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March 21, 2019

**VIA ELECTRONIC FILING**


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

**Re: Carla Matronics v. West Penn Power Company**  
**Complaint Docket No. C-2017-2617235**

Dear Secretary Chiavetta:

Enclosed please find the Reply to Exceptions of West Penn Power Company in the above-captioned Formal Complaint, with certificate of service attached. West Penn Power Company states that Complainant did not serve Complainant's Exceptions upon West Penn Power Company. It appears to West Penn that the Complainant served the Exceptions upon an attorney representing West Penn Power Company in another proceeding (Lekawa v West Penn Power Company and Titan Gas, Docket No. F-2017-2629733) but did not serve the undersigned counsel, who is the sole counsel of record representing West Penn Power Company in the instant, above-captioned proceeding. West Penn Power Company's Reply to Exceptions is filed in a timely manner based on when it discovered that the Complainant filed Exceptions. To date, West Penn has not received proper service of the Complainant's Exceptions.

Very truly yours,

  
John L. Munsch  
Attorney

JLM:dml

Enclosures

cc: Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>CARLA MATRUNICS</b>	:	
<b>Complainant</b>	:	
	:	
<b>v.</b>	:	<b>Complaint Docket No. C-2017-2617235</b>
	:	
<b>WEST PENN POWER COMPANY</b>	:	
<b>Respondent</b>	:	

**WEST PENN POWER COMPANY REPLY TO EXCEPTIONS**

West Penn Power Company (hereinafter “West Penn” or “Company”) submits its Reply to the Exceptions filed by Complainant, Carla Matrunics (“Complainant”), to the Initial Decision of Administrative Law Judge Conrad A. Johnson. West Penn’s Reply to Exceptions is submitted pursuant to Section 5.535 of the Commission’s regulations, 52 Pa. Code §5.535, relating to Reply Exceptions.

**Complainant’s Lack of Service of Exceptions Upon West Penn**

The Complainant failed to serve her Exceptions upon West Penn. It appears that the Complainant filed Exceptions to the Initial Decision on or about March 5, 2019, with the Commission. Importantly, however, the Complainant failed to serve the Exceptions upon the undersigned counsel of record for West Penn, John L. Munsch. The undersigned counsel is the sole counsel of record for West Penn in the instant proceeding. It appears to West Penn that the Complainant served the Exceptions upon an attorney representing West Penn in another proceeding but did not serve the sole

counsel of record representing West Penn in the instant proceeding.<sup>1</sup> As such West Penn has been unfairly prejudiced in filing timely Reply Exceptions by Complainant's failure to serve West Penn with Complainant's Exceptions. On or about March 12, 2019, West Penn discovered that the Complainant had filed Exceptions. West Penn submits its Reply to Exceptions in a timely manner based on when it discovered that the Complainant filed Exceptions. To date, West Penn has not received proper service of the Complainant's Exceptions.

### **Background**

On August 2, 2017, the Complainant filed a Complaint with the Pennsylvania Public Utility Commission against West Penn. The Complainant alleged 1) that West Penn was threatening to shut off her utility service; 2) that she wanted a payment arrangement; and 3) that there were incorrect charges on her bills from West Penn. West Penn filed its Answer on August 22, 2017, requesting that the Complaint be denied.

A telephonic hearing was held September 5, 2018, before Administrative Law Judge Conrad A. Johnson ("ALJ"). The Complainant appeared and testified pro se. West Penn presented the testimony of two witnesses, Tammy J. Taylor, Senior Customer Service Compliance Specialist of the Company, and Dallas W. Jenkins, the Company's Meter Test Supervisor. The Company offered nine exhibits, all of which were admitted as evidence.

