

200 Brook Hollow Road
Mount Pleasant, PA 15666

January 9, 2025

VIA ELECTRONIC FILING

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

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

Dear Secretary Chiavetta,

Attached please find my **Petition to Re-Open the Proceeding for the Purpose of Taking Additional Evidence** in the above-referenced matter. This document has been served on FirstEnergy Pennsylvania Electric Company (West Penn Rate District) as shown in the Certificate of Service.

Please contact me if you have any questions.

Respectfully Submitted,



Michael T. Jennings, Complainant
724-613-4262
Lilmac2@zoominternet.net

ssj
Enclosures

CC: ALJ Gail M. Chiodo
West Penn Power, as per Certificate of Service
Watson & Renner, as per Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MICHAEL T. JENNINGS

v.

WEST PENN POWER COMPANY

:
:
:
:
:

Docket No. C-2018-3006031

PETITION TO RE-OPEN THE PROCEEDING
FOR THE PURPOSE OF TAKING ADDITIONAL EVIDENCE

To the Honorable ALJ Gail Chiodo:

- 1) Complainant respectfully files this petition to reopen the above proceeding for the purpose of submitting additional evidence as per 52 PA Code § 5.571 (a) which states, § 5.571. Reopening prior to a final decision.
(a) At any time after the record is closed but before a final decision is issued, a party may file a petition to reopen the proceeding for the purpose of taking additional evidence.

- 2) Complainant's reasons for submitting this additional evidence are as follows:
 - a) Respondent referenced fact and matters of law that were never introduced in the instant case proceedings until Respondent ***late filed*** its Reply Brief on November 18, 2024. Therefore, these matters of law ***have never been settled.***
 - b) The fact and matters of law in which Respondent introduced in its Reply Brief pp. 8-10 concerns the Mootness Doctrine, *Driscoll v. Zoning Bd. of Adjustment*, 201 A.3d 265, 269 (Pa. Cmwlth. 2018) (quoting *Clinkscale v. Dep't of Pub. Welfare*, 101 A.3d 137, 139 (Pa. Cmwlth. 2014)).
 - c) The Complainant never had the opportunity to respond to the Mootness Doctrine argument in relation to the instant case.
 - d) The Mootness Doctrine is not a novel argument since the PA Supreme Court's Stay of Proceedings dated November 4, 2020, as can be seen in the citation above (2018, 2014), and was not addressed before reply briefs were filed.

- 3) The information Complainant seeks to provide is relevant as per 225 Pa. Code § 401 which states:
225 Pa. Code § 401 – Test for Relevant Evidence
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.

- 4) The Complainant invokes *Haines v. Kerner*, 404 U.S. 520 (1971) in which the U.S. Supreme Court wrote “that people as themselves (that are pro se, as the Complainant in this instant case) are not same as professional attorneys, and should not be treated and judged as such. Nor should we be judged to the same standard.” As such, the Complainant is submitting this Petition to Re-Open the Proceeding as per 52 PA Code § 5.571 to the best of his understanding of the law and request Your Honor to please notify him if you require any additional information or clarification from him in this matter.

Thank you for your consideration. Please see the Complainant’s additional evidence which follows.

Respectfully Submitted,



Complainant

Dated: January 9, 2025

Ssj

Cc: Rosemary Chiavetta, Esq. Public Utility Commission
As Per Certificate of Service

THE INSTANT COMPLAINT IS NOT MOOT

1. In his November 15, 2024 Reply Brief of FirstEnergy Pennsylvania Electric Company (West Penn Rate District) Mr. Meehan asserts, in IV.A.1 that the Complainant's Instant Complaint is Moot. As a matter of fact and a matter of law, the Complainant's case is **NOT** moot.

2. There are limited exceptions to the mootness doctrine and the instant complaint meets three prongs: "*Although we generally will not decide moot cases, exceptions are made when (1) the conduct complained of is capable of repetition yet evading review, or (2) involves questions important to the public interest, or (3) will cause one party to suffer some detriment without the Court's decision.*" *Clinkscale* , [101 A.3d at 139](#) (quoting *Phila. Pub. Sch. Notebook v. Sch. Dist. of Phila.* , [49 A.3d 445, 448-49](#) (Pa. Cmwlth. 2012)).

