

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held September 15, 2022

Commissioners Present:

Gladys Brown Dutrieuille, Chairman
John F. Coleman, Jr., Vice Chairman
Ralph V. Yanora

Amanda Polk Herr

C-2021-3028202

v.

West Penn Power Company

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Amanda Polk Herr (Complainant or Ms. Herr), filed on April 8, 2022, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Mary D. Long, issued on March 21, 2022.¹ West Penn Power Company (West Penn or Company) filed Replies to Exceptions on April 29, 2022. For the reasons

¹ By Secretarial Letter dated April 19, 2022, the Commission's Secretary's Bureau stated that the Exceptions received on April 8, 2022, did not contain a Certificate of Service or other indication that the Parties were served with the Exceptions. Thus, the Secretary's Bureau attached a copy of the Exceptions to constitute service to the Parties and stated that any Reply Exceptions would be due by April 29, 2022.

stated below, we will deny the Complainant's Exceptions and adopt the Initial Decision, consistent with this Opinion and Order.

History of the Proceeding

On August 20, 2021, Ms. Herr filed a Formal Complaint (Complaint)² against West Penn averring that the utility is threatening to terminate her service and that she would like a payment arrangement. The Complainant also checked the box noting that a court has granted her a Protection from Abuse (PFA) Order for her personal safety or welfare.

On September 20, 2021, West Penn filed an Answer and New Matter in which it denied any pending termination action. The Company averred that the Commission awarded Ms. Herr a payment arrangement on July 16, 2020, and opposed a further Commission-ordered payment arrangement. In its New Matter, West Penn contended that the Commission should decline to order any further payment arrangements to Ms. Herr and that the Complainant has abused the complaint process. For relief, West Penn requested the Commission bar Ms. Herr from filing any further complaints until she pays her balance in full. Answer and New Matter at 10-11.

The Answer and New Matter included a notice to plead which notified Ms. Herr that she should file a response to the New Matter within twenty days. The Complainant did not file a response to the New Matter. By Interim Order dated October 26, 2021, ALJ Long directed Ms. Herr to provide a copy of any PFA currently in effect, on or before November 15, 2021.

² The Complaint was served on West Penn on August 30, 2021.

Thereafter, the Complainant requested and received a continuance of the initial hearing originally scheduled for December 1, 2021. By Interim Order dated November 22, 2021, ALJ Long rescheduled the hearing for December 14, 2021, and renewed the direction to file any currently effective PFA.³

On the evening prior to the scheduled hearing, ALJ Long received an email from Ms. Herr stating that she no longer wished to have a hearing. The ALJ responded by email stating that the hearing would convene as scheduled in order to provide West Penn with an opportunity to respond to her request to withdraw her Complaint. Ms. Herr also contacted the Office of Administrative Law Judge (OALJ) Scheduling Unit by telephone on the morning of December 14, 2021, stating that she would not attend the hearing. I.D. at 3 (citing Tr. at 6-7).

The hearing convened as scheduled at which counsel for the Company appeared with one witness, but the Complainant did not appear. At the hearing, West Penn's counsel asserted 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 for the Commission's approval. However, West Penn's counsel stated that Ms. Herr was unclear regarding her intention to continue pursuing a settlement. Thus, the Company requested a short continuance to finalize settlement negotiations with Ms. Herr. I.D. at 3.

West Penn's counsel also requested leave to present the testimony of the Company's witness to authenticate documents related to Ms. Herr's account history in support of the New Matter allegations seeking to preclude Ms. Herr from filing further complaints until her substantial past due balance is paid in full. The ALJ granted the leave to present the testimony of the witness who offered nine exhibits, which were

³ The ALJ stated Ms. Herr did not provide a copy of a PFA. I.D. at 3.

admitted into the record. The ALJ also took official notice of the initial decision and our prior Opinion and Order entered on July 16, 2020, at Docket C-2019-3009143 (*July 2020 Order*), resolving a formal complaint that Ms. Herr filed in 2019.

