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December 3, 2015

**VIA UPS OVERNIGHT DELIVERY**

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

Re: Sarah Bernardi v. West Penn Power Company  
Docket No. C-2014-2453852

Dear Secretary Chiavetta:

On behalf of West Penn Power Company, I have enclosed for filing the Reply of West Penn Power Company to the Exceptions of Sarah Bernardi in the above-captioned matter.

Copies have been served on all parties as indicated in the attached Certificate of Service.

Very truly yours,



Brian C. Wauhop

BCW/tlg

Enclosure

cc: Certificate of Service

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DEC - 3 2015

PA PUBLIC UTILITY COMMISSION  
SECRETARY'S BUREAU

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**SARAH BERNARDI** :  
 :  
 v. : **Docket No. C-2014-2453852**  
 :  
**WEST PENN POWER COMPANY** :

**REPLY OF WEST PENN POWER COMPANY  
TO THE EXCEPTIONS OF SARAH BERNARDI**

**I. INTRODUCTION**

AND NOW, West Penn Power Company (“West Penn” or the “Company”), by and through its counsel, Brian C. Wauhop and Buchanan Ingersoll & Rooney PC, files this Reply to the Exceptions of Sarah Bernardi (“Complainant”) in response to the Initial Decision issued in this matter on November 3, 2015.

The Pennsylvania Public Utility Commission (“Commission”) should deny the Complainant’s Exceptions and affirm the Initial Decision. The Exceptions ask the Commission to evaluate and enforce environmental regulations which are not within the Commission’s jurisdiction. The Company agrees with the ultimate findings reached in the Initial Decision sustaining the Company’s plan to manually cut the vegetation and treat the remaining stumps with herbicide on the Complainant’s property and that the limitations imposed on the Company are constrained to the Complainant’s property only.<sup>1</sup>

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<sup>1</sup> Initial Decision p. 44, ordering Paragraphs 1, 2, 3 and 4. The Company certainly intended no disrespect in conveying its opposition to the Complainant’s attempts to introduce materials in this case upon which the Commission could not base findings or conclusions. Its strong opposition was based on the extraordinary circumstances presented in this complaint proceeding: the Complainant’s testimony and evidence were designed to prove alleged violations of regulations and laws administered by the Pennsylvania Department of Environmental Protection (“DEP”). When coupled with the Complainant’s unfamiliarity with the formal hearing process (e.g., interjecting legal argument in her fact presentation and introducing new testimony while cross-examining Company witnesses), the Company was placed into the unusual situation of defending what it considered to be a record containing material that could not form the basis of lawful findings and conclusions.

## II. BACKGROUND AND PROCEDURAL HISTORY

On October 16, 2014, the Complainant filed a Formal Complaint with Commission asking the Commission to prohibit the Company from applying herbicide to control vegetation growing in a transmission corridor that crosses the back of her property located at 1022 Dahlia Lane, Jeannette, Pennsylvania 15644. Among other things, the Complainant alleged that herbicides are not safe when ingested at levels that exceed United States Environmental Protection Agency (“EPA”) levels.

On or about November 19, 2014, the Complaint was served upon the Company via electronic mail.

On December 9, 2014, West Penn filed an Answer admitting in part and denying in part the material allegations set forth in the Complaint.

An evidentiary hearing was held in this matter on June 3, 2015 before Administrative Law Judge Susan D. Colwell (“ALJ”). The Complainant appeared *pro se*.

On June 4, 2015, the ALJ issued a Briefing Order scheduling deadlines for Main Briefs and Replies to Main Briefs. The Complainant filed a main brief and no reply brief; the Company filed a main brief and reply brief.

On November 3, 2015, the Company was served with the Initial Decision which granted the Complaint in part and denied the Complaint in part.

On November 16, 2015, the Complainant filed Exceptions to the Initial Decision.

In accordance with Section 5.535 of the Commission regulations, 52 Pa. Code § 5.535, West Penn submits the following Reply to the Complainant’s Exceptions.

