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February 8, 2018

VIA ELECTRONIC FILING


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

**Re: Reply to Exception;
Jerry Reed v. West Penn Power Company;
Complaint Docket No. C-2017-2616261**

Dear Secretary Chiavetta:

Enclosed is the **Reply to Exception** of West Penn Power Company to the Exception of Complainant filed at the above-captioned docket. A certificate of service attached, showing service of the Reply to Exception upon the Complainant. This Reply to Exception is filed electronically and is deemed filed today.

Very truly yours,


John L. Munsch
Attorney

JLM:slm

Enclosures

cc: Certificate of Service
Office of Special Assistants: *ra-OSA@pa.gov*.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JERRY REED	:	
Complainant	:	
	:	
v.	:	Complaint Docket No. C-2017-2616261
	:	
WEST PENN POWER COMPANY	:	
Respondent	:	

WEST PENN POWER COMPANY REPLY TO EXCEPTION

West Penn Power Company (hereinafter “West Penn” or “Company”) provides a Reply to the Exception filed by Complainant, Jerry Reed (“Complainant”), to the Initial Decision of Administrative Law Judge David A. Salapa. West Penn’s Reply to Exception is submitted pursuant to Section 5.535 of the Commission’s regulations, 52 Pa. Code §5.535, relating to Reply Exceptions.

1. Background

On July 17, 2017, the Complainant filed a Complaint with the Pennsylvania Public Utility Commission (“Commission”) against West Penn alleging that there were incorrect charges on his electric bills and requesting an additional payment arrangement with a lower payment. West Penn filed an Answer on August 14, 2017, denying the factual allegations of the Complaint and requesting that the Complaint be denied.

A telephonic hearing was held November 28, 2017, before Administrative Law Judge David A. Salapa. The Complainant appeared and testified pro se. West Penn presented the testimony of one witness, Tammy J. Taylor, a senior customer service compliance specialist with the Company.

At the time of the hearing the Complainant's account balance owed to West Penn was \$7,283.56. In the two-year period prior to the hearing the Complainant made three payments to West Penn totaling \$877.11. N. T. Ex. 1.

The Administrative Law Judge issued an Initial Decision denying the Complaint. The Initial Decision was served on the Complainant and on West Penn under a Commission Secretarial Letter dated January 5, 2018. The Secretarial Letter explained that parties had 20 days from January 5, 2018, to file Exceptions to the Initial Decision pursuant to Section 5.533 of the Commission's regulations. The Secretarial Letter also stated that the parties should serve each other with any Exceptions filed.

By letter dated January 29, 2018, the Commission issued a Secretarial Letter to West Penn advising that on January 29, 2018, the Commission received an Exception from the Complainant. The Secretarial Letter advised that, because the Complainant did not serve the Exception upon West Penn, West Penn should file Reply Exceptions if any by February 8, 2018.

2. Complainant's Exception

The Complainant's Exception consists of one sentence. The Complainant states: "I would like to file an exception to case number C-2017-2616261 Due to unforeseen circumstances and change in income."

3. West Penn's Reply to Exception

West Penn notes that the Exception of Complainant is not in compliance with Section 5.533(b) of the Commission's Rules of Administrative Practice and Procedure, 52 Pa. Code § 5.533(b), which provides:

(b) An exception shall be stated in specific, numbered paragraphs, identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision. Supporting reasons for the exception shall follow a specific exception.

The Complainant's one-sentence Exception offers no explanation or background for the assertion that there are unforeseen circumstances or a change in income to support the Exception. The Exception is not clear if the Complainant takes issue with the Initial Decision's extensive analysis of the Complainant's situation concerning "change in income" and "significant change in circumstances" or, on the other hand, the Complainant is presenting evidence of events after the record has closed. To the extent the Exception is an attempt to present new evidence after the close of the record, the Commission should decline to consider it for lack of good cause shown pursuant to 52 Pa. Code § 5.431(b). See Lewis v. Peoples Natural Gas Company, (Docket No. C-2016-2552262, Opinion and Order entered October 5, 2017).

Most importantly, however, the Initial Decision is amply supported by substantial evidence in the record. The Initial Decision explains that the Public Utility Code provides that the Commission may not order a utility to enter into a second or subsequent payment arrangement with a customer once the customer has defaulted on a payment arrangement and, further, that the Commission may not extend a defaulted payment arrangement.

The prohibition of a second or subsequent payment arrangement is contained in Section 1405(d) of the Public Utility Code, 66 Pa. C. S. §1405(d). Section 1405(d) contains an exception to the prohibition against second or subsequent payment arrangements. That exception occurs when the customer establishes that there has been a "change in income" as that term is defined in Section 1403 of the Public Utility Code.

Similarly, under Section 1405(e) of the Public Utility Code, the Commission may not extend a payment agreement that the customer has defaulted upon. Section 1405(e) also contains an exception when the customer has suffered a “significant change in circumstance” as that term is defined in Section 1403 of the Public Utility Code.

