

October 21, 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
Answer to Petition for Reconsideration

Dear Secretary Chiavetta:


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

A copy of the Answer to Petition for Reconsideration 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
Answer to Petition for Reconsideration**

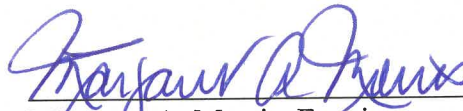
CERTIFICATE OF SERVICE

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
Soccermom2madison@gmail.com

Dated: October 21, 2022



Margaret A. Morris, Esquire

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**ANSWER OF WEST PENN POWER COMPANY
TO PETITION FOR RECONSIDERATION FILED BY AMANDA POLKA HERR**

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

Dated: October 21, 2022

Counsel for West Penn Power Company

I. Introduction

West Penn Power Company (West Penn), pursuant to 52 Pa. Code 5.61 and 5.572, hereby respectfully submits its Answer to the Petition for Reconsideration (Petition) filed by Amanda Polka Herr (Complainant) on September 30, 2022. As with the Complainant's Exceptions, the Petition was not served on West Penn who was advised of the filing by the Commission's *Opinion and Order* entered on October 14, 2022, granting reconsideration pending disposition of the merits of the Petition.

II. Pertinent 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.

On the morning of scheduled hearing on December 14, 2021, Complainant advised Judge Mary D. 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 Complainant did not call into the hearing. West Penn 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.

The Initial Decision was issued March 21, 2022. The Complainant filed Exceptions on April 8, 2022. West Penn filed a Reply to the Exceptions on April 29, 2022.

By *Opinion and Order* entered September 15, 2022, the Commission denied the Complainant's Exceptions, adopted the Initial Decision, without modification, and found that the Complainant had abused the Commission's complaint process and barred the Complainant from filing any complaint until the Complainant's account balance was satisfied (*September Order*).

III. Legal Standards

The requirements for petitions for reconsideration of a Commission order are set forth in the Commission regulations at 52 Pa. Code § 5.572. The Commission's standard for granting reconsideration following final orders is set forth in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 559 (1982) (emphasis added):

A petition for reconsideration, under the provisions of 66 Pa.C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the Court in the Pennsylvania Railroad Company case, wherein it was said that “[p]arties ..., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them...” What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.

Consequently, for a petition to warrant reconsideration by the Commission, it must demonstrate new and novel arguments that were raised by the petitioner, but not previously considered by the Commission. The Commission has cautioned that the last portion of the operative language of the *Duick* standard (*i.e.*, “by the Commission”) focuses on the deliberations of the Commission, not the arguments of the parties. *See Pa. PUC v. PPL Elec.*

Utils. Corp., Docket No. R-20122290597, p. 3 (Order entered May 22, 2014). Therefore, a petition for reconsideration cannot be used to raise new arguments or issues that should have been, but were not, previously raised.

A petition seeking relief under the *Duick* standard may properly raise any matter designed to convince the Commission that it should exercise its discretion to rescind or amend a prior order in whole or part. Importantly, however, the *Duick* standard does not permit a petitioner to raise issues and arguments considered and decided below such that the petitioner obtains a second opportunity to argue properly resolved matters. *Id.* Further, as explained by the Pennsylvania Supreme Court, petitions for reconsideration of a final agency order may only be granted judiciously and under appropriate circumstances because such action results in the disturbance of final agency orders. *City of Pittsburgh v. Pa. Dep't of Transp.*, 490 Pa. 264, 416 A.2d 461 (1980).

IV. Complainant's Petition for Reconsideration

Commission regulations require that the Petition must specify the findings in the *September Order* and the points relied upon with appropriate record references and specific requests for the findings or orders desired. 52 Pa. Code §5.572(a). As with her Exceptions, the Complainant simply make conclusory statements without any facts or argument. The Complainant simply rephrased her Exceptions as reasons to reconsider the *September Order*. All of the points raised in the Petition are not new and were previously considered and rejected by the Commission in its *September Order*. Therefore, the Petition fails to meet the *Duick* standard for reconsideration.

The Complainant's numbered bullets for reconsideration and West Penn's responses are set forth below.

Bullet #1:

West Penn Power will not in any way work with me to resolve my balance.

West Penn Response:

This issue is irrelevant to the Petition.

Bullet #2:

I live way below the poverty line.

West Penn Response:

This issue is irrelevant to the Petition.

Bullet #3:

I have been making payments.

West Penn Response:

This issue was raised as Complainant's Exceptions #6 and denied in the *September Order*.

Bullet #4:

This is very unfair to ask me to make an 11,000 payment.

West Penn Response:

This issue was raised as Complainant's Exceptions #2 and #8 and denied in the *September Order*.

Bullet #5:

I have a medically sick child.

West Penn Response:

This issue is irrelevant to the Petition.

Bullet #6:

I was never mailed the order like I ask [sic].

West Penn Response:

This issue is irrelevant to the Petition.

V. Conclusion

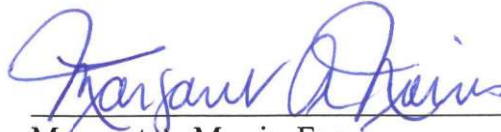
The Complainant's Petition clearly fails to satisfy the standards for granting reconsideration and also fails to meet the requirements of the Commission's regulations. The Complainant cannot simply re-raise the same arguments (or irrelevant arguments) that were considered and rejected by the Commission in the *September Order*.

For the reasons set forth in this Answer to the Petition for Reconsideration, West Penn Power Company, respectfully requests that the Commission deny the Petition for Reconsideration filed by Amanda Polka Herr in its entirety.

Respectfully submitted,

Reger Rizzo & Darnall LLP

Dated: October 21, 2022



Margaret A. Morris, Esq.

Attorney ID No. 75048

Cira Centre, 13th Floor

2929 Arch Street

Philadelphia, PA 19104

(215) 495-6524 tel.

mmorris@regerlaw.com

Counsel for West Penn Power Company