The ALJ issued an Initial Decision dated February 5, 2019, denying the Complaint. The ALJ found that the Complainant had not met her burden of proof that her bills were based on

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<sup>1</sup> The Complainant served Exceptions in the instant case (Docket C-2017-2617235) upon Attorney Margaret A. Morris. Attorney Margaret Morris represents West Penn in a different proceeding (*Mable Lekawa v. West Penn Power Company and Titan Gas, LLC*, Docket No. F-2017-2629733). The Complainant in the other proceeding, Mable Lekawa, is also represented by Attorney David A. Colecchia. Attorney Colecchia represents the Complainant, Carla Matronics, in the instant proceeding. Attorney Morris is not counsel of record for West Penn in the instant case.

incorrect or faulty meter readings. The ALJ further determined that West Penn had terminated the Complainant's electric service pursuant to appropriate termination procedures, and that the Complainant was not entitled to a further payment arrangement under Section 1405 of the Public Utility Code.

On February 13, 2019, the Commission issued a Secretarial Letter to the parties containing the ALJ's Initial Decision and advised the parties that Exceptions would be due twenty days from the date of the Secretarial Letter, with Reply Exceptions due 10 days after the due date for Exceptions.

### **Complainant's Exceptions**

For ease of reference West Penn repeats Complainant's Exceptions, as follows:

1. The Court without any evidence erred in failing to provide the Appellant with a payment arrangement.
2. A payment arrangement, unlike current PUC jurisprudence, is a right and not a matter of discretion for the PUC.
3. In addition, the PUC as a matter of law under the Pennsylvania Constitution must have the right, duty and ability to say that a utility debt is forgiven.
4. The PUC improperly relied upon Ms. Matronic's poor payment history as a factor in deciding whether to provide her with a repayment plan. Taken to its limits, no one would deserve a repayment plan because everyone who needed a payment plan necessarily would have a poor repayment history.
5. The Regulation and Statutes involving a payment arrangement are unconstitutional under Article I Section I of the Pennsylvania Constitution. Simply, everyone who requests a payment plan is entitled to a payment plan due to the right to utility service guaranteed under the Pennsylvania Constitution.

## **West Penn's Reply to Exceptions**

The Complainant's first Exception appears to be that the ALJ's Initial Decision is not based on substantial evidence.

Adjudications by the Commission must be supported by substantial evidence in the record. 2 Pa.C.S. § 704. "Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *Consolidated Edison Company of New York v. National Labor Relations Board*, 305 U.S. 197, 229, 59 S.Ct. 206, 217 (1938). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980). Personal opinion, no matter how strongly held, does not constitute evidence. *Pennsylvania Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

Under the applicable standards of substantial evidence, the ALJ's Initial Decision is based on substantial evidence and, further, is fully supported by a careful analysis of the evidence. West Penn responds to the Complainant's Exception by quoting the Initial Decision's extensive factual presentation of the case, including precise references to the record transcript, and careful analysis concerning the Complainant's eligibility for a payment arrangement. The Initial Decision states:

1. Complainant Carla Matrunics resides at 105 10th Street, Bradenville, Westmoreland County, Pennsylvania (service address).
2. Respondent West Penn Power Company is a jurisdictional public utility providing electric service to Pennsylvania customers and to Ms. Matrunics at the service address.
3. On February 1, 1999, West Penn established electric service for Ms. Matrunics at the service address. Tr. 50.

