ms. Giesler claims we offer no reasons as to why our proposed Expert Witnesses were not available earlier. We answered this in comment 2) above. Their testimonies are relevant because they speak to the intent of the legislature in passing Act 129, and elucidate on the mechanism of harms caused by RF emissions. Furthermore, in the latter case, the expert in spectral chemistry was not available to testify in 2020 but is now available to do so.
- f) In III-A-1 Ms. Giesler wonders why Dr. Slawecki did not present her experience as it relates to matters of human health. Dr. Slawecki has more experience now that is relevant to her claimed expertise than she had back in March of 2020. Furthermore, as Mr. Renner made numerous false allegations against Dr. Slawecki, we feel that it is only proper to be given an opportunity to address these allegations, including "matters of human health" that he raised. The information Dr. Slawecki provided in her CV at that time was insufficient to convey to the court her expertise and experience in human health. For example, her resume cites that she developed and taught a course in

integrative medicine. This required, as per Rule 702 of the Pennsylvania Rules of Evidence, that “the expert’s scientific, technical, or other specialized knowledge is beyond that possessed by the average layperson.” We therefore wish to submit more detail about this course to substantiate Dr. Slawecki’s background as a health educator. Her expertise as health educator further derives from her informal experiential learning over the decades which is not something she would normally include on her professional vitae – yet clearly is of interest to this court. As we did not expect or foresee that this matter would be of issue, we could not have guessed what additional material this court would require to qualify Dr. Slawecki in her expert witness capacity. An updated CV is now available.

g) Ms. Giesler asks who we propose as Expert Witnesses. See Appendix III for a preliminary answer.

9) In **Argument B** Ms. Giesler proposes that there be established specific procedural mandates for presenting new evidence. We treat these briefly:

a) Ms. Giesler again refers to the Complainants’ on-record evidence. We have asked Your Honor to clarify, for example, whether Dr. Slawecki’s Expert Witness Testimony was, or was not entered into the record. We have summarized the circumstances around her Testimony in 1) above. To aver that we are angling for a second bite at the apple overlooks the simple fact that we did not get a first bite. Since the Respondent didn’t like the first Expert Witness, we are proposing others. If Dr. Slawecki’s status as Expert Witness is affirmed, and her Expert Witness Testimony was or is entered into the record, it seems sensible to do as Ms. Giesler proposes: “testimony ... limited to the offering of information not in existence or not available to the Complainants as of the March 10, 2020 Evidentiary Hearing.”

b) It is simply not true that “the Complainants have not previously presented any testimony or evidence related to RF, including any specific medical concerns related to RF” and we therefore do not agree with Ms. Giesler that “evidence on this point should not be permitted from the Complainants at this late stage of the proceeding.” Ms. Giesler asserts that we were at liberty to present evidence of RF concerns during the March 10 hearing, overlooking that Respondents objected to our three Factual Witness Testimonies that presented not tepid “concerns” but evidence of harms. When Ms.

Giesler complains that the hearing stage is late stage of our proceeding; we remind her that the delays between March 10 and October 29 of 2020 were not of our doing (see 7-b and 7-d above).

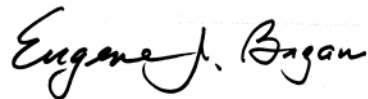
- c) Rules of Evidence permit Factual Witness Testimonies. We were invited in the initial litigation schedule to prepare and present these, which we did in a timely manner. Now Ms. Giesler wants to dispense with these rules. We don't think this is within her purview.
- d) We do not object to Ms. Giesler's proposal to allow for the exchange of written testimonies with time for review as necessary. We merely point out in 1) above that under the initial litigation schedule respondents had a full nine months to review our Expert and Factual Witness Testimonies. We would have appreciated a more meaningful response reflecting the extended time to digest of nine months at our March 10, 2020 hearing.

CONCLUSION

For the reasons listed above, we find the arguments put forth by Ms. Giesler for the respondents are incorrect and misleading, and undermine due process of law in our case. We have requested clarification in recent filings as to several aspects of this proceeding which we have not yet received but expect, and regard this Petition to Reopen the Proceeding as a necessary next step to getting this case on its proper and legal footing.

Thank you for your consideration.

