



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

November 9, 2022

Via Electronic Filing

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

Re: Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement v.
West Penn Utilities, LLC
Docket No. C-2022-3031862
Answer to Petition for Reconsideration

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Answer to Petition for Reconsideration in the above-referenced case on behalf of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission. Copies have been served on the parties of record in accordance with the Certificate of Service.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in blue ink that reads 'Emily A. Farren' with a stylized flourish at the end.

Emily A. Farren
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 322910
(717) 783-6150
efarren@pa.gov

EAF/ac
Enclosures

cc: Kathryn G. Sophy, Director, OSA (*via email*)
Kimberly A. Hafner, Deputy Director - Legal, OSA (*via email*)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. C-2022-3031862
	:	
West Penn Utilities, LLC	:	

**ANSWER OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT
IN OPPOSITION TO THE PETITION OF
WEST PENN UTILITIES, LLC
FOR RECONSIDERATION OF THE COMMISSION’S
OCTOBER 27, 2022 ORDER**

TO THE HONORABLE COMMISSION:

Pursuant to 52 Pa. Code § 5.572(e), the Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission (“Commission”) hereby submits its Answer to the Petition for Reconsideration (“Petition”) ¹ of the Commission’s October 27, 2022 Opinion and Order (“October 27 Order”) in the above-captioned proceeding filed by West Penn Utilities, LLC (“West Penn Utilities”, “the Company”, or “Petitioner”).² In support of this Answer, I&E avers as follows:

I. INTRODUCTION

I&E filed a Formal Complaint (“Complaint”) against West Penn Utilities on April 11, 2022, alleging that the Company violated Section 180(2.1) of the Underground Utility Line Protection Law, Act of October 30, 2017, P.L.806, No. 50 (hereinafter referred to as the “PA One Call Law”), 73 P.S. § 180(2.1), for Petitioner’s failure to submit a Complex Project

¹ West Penn Utilities, LLC entitled its October 31, 2022 filing, “Motion for Reconsideration.”

² Petitioner herein, West Penn Utilities, LLC, is an excavator as that term is defined by the PA One Call Law, 73 P.S. § 176, and should not be confused with West Penn Power Company, the jurisdictional electric distribution company.

Ticket through the Pennsylvania One Call System (“POCS”) at least ten (10) business days prior to commencing excavation. I&E’s Complaint sought an administrative penalty be imposed on Petitioner in the amount of Two Thousand Five Hundred Dollars (\$2,500).

Though I&E’s Complaint was served on West Penn Utilities via electronic mail, and Petitioner acknowledged receipt of the Complaint on April 12, 2022, Petitioner did not file an Answer to the Complaint within twenty (20) days, in that Petitioner failed to ever file an Answer.

On May 24, 2022, I&E filed, and served on Petitioner, a Motion for Default Judgment. Petitioner took no action in response to I&E’s Motion for Default Judgment, including answering the Motion or paying the applicable administrative penalty.

On October 27, 2022, the Commission entered an Order (“October 27 Order”) granting I&E’s Motion and sustaining I&E’s Complaint. The Commission directed West Penn Utilities to remit I&E’s requested administrative penalty of Two Thousand Five Hundred Dollars (\$2,500) within thirty (30) days of the entry of the October 27 Order. The October 27 Order further stated that if Petitioner fails to make payment, then the matter shall be referred to the Pennsylvania Office of Attorney General for appropriate action.

On October 31, 2022, West Penn Utilities filed a Motion for Reconsideration of the Commission’s October 27, 2022 Opinion and Order.

II. STANDARD OF REVIEW

Subsection 703(g) of the Public Utility Code, 66 Pa.C.S. § 703(g) establishes a party’s right to seek relief following the issuance of final decisions and permit the Commission to rescind and amend orders. Petitions for reconsideration are governed by *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 559 (Order entered December

17, 1982), which establishes a two-step analysis in determining whether to amend or rescind prior orders. First, the Commission determines whether there is newly discovered evidence, errors of law, or changes in circumstances that warrant other Commission review or whether the petition raises “new and novel” arguments or identifies considerations that appear to have been overlooked or not addressed in a previous order. *Duick*, 56 Pa. P.U.C. at 559. The second step of *Duick* is to evaluate the new or novel argument or overlooked consideration in order to determine whether to exercise discretion to modify the previous Commission order. *Id.* Reconsideration is not “a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them.” *Id.* (quoting *Pa. Railroad Co. v. Pa. Pub. Serv. Comm’n*, 179 A. 850, 854 (Pa. Super. 1935)).