By Interim Order dated December 14, 2021 (*December 2021 Interim Order*), the ALJ granted a continuance of the proceedings and directed the Company to file a status report on or before December 29, 2021, regarding the settlement agreement. The ALJ 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 the prior Commission-related decisions. I.D. at 4.

On December 28, 2021, the Company's counsel filed a status report (Status Report) stating that she sent the settlement documents to Ms. Herr for her signature on December 17, 2021. According to the Company, its counsel attempted to follow-up with Ms. Herr on December 23, 2021. Thereafter, Ms. Herr texted a lab report which noted that she had tested positive for COVID-19, and that she was unable to sign anything. In addition, the Company's counsel stated that she received an email from Ms. Herr's son on December 28, 2021, stating that Ms. Herr was in the hospital and that she would "take care of this" at a later time. Status Report at 1.

The hearing produced a transcript of fifty-four pages and the ALJ closed the record by Interim Order dated January 10, 2022.

In the Initial Decision issued on March 21, 2022, the ALJ dismissed the Complaint and barred the Complainant from filing further informal or formal Complaints regarding her electric utility account balance until she pays that balance in full. The ALJ reasoned that the Complainant failed to appear for the hearing and failed to prove that the Commission should grant her a further payment arrangement for her unpaid balance in excess of \$20,000. According to the ALJ, the Complainant's conduct of filing numerous

complaints, breaking payment arrangements, and other behavior constitutes an abuse of the administrative process calculated to avoid or delay the termination of her utility service. I.D. at 1.

As previously noted, the Complainant filed Exceptions on April 8, 2022. West Penn filed Replies to Exceptions on April 29, 2022.

Discussion

We acknowledge that the format of the Complainant's Exceptions do not strictly comply with Section 5.533(b) of our Regulations, 52 Pa. Code § 5.533(b), which requires that exceptions be numbered, identify the finding of fact and conclusions of law to which exception is taken, and cite to the relevant pages of the Initial Decision. Nevertheless, particularly because the Complainant is appearing *pro se* and because West Penn was given a meaningful opportunity to file Replies to Exceptions, we will accept the Exceptions as filed pursuant to Section 1.2(a) of our Regulations, 52 Pa. Code § 1.2(a), in order to secure a just, speedy, and inexpensive determination.

Legal Standards

As an administrative agency of the Commonwealth, the Commission is required to provide due process to the parties appearing before it. *Schneider v. Pa. PUC*, 479 A.2d 10, 15 (Pa. Cmwlth. 1984) (*Schneider*). Due process is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider*, 479 A.2d at 15 (Pa. Cmwlth. 1984). 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 A.2d 481, 484 (Pa. Cmwlth. 1980).

The Commission is required to fix the time and place of a hearing in a complaint proceeding and to serve notice thereof upon the parties in interest. *See* 66 Pa. C.S. § 703(a)-(b). Service on interested persons is sufficient to provide notice. 52 Pa. Code § 5.201(a). Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *See Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 531, 317 A.2d 584 (Pa. 1974); *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944, 946 (Pa. Cmwlth. 1994), appeal denied 539 Pa. 696, 653 A.2d 1234 (1994); *Geary v. Verizon Pennsylvania Inc.*, Docket No. C-2009-2118625 (Order entered September 16, 2010) (*Geary*).

Once a hearing is scheduled and duly notified by the Commission, it is the responsibility of the parties to appear and participate in the hearing. *Mumma v. PPL Electric Utilities Corporation*, Docket No. C-00014869 (Order entered January 24, 2002); *Sentner v. Bell Tel. Co. of PA*, Docket No. F-00161106 (Order entered October 25, 1993).

A party to a proceeding has the right to request a continuance of the hearing, which may be considered and granted by the presiding officer "only for good cause shown." *See* 52 Pa. Code § 1.15(b). The party making the request must file a motion at least five days prior to the hearing date stating the facts on which the request is made, except that during a hearing, an oral request for hearing continuance may be made before the presiding officer in the hearing room. 52 Pa. Code § 1.15(b).