3. First, the conduct Complainant has complained about is most definitely capable of repetition if a "smart" meter is deployed on complainant's current home/property. There is a threat and strong possibility of exacerbating his son's epilepsy, yet again, to the point of status epilepticus, which could be his demise, should a "smart" meter be deployed as it was in March 2017 on Complainant's former home. The Complainant's son had an atypical 115 seizures in one night and 109 the next in the hospital after the deployment. The Complainant can **NOT** have this travesty repeated.

4. Second, the instant case most definitely involves questions important to the public interest. Thousands of customers have complained about "smart" meters, hundreds have pursued legal recourse to prevent or remove "smart" meter deployments, and the Complainant represents the public and already had a life-threatening experience after a "smart" meter deployment. In FirstEnergy's 2018 Annual Progress Report Smart Meter Technology Procurement and Installation Plan (For the Twelve-Months Ended June 30, 2018) <https://www.puc.pa.gov/pcdocs/1579284.pdf>, they state on page 2, "...there have been approximately 5400 disputed installations since project inception. Thus far, more than 5,000 disputes have been positively resolved in favor of smart meter installation." When they state that the disputes "have been positively resolved in favor of smart meter installation," that means that the PA PUC ruled against the complainants and the **disputes were positively resolved in favor of the utilities, not the complainants.**¹ To date, not one complainant has won their formal complaint, even with paid, credible expert witnesses. This highlights the need for a legal remedy. This issue is definitely and undeniably in the public interest.

5. Third, the Complainant and his family are the parties that **will "suffer some detriment"** without the Commission's decision to grant an ADA accommodation. More to the point, this detriment is **substantial**. This relief is warranted because if a "smart" meter is allowed to be deployed on Complainant's current home, his son could experience life threatening exacerbation of his epilepsy disability, just as occurred earlier in 2017, discussed above.

¹ When the PA PUC lifted the stay in November of 2023, there were approximately 107 active Formal Complaints against the deployment of "smart" meters. The earliest went back to 2009 and the latest to 2023, the year the stay was lifted. How many more complaints have been filed since then?

Deployment of another “smart” meter on Complainant’s current home/property would be detrimental in the instant complaint. The termination of electrical service also constitutes a detriment for a family with disabilities.

6. Further evidence of Respondent’s mootness is found in its Reply Brief at pp. 15-16, as the Respondent corroborates exactly what the Complainant has declared throughout his Complaint:

“(2) Electric distribution companies shall furnish Smart Meter technology as follows:

- (i) *Upon request from a customer that agrees to pay the cost of the Smart Meter at the time of the request.”² [Emphasis added.]*

It is crystal clear from the plain language of the text that a request and an agreement to pay the cost for a “smart” meter is required **before** a “smart” meter can be deployed, as the Respondent so aptly highlighted in its Reply Brief.

7. From day one, the Complainant has stated he did **NOT** request a “smart” meter as he did not want to change his contract with WPP nor did he ever agree to pay for a “smart” meter. The Respondent’s discussion referencing 66 Pa.C.S. § 2807(f)(2)(i) (Respondent’s Reply Brief p. 16, paragraph one) was vague, irrelevant to the citing of § 2807(f)(2)(i), and devoid of proof of the Complainant’s request for said “smart” meter because the Complainant never requested one, nor did he ever agree to pay for one.

8. The Respondent wholly failed to present any evidence at all that the Complainant requested a “smart” meter and agreed to pay the cost of said “smart” meter at the time of request. Where is the signed documentation from the Complainant requesting said meter? Where is the signed documentation from the Complainant agreeing to pay for said meter?

9. Undoubtedly the Respondent did not establish evidence that Complainant made a request for a “smart” meter due to the fact that the Complainant has fervently asked for an ADA accommodation for six years. A request for an ADA accommodation and six years of fighting a deployment does not equate to a request for a “smart” meter, nor is it an agreement to pay for one.

10. Mr. Meehan avers at p. 16 of his Reply Brief that *“Throughout the Complaint – and through the Evidentiary Hearing and in his Main Brief - the Complainant alleges various vague health and safety concerns related to smart meters but failed to provide any reliable evidence in support of these allegations at the Evidentiary Hearing.”* Mr. Meehan is correct on one point, there is no evidence in the record; **however, Mr. Meehan obfuscates the truth of the matter.**

² WPP Reply Brief, p. 16.