III. ARGUMENT

The arguments and defenses raised in West Penn Utilities’ Petition are undoubtedly new since the Company failed to file responses to every prior pleading in this matter; as such, the arguments now advanced by West Penn Utilities to justify reconsideration should not be considered at such a late stage as the Company failed to properly raise them in any prior pleadings. Setting aside the aforementioned procedural argument highlighting the Company’s failure to properly and timely respond to I&E’s Complaint and/or I&E’s Motion for Default Judgment, West Penn Utilities’ legal arguments lack merit.

West Penn Utilities did not address the crux of I&E’s Complaint, that Petitioner failed to place a complex project ticket which in practice is the invitation to a preconstruction meeting. The failure to place a Complex Project Ticket is in violation of Section 180(2.1) of the PA One Call Law, 73 P.S. § 180(2.1). The purpose of a preconstruction meeting is to **correctly** identify **all** facility owners within the vicinity of the proposed work site in order to

hold a “scheduled event held by the excavator, designer, project owner and facility owner . . . prior to the commencement of excavation work in a complex project” (emphasis added). 73 P.S. § 176. Petitioner’s misguided belief that West Penn Power Company owned the underground electrical lines in the vicinity of Petitioner’s proposed worksite stood to be corrected prior to Petitioner striking underground facilities, had a preconstruction meeting been held. Even if, as Petitioner states at Paragraph 17 of its Motion, “no amount of time, meetings, care or diligence would have revealed this [damaged underground] line pre-excavation,” Petitioner’s responsibility to place a complex project ticket is not absolved.

IV. ANSWER TO PETITION FOR RECONSIDERATION

1. Admitted in part and denied in part. It is admitted that Petitioner filed a “Motion for Reconsideration” on or about October 31, 2022. It is denied that Petitioner met the established standard to justify that the Commission reopen the proceeding.

2. Admitted in part and denied in part. It is admitted that I&E served Petitioner with the Complaint in the above-docketed matter electronically on April 11, 2022, pursuant to *Waiver of Regulations Regarding Service Requirements*, Docket No. M-2021-3028321 (Order entered September 15, 2021) (exclusively electronic service by Commission staff on parties). By way of further response, the Complaint speaks for itself, and any interpretation, quotation, or characterization thereof is denied.

3. Admitted in part and denied in part. It is admitted that I&E served Petitioner with the Complaint in the above-docketed matter electronically on April 11, 2022, pursuant to *Waiver of Regulations Regarding Service Requirements*, Docket No. M-2021-3028321 (Order entered September 15, 2021) (exclusively electronic service by Commission staff on

parties). By way of further response, the Complaint speaks for itself, and any interpretation, quotation, or characterization thereof is denied.

4. Admitted in part and denied in part. It is admitted that I&E staff received an email from Petitioner on or about April 12, 2022 (“Petitioner’s April 12 Email”). As the document attached to Petitioner’s “Motion for Reconsideration” as Exhibit “A” speaks for itself, any interpretation, quotation, or characterization thereof is denied. By way of further response, undersigned Prosecutor responded to Petitioner’s April 12 Email (“Response Email”), on the same day, encouraging Petitioner to seek legal counsel. Response Email is attached as I&E Attachment 1.

5. Admitted in part and denied in part. It is admitted that I&E staff received an email with an attachment on or about April 12, 2022. As the document attached to Petitioner’s “Motion for Reconsideration” as Exhibit “B” speaks for itself, any interpretation, quotation, or characterization thereof is denied. By way of further response, since I&E was not involved “throughout the informal resolution process *preceding* the filing of the formal Complaint” (emphasis added), I&E is without sufficient knowledge to form a belief as to the truth of the matters asserted in the remainder of the averments in this Paragraph, and they are therefore denied.

6. Denied. I&E is without sufficient knowledge to form a belief as to the truth of the matters asserted. By way of further response, it is denied that Petitioner’s Exhibits marked “A” and “B” (“Petitioner’s ‘Response’”), considered separately or together, amounted to an Answer pursuant to Section 5.61(b) of the Public Utility Code, 52 Pa. Code § 5.61. Specifically, it is denied that Petitioner’s Response answered the Complaint within twenty (20) days of April 11, 2022 in that Petitioner, to date, never filed an Answer; it is

denied that Petitioner ever set forth a written response in numbered paragraphs to correspond with I&E's Complaint; it is denied that Petitioner advised the parties and the Commission as to the nature of its defense; it is denied that Petitioner admitted or denied specifically all material allegations of the Complaint; and, it is denied that Petitioner concisely stated the facts and matters of law relied upon. It is further denied that I&E staff has any obligation to "act accordingly" to Petitioner's beliefs.

