

September 22, 2022

Via Electronic Filing

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

**Re: Docket No. C-2022-3030679
Roberta Zenmon v. Pennsylvania Power Company
Reply Exceptions of Penn Power**

Dear Secretary Chiavetta:

Attached for filing is the Reply of Pennsylvania Power Company to the Exceptions filed by Roberta Zenmon (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. Katrina L. Dunderdale, PA Public Utility Commission [w/encls.]
Office of Special Assistants, PA Public Utility Commission [w/encls.]
Tori Giesler, Esquire, FirstEnergy Service Company [w/encls.]
Roberta Zenmon [w/encls.]

**Re: Docket No. C-2022-3030679
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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

Roberta Zenmon
P.O. Box 463
Wexford, PA 15090
robertastevenson144@icloud.com

Dated: September 22, 2022



Margaret A. Morris, Esquire

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

ROBERTA ZENMON :
 :
 v. : Docket No. C-2022-3030679
 :
 PENNSYLVANIA POWER COMPANY :

**REPLY EXCEPTIONS ON BEHALF OF PENNSYLVANIA POWER COMPANY
TO EXCEPTIONS FILED BY ROBERTA ZENMON**

Margaret A. Morris, Esq.
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2929 Arch Street
Philadelphia, PA 19104

Dated: September 22, 2022

Counsel for Pennsylvania Power Company

I. Introduction

In accordance with Section 5.535 of Commission's regulation, 52 Pa. Code § 5.535, and the *Secretarial Letter*, dated September 13, 2022, Pennsylvania Power Company (Penn Penn or the Company) timely files its Reply to the Exceptions filed by Roberta Zenmon (Complainant or Ms. Zenmon) which supports the adoption of the Initial Decision (ID) of Administrative Law Judge Katrina L. Dunderdale (Judge Dunderdale) without modification. The Commission should affirm Judge Dunderdale's dismissal of the Formal Complaint, for Complainant's failure to carry her burden of proof at the scheduled hearing.

II. Procedural Background

On December 27, 2021, the Complainant filed a Formal Complaint alleging incorrect charges for her residential electric utility service and requesting a Commission payment arrangement (PAR). She specifically alleged that Penn Power failed to comply with the Settlement Agreement reach in the 2020 Formal Complaint¹ which she alleged allowed her to pay her bill on the first of every month.

On February 22, 2022, Penn Power filed an Answer and New Matter specifically denying the Complainant's allegations. Specifically, Penn Power denied that the Settlement Letter addressed the issue of due date for her monthly bills. The Complainant did not file a response to the New Matter.

By Hearing Notice dated March 15, 2022, a hearing was scheduled for April 27, 2022, before Judge Dunderdale.

The hearing convened as scheduled. The Complainant appeared *pro se* and testified on her own behalf. She did not offer any exhibits. Penn Power presented one witness, Charles Howlett, a Senior Compliance Specialist, who sponsored eight (8) exhibits which were admitted into the record.

¹ Docket No. F-2020-3023344.

The Initial Decision was issued August 23, 2022. Exceptions were due September 12, 2022, and Reply Exceptions were due September 22, 2022. The Complainant filed Exceptions with the Commission *via* USPS Priority Mail on September 9, 2022 but failed to serve Penn Power. On September 13, 2022, Penn Power was notified *via Secretarial Letter* that Complainant's Exceptions were improperly filed without Certificate of Service, and due to Complainant's failure, Penn Power had until September 22, 2022, to file its Reply Exceptions.

III. Initial Decision

Judge Dunderdale found that the Complainant failed to meet her burden of proof that (1) Penn Power failed to comply with the terms of the Settlement Letter; (2) Penn Power failed to comply with the Commission's statutes, regulations, or orders when it billed her after June 2021 with due dates for payments due before the first of each subsequent month or (3) Penn Power said her electric service could not be terminated until the next business day after she called the Company to request termination. Judge Dunderdale also noted that during the hearing, the Complainant clarified that she does not dispute the amount of the charges on her billing statement (ID at 8) and no longer sought a Commission PAR (ID at footnote 4).

Judge Dunderdale's analysis and conclusions is set forth below:

Penn Power Exhibit 8 was the transcript from the hearing conducted on June 3, 2021, in the prior proceeding and which was admitted into this proceeding as a late-filed exhibit on May 11, 2022. After reviewing Penn Power Exhibit 8, the presiding officer found no reference by Complainant to her requirement that a settlement must include a due date of the first of each subsequent month. However, Complainant's request - to establish the first of each month as the due date for all billing statements going forward — is located in the transcript of the prehearing conference conducted on February 11, 2021, in the 2020 Formal Complaint. The transcript from the prehearing conference, in which the parties engaged in an unsworn conversation with ALT Johnson attempting to settle the dispute, reflected that Complainant wanted the due date for each bill to be the first of every month, because she receives her monthly disability check on the first day of the month.