11. In the first place, the Complainant is not alleging various vague health and safety concerns, but speaks of actual harm his son endured because of the deployment of a “smart” meter on his former home which exacerbated his epilepsy to the point of status epilepticus. There is more than a mere trace of evidence or a suspicion as he had 115 seizures in one day and 109 the next day in the hospital.

12. Secondly, the Complainant is not relying solely upon his own assertions to establish his family’s disabilities. The Complainant provided letters from licensed physicians and others which corroborate the disabilities. These 12 letters, all but 2 of the Complainant’s exhibits, Dr. Semelka’s testimony and appearance at the hearing were **wrongfully expunged in prejudicial actions during the Complainant’s hearing on July 24, 2020**. Expunging and ignoring the explicit medical directives from licensed medical doctors is unreasonable. It is also unreasonable to prevent the Complainant from fairly arguing his case through prejudicial actions. Please see Complainant’s Reply Brief, Attachment RB-1, Attachment RB-2, Attachment RB-3, and Attachment RB-4, which contains the aforementioned letters from doctors, the Social Security Administration, and much more.

13. And most importantly, the issue that “...the Complainant has failed to sustain his burden of proof...” is a **moot point** with the PA Supreme Court decision. The PA Supreme Court’s decision states “*This holding 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,*”³ regardless of proof of harm. Even in the absence of a Section 1501 violation, WPP is not precluded from providing the Complainant a reasonable accommodation pursuant to a customer service policy. The PA Supreme Court has decided to protect people with disabilities, regardless of proof of harm.

14. WPP and the PA PUC must comply and obey the PA Supreme Court decision, and as such, federal intervention is not required. Therefore, the PA PUC is quite able to provide an ADA accommodation in the instant case. A customer service policy is the second method by which WPP should accommodate the Complainant and his family, although the Complainant maintains that a customer service policy is actually not needed for an ADA accommodation.

For all of the reasons discussed above, the Complainant has shown that the Respondent’s stance is moot and the Complainant’s instant complaint is NOT moot. In view of Respondent’s mootness, and the Respondent’s failure to establish that the Complainant requested a “smart” meter, the Respondent should be denied and dismissed with prejudice.

³ PA Supreme Court Dockets Povacz, M v. PUC, No. 34-45 MAP 2001, p. 7, footnote 5.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MICHAEL T. JENNINGS,
Complainant

v.

WEST PENN POWER COMPANY
Defendant

:
:
:
:
:
:
:

Docket No. C-2018-3006031

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the **Petition to Re-Open the Proceeding for the Purpose of Taking Additional Evidence** upon the individuals listed below, in accordance with the requirement of 52 Pa. Code § 1.54 (relating to service by a participant.)

Service by e-filing and e-mail:

Administrative Law Judge Gail Chiodo
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120
gchiodo@pa.gov

Lauren M. Lepkoski Esquire
Tori Giesler Esquire
James Meehan Esquire*
FirstEnergy Services Company
2800 Pottsville Pike, PO Box 16001
Reading, PA 19612-6001
llepkoski@firstenergycorp.com
tgiesler@firstenergycorp.com
jameehan@firstenergycorp.com

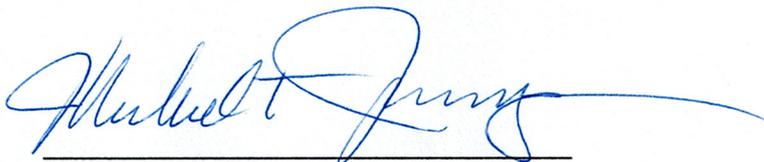
Accepts eService

**Served via email and first-class mail*

Curtis S. Renner
Watson & Renner
1901 Pennsylvania Ave. NW
Suite 1005-ENS
Washington, DC 20006
crenner@w-r.com
Accepts eService

Daniel A. Garcia
FirstEnergy
800 Cabin Hill Drive
Greensburg, PA 15601
dagarcia@firstenergycorp.com
Accepts eService

Dated: January 9, 2025



Michael T. Jennings, Complainant
200 Brook Hollow Road, Mount Pleasant, PA 15666
724-613-4262 Lilmac2@zoominternet.net