

April 29, 2022

**Via Electronic Filing**

Rosemary Chiavetta, Esquire  
Secretary  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**Re: Docket No. C-2021-3028202  
Amanda Polka Herr v. West Penn Power Company  
Reply Exceptions of West Penn**

Dear Secretary Chiavetta:

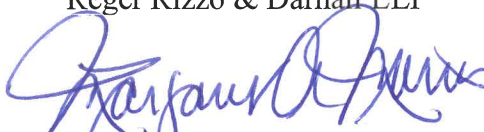
Attached for filing is the Reply of West Penn Power Company to the Exceptions filed by Amanda Polka Herr (Complainant) in the above referenced proceeding.

A copy of the Reply Exceptions has been provided to the Complainant 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/co  
Enclosures

cc: The Hon. Mary D. Long, PA Public Utility Commission  
Office of Special Assistants, PA Public Utility Commission  
Tori Giesler, Esquire, FirstEnergy Service Company  
Amanda Polka Herr

**Re: Docket No. C-2021-3028202  
Amanda Polka Herr v. West Penn Power Company  
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 person, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

**Via Electronic and First-Class Mail**

Amanda Polka Herr  
616 Stanton Street Front  
Greensburg, PA 15601  
[landoncollin12@gmail.com](mailto:landoncollin12@gmail.com)  
[Soccermom2madison@gmail.com](mailto:Soccermom2madison@gmail.com)

Dated: April 29, 2022

  
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Margaret A. Morris, Esquire

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

AMANDA POLKA HERR :  
v. : Docket No. C-2021-3028202  
WEST PENN POWER COMPANY :

**REPLY EXCEPTIONS ON BEHALF OF WEST PENN POWER COMPANY  
TO EXCEPTIONS FILED BY AMANDA POLKA HERR**

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Margaret A. Morris, Esq.  
REGER RIZZO & DARNALL LLP  
Cira Centre, 13<sup>th</sup> Floor  
2929 Arch Street  
Philadelphia, PA 19104

Dated: April 29, 2022

*Counsel for West Penn Power Company*

## **I. Introduction**

In accordance with Section 5.535 of Commission's regulation, 52 Pa. Code § 5.535, and the *Secretarial Letter*, dated April 19, 2022, West Penn Power Company (West Penn or the Company) timely files its Reply to the Exceptions filed by Amanda Polka Herr (Complainant or Ms. Herr) which supports the adoption of the Initial Decision (ID) of Administrative Law Judge Mary D. Long (Judge Long) without modification. The Commission should affirm Judge Long's dismissal of the Formal Complaint, with prejudice, for Complainant's failure to appear at the scheduled hearing, which was not unavoidable, and her finding that bars the Complainant from filing any formal or informal complaint until her unpaid balance is paid in full.

## **II. Procedural Background**

On August 20, 2021, the Complainant filed a Formal Complaint alleging, *inter alia*, West Penn is threatening to shut off her service or has already shut off her service. Complainant also requested a payment arrangement.

On September 20, 2021, West Penn filed an Answer and New Matter specifically denying the Complainant's allegations. West Penn denied that there is a pending termination and contended that the Commission should decline to order any further payment arrangements to the Complainant and requested in New Matter that the Commission bar the Complainant from filing any further complaints until she pays her balance in full. The Complainant did not file a response to the New Matter.

By Hearing Notice dated October 25, 2021, a hearing was scheduled for December 1, 2021. On October 26, 2021, Judge Long issued a *Prehearing Order*, setting forth the procedures for the conduct of hearings, including the consequences for failing to appear as well as instructions for requesting a continuance.

By email, dated November 19, 2021, the Complainant requested a continuance of the December 1, 2021, hearing because her appearance that day was required elsewhere. By *Interim Order*, dated November 22, 2021, the Complainant's request for a continuance was granted and the hearing was subsequently rescheduled for December 14, 2021. Judge Long also renewed her

directive to the Complainant to provide a copy of a court issued Protection From Abuse (PFA). No PFA was ever provided.

On the morning of December 14, 2021, Complainant advised Judge Long, *via* email, that she no longer wished the matter to proceed to hearing. That same morning, the Complainant contacted the Office of Administrative Law Judge Scheduling Unit by telephone, stating that she did not intend to appear at the scheduled hearing. Judge Long emailed the parties that the hearing would convene as scheduled to allow West Penn an opportunity to respond to Complainant's request to withdraw her complaint.