Sincerely,



Eugene J. Bazan,
Co-Complainant, pro se
PO Box 24
Lemont, PA 16851



Tania M. Slawecki,
Co-Complainant, pro se

APPENDIX I
List of Exhibits Submitted for October 29, 2020 Hearing

Part 1	
D-1	52 PA code ch 57 124 p
D-2	Title 66 Section 315 2p
D-3	First Energy Promotional Brochure 5p
D-4	2018 Naperville decision 13p
D-5	Bazan v WPP Select Responses Set 5 4-15-19 11p
D-6	1982 ANSI-National standards 20p
D-7	1991 IEEE RF Safety Levels standards 72 p
D-8	2002 FDA letter on FCC guidelines 4p
D-9	2012 Testimony of Dr. De-Kun Ki on FCC guidelines 6p
Part 2	
D-10	2015 Alter Harvard U Captured Agency 59p
D-11a	2014 Karl Maret MD RF metering 78p
Part 3	
D-11b	2014 Karl Maret MD RF metering 78p
D-12	Marino 2016 Direct exhibit 2 pulses 1p
D-13	Graph of Smart meter emissions 1p
D-14	Bazan v WPP modulation info Set 5 4-15-19 2p
D-15	Bazan v WPP zigbee Set 5 4-15-19 3p
D-16	1991 Rea EMF sensitivity 16p
D-17	2016 Belyaev EUROPAEM EMF Guidelines 35p
D-18	Martin Pall 2016 62 Reviews of non-thermal effects 5p
D-19	Marino 2016 Direct exhibit 3 17 effects at PD less than SMs 1p
D-20	Marino 2016 Direct exhibit 4 12 epidem studies PD less than SM 1p
Part 4	
D-21	2020 Belpomme and Irigaray EHS neurologic pathological disorder 20p
D-22	2011 Buchner GSM transmitters affect catecholamines 14p
D-23	2018 Eltiti EHS symptoms real vs sham 16p
D-24	2018 Eltiti graph 1p
D-25	2016 Wasserstein ASA Statement on p Values 6p
D-26	2019 Amrhein Nature Statistical Significance 3p

APPENDIX II
Preliminary List of Recent Scientific Articles Published
After our March 10, 2020 Hearing

Belpomme, D. and Irigaray, P. (2020) Electrohypersensitivity as a Newly Identified and Characterized Neurologic Pathological Disorder: How to Diagnose, Treat, and Prevent It *Int. J. Mol. Sci.* **2020** (21):191 (20 pp) – *Published March 11, 2020*

Bakiu, E., et. al. (2020) Placebo and nocebo effects: An introduction to the terms and their presence in oncology. *D J Med Sci* 2020;6(1):21-27 (7 pp)

Belpomme, D., et. al., (2021) The Critical Importance of Molecular Biomarkers and Imaging in the Study of Electrohypersensitivity. A Scientific Consensus International Report. *Int J Mol Sci* **2021** 22(14):7321 (19 pp)

Belpomme, D. and Irigaray, P. (2022) Why electrohypersensitivity and related symptoms are caused by non-ionizing man-made electromagnetic fields: An overview and medical assessment. *Env. Res.* **2022** (212):113374 (15 pp)

McCredden, J., et. al. (2022) Wireless technology is an environmental stressor requiring new understanding and approaches in health care. *Front. Public Health* 20 December 2022 Sec. Radiation and Health, Volume 10 – 2022 (14 pp)

APPENDIX III
Preliminary List of Expert Witnesses

Expert Witness 1: Juliana Mortenson, MD: A physician physicist, board certified anesthesiologist in Maryland and Ohio, who is expert in how energy interacts with biological organisms, particularly in resonance phenomenon and the field of spectral chemistry.

Expert Witness 2: Robert Brown, MD – Radiologist (Radiology Partners, Phoenix) and VP Scientific Research and Clinical Affairs for the Environmental Health Trust. Complainants did not know of Dr. Brown in 2020.

Legislator 1: (recently contacted and invited to testify but has not yet replied). Present during deliberation and passage of Act 129

Legislator 2: (recently contacted and invited to testify but has not yet replied). Present during deliberation and passage of Act 129

CERTIFICATE OF SERVICE

I certify that I have this day served a true copy of our **REPLY TO WPP'S ANSWER TO REQUEST TO REOPEN THE PROCEEDING FOR THE PURPOSE OF TAKING ADDITIONAL EVIDENCE** upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), by email, to the parties listed below.

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Docket No. C-2017-2640338