If a party fails to appear at a scheduled and duly notified hearing, the party will be deemed to have waived the opportunity to participate in a hearing in the matter. 66 Pa. C.S. § 332(f); 52 Pa. Code § 5.245(a)-(b). This result is not applied to the party, however, if the presiding officer determines that the party's failure to appear was "unavoidable" and the interests of the other party (or parties) and the public will not be

“prejudiced” by permitting the reopening or further examination. 66 Pa. C.S. § 332(f); 52 Pa. Code § 5.245(a)-(b). Also, this result may not be applied if the presiding officer of the Commission determines that the complainant demonstrated a good faith attempt to attend the hearing. *See, e.g., Yomari Then v. Philadelphia Gas Works*, Docket No. F-2012-2318264 (Order entered June 13, 2013); *see also Windell C. Wiggins v. PECO Energy Company*, Docket No. C-2010-2190335 (Order entered October 27, 2011).

The public interest is prejudiced by the wasteful use of the agency’s and the respondent’s time and resources in addressing a complaint. *See Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995), *see also, e.g., Charles Nichols III v. Bell-Atlantic-Pennsylvania*, Docket No. C-00956667 (Order entered August 4, 1995). Out of concern for the waste of the Commission’s (and respondent’s) time and resources, we have, on many occasions, dismissed *pro se* complaints with prejudice for failure to appear at a hearing. *See, e.g., Cynthia Santore Smith v. PECO Energy Company*, Docket No. F-2014-2446204 (Order entered September 3, 2015); *Marilyn Day v. PECO Energy Company*, Docket No. C-2010-2181515 (Order entered June 10, 2011); and *Geary*.

Any issue that we do not specifically delineate or address herein shall be deemed to have been duly considered and denied without further discussion. It is well-settled that the Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741, 744 (Pa. Cmwlth. 1993); *also see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217, 1222-1223 (Pa. Cmwlth. 1984).

The ALJ’s Initial Decision

In the Initial Decision, the ALJ made seventeen Findings of Fact and reached seven Conclusions of Law. I.D. at 4-6 and 11-12. We shall adopt and incorporate herein by reference the ALJ’s Findings of Fact and Conclusions of Law

unless they are either expressly or by necessary implication overruled or modified by this Opinion and Order.

The ALJ explained that Ms. Herr not only failed to appear at the hearing scheduled for her benefit, but also failed to respond to any of the opportunities provided by the presiding officer to participate in the resolution of her Complaint. According to the ALJ, the Complainant has engaged in a course of conduct calculated to delay the conclusion of these proceedings and ultimately avoid responsibility for her unpaid balance. As a result, the ALJ found that Ms. Herr has not shown that she is entitled to a further Commission-ordered payment arrangement. The ALJ also concluded 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. Accordingly, the ALJ dismissed the Complaint and barred Ms. Herr from filing any formal or informal complaints regarding her unpaid balance until she pays that balance in full. I.D. at 6-7.

Regarding the payment arrangement request in the Complaint, the ALJ explained that the Commission retains discretion to establish a payment arrangement which is determined on a case-by-case basis and considering whether the customer and the utility company will benefit from its issuance. I.D. at 7 (citing *DeGannaro v. Pennsylvania Electric Company*, Docket No. C-2012-2300818 (Final Order entered November 8, 2012)). The ALJ also noted that the Commission will only approve a payment arrangement if customers have demonstrated good faith efforts to pay their utility bills or have experienced significant changes of circumstance outside of their control. I.D. at 7 (citing, in part, *Stormer v. Pennsylvania-American Water Company*, Docket No. C-2011-2249169 (Final Order entered March 28, 2012)).

Here, the Commission had previously awarded Ms. Herr a generous payment arrangement in the *July 2020 Order*, by granting a ten-year payment

arrangement for the \$15,838.03 balance owed at the time. The ALJ explained that the payment arrangement with such a longer repayment period than normally authorized was permitted pursuant to Section 1417 of the Public Utility Code, 66 Pa. C.S. § 1417, due to the fact that Ms. Herr had a valid PFA in place. In the following year, however, Ms. Herr only made two payments by credit card on May 13, 2021, and July 23, 2021. The ALJ noted further that Ms. Herr electronically submitted two checks to West Penn Power on August 3, 2021, and August 15, 2021, in the amounts of \$12,577.47 and \$12,520.80 respectively, and that both of these checks were returned because the West Penn system did not find a valid account. I.D. at 7-8.