7. Admitted in part and denied in part. It is admitted that I&E served Petitioner with I&E's Motion for Default Judgment in the above-docketed matter by electronic means on May 24, 2022, pursuant to *Waiver of Regulations Regarding Service Requirements*, Docket No. M-2021-3028321 (Order entered September 15, 2021) (exclusively electronic service by Commission staff on parties). Proof of electronic service³ of I&E's Motion for Default Judgment on Petitioner is attached as I&E Attachment 2. For the remainder of Paragraph 7, it is denied. As I&E cannot speak to the Petitioner's recollection, I&E is without sufficient knowledge to form a belief as to the truth of the matters asserted.

8. Admitted. It is admitted that the basis of I&E's Complaint in this matter pertained to allegations of Petitioner's violation of the Underground Utility Line Protection Law, Act of October 30, 2017, P.L. 806, No. 50 (at times referred to as the "PA One Call Law"), 73 P.S. § 176, *et seq.*

9. Denied. I&E is without sufficient knowledge to form a belief as to the truth of the matters asserted. By way of further response, it is denied that Petitioner disputed its

³ I&E initiated electronic service using the exact email address, s.dowling_westpennutilities@yahoo.com, as indicated on the Certificate of Service of I&E's Complaint and Motion for Default Judgment; the same being used by Petitioner to send its April 12 Email to I&E Staff.

liability under the PA One Call Law as detailed in the Complaint, in the form of either an Answer to the Complaint or response to I&E's Motion for Default Judgment.

10. Denied. This Paragraph states a legal conclusion to which no response is required. To the extent a response is deemed to be required, it is denied. By way of further response, it is specifically denied that Petitioner's legal obligations, responsibilities or liabilities to comply with the PA One Call Law are met or assumed by any third-party actor(s).

11. Denied. The Commission's October 27 Opinion and Order speaks for itself, and any interpretation, quotation or characterization thereof is denied. To the extent that a response is deemed to be required, this Paragraph is denied. By way of further response, the crux of I&E's Complaint is that Petitioner failed to place a Complex Project Ticket, initiating a preconstruction meeting in violation of Section 180(2.1) of the PA One Call Law, 73 P.S. § 180(2.1). The purpose of a preconstruction meeting is to correctly identify all facility owners within the vicinity of the proposed work site in order to hold a "scheduled event held by the excavator, designer, project owner an facility owner . . . *prior to the commencement of excavation work in a complex project*" (emphasis added). 73 P.S. § 176.

12. Denied. This Paragraph states a legal conclusion to which no response is required. By way of further response, it is specifically denied that Petitioner's legal obligations, responsibilities or liabilities to comply with the PA One Call Law are met or assumed by any third-party actor(s).

13. Denied. This Paragraph states a legal conclusion to which no response is required. By way of further response, it is specifically denied that Petitioner's legal obligations, responsibilities or liabilities to comply with the PA One Call Law are met or

assumed by any third-party actor(s), and the crux of I&E's complaint is that Petitioner failed to place a Complex Project Ticket with the POCS, initiating a preconstruction meeting in violation of Section 180(2.1) of the PA One Call Law, 73 P.S. § 180(2.1). The purpose of a preconstruction meeting is to correctly identify all facility owners within the vicinity of the proposed work site in order to hold a "scheduled event held by the excavator, designer, project owner an facility owner . . . *prior to the commencement* of excavation work in a complex project" (emphasis added). 73 P.S. § 176.

14. Denied. The POCS User Guide is appended to the Company's "Motion for Reconsideration" as Exhibit C. The POCS User Guide speaks for itself, and any interpretation, quotation or characterization thereof is denied. By way of further response, it is specifically denied that the emphasized language supports Petitioner's argument that its excavation work did not require a complex project ticket or locate request when Petitioner previously admitted the entire length of its project was 1,477 feet. *See* West Penn Utilities' Alleged Violation Report ("AVR") at p. 4 of I&E's Complaint, Exhibit 1.