#### Company Payment Arrangements and Service Account History

4. On November 26, 2013, West Penn extended a payment arrangement to Ms. Matrunics on an account balance of \$496.14, based upon her \$2,253.33 gross monthly household income, which required Ms. Matrunics to pay her budget bill and electric generation supplier charges plus \$15.00 monthly (2013 PAR) beginning on December 26, 2013. Tr. 73; Exhibit 4.
5. The 2013 PAR defaulted because of non-payment. Tr. 73.
6. On July 25, 2015, West Penn enrolled Ms. Matrunics in the Company's Low-Income Payment and Usage Reduction Program (2015 LIPURP) which was the predecessor to the Company's Pennsylvania customer assistance program (PCAP). Tr. 73; Exhibit 4.
7. The 2015 LIPURP was based upon a \$1,327.72 account balance and Ms. Matrunics' \$896.00 gross monthly household income, which required her to pay \$116.48 monthly plus a \$5.00 co-pay beginning on August 24, 2015. Tr. 73-74; Exhibit 4.
8. While Ms. Matrunics' account was in default under the 2015 LIPURP, West Penn enrolled her in the Company's PCAP with a \$1,415.30 account balance on December 13, 2015 (2015 PCAP). Tr. 74; Exhibit 4.
9. The 2015 PCAP required Ms. Matrunics to pay her current monthly charges minus a \$129.03 credit starting in January 2016. Id.
10. Under the 2015 PCAP, Ms. Matrunics made two payments in the amounts of \$224.62 and \$152.79, respectively on April 1, 2016 and April 27, 2016. Exhibit 2.
11. On April 29, 2016, West Penn mailed Ms. Matrunics a letter informing her it was time for her annual recertification for the Company's PCAP, and she was required to call the Company within 10 days of receipt of the letter to schedule a recertification appointment. Failure to recertify would result in removal from PCAP. Tr. 81; Exhibit 5.
12. Ms. Matrunics' June 2, 2016, electric bill included the following: "Important Notice: You are required to call 1-888-282-6816 to recertify for PCAP by June 26, 2016. If you do not, you will be

removed from the program. Your account cannot be past due when recertifying." Tr. 82-83; Exhibit 6.

13. On June 28, 2016, West Penn removed Ms. Matrunics from the Company's PCAP for her failure to recertify her eligibility for the program; at the time of removal the account was in default. Tr. 74; Exhibit 1.
14. West Penn confirmed Ms. Matrunics' removal from PCAP in a letter dated August 1, 2016. Tr 82-83; Exhibit 7.
15. Following the removal of her account from West Penn's PCAP, Ms. Matrunics made three payments on her account in the amounts of \$232.00, \$100.00 and \$200.00, respectively on July 31, 2016, December 3, 2016 and March 2, 2017. Tr. 59; Exhibits 1-2.
16. West Penn has not received any payments on Ms. Matrunics' account since March 2, 2017. Tr. 59; Exhibit 2.
17. Ms. Matrunics' electric service remains active. Tr. 45.
18. Ms. Matrunics' account balance is \$6,114.12. Tr. 58; Exhibit 2.
19. Ms. Matrunics' account balance does not include any PCAP arrearages. Tr. 77, 91-93.
20. "Given the current balance and the history of default on the prior payment arrangement, and lack of payment, the company is not willing to provide another arrangement at this time [to Ms. Matrunics]." Tr. 73, 93-94, 111.
21. Ms. Matrunics has not previously received a payment arrangement from the Commission. Tr. 44.

#### Service Address Description

22. The service address is an all-electric, three-bedroom, 2,600 square foot, ranch-style home with a fireplace and two bathrooms. Tr. 16, 29.
23. The electrical appliances at the service address include the following: refrigerator, range, upright freezer, dishwasher, washer/dryer, hot water heater, three televisions, computer, out-of-service pool pump, C-PAP machine and nebulizer. Tr. 20, 29-30.

Initial Decision, pages 3 to 5.

The ALJ then went on to present an extensive and careful analysis of the applicable statutory law and judicial and regulatory precedent governing the Complaint given the factual findings. The ALJ continued, first reciting the applicable Section 1405 of the Public Utility Code, as follows:

Here, Ms. Matrunic seeks an affordable payment arrangement from the Commission. Thus, Chapter 14 of the Code, *the Responsible Utility Customer Protection Act*, 66 Pa.C.S. § 1401 et seq., effective December 22, 2014, applies to this proceeding. Section 1405 of the statute provides in pertinent part as follows:

**§ 1405. Payment arrangements.**

(a) **General rule.** - The commission is authorized to investigate complaints regarding payment disputes between a public utility, applicants and customers. The commission is authorized to establish payment arrangements between a public utility, customers and applicants within the limits established by this chapter.

... .