The ALJ also stated that West Penn entered into a further payment arrangement with Ms. Herr in May 2021. At that time, the Complainant reported a slightly higher monthly income to West Penn than she reported at her hearing in 2019. The Company also enrolled Ms. Herr in its customer assistance program (CAP) in June 2021. *Id.* at 8.

The ALJ reasoned that Ms. Herr's failure to appear at her hearing resulted in the Complainant's failure to offer any evidence of changes to her income or any other challenges in her living circumstances which might explain why she only made two payments after July 2020. Likewise, her absence resulted in a failure to offer an argument that the Commission should award her a further payment arrangement for any other reason. Thus, the ALJ determined that, based on Ms. Herr's actions regarding her electricity account since 2020 and supported by West Penn's evidence, the Complainant has not shown an intention to make any payments on her past due balance on a regular basis or in good faith. Accordingly, the ALJ concluded that Ms. Herr has not shown that the Commission should authorize a further payment arrangement. *Id.*

Next, the ALJ addressed the Company's argument that Ms. Herr has abused the Commission's administrative process and its request to bar her from filing further

complaints until her entire account balance has been repaid. According to West Penn, the Complainant has a large balance, a poor payment history, and a practice of writing large checks which are later rejected as non-payable. The Company also asserted that Ms. Herr's pattern of filing formal and informal complaints and medical certificates point to a pattern of using the Commission's process to avoid termination. *Id.*

The ALJ considered Ms. Herr's substantial unpaid balance of \$20,334.40 and noted that from April 2014 until November 2021, the Complainant has only made ten payments to her account. She has tendered checks in the amount of \$101,767.37, which were returned by West Penn Power as unpayable. Additionally, the ALJ explained that Ms. Herr has not complied with the Commission-issued payment arrangement, or any of the Company payment arrangements or CAP payment plans. Moreover, since 2015, Ms. Herr has filed eight informal complaints and two formal complaints seeking relief from the Commission in the form of payment arrangements. According to the ALJ, this pattern of behavior is similar to behavior the Commission considered inappropriate and determined that the customer was attempting to improperly avoid termination of utility service. I.D. at 9-10 (citing *Hogan v. West Penn Power Company*, Docket F-2019-3012920 (Final Order entered March 10, 2020) (*Hogan*), and *Potora v. UGI Penn Natural Gas, Inc.*, Docket No. C-2018-3003485 (Order entered August 8, 2019) (*Potora v. UGI Order*)).

The ALJ explained that Ms. Herr's conduct in the current proceeding further evidences an abuse of the Commission's administrative process. These actions included Ms. Herr's failure to respond to or comply with two orders which required her to provide a copy of a PFA order. In addition, Ms. Herr subscribed to the Commission's e-filing service, but later complained she could not receive filings in that manner. However, Ms. Herr did not contact the Secretary's Bureau to unsubscribe from e-filing and to make other arrangements to receive service from the Commission. Additionally, the Complainant contacted the ALJ and the Company's counsel on the eve prior to her

hearing stating that she did not intend to pursue her Complaint.⁴ As noted, the ALJ instructed Ms. Herr to appear and explain her request to withdraw her Complaint; the ALJ noted the Complainant's subsequent failure to appear. I.D. at 10 (citing, in part, 52 Pa. Code § 5.94 and Tr. at 6, 9-10).⁵

The ALJ concluded that in summary Ms. Herr's substantial balance, poor payment history and conduct in proceedings before the Commission constitutes a pattern of activity calculated to avoid or delay termination of her utility service. According to the ALJ, West Penn deserves to be paid for the service it has provided to Ms. Herr and the Company's other customers should not be responsible for the Complainant's failure

⁴ The Complainant's email to the OALJ does not appear in the record. However, during the hearing on December 14, 2021, the ALJ stated: "The Complainant, Ms. Herr, elected not to appear at today's hearing. Last night she sent an email stating that she was – that she no longer wanted to pursue her Complaint. I responded by email that the hearing would proceed as scheduled in order to give the Utility an opportunity to object to the withdrawal if it wished to do so." Tr. at 6.