During that discussion, Complainant indicated a concern that the timing of the due date on the billing statements was important to her because the due date might fall at the wrong time of the month for her to be able to pay on time. The proceeding on February 11, 2021 ended without a settlement and the parties agreed to participate in a hearing at a later date. After the prehearing conference

on February 11, 2021, the parties engaged in settlement conversations at the subsequent hearing in June 2021, at which time a settlement was reached. Counsel for the utility followed up after the June 2021 hearing with a writing that memorialized the settlement reached by the parties.

Ms. Zenmon waited five months after the first payment was due in August 2021 (and six months after settling the 2020 Formal Complaint) before filing the instant formal complaint. During that time, Penn Power issued billing statements with due dates that were not the first of each month.

The undersigned concludes, based upon the totality of factual evidence chronicled in the Findings of Fact and a review of the two transcripts from the 2020 Formal Complaint, that Ms. Zenmon did not meet the burden of proof. Complainant proved the due date was important to her at the prehearing conference in February 2021, but she was unable to prove that due dates remained an important settlement term at the hearing in June 2021 and/or in the settlement agreement which resulted after the further hearing.

The fact that is most determinative against Complainant is the fact that Ms. Zenmon did not appeal, complain, or object after receiving the 2020 Settlement Letter in June 2021. She did not object to the 2020 Settlement Letter or to the Certificate of Satisfaction. She also waited more than five months before complaining about the due date. Complainant did not meet her burden of proving Penn Power violated the Commission's statutes, regulations, or orders when it billed her after June 2021 with due dates for payments due before the first of each subsequent month.

Further, it should be noted the issue Complainant raised at the hearing — that Penn Power initially said it would delay termination from April 14, 2022 to April 18, 2022 — is moot and Complainant is incorrect in her allegations. Complainant was advised in the 2020 Settlement Letter that she must provide seven days for the Company to terminate service. In addition, Complainant waited until the day before a long weekend to make her request to terminate service. Penn Power was correct to delay termination until the first business day after Complainant made the request. The first business day after Complainant made the request was Monday because Friday through Sunday were not business days, due to the Good Friday/Easter holidays. Furthermore, Respondent adjusted the termination date back to April 14, 2022 as a courtesy after it received the formal complaint herein.

ID at 10-11.

IV. Exceptions and Reply

The Complainant's Exceptions violate Section 5.533(b) of the Commission's regulations,² 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. The Complainant's Exceptions do not identify any error of law or finding of fact. The Exceptions fail to present a legally sufficient basis to alter the Findings of Fact and Conclusions of Law set forth in the Initial Decision. The Exceptions simply disagree with the finding set forth in the ID. The substantial record evidence supports the finding that the Complainant failed to carry her burden of proof that Penn Power breached the Settlement Agreement or violated the Code, Commission regulation or order.

The Complainant simply states she is "appealing [my] case. Penn Power has failed to keep terms of "agreement for payment." The Complainant's attempt to further litigate this matter by simply disagreeing with the outcome of the ID without identifying any specific error of law or abuse of discretion to satisfy the requirements is procedurally improper and should be summarily dismissed.

Penn Power notes the irony of the Complainant's continued assertion that Penn Power breached the Settlement Agreement given the Complainant's failure to honor terms of the Settlement Agreement by providing the requisite notice for a request to discontinue service in her name.

The Complainant's Exceptions requests "terms of a payment agreement from the PUC to Penn Power in writing." Section 1405 of the Pennsylvania Public Utility Code³ authorizes the Commission to direct a payment arrangement for a customer or applicant for residential service. The Complainant is not a current customer of Penn Power. Finding of Fact #5. The Commission is without authority to grant the Complainant's request. This Exception should be dismissed.

² 52 Pa. Code § 5.533(b).

³ 66 Pa.C.S. § 1405.

The Complainant's Exception argue that "Penn Power has begun to collect the balance before the judge made a decision." As noted in footnote 4 of the ID, the scope of the proceedings only concerned Penn Power's failure to comply with the Settlement Agreement.

Section 5.431 of the Commission's regulations⁴ provides that after the record is closed, additional matters may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion. This issue was not addressed at the hearing and any attempt to introduce the allegation at this last stage should be summarily rejected.

V. Conclusion

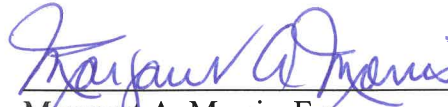
The Exceptions, either raising new evidence, irrelevant points or repeating positions that Judge Dunderdale soundly rejected based on the record evidence, are without merit. The substantial record evidence shows that the Complainant failed to carry her burden of proof that Penn Power breached the Settlement Agreement or violated the Code, Commission regulation or order. The findings of facts and conclusions of law in the ID are based on substantial record evidence.

⁴ 52 Pa. Code § 5.431.

For the reasons set forth above, Pennsylvania Power Company respectfully requests that the Commission adopt the Initial Decision of the Honorable Katrina L. Dunderdale without modification and deny the Formal Complaint of Roberta Zenmon.

Respectfully submitted,

Dated: September 22, 2022



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