(f) **Failure to comply with payment arrangement.** - Failure of a customer to comply with the terms of a payment arrangement shall be grounds for a public utility to terminate the customer's service. Pending the outcome of a complaint filed with the commission, a customer shall be obligated to pay that portion of the bill which is not in dispute and subsequent bills which are not in dispute.

... .

A complainant, who is claiming an inability to pay her utility bills, is not entitled as a matter of right to receive a Commission-ordered payment arrangement. It is entirely within the discretion of the Commission to determine on a case-by-case basis whether both parties, the customer and the utility company, will benefit from the issuance of a payment arrangement pursuant to the guidelines of *The Responsible Utility Customer Protection Act*, 66 Pa.C.S. §§ 1401-1419, as amended December 22, 2014 (Chapter 14 or Act).

*Creekmur v. PECO Energy Company*, Docket No. C-2008-2079322 (Final Order entered February 4, 2010).

Importantly, the Commission exercises its authority to establish payment arrangements under Section 1405 of Chapter 14 very judiciously. Specifically, the Commission exercises its discretion only on behalf of customers who have demonstrated some evidence of good faith efforts to pay their utility bills or who have experienced a significant change of circumstance outside of their control. See *Slaughter v. Philadelphia Gas Works*, Docket No. C-2016-2541771 (Opinion and Order entered April 13, 2017), citing *Hewitt v. PECO Energy Company*, Docket No. F-2011-2273271 (Opinion and Order entered September 12, 2013).

In *Hewitt*, the Commission declined to exercise its authority, to grant the complainant a payment arrangement based on the complainant's poor payment history and her ability to keep company-issued payment arrangements. *Hewitt* at 10-12.

Similarly, in the present case, Ms. Matrunic has a poor payment history. Exhibits 1-2. Ms. Matrunic has a delinquent account balance in the amount of \$6,114.12. Tr. 58; Exhibit 2. She has received payment arrangements from West Penn dating back to 2013. Tr. 73; Exhibit 4. Her 2013 PAR defaulted because of nonpayment. Tr. 74; Exhibit 4. In July 2015 West Penn enrolled Ms. Matrunic in its LIPURP, on which she also defaulted. *Id.* Later in 2015, West Penn enrolled Ms. Matrunic in its PCAP. *Id.* Under the 2015 PCAP, Ms. Matrunic made two payments in the amounts of \$224.62 and \$152.79, respectively on April 1, 2016 and April 27, 2016. Exhibit 2.

On June 28, 2016, West Penn removed Ms. Matrunic from the Company's PCAP for her failure to recertify her eligibility for the program; at the time of removal the account was in default. Tr. 74; Exhibit 1. Following the removal of her account from West Penn's PCAP, Ms. Matrunic made three payments on her account in the amounts of \$232.00, \$100.00 and \$200.00, respectively on July 31, 2016, December 3, 2016 and March 2, 2017. Tr. 59; Exhibits 1-2. At the time of the September 5, 2018 hearing, West Penn had not received a payment on Ms. Matrunic's account for more than 18 months. Tr. 59; Exhibit 2. West Penn is not willing to extend another payment arrangement to Ms. Matrunic.

Importantly, by law, a public utility is entitled to receive payment for the service it provides. *Scaccia v. West Penn Power Company*, 55 Pa. PUC 637 (1982). Otherwise, unpaid bills are

included in the utility's uncollectible expenses, which its remaining customers must pay. *Bolt v. Duquesne Light Company*, Docket No. Z-8712758 (Order entered April 8, 1988). However, Ms. Matrunics manages her household budget, she will have to pay West Penn the arrearages that she owes.

Considering Ms. Matrunics' high account balance, \$6,114.12, defaults on West Penn's payments arrangements, and poor payment history, her request for a Commission-ordered payment arrangement must be denied in conformity with the ruling in *Hewitt*, cited above.

Initial Decision, pages 10 to 15.

