

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JESSICA JANOSEK,	)	
	)	C-2019-3010124
v.	)	
	)	
WEST PENN POWER COMPANY	)	
	)	

**EXCEPTIONS TO INITIAL DECISION**

Jessica Janosek provides the following exceptions to the Initial Decision, dated October 2, 2024 (“Initial Decision”), by Jeffrey A. Watson, Administrative Law Judge (“ALJ”), consistent with, and in an effort to comply with, the decision of the Supreme Court of Pennsylvania in *Povacz v. Pennsylvania Public Utility Commission*, 280 A.3d 975 (Pa. 2022):

1. During the proceeding before the ALJ, Ms. Janosek submitted testimony and medical documentation demonstrating she was suffering adverse health effects from radio frequency emissions associated with electric smart meter technology.

2. Ms. Janosek testified that, after installation of a smart meter on February 10, 2019, she started hearing an unbearable high-pitched ringing (Tinnitus), suffered migraines lasting for days, suffered unbearable heart palpitations, and felt very agitated and confused. Ms. Janosek submitted medical documentation of trips to Med Express on February 16, 2019, and February 22, 2019, supporting this testimony.

3. Ms. Jaonsek also saw doctors and received medical documentation that supported her testimony of adverse health effects. Dr. Matthew Oliverio, ENT, provided medical documentation dated March 2, 2019, finding Ms. Janosek “is reacting to smart meter frequency. If possible, modifications needed.” *See Exhibit A.*

4. Ms. Janosek also was seen by Donna Sheetz, PA-C, part of a medical neurology practice on November 28, 2023, who found Ms. Janosek “has chronic migraine headaches and tinnitus, which are aggravated by use of “smart” devices . . . [i]t would benefit Jessica, if she would continue to use [an analog meter], on her home.” See Exhibit B.

5. Although West Penn Power Company (“West Penn”) did not refute the evidence regarding Ms. Janosek’s adverse health effects, the ALJ rejected that evidence on the grounds “[a]ssertions, personal opinions or perceptions do not constitute factual evidence.” Initial Decision at 13-14. That finding is clearly erroneous because the testimony of a witness constitutes factual evidence under Pennsylvania law. See, e.g., *Romeo v. Pa. Pub. Util. Comm’n*, 154 A.3d 422, 430 (Pa. Commw. 2017) (complainant may prove a Section 1501 claim through personal testimony).

6. Similarly, medical documentation is also factual evidence. *Susan Kreider v. PECO Energy Co.*, P-2015-2495064, 2016 WL 406549, at \*14 (Pa. P.U.C. Jan. 28, 2016) (medical documentation can support a claimant’s burden of proof).

7. Based on the foregoing, Ms. Janosek requests the Secretary of the Commission remand this matter to the ALJ for further consideration of the evidence of her adverse health effects, and West Penn’s responsive medical evidence (if any).

8. Ms. Janosek is disabled, has limited financial resources, and undersigned counsel has agreed to represent her pro bono through Christian Legal Aid of Pittsburgh. Due to her limited financial resources, Ms. Janosek attempted to offer scientific and expert evidence demonstrating causation between radio frequency emissions associated with smart meter technology in the form of medical journals, such as the Naval Medical Journal, Journal of Chemical Neuroanatomy, and The Wireless Utility Meter Safety Impact Survey by Ed Halteman PHD of 2011, but the ALJ found this evidence was not admissible. Initial Decision, p. 11.

9. Ms. Janosek requests the Secretary of the Commission remand the case to the ALJ for consideration of such evidence and to allow Ms. Janosek a reasonably opportunity to locate pro bono expert testimony to satisfy her burden of proof under the *Povacz* decision.

10. The Supreme Court of Pennsylvania held in *Povacz* that its decision “does not preclude an electric utility from providing a reasonable accommodation to an electric customer in the absence of a Section 1501 violation pursuant to a customer service policy.” *Povacz*, at 983, n. 5.

11. During the ALJ proceedings, Ms. Janosek requested accommodation pursuant to certain statutes, including, without limitation, the Americans with Disability Act of 1996, the Architectural Barriers Act of 1968, the Rehabilitation Act of 1996, and others. The ALJ did not address Ms. Janosek’s request for accommodation in the Initial Decision. As such, Ms. Janosek requests the Secretary of the Commission remand this matter to the ALJ for further consideration of Ms. Janosek’s request for accommodation and permit discovery of West Penn’s customer service policies with respect to granting of reasonable accommodations.