15. Denied. This Paragraph states a legal conclusion to which no response is required. To the extent a response is deemed to be required, it is denied that Petitioner met its legal obligations, responsibilities, or liabilities under the PA One Call Law. By way of further response, Petitioner's averment in Paragraph 14 is inapposite of its averment in Paragraph 15, whereas Petitioner admitted that its project was 1,477 feet in length, which is greater than 1,000 feet. *Id.*

16. Denied. I&E is without sufficient knowledge to form a belief as to the truth of the matters asserted. To the extent a response is required, this allegation is denied. By way of further response, Petitioner had ample time and opportunity to raise such argument in

prior pleadings, but failed to do so, and therefore, such argument is waived and should not be considered at this late stage.

17. Denied. I&E is without sufficient knowledge to form a belief as to the truth of the matters asserted. To the extent a response is required, this allegation is denied. By way of further response, I&E submits that Petitioner's misguided belief that West Penn Power Company owned the underground electrical lines in the vicinity of Petitioner's proposed worksite stood to be corrected prior to Petitioner striking underground facilities, had a preconstruction meeting been held. Even if, "no amount of time, meetings, care or diligence would have revealed this [damaged underground] line pre-excitation," Petitioner's responsibility to place a Complex Project Ticket is not absolved. By way of further response, Petitioner had ample time and opportunity to raise such argument in prior pleadings, but failed to do so, and therefore, such argument should not be considered at this late stage.

18. Denied. The Paragraph states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied. By way of further response, it is specifically denied that Petitioner met its legal obligations, responsibilities, or liabilities under the PA One Call Law.

19. Denied. The Paragraph states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied. By way of further response, it is specifically denied that Petitioner met its legal obligations, responsibilities, or liabilities under the PA One Call Law.

20. Denied. The Paragraph states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied. By way of further

response, it is specifically denied that Petitioner met its legal obligations, responsibilities, or liabilities under the PA One Call Law.

21. Denied. The Paragraph states a conclusion of law to which no response is required. To the extent a response is deemed to be required, it is denied. By way of further response, it is specifically denied that Petitioner met its legal obligations, responsibilities, or liabilities under the PA One Call Law.

22. Denied. The Emergency Order speaks for itself, and any interpretation, quotation, or characterization thereof is denied.

23. Denied. It is denied that I&E failed to assist Petitioner to the extent that the above-docketed matter was initiated by a formal complaint, indicative of a contested dispute between the parties thereto, as undersigned Prosecutor's April 12 Response Email encouraged Petitioner to seek legal counsel. *See* I&E Attachment 1.

24. Denied. It is denied that Petitioner's failure to timely file an answer to I&E's Complaint or a timely response to I&E's Motion for Default Judgment warrants an opportunity to file such now. By way of further answer, it is specifically denied that Petitioner met the established standard to justify that the Commission reopen the proceeding.

V. CONCLUSION

I&E respectfully submits that West Penn Utilities had ample time to file its Answer to the Complaint or a response to the Motion for Default Judgment, given the six-month time lapse between I&E's Complaint filing on April 11, 2022, and the Commission's October 27 Order granting the Motion for Default Judgment. Therefore, I&E asserts that West Penn Utilities has not met the high standard for amending the Commission's Order.

WHEREFORE, for the reasons set forth above, the Bureau of Investigation and Enforcement respectfully requests that the Petition for Reconsideration of West Penn Utilities, LLC be denied.

Respectfully submitted,



Emily A. Farren
Prosecutor
PA Attorney ID No. 322910

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 783-6150
efarren@pa.gov

Dated: November 9, 2022

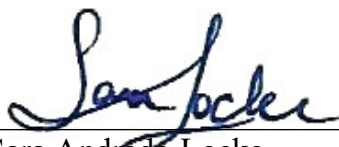
**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. C-2022-3031862
	:	
West Penn Utilities, LLC	:	

VERIFICATION

I, Sara Andrade-Locke, Damage Prevention Supervisor, Damage Prevention Section, Bureau of Investigation and Enforcement, hereby state that the facts above set forth are true and correct to the best of my knowledge, information, and belief and that I expect the Bureau will be able to prove the same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: November 9, 2022



Sara Andrade-Locke
Damage Prevention Supervisor
Damage Prevention Section
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120

I&E

Attachment 1

From: Farren, Emily
Sent: Tuesday, April 12, 2022 11:02 AM
To: ScottMichael Dowling
Subject: RE: [External] Re: West Penn Utilities - I&E Formal Complaint

Mr. Dowling,

So that you are aware, this matter was referred to the Public Utility Commission's Bureau of Investigation and Enforcement for prosecution after West Penn submitted its rejection of the Damage Prevention Committee's Informal Determination. West Penn has 20 days from the date of the filing of the Formal Complaint to file an Answer. You may want to forward the Formal Complaint to West Penn's legal department for review.