⁵ Section 5.94 of our Regulations, 52 Pa. Code § 5.94, pertains to the withdrawal of pleadings in a contested proceeding, which requires the filing of a petition and the setting forth of the reasons for the withdrawal. Section 5.94 also provides the opportunity for parties to object to the withdrawal petition. Here, the ALJ directed the Complainant to appear at the hearing to explain the reasons for her withdrawal request. By failing to appear at the hearing, the Complainant effectively waived her request to withdrawal of the Complaint. Moreover, it is evident from the Company's request for a determination that the Complainant has abused the Commission's process that West Penn opposed any withdrawal of the Complaint.

This case is distinguishable from our recent decision in *Erika and Brendan Kelley v. Duquesne Light Company*, Docket No. F-2021-3029920 (Order entered August 15, 2022) (*Kelley*). In *Kelley*, the *pro se* Complainants clearly communicated in email correspondence the reasons for wishing to withdraw their Complaint due to their unsuccessful attempts to secure a solar panel representative to substantiate the Complaint. Thus, we determined that the Complainants' correspondence should have been deemed as a petition to withdraw the Complaint and established a ten-day objection period. Specifically, we determined there was no harm to the public interest in granting the request to withdraw the Complaint. *Kelley* at 9. In contrast, as discussed below, permitting the withdrawal of the Complaint in this proceeding would appear to significantly impact the public interest.

to make any good faith effort to pay for her service. Therefore, the ALJ found that Ms. Herr abused the Commission's administrative process, barred her from filing further formal or informal complaints until her balance is paid in full and dismissed the Complaint with prejudice. I.D. at 10-11.

Exceptions and Replies

The Complainant's Exceptions consist of the following ten statements:

1. I had COVID 19 and almost died all parties were advised by email.
2. The conditions that I not be allowed to file another PUC case unless I pay [\$]11,000 is unconstitutional.
3. The offer by West Penn Power was more money than I could afford.
4. I had valid PFA's at the time of filing.
5. I have long haul COVID and cannot work a full time job.
6. I am on the customer assistance program and I am making payments.
7. I have applied for [Low Income Home Energy Assistance Program], [Emergency Rental Assistance Program] and other programs.
8. This is very wrong to do to people who have little or no money.
9. Any human being should be allowed to complain about the West Penn Power.
10. Why would I give up a poverty payment to pay more than I can afford[?]

Exc. at 1-3.

In its Replies to the Exceptions, West Penn argues that the Complainant did not appear at the scheduled hearing and that Ms. Herr did not show that her failure to attend was unavoidable. West Penn submits that the Exceptions do not address 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 as to why she did not comply with the ALJ's directive to appear at the hearing so that West Penn could provide its position on her request. The Company adds that the ALJ provided the Complainant with written notice and a reasonable opportunity to be heard. Thus, West Penn requests that the Initial Decision pertaining to Ms. Herr's failure to attend should be adopted without modification. R. Exc. at 6.

Additionally, West Penn argues that the Complainant waived her right to challenge West Penn's allegation of abuse of the Commission's complaint process. According to West Penn, the record evidence supports the ALJ's finding that the Company 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 and that the ALJ's determination is consistent with Commission precedent. R. Exc. at 7 (citing in part, *Jennifer Potora v. Pennsylvania-American Water Company*, Docket No. C-2017-2627873 (Order entered August 8, 2019) and *Potora v. UGI Order*).

Regarding Ms. Herr's contention of having COVID-19, the Company submits that the Complainant's medical situation was diagnosed after the scheduled hearing. West Penn adds that Ms. Herr does not represent that her medical condition prevented her from appearing at the scheduled hearing. Instead, the Complainant's emails regarding her medical condition were in response to the status of the settlement agreement. R. Exc. at 6-7.