The hearing convened as scheduled. West Penn and its witness appeared. The undersigned counsel explained that she and Ms. Herr had been in settlement negotiations consistently in the days leading up to the hearing and had negotiated a joint settlement agreement. West Penn and Ms. Herr would be requesting the Commission approve the settlement agreement. Due to the uncertainty of Ms. Herr's intention to continue pursuing a settlement, based on her email to Judge Long, West Penn requested a short continuance to finalize the settlement negotiations with Ms. Herr. West Penn also requested leave to present the testimony of its witness in order to support its allegations of abuse of process as plead in New Matter. Leave was granted and West Penn's witness was permitted to authenticate documents relating to Complainant's payment arrangement history, medical certificate history, payment history, returned check history and current outstanding balance.

By *Interim Order*, dated December 14, 2021, Judge Long granted a continuance of the proceedings and directed West Penn to file a status report on or before December 29, 2021, reporting whether the parties were able to finalize a settlement agreement. Judge Long also provided Ms. Herr with an opportunity to object to the exhibits that were admitted into the record and to object to the official notice of (1) decisions issued by the Commission's Bureau of Consumer Services regarding the Complainant's informal complaints, (2) the Initial Decision and entered *Opinion and Order* on the Complainant's 2019 formal complaint<sup>1</sup> including the facts set forth in those decisions. No objection was filed.

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<sup>1</sup> Docket No. C-2019-3009143.

On December 28, 2021, West Penn efiled a Status Report indicating that settlement documents were sent to Complainant on Friday, December 17, 2021, for her signature. Subsequent attempts to follow-up with the Complainant regarding the status of the settlement documents were unsuccessful and no settlement documents were executed.

The Initial Decision was issued March 21, 2022. Exceptions were due April 11, 2022, and Reply Exceptions were due April 20, 2022. The Complainant filed her Exceptions with the Commission *via* USPS Priority Mail on April 8, 2022. On April 19, 2022, West Penn was notified *via Secretarial Letter* that Complainant's Exceptions were improperly filed without Certificate of Service, and due to Complainant's failure, West Penn had until Friday, April 29, 2022, to file its Reply Exceptions.

### **III. Initial Decision**

Judge Long specifically concluded:

Ms. Herr not only failed to appear at the hearing scheduled for her benefit, but she has also failed to respond to any of the opportunities provided by me to participate in the resolution of her complaint. She has engaged in a course of conduct calculated to delay the conclusion of these proceedings and ultimately avoid responsibility for her unpaid balance. As explained in more detail below, I find that Ms. Herr has not shown that she is entitled to a further Commission-ordered payment arrangement. I further conclude that Ms. Herr's actions are an abuse of the Commission's administrative process to avoid termination of her electricity service and payment for the electricity service that she has consumed. Ms. Herr's complaint will be dismissed, and she will be barred from filing any formal or informal complaints regarding her unpaid balance until she pays that balance in full.

ID at 6-7.

### **IV. Complainant's Exceptions**

The Complainant's Exceptions violate Section 5.533(b) of the Commission's regulations,<sup>2</sup> which requires each exception to identify the finding of fact or conclusion of law to which exception is taken, and to cite to relevant pages of the Initial Decision. She does not identify any specific error of law or abuse of discretion. The Exceptions fail to present a legally

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<sup>2</sup> 52 Pa. Code § 5.533(b).

sufficient basis to alter the Findings of Fact and Conclusions of Law set forth in the Initial Decision.

Administrative agencies of the Commonwealth of Pennsylvania, such as the Commission are required to provide due process to the parties appearing before them.<sup>3</sup> The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Montefiore Hospital Ass'n of Western Pennsylvania v. Pa PUC*, 421 A2d 481, 484 (Pa. Cmwlth. 1980). The due process requirement is satisfied when the parties are provided notice and the opportunity to appear and be heard.<sup>4</sup> Once the Commission meets its due process requirement, the burden falls upon the parties to appear and participate in the hearing.<sup>5</sup> Section 332(f) of the Pennsylvania Public Utility Code mandates:

***Any party who shall fail to be represented at a scheduled conference or hearing after being duly notified thereof, shall be deemed to have waived the opportunity to participate in such conference or hearing, and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat, or to recall for further examination of witnesses who were excused, unless the presiding officer shall determine that failure to be represented was unavoidable and that the interests of the other parties and the public would not be prejudiced by permitting such reopening or further examination. (Emphasis added).***

66 Pa.C.S. §332(f).

Based on prior cases, to meet the unavoidable standard, the Commission requires a complainant to show, with supporting information, that the failure to appear was due to exigent circumstance. See, e.g., *El-Ayazra v West Penn Power Company*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016) (“affirmed ALJ’s decision to dismiss complaint with prejudice because the complainant failed to follow the call-in instructions for the telephonic hearing”). Moreover, the Commission exercises its discretion and will excuse a complainant’s failure to appear at a hearing if the complainant demonstrates that he/she made a good faith effort

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<sup>3</sup> See *Brown v. PECO Energy Co.*, Docket No. C-2008-2060121, Initial Decision at 7 (Pa. P.U.C. May 18, 2009) (Chestnut, J.) (citing *Schneider v. Pa. P.U.C.*, 479 A.2d 10 (Pa. Cmwlth. 1984)).

<sup>4</sup> See *id.*

<sup>5</sup> See, e.g., *Mumma v. PPL Elec. Util. Corp.*, Docket No. C-00014869 (Jan. 24, 2002) (“It is well-established law that once timely notice of a hearing and the opportunity to be heard have been provided, it is the responsibility of the parties to be present and participate in the hearing.”).

to attend the hearing. See, e.g., *Yomari Then v Philadelphia Gas Works*, Docket No. F-2012-2318264 (Opinion and Order entered June 13, 2013). However, if a complainant's failure to appear was not unavoidable, or if the complainant did not make a good faith attempt to attend the duly scheduled hearing, the Commission has recognized that any further procedural activity in the docket would prejudice the public interest due to the wasteful use of the agency's and the respondent's time and resources in addressing the complaint. See, *Jefferson v UGI Utilities, Inc.*, Docket Z-00269892 (Order entered December 26, 1995). In *Jefferson*, the Commission stated (1) that it could not condone the wastefulness of a procedure that permits a "no-show complainant" to refile a complaint and thereby institute yet another stay of lawful termination of service and (2) that such misuse of the process cannot be tolerated.

Judge Long exercised her discretion and found that the Complainant's failure to appear was not unavoidable and permitting a hearing after such a "no-show" would prejudice the public interest and the interest of West Penn. The Complainant did not make a good faith effort to attend the scheduled hearing. The Complainant's Exceptions never address, let alone provide, any explanation of the two emails sent the morning of the hearing that she no longer wished to have a hearing and would not attend the hearing. The Complainant offered no explanation why she did not comply with Judge Long's directive to appear at the hearing so that West Penn could provide its position on her request. Judge Long provided the Complainant written notice and a reasonable opportunity to be heard. The well-reasoned Initial Decision should be adopted, without modification, that the Complainant's failure to appear was not unavoidable.

The Complainant's numbered Exceptions and West Penn's responses are set forth below.

**Complainant's Exception #1:**

*I had COVID 19 and almost died all parties were advised by email.*

**West Penn Response:**

The Complainant's medical situation was diagnosed **after** the scheduled hearing. She does not represent that her medical condition prevented her from appearing at the scheduled

hearing. Rather, her emails regarding her medical condition were in response to the status of the settlement agreement. This Exception should be denied.

**Complainant's Exception #2:**

*The conditions that I not be allowed to file another PUC case unless I pay \$11,000 is unconstitutional.*