Given the ALJ's extensive findings of fact, and extensive analysis of the facts with respect to Commission regulations and the Public Utility Code, it is manifest that the Complainant's contention that the Initial Decision is not based on substantial evidence is incorrect. By contrast, West Penn's position and the ALJ's Initial decision are based on substantial evidence, on statutory and regulatory law and on legal precedent.

The Complainant's second Exception is that the Commission has no discretion with respect to allowing a payment arrangement. The Complainant states: "A payment arrangement, unlike current PUC jurisprudence, is a right and not a matter of discretion for the PUC." Essentially the Complainant is contending that Section 1405 of the Code requires the Commission to authorize a customer's request for a payment arrangement regardless of the size of customer's billing arrearage, regardless of the number of prior defaults and, for that matter, regardless of all considerations except the customer's request for a payment arrangement.

In response, the Company again refers to the ALJ's Initial Decision, which presented a full analysis that Section 1405 was created by the General Assembly as a method for payment-trouble customers to regain control of their utility bills, subject to the discretion of the Commission in allowing a payment arrangement and its terms. To repeat, the ALJ wrote:

It is entirely within the discretion of the Commission to determine on a case-by-case basis whether both parties, the customer and the utility company, will benefit from the issuance of a payment arrangement pursuant to the guidelines of *The Responsible Utility Customer Protection Act*, 66 Pa.C.S. §§ 1401-1419, as amended December 22, 2014 (Chapter 14 or Act). *Creekmur v. PECO Energy Company*, Docket No. C-2008-2079322 (Final Order entered February 4, 2010).

Importantly, the Commission exercises its authority to establish payment arrangements under Section 1405 of Chapter 14 very judiciously. Specifically, the Commission exercises its discretion only on behalf of customers who have demonstrated some evidence of good faith efforts to pay their utility bills or who have experienced a significant change of circumstance outside of their control. *See Slaughter v. Philadelphia Gas Works*, Docket No. C-2016-2541771 (Opinion and Order entered April 13, 2017), citing *Hewitt v. PECO Energy Company*, Docket No. F-2011-2273271 (Opinion and Order entered September 12, 2013).

Initial Decision, page 14.

The Initial Decision accurately summarizes the General Assembly's Declaration of Policy underlying Chapter 14 of the Public Utility Code, as stated in Section 1402 of the Public Utility Code, 66 Pa. C. S. § 1402, and in subsequent cases as cited in the Initial Decision.

In the Complainant's third, fourth and fifth Exceptions, the Complainant makes broad statements to the effect that *The Responsible Utility Customer Protection Act*, 66 Pa.C.S. §§ 1401-1419, is unconstitutional:

3. In addition, the PUC as a matter of law under the Pennsylvania Constitution must have the right, duty and ability to say that a utility debt is forgiven.
4. The PUC improperly relied upon Ms. Matrunic's poor payment history as a factor in deciding whether to provide her with a repayment plan. Taken to its limits, no one would deserve a repayment plan because everyone who needed a payment plan necessarily would have a poor repayment history.

5. The Regulation and Status involving a payment arrangement are unconstitutional under Article I Section I of the Pennsylvania Constitution. Simply, everyone who requests a payment plan is entitled to a payment plan due to the right to utility service guaranteed under the Pennsylvania Constitution.

The Complainant challenges the jurisdictional boundaries of the Commission and whether the General Assembly could impose limits upon a customer's ability to repay valid utility obligations. The Complainant provides no legal support for its position that customers have a constitutional right to a payment arrangement. By contrast, the Company submits that the constitutionality of Chapter 14, at least as disputed by Complainant, is beyond reproach.