Best regards,
Emily

Emily A. Farren | Prosecutor
PA Public Utility Commission | Bureau of Investigation & Enforcement
Commonwealth Keystone Building
400 North Street | Harrisburg PA 17120
Phone: 717.783.6150 | Fax: 717.783.3458 | Email: efarren@pa.gov



PRIVILEGE AND CONFIDENTIALITY NOTICE: This e-mail, including any attachments, may be privileged, confidential, proprietary and/or otherwise protected from disclosure and is intended only for the use of the designated recipient(s). Any dissemination, disclosure, distribution, copying or other use of this communication without the approval of the sender is strictly prohibited and may be unlawful. If you have received this communication in error, please immediately notify the sender and delete the original electronic e-mail and destroy any printed copies. Receipt by anyone other than the intended recipient is not a waiver of any attorney-client or work-product privilege.

From: ScottMichael Dowling <s.dowling_westpennutilities@yahoo.com>
Sent: Tuesday, April 12, 2022 8:33 AM
To: McElroy, Joanna <joamcelroy@pa.gov>; Dave Weaver <west_penn_utilities@yahoo.com>
Cc: Farren, Emily <efarren@pa.gov>
Subject: [External] Re: West Penn Utilities - I&E Formal Complaint

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown sources. To report suspicious email, forward the message as an attachment to CWOPA_SPAM@pa.gov.

To All parties,

I am attaching the letter submitted to the PUC disputing the claim that we failed to hold a complex meeting that lead to the damage of an electric line. The work was performed between two intersections. If work takes place between two intersections a complex ticket is not required. Also the damaged line was due to a party not being members of the PA 1 Call service. We worked with the locators throughout this project the entire way giving locators plenty of time to get sections of the work located. We performed our excavation with care and worked to minimize any damages. The

cause of this issue was a facility owner not being a member of the one call system. If you have any questions, please feel free to contact me.

Thank you,
ScottMichael Dowling
West Penn Utilities
724-797-1739

On Monday, April 11, 2022, 08:58:55 AM EDT, McElroy, Joanna <joamcelroy@pa.gov> wrote:

Good Morning,

On behalf of the Bureau of Investigation & Enforcement (I&E) attached please find a courtesy copy of the **Formal Complaint** that was e-filed with the Secretary's Bureau this morning. The Secretary's Bureau will be serving an official copy with the assigned docket number.

If you have any questions, please contact Emily A. Farren, (717) 783-6150 or efarren@pa.gov.

Thank you,

Joanna McElroy

Legal Assistant

Bureau of Investigation & Enforcement

(717) 214-2235

joamcelroy@pa.gov



I&E

Attachment 2

From: McElroy, Joanna
Sent: Tuesday, May 24, 2022 12:41 PM
To: s.dowling_westpennutilities@yahoo.com
Cc: Farren, Emily
Subject: C-2022-3031862 (West Penn Utilities) I&E Motion for Default Judgment
Attachments: C-2022-3031862 (West Penn Utilities) I&E Motion for Default Judgment FINAL.pdf

Good Afternoon,

On behalf of the Bureau of Investigation & Enforcement (I&E) attached please find the **Motion for Default Judgment** for the above-referenced matter that was e-filed with the Secretary's Bureau this afternoon.

Copies are being served on parties of record per the attached Certificate of Service. Should you have any questions, please contact Emily A. Farren, (717) 783-6150 or efarren@pa.gov.

Thank you,

Joanna McElroy

Legal Assistant

Bureau of Investigation & Enforcement

(717) 214-2235

joamcelroy@pa.gov



**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

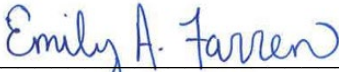
Pennsylvania Public Utility Commission	:	
Bureau of Investigation and Enforcement	:	
	:	
v.	:	Docket No. C-2022-3031862
	:	
West Penn Utilities, LLC	:	

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing **Answer to Petition for Reconsideration** in the manner and upon the parties listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

Served via Electronic Mail

Louis C. Blauth, Jr., Esq.
The Mitchell Building
304 Ross Street, Suite 703
Pittsburgh, PA 15219
lou@blauthlaw.com
Counsel for West Penn Utilities, LLC



Emily A. Farren
Prosecutor
PA Attorney ID No. 322910

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 783-6150
efarren@pa.gov

Date: November 9, 2022