As to the remaining statements in the Exceptions, West Penn contends that the issues are irrelevant to the Complainant's failure to appear at the scheduled hearing. Accordingly, the Company requests that all of the Exceptions be denied. *Id.* at 7-9.

Disposition

From an administrative due process standpoint, the question is whether a complainant's failure to appear at a scheduled and duly notified hearing shall be deemed to be the party's waiver of the opportunity to participate in a hearing in the matter. 66 Pa. C.S. § 332(f); 52 Pa. Code § 5.245(a)-(b). Whether the complainant's failure to appear at the hearing was "unavoidable" is a fact-based question. Where a complainant's failure to appear at a scheduled hearing is unavoidable, the ALJ has the discretion to recognize that and to reschedule the hearing. 66 Pa. C.S. § 332(f); 52 Pa. Code § 5.245(a)-(b). However, if a complainant fails to bring the situation to the attention of the presiding officer prior to the issuance of the Initial Decision, the record closes and the presiding officer can no longer exercise that discretion. *See, e.g., Alice Anderson v. PECO Energy Company*, Docket No. F-2017-2614241 (Order entered July 18, 2018).

At the exceptions stage of a proceeding before the Commission, the record is closed, and the complainant filing exceptions has the responsibility of challenging the findings and conclusions of the Initial Decision. 52 Pa. Code § 5.533. The complainant filing exceptions must provide, in a timely fashion, a compelling explanation of why he or she neglected to raise with the presiding officer the excuse for failing to appear at the hearing so that the presiding officer can determine whether rescheduling the hearing is appropriate. *See, e.g., Clem Marable v. PECO Energy Company*, Docket No. C-2017-2609460 (Order entered July 18, 2018).

Here, in her Exceptions, the Complainant provides no explanation as to why she missed the scheduled hearing. Rather, Ms. Herr states generally that she had

COVID-19 and almost died and that all the Parties were advised of this by email. Exc. at 1. However, as noted by West Penn, the Complainant's medical situation appears to have been diagnosed after the scheduled hearing and Ms. Herr does not contend that her medical condition prevented her from appearing at the scheduled hearing. Rather, the emails regarding her medical condition were in response to the status of the proposed settlement agreement. R. Exc. at 6-7 and Status Report.

Indeed, prior to the scheduled hearing, Ms. Herr simply stated via an email to the ALJ that she no longer wanted to pursue her Complaint and telephoned the OALJ Scheduling Unit stating that she would not attend the hearing. Tr. at 6-7. Thus, there is no basis to support a contention that Ms. Herr's absence from the hearing was unavoidable. Moreover, following the hearing, the ALJ issued the *December 2021 Interim Order* which afforded Ms. Herr the opportunity to object to the exhibits admitted at the hearing. The Complainant did not reply to the *December 2021 Interim Order* nor did she offer any explanation to the ALJ for failing to attend the scheduled hearing. Under the circumstances, we find that the ALJ properly exercised her discretion to decline to reschedule the hearing after the receipt of the Status Report.

We have stated in prior proceedings that a Complainant has a responsibility to establish contact with the presiding officer, either by phone or written correspondence, to explain the reason for a hearing absence prior to the issuance of the Initial Decision. *See, e.g., Shenik Harvey v. PECO*, Docket No. C-2018-3002514 (Order entered December 20, 2018). Again, no reason, other than Ms. Herr's intention not to pursue her Complaint was provided.

Despite the available opportunities, the Complainant failed to make any good faith attempt to explain her absence from the December 14, 2021, hearing. Moreover, her Exceptions do not request a reopening of the record or the rescheduling of the hearing. Even if such a request could be construed from the filing, we are of the

opinion that it would not serve the public interest to remand this case for further proceedings, as it would require the expenditure of administrative and judicial resources. Further, we believe that the interests of West Penn would be prejudiced by giving the Complainant another opportunity to present her case. We acknowledge that the Company's counsel and witness were present on the date of the scheduled hearing and were prepared to proceed. Therefore, we find that the Complainant has not satisfied the conditions under 52 Pa. Code § 5.245(b) for reopening this proceeding.