**West Penn Response:**

Ms. Herr did not appear at the hearing to dispute the allegation of West Penn that she was abusing the Commission's complaint process, nor did she take the opportunity to object to the admission of the evidence which supports West Penn's claims. The Complainant waived her right to challenge West Penn's claims and supporting exhibits. The record evidence supports Judge Long's finding that West Penn met its burden of proof that the Complainant's conduct in filing meritless complaints to avoid lawful termination was an abuse of the complaint process. Judge Long's finding is consistent with Commission precedent. *Jennifer Potora v. PAWC*, Docket No. C-2017-2627873, (Opinion and Order entered August 8, 2019); *Jennifer Potora 2 v. PAWC*, Docket No. C-2018-3003485, (Opinion and Order entered August 8, 2019); *Grossman v. Bell Telephone Company of Pennsylvania*, 67 Pa. PUC 714 (1988); *Manu v. The Bell Telephone Company of Pennsylvania*, Docket No. F-09029141 (Order entered May 4, 1994); *DiFilippo v. PECO Energy Company*, Docket No. C-20027116 (Final Order entered October 3, 2002); *Seidenstricker v. Metropolitan Edison Company*, Docket No. F-2008-2019388 (Order entered July 28, 2009); *Thomas v. The Peoples Natural Gas Company*, Docket No. 2009-2102194 (Order entered June 17, 2010)); *Mark Mazza v PECO Energy Company*, Docket No. C-2012-2318472, (Opinion and Order entered April 23, 2014). This Exception should be denied.

**Complainant's Exception #3:**

*The offer by West Penn Power was more money than I could afford.*

**West Penn Response:**

A settlement agreement was never executed or submitted to the Commission for review and approval. This issue is irrelevant to the Complainant's failure to appear at the scheduled hearing. This Exception should be denied.

**Complainant's Exception #4:**

I had valid PFA's at the time of filing.

**West Penn Response:**

The Complainant never provided a valid court ordered PFA despite multiple directives from Judge Long to submit. This issue is irrelevant to the Complainant's failure to appear at the scheduled hearing. This Exception should be denied.

**Complainant's Exception #5:**

*I have long haul COVID and cannot work a full time job.*

**West Penn Response:**

This issue is irrelevant to the Complainant's failure to appear at the scheduled hearing. This Exception should be denied.

**Complainant's Exception #6:**

*I am on the customer assistance program and I am making payments.*

**West Penn Response:**

This issue is irrelevant to the Complainant's failure to appear at the scheduled hearing. This Exception should be denied.

**Complainant's Exception #7:**

*I have applied for LIHEAP, ERAP and other programs.*

**West Penn Response:**

This issue is irrelevant to the Complainant's failure to appear at the scheduled hearing. This Exception should be denied.

**Complainant's Exception #8:**

*This is very wrong to do to people who have little or no money.*

**West Penn Response:**

Ms. Herr did not appear at the hearing to dispute the allegation of West Penn that she was abusing the Commission's complaint process, nor did she take the opportunity to object to the admission of the evidence which supports West Penn's claims. The Complainant waived her right to challenge West Penn's claims and admitted exhibits. The record evidence supports Judge Long's finding that West Penn met its burden of proof that the Complainant's conduct to avoid lawful termination was an abuse of the complaint process. This Exception should be denied.

**Complainant's Exception #9:**

*Any human being should be allowed to complain about the West Penn Power.*

**West Penn Response:**

Ms. Herr did not appear at the hearing to dispute the allegation of West Penn that she was abusing the Commission's complaint process, nor did she take the opportunity to object to the admission of the evidence which supports West Penn Power's claims. The Complainant waived her right to challenge West Penn's claims and supporting exhibits. The record evidence supports Judge Long's finding that West Penn met its burden of proof that the Complainant's conduct in filing meritless complaints to avoid lawful termination was an abuse of the complaint process. This Exception should be denied.

**Complainant's Exception #10:**

*Why would I give up a poverty payment to pay more than I can afford.*

**West Penn Response:**

This issue is irrelevant to the Complainant's failure to appear at the scheduled hearing. This Exception should be denied.

**V. Conclusion**

As Judge Long recognized in her well-reasoned ID, the Complainant's failure to appear at the scheduled hearing was not unavoidable. The Complainant waived her right to challenge West Penn's allegation of abuse of the Commission's complaint process and the admitted exhibits. The record evidence supports Judge Long's finding that West Penn met its burden of proof that the Complainant's conduct to avoid lawful termination was an abuse of the complaint process.

For the reasons set forth in these Reply to Exceptions, West Penn Power Company, respectfully requests that the Commission deny the Exceptions, adopt the Initial Decision of the Honorable Mary D. Long, without modification, and dismiss the Formal Complaint of Amanda Polka Herr against West Penn Power Company with prejudice.

Respectfully submitted,

Reger Rizzo & Darnall LLP



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Dated: April 29, 2022

*Counsel for West Penn Power Company*