In the Initial Decision the ALJ discussed in detail, and with reference to the transcript of the proceeding, that the Complainant had not presented evidence of a “change in income” nor evidence of a “significant change in circumstances” as those terms are defined in Section 1403. The Administrative Law Judge recognized that the Complainant’s household income had recently decreased, but that the decrease did not amount to a “change in income” as defined in Section 1403. In that regard, West Penn reiterates Findings of Fact Nos. 43 through 51 presented by the ALJ on pages six to seven of the Initial Decision. There the ALJ specifically found as follows, making specific reference to the record of the proceeding:

43. The Complainant is unemployed and earns no income and receives no benefits of any kind. N.T. 12.
44. The Complainant’s wife works as an LPN and earns \$37,500.00 per year or \$3,125.00 per month. N.T.12.
45. The Complainant’s two children, ages 16 and 21 reside with the Complainant and his wife. N.T.8.
46. The 21 year-old is a full time student and does not work. N.T.12.
47. The Complainant’s household income has remained relatively stable during the last three years. N.T.14.
48. At the time of the BCS decision dated May 17, 2017 at Case No. 3514319 the Complainant’s household income was approximately \$3,400.00 per month. Ex. 3.
49. The Complainant’s household income since the BCS decision dated BCS decision dated May 17, 2017 at Case No. 3514319 has suffered a decrease. N.T.12, Ex. 3.

50. The decrease in the Complainant's household income is not a ten per cent decrease ($\$3,400.00 \times 10\% = 340.00$) ($\$3,400.00 - \$340.00 = \3060.00). N.T. 12, Ex 3.
51. The Complainant's household had not suffered a catastrophic illness, damage to or loss of the residence or an increase in the number of dependents. N.T. 14-15.

The Administrative Law Judge then discussed his findings in relation to the Public Utility Code's definitions of "change in income" and "significant change in circumstances." The analysis correctly concluded that the Complainant did not suffer a "change in income" nor a "significant change in circumstance" as defined in the Public Utility Code. The Initial Decision's discussion on Page Nos. 15 through 17 of the Initial Decision is presented as follows:

According to 66 Pa.C.S. § 1405(d), the Complainant would be entitled to another payment arrangement only if she had suffered a change in income. The statute at 66 Pa.C.S § 1403 defines a "Change in Income" as follows:

A decrease in household income of 20% or more if the customer's Household income level exceeds 200% of the federal poverty level or a decrease in household income of 10% or more if the customer's household income level is 200% or less of the federal poverty level.

Here, the Complainant testified that he is unemployed and earns no income and receives no benefits of any kind. N.T. 12. The Complainant testified his wife works as an LPN and earns \$37,500.00 per year or \$3,125.00 per month. N.T.12. The Complainant testified that their two children, ages 16 and 21 reside with the Complainant and his wife. N.T.8. The 21-year-old is a full-time student and does not work. N.T.12.

The Complainant testified that the family's income has remained relatively stable during the last three years. N.T. 14. The BCS decision dated BCS decision dated May 17, 2017 at Case No. 3514319 indicates that at the time of that decision the Complainant's household income was approximately \$3,400.00 per month. Ex. 3. While the Complainant has suffered a decrease in his household

income since the BCS decision dated BCS decision dated May 17, 2017 at Case No. 3514319, it is not a ten per cent decrease ($\$3,400.00 \times 10\% = 340.00$) ($\$3,400.00 - \$340.00 = \3060.00) Since the Complainant's household has not suffered a 10% decrease in income, as required by 66 Pa.C.S §1405(d), the Commission cannot order a second payment arrangement, pursuant to 66 Pa.C.S. §1405(d).

While I cannot order a second payment arrangement for the Complainant, the Responsible Utility Customer Protection Act provides that the Commission may reinstate a previously ordered payment arrangement in limited circumstances where the customer has defaulted on that payment arrangement. The statute at 66 Pa.C.S. §1405(e) states as follows:

(e) Extension of payment arrangements. If the customer defaults on a payment arrangement established under subsections (a) and (b) as a result of a significant change in circumstance, the commission may reinstate the payment arrangement and extend the remaining term for an initial period of six months for good cause shown.

The statute at 66 Pa.C.S. §1403 defines "significant change in circumstance" as follows:

"Significant change in circumstance." Any of the following criteria when verified by the public utility and experienced by customers with household income less than 300% of the Federal poverty level:

- (1) The onset of a chronic or acute illness resulting in a significant loss in the customer's household income.
- (2) Catastrophic damage to the customer's residence resulting in a significant net cost to the customer's household.
- (3) Loss of the customer's residence.
- (4) Increase in the customer's number of dependents in the household.

The Complainant testified that his household had not suffered a catastrophic illness, damage to or loss of the residence or an increase in the number of dependents. N.T. 14-15. Therefore, the Commission may not reinstate the BCS payment arrangement dated May 17, 2017 at Case No. 3514319.

The Exception of the Complainant is not meritorious and should be denied. West Penn respectfully submits that the Initial Decision fully, fairly and adequately explained why the Complainant is not entitled to a second or subsequent payment arrangement, nor an extension of previous payment arrangement, under the exceptions for a change in income or significant change in circumstances. As the Complainant did not fulfill his burden of proof of establishing an exception to the statutory prohibition against second or subsequent payment arrangement, nor establishing an exception to the statutory prohibition against an extension of payment arrangements, the Complainant's Exception should be denied.

Respectfully submitted,

Date: February 8, 2018

By:



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Attorney WEST PENN POWER COMPANY

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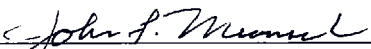
CERTIFICATE OF SERVICE

I hereby certify that I have this day served by first-class mail, postage prepaid, the foregoing
Reply to Exception addressed as follows:

ALJ David A. Salapa
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Jerry Reed
400 Moween Road
Saltsburg, PA 15681

Date: February 8, 2018



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