Under the circumstances of this case, we find that the ALJ correctly dismissed the Complaint because Ms. Herr failed to appear at the hearing and to present any evidence in support of her Complaint.⁶ Accordingly, the Complainant has failed to meet her burden of proof and the ALJ appropriately dismissed the Complaint with prejudice.

Regarding the allegations of abuse of the administrative process, the Company requests that we bar Ms. Herr from filing further formal or informal complaints until her balance is paid in full. We note, that pursuant to this Opinion and Order, which dismisses the Complaint, Ms. Herr will have no legal authority to file future informal or formal complaints which contain allegations of a similar nature to those that have been dismissed with prejudice in this proceeding, *i.e.*, allegations pertaining to her arrearages for electric service and requests for any further payment arrangements pertaining to such arrearages.

Nonetheless, West Penn seeks an additional directive to both the Commission's Bureau of Consumer Services and the Secretary's Bureau to refuse the filing of any future informal or formal complaints from Ms. Herr related to the current

⁶ By failing to appear at the hearing and to offer any evidence, the Complainant has not shown that the Commission should authorize a further payment arrangement.

balance on her account for electric service until all of her arrearages are paid in full. This is an extraordinary request which would effectively bypass the Commission's normal administrative litigation procedure. We recognize that the Commission has taken similar steps in cases involving egregious abuses of our administrative process. *See, e.g., Hogan and Patora v. UGI Order.*

Under the facts and circumstances of this case, we are constrained to agree with the ALJ that the Complainant's actions constitute a history of abusing the Commission's process. As thoroughly discussed in the Initial Decision, Ms. Herr has accrued a substantial unpaid balance of \$20,334.40 with only ten payments made to her account over a seven-year period. Additionally, she has tendered unpayable checks in the amount of \$101,767.37, and has not complied with the Commission-issued payment arrangement, or any of the Company payment arrangements or CAP payment plans. Since 2015, Ms. Herr has filed eight informal complaints and two formal complaints seeking relief from the Commission in the form of payment arrangements. Moreover, the Complainant's actions regarding her disregard of directives of the ALJ in this proceeding are troubling. We agree with the ALJ that this pattern of behavior is similar to behavior the Commission has considered inappropriate and determined that the customer was attempting to improperly avoid termination of utility service. I.D. at 9-10.

Accordingly, we shall adopt the ALJ's recommendation pertaining to abuse of our process. However, we encourage the Company to continue to work with Ms. Herr to offer all available Universal Service Program resources – such as continued participation in the Company's CAP, the Low Income Usage Reduction Program, the Customer Assistance and Referral Evaluation Services, and the Hardship Fund resources – to help her address the substantial unpaid account balance and her circumstances.

Conclusion

Based on our review of the record, the Exceptions, and the applicable law, we shall deny the Exceptions and adopt the ALJ's Initial Decision, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions filed by Amanda Polk Herr on April 8, 2022, are denied, consistent with this Opinion and Order.

2. That the Initial Decision of Administrative Law Judge Mary D. Long, issued on March 21, 2022, is adopted, consistent with this Opinion and Order.

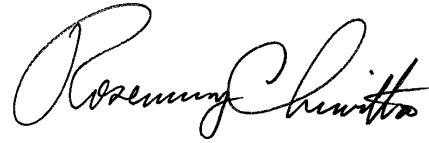
3. That the Formal Complaint filed by Amanda Polk Herr on August 20, 2021, against West Penn Power Company at Docket No. C-2021-3028202 is dismissed with prejudice.

4. That Amanda Polk Herr is precluded from filing further complaints with the Commission, whether of an informal or formal nature, regarding the arrearages on her account for electric service rendered by West Penn Power Company until all arrearages are paid in full and that the filing of any complaint pertaining to such arrearages shall be dismissed without further proceedings.

5. That a copy of this Opinion and Order shall be provided to the Commission's Bureau of Consumer Services.

6. That the proceeding at Docket No. C-2021-3028202 be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: September 15, 2022

ORDER ENTERED: September 15, 2022