Pennsylvania Courts have consistently held that enactments of the General Assembly enjoy a strong presumption of constitutionality. *Commonwealth v. Barud*, 681 A.2d 162, 165 (Pa. Super. 1996); *Pennsylvania School Boards Ass'n., Inc. et al. v. Commonwealth Ass'n. of School Administrators*, 805 A.2d 476, 479 (Pa. Super. 2002). All doubts are to be resolved in favor of sustaining the constitutionality of the legislation. *Commonwealth v. Blystone*, 549 A.2d 81, 87 (Pa. Super. 1988), affirmed, 494 U.S. 299, 110 S. Ct. 1078, 108 L. Ed. 2d 255 (1990). "[N]othing but a clear violation of the Constitution—a clear usurpation of power prohibited—will justify the judicial department in pronouncing an act of the legislative department unconstitutional and void." *Glancey v. Casey*, 288 A.2d 812, 818 (Pa. Super. 1972). In other words, the courts and regulatory bodies are "obliged to exercise every reasonable attempt to vindicate the constitutionality of a statute and uphold its provisions." *Commonwealth v. Chilcote*, 578 A.2d 429, 435 (Pa. Super. 1990). Thus, there is a very heavy burden of persuasion upon one who challenges the constitutionality of a statute. *Commonwealth v. Barud*, 545 Pa. 297, 681 A.2d 162, 165 (1996).

In enacting Chapter 14, the General Assembly clearly stated the rationale and policy supporting its enactment:

The General Assembly finds and declares as follows:

- (1) Formal service rules were first adopted by the Pennsylvania Public Utility Commission in 1978 with the stated goal of enforcing uniform, fair and equitable residential utility service standards governing eligibility criteria, credit and deposit practices, account billing, termination and restoration of service procedures and customer complaint procedures. These rules have not successfully managed the issue of bill payment. Increasing amounts of unpaid bills now threaten paying customers with higher rates due to other customers' delinquencies.
- (2) The General Assembly believes that it is now time to revisit these rules and provide protections against rate increases for timely paying customers resulting from other customers' delinquencies. The General Assembly seeks to achieve greater equity by eliminating opportunities for customers capable of paying to avoid the timely payment of public utility bills.
- (3) Through this chapter, the General Assembly seeks to provide public utilities with an equitable means to reduce their uncollectible accounts by modifying the procedures for delinquent account collections and by increasing timely collections. At the same time, the General Assembly seeks to ensure that service remains available to all customers on reasonable terms and conditions.
- (4) The General Assembly believes that it is appropriate to provide additional collection tools to city natural gas distribution operations to recognize the financial circumstances of the operations and protect their ability to provide natural gas for the benefit of the residents of the city.

66 Pa.C.S. § 1402.

In its declaration of policy in Section 1402, the General Assembly recognized that receipt of utility service goes hand in hand with payment for utility service, and that unpaid utility bills threaten paying customers with higher bills through larger uncollectible accounts. Chapter

14 did not abridge the longstanding law that a utility is entitled to payment for its services. *Scaccia v. West Penn Power Company, supra; Bolt v. Duquesne Light Company, supra.*


**Conclusion**

West Penn Power Company respectfully requests that the Pennsylvania Public Utility Commission deny the Exceptions of Carla Matrunics, affirm the Initial Decision of the Administrative Law Judge dismissing the Complaint of Carla Matrunics, and close the Complaint.

Respectfully submitted,

Date: March 21, 2019

By:

  
John L. Munsch  
West Penn Power Company  
800 Cabin Hill Drive  
Greensburg, PA 15601  
(724) 838-6210  
Pa. I.D. No. 31489

**Pennsylvania Public Utility Commission;**  
**Re: Carla Matrunics v. West Penn Power Company; Docket No. C-2017-2617235**

**CERTIFICATE OF SERVICE**


I hereby certify that I have this day served by First Class Mail, the foregoing **Reply**

**Exceptions** addressed as follows:

David A. Colecchia, Esquire  
324 South Maple Avenue  
Greensburg, PA 15601

Administrative Law Judge Conrad A. Johnson  
Pennsylvania Public Utility Commission  
Piatt Place, Suite 220  
301 Fifth Avenue  
Pittsburgh, PA 15222

Date: March 21, 2019

  
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John L. Munsch, Attorney for  
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