

December 23, 2015

Via Electronic Filing

Rosemary Chiavetta, Esquire
Secretary
PA Public Utility Commission
Commonwealth Keystone Building, 2 North
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Docket No. C-2015-2493095
Matthew and Tracie Kolar v. West Penn Power Company
Reply Exceptions of West Penn**

Dear Secretary Chiavetta:

Enclosed for filing is the Reply Exceptions on behalf of West Penn Power Company to the Exceptions of Matthew and Tracie Kolar (Complainants) to the Initial Decision of ALJ Steven K. Haas in the above-captioned matter.

A copy of the Reply Exceptions has been provided to the Complainants in the manner indicated on the attached Certificate of Service.

If there are any questions, please do not hesitate to contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

MAM/jmm

cc: The Hon. Steven K. Haas, PA Public Utility Commission
Cheryl Walker-Davis, OSA, PA Public Utility Commission
John L. Munsch, Esquire, FirstEnergy Service Company
Matthew and Tracie Kolar

**Re: Docket No. C-2015-2493095
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Reply Exceptions of West Penn**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following persons on the attached service list, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

Via Electronic and First Class Mail

Matthew Kolar
Tracie Kolar
854 Cleveland Avenue
Brackenridge, PA 15014
traciekolar@gmail.com

Dated: December 23, 2015


Margaret A. Morris, Esquire

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

MATTHEW AND TRACIE KOLAR :
 :
 v. : Docket No. C-2015-2493095
 :
 WEST PENN POWER COMPANY :

**REPLY EXCEPTIONS
OF WEST PENN POWER COMPANY
TO COMPLAINANTS' EXCEPTIONS**

Margaret A. Morris, Esq.
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Dated: December 23, 2015

Counsel for West Penn Power Company

Introduction

In accordance with the Commission's directive and Section 5.535 of the Commission's Regulation, 52 Pa. Code § 5.535, West Penn Power Company (West Penn or the Company) submits its Reply to the Exceptions of Matthew and Tracie Kolar (Complainants) which support the adoption of the Initial Decision (ID) of Administrative Law Judge Steven K. Haas (Judge Haas). The Commission should deny the Exceptions, affirm the ID in its entirety and sustain the dismissal of the Formal Complaint. The findings of facts and conclusions of law set forth in the well-reasoned ID are based on the record evidence and sustain the dismissal of the Complaint.

Relevant History of Proceedings

In their Formal Complaint filed on July 16, 2015, the Complainants alleged West Penn was threatening to shut off their service and requested a Commission payment arrangement (PAR). On April 5, 2015, West Penn filed an Answer and New Matter denying the material averments. In its New Matter, West Penn alleged that the Commission lacked authority under the Code¹ to direct a PAR since the entire outstanding balance was incurred while the account was enrolled in the Company's low-income program, known as the Low Income Payment and Usage Reduction Program (LIPURP).

Judge Haas presided over the scheduled telephonic hearing on September 22, 2015. Tracie Kolar appeared *pro se*, offered her testimony and sponsored

¹ 66 Pa.C.S. §1405(c).

no exhibits. West Penn offered the testimony of one witness and sponsored five exhibits. All exhibits were admitted into the record.

Initial Decision

The ID was issued on November 24, 2015 and dismissed the Complaint concluding that the Complainants failed to meet their burden of proof that they are entitled to a Commission-directed PAR. Judge Haas ruled that the Commission does not have authority to order a PAR that consists entirely of LIPURP arrears. 66 Pa.C.S. § 1405(c). He did not direct the requested PAR since the record evidence showed all arrears were incurred while the account was enrolled in LIPURP.

In his dismissal of the Complaint, Judge Haas specifically stated:

Company witness Tammy Taylor testified that the Complainants are enrolled in Respondent's CAP, known as LIPURP, and that all of the arrearages on the account are LIPURP arrearages. Tr. 22. The Complainants did not contradict or otherwise challenge this testimony. Therefore, the record evidence is clear and undisputed that the entire unpaid balance on the Complainants' account is composed of LIPURP charges. Accordingly, Complainants are not eligible for a Commission-ordered payment arrangement, which is their sole request for relief. Since the Commission lacks the authority to establish a payment arrangement for the Complainants' outstanding balance, the complaint must be dismissed.

ID at 6.

Discussion

The Commission should sustain the decision of Judge Haas. The Complainants do not allege Judge Haas made an error of law or abused his discretion in

any manner. The Complainants' Exceptions do not dispute Judge Haas's findings and analysis that they are not entitled to a Commission-directed PAR; they simply disagree with the decision. The Complainants appear to present additional argument/evidence not raised at hearing but submitted for the first time during the exceptions stage of the proceedings.