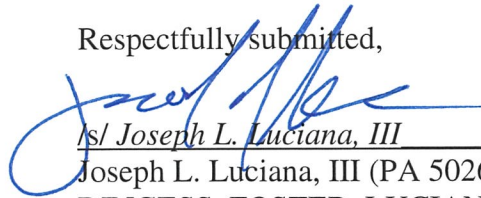
12. Due to her current financial situation, West Penn’s proposed accommodation in 2019 – having Ms. Janosek pay to relocated the smart meter outside her home – was cost prohibitive (more than \$11,000 at that time). Accordingly, Ms. Janosek requests the Secretary of the Commission remand this matter to the ALJ to address availability of financial aid for her request for accommodation and to permit discovery of West Penn’s customer service policies with respect to financial aid.

WHEREFORE, Ms. Janosek requests the Secretary of the Commission remand this matter to the ALJ for: (1) further consideration of the evidence of her adverse health effects, and West Penn’s responsive medical evidence (if any); (2) further consideration of causation evidence and

to allow Ms. Janosek a reasonably opportunity to locate pro bono expert testimony to satisfy her burden of proof under the *Povacz* decision; (3) further consideration of Ms. Janosek's request for accommodation and permit discovery of West Penn's customer service policies with respect to granting of reasonable accommodations; and (4) addressing availability of financial aid for her request for accommodation and to permit discovery of West Penn's customer service policies with respect to financial aid for disabled customers with limited financial resources.

Dated: October 22, 2024

Respectfully submitted,



/s/ Joseph L. Luciana, III

Joseph L. Luciana, III (PA 50268)

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# **EXHIBIT A**

OLIVERIO ENT, INC.  
MATTHEW A. OLIVERIO, M.D.

10 HIGHLAND PARK DR.

UNIONTOWN, PA 15401

NAME

Jessie Joseph

ADDRESS

DATE

3-29-19

AGE

REFILL

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make frequent. If possible

LABEL

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SUBSTITUTION PERMISSIBLE

IN ORDER FOR A BRAND NAME PRODUCT TO BE DISPENSED, THE PRESCRIBER MUST HAND-WRITE "BRAND NECESSARY" OR "BRAND MEDICINE NOT NECESSARY" IN THE SPACE BELOW.

M.D.

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# **EXHIBIT B**

EMKN: 30579  
Encounter Date: 11/28/2023

Patient: JESSICA JANOSEK  
Age/DOB: 41/Jun 03, 1982

**SOAP**

I am writing this letter regarding our patient, Jessica Janosek (DOB 06/03/1982). Jessica is followed by our neurology practice at Independence Health Systems. She has chronic migraine headaches and tinnitus, which are aggravated by use of "smart" devices. As a result, she has an analog meter on her home from the electric company. It would benefit Jessica, if she would continue to use this, instead of a smart meter, on her home.

Thank You,

Donna Sheetz, MPAS, PA-C.

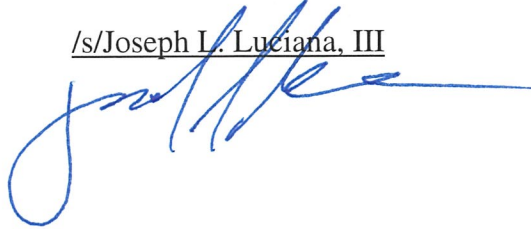
**Signatures**

Electronically signed by : Donna Sheetz, PA-C, Nov 28 2023 2:15PM Eastern Standard Time

CERTIFICATE OF SERVICE

The undersigned certifies that on the October 22, 2024, the foregoing Exceptions to Initial Decision were served in accordance with the instructions in the letter dated October 2, 2024 from the Pennsylvania Public Utility Commission transmitting the Initial Decision.

/s/Joseph L. Luciana, III

A handwritten signature in blue ink, appearing to read "Joseph L. Luciana, III", is written over the typed name. The signature is fluid and cursive, with a long horizontal stroke extending to the right.