### III. REPLY TO EXCEPTIONS

As the ALJ correctly pointed out in the Initial Decision, the Complainant has the burden of proof to establish that the public utility violated the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission.<sup>2</sup> The transcript and briefs show that the bulk of the Complainant's Formal Complaint, the evidence presented at hearing, and now the Exceptions are based solely on claims relating to environmental issues that fall within the jurisdiction of the DEP. The Company agrees with the ALJ's ruling that the Commission cannot enforce the regulations of another state agency.<sup>3</sup> The Exceptions do not establish any basis for changing the ALJ's proper conclusions regarding the Commission's jurisdiction; in fact, the second sentence of the Exceptions shows that the Complainant herself understands this is true: "[the ALJ] does not have the authority to rule on Pennsylvania State Environmental Laws."<sup>4</sup>

Therefore, the Complainant's Exceptions do not provide any basis to alter the Initial Decision. The Complainant's Exceptions are requests for determinations and relief that are beyond the Commission's jurisdiction to provide.

In addition, the Company acknowledges that the Initial Decision applies only to the right-of-way that crosses the Complainant's property.<sup>5</sup> As the Initial Decision properly recognized, the vegetation maintenance plan at issue in this case (i) included the use of EPA-approved herbicides in accordance with their labels;<sup>6</sup> and (ii) did not include application of herbicide to the water.<sup>7</sup> The Initial Decision also approved of the "hand cut and stump treat" maintenance method, which is the method the Company desires to use as the Best Management Practice to

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<sup>2</sup> Initial Decision, p 10-11; Conclusions of Law 1-4, 6.

<sup>3</sup> Initial Decision, p. 23, 24.

<sup>4</sup> Exceptions, first page, second sentence.

<sup>5</sup> Initial Decision, Ordering Paragraphs 3, 4.

<sup>6</sup> Initial Decision, Finding of Fact No. 62; *see also* N.T. 131-132:1-15, 186:7-13; West Penn Exhibits 1, 2, 3; Compl. Exhibit 13.

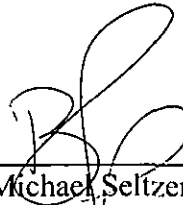
<sup>7</sup> Initial Decision, Finding of Fact No. 63; *see also* N.T. 156:13-14, 157:21-22.

maintain the right-of-way on the Bernardi property.<sup>8</sup> As a result, the Company understands and accepts that the Initial Decision's limitation on the use of "foliar" herbicide applies only to the circumstances of this particular case for this customer. Where "foliar" applications are appropriate and the Best Management Practice for the Company to maintain safe, efficient and reliable service, the Company retains the opportunity to safely employ that method in the future.

**IV. CONCLUSION**

For the reasons set forth above, West Penn respectfully requests that the Commission (i) reject the Exceptions and (ii) affirm the November 3, 2015 Initial Decision in this proceeding.

Respectfully submitted,



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Alan Michael Seltzer  
Brian C. Wauhop  
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(717) 237-4975

Date: December 3, 2015

Attorneys for  
West Penn Power Company

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<sup>8</sup> Initial Decision p. 44, Ordering Paragraph 2.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**SARAH BERNARDI**

v.

**WEST PENN POWER COMPANY**

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**Docket No. C-2014-2453852**

**CERTIFICATE OF SERVICE**

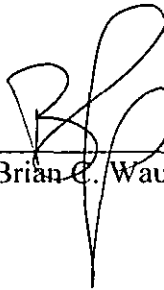
I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

**Via Email and First-Class Mail**

Administrative Law Judge Susan D. Colwell  
Office of Administrative Law Judge  
Pennsylvania Public Utility Commission  
400 North Street – 2<sup>nd</sup> Floor  
Harrisburg, PA 17120  
scolwell@pa.gov

Sarah Bernardi  
1022 Dahlia Lane  
Jeanette, PA 15644  
araslyn@msn.com

Dated this 3<sup>th</sup> day of December, 2015.



\_\_\_\_\_  
Brian C. Wauhop, Esq.

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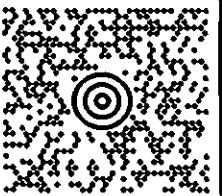

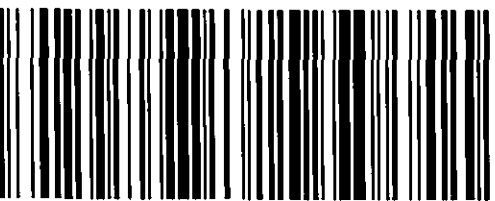

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