The Complainants' Exceptions violate Section 5.533(b) of the Commission's regulations² that requires each exception to be numbered, to identify the finding of fact or conclusion of law to which exception is taken, to cite to relevant pages of the ID and to provide supporting reasons for the exceptions following each specific exception. While the Company recognizes that the Commission has been hesitant to rule unfavorably against *pro se* litigants like the Complainants based on technical grounds, in this case a substantial part of the Exceptions should be summarily rejected because the Complainants' attempt to further litigate this matter by simply disagreeing with the outcome of the ID without identifying any specific error or law or abuse of discretion fails to satisfy the requirements, is procedurally improper and should be dismissed summarily.

As Judge Haas recognized in his well-reasoned ID, the Complainants have not met their burden of proving that they are entitled to a Commission-directed PAR. The Complainants did not refute the record evidence that the delinquent arrears were incurred while the account was enrolled in LIPURP. Rather, the Exceptions consist solely of unsupported assertions.

² 52 Pa. Code § 5.533(b).

The Complainants' assertions and/or personal opinions do not constitute evidence. Even a *pro se* complainant must provide relevant and necessary information.³ No matter how strongly held, personal opinion does not constitute evidence. *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

The Complainants argue they were provided "misleading information." They specifically allege that they were never told that participation in LIPURP would prohibit a Commission-directed PAR. The record evidence does not support this statement. The Complainants' Informal Complaint requesting a Commission-directed PAR was dismissed specifically stating that the request was barred by Section 1405(c).⁴ Respondent Exhibit 5.

The Complainants allege they were never advised that lump sum payment would be billed. Again, the record evidence does not support this allegation. Company witness, Tammy Taylor, testified that she personally explained to Tracie Kolar that there were two options that would prevent the lawful termination of service: (1) either re-enroll in LIPURP with an upfront payment for the missed LIPURP payments; or (2) enter into a 60-month Company PAR for the entire outstanding balance. The record evidence reflects the Complainants chose the 60-month Company PAR that eliminated the required upfront payment; Tracie Kolar specifically understood the Company PAR would result in higher monthly terms. Respondent Exhibit 3, page 5. Tracie Kohler chose not to cross-examine

³ *Groch v. Unemployment Comp. Bd. of Review*, 472 A.2d 286 (Pa. Cmwlth. 1984); *Vann v. Unemployment Comp. Bd. of Review*, 494 A.2d 1081 (Pa. 1985).

⁴ BCS Decision No. 3287919 was closed on May 27, 2015.

witness Taylor and is barred from raising new arguments at the exceptions stage of the proceedings.

While the Company recognizes that the Commission has been hesitant to rule unfavorably against *pro se* litigants like the Complainants based on technical grounds, this Exception is based entirely on non-record evidence.

As the Commission has previously recognized, a *pro se* litigant is not absolved of complying with procedural rules.⁵ In *Blauhut v. PECO Energy Co.*,⁶ the Commission recognized that a *pro se* litigant whose exceptions were based on non-record evidence and additional argument were not a basis for exceptions under Section 5.533 of the Commission's regulations and could not be considered. The same result should occur here; the Complainants' Exceptions alleging issues/arguments for the first time should not be considered by the Commission.

The record evidence supports Judge Haas's analysis and disposition of the Complainant's request for a Commission-directed PAR. The Complainants' Exceptions should be denied.

Conclusion

The Exceptions, repeating positions that Judge Haas soundly rejected based on the record evidence or raising: (1) issues for the first time; or (2) irrelevant

⁵ *Tremayne Shanault Lewis v. PECO Energy Co.*, Docket No. C-2010-2189187 (Order entered May 4, 2011).

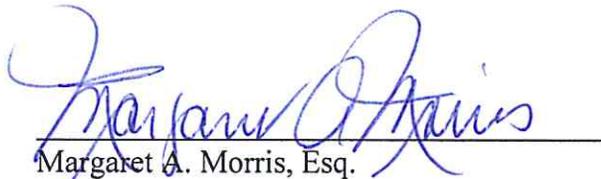
⁶ *Adolf H. Blauhut v. PECO Energy Co.*, Docket No. C-2009-2087552 (Order entered January 29, 2010).

points, are without merit. The substantial record evidence shows that the Complainants failed to carry their burden of proof that they are entitled to a Commission-directed PAR for the delinquent arrears. The findings of facts and conclusions of law set forth in the ID are based on substantial record evidence.

For the reasons set forth above, West Penn Power Company respectfully requests that the Commission adopt the Initial Decision of the Honorable Steven K. Haas without modification and dismiss the Formal Complaint of Matthew and Tracie Kolar.

Respectfully submitted,

Dated: December 23, 2015



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