



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

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

November 17, 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  
**I&E Motion to Strike Untimely-Filed Answer**

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Bureau of Investigation and Enforcement's ("I&E") **Motion to Strike the Answer to Complaint and New Matter of West Penn Utilities, LLC**, filed in the above-referenced proceeding. 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".

Emily A. Farren  
Prosecutor  
PA Attorney ID No. 322910  
Bureau of Investigation and Enforcement

EAF/jfm  
Enclosures

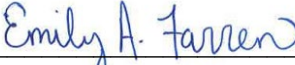
cc: Michael L. Swindler, Deputy Chief Prosecutor (*via email only*)  
Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**NOTICE TO PLEAD**

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) has filed a Motion to Strike the Untimely Filed Answer of West Penn Utilities, LLC in the above-captioned matter. Pursuant to 52 Pa. Code § 5.103(c), you are hereby notified to file a written response within twenty (20) days of service of the Motion. Any Answer to the Motion must be filed with the Pennsylvania Public Utility Commission, with a copy served to the I&E prosecutor.

  
\_\_\_\_\_  
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](mailto:efarren@pa.gov)

Dated: November 17, 2022

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MOTION TO STRIKE**

Pursuant to 52 Pa. Code § 5.103, the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”), by its prosecuting attorneys, files this Motion to Strike the Untimely-Filed Answer to Complaint and New Matter of West Penn Utilities, LLC (“West Penn Utilities”, “Company”, or “Respondent”).

In support thereof, I&E respectfully represents as follows:

**I. PROCEDURAL HISTORY**

1. I&E commenced this action by filing and serving a 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 Respondent’s failure to submit a Complex Project Ticket through the Pennsylvania One Call System (“POCS”) at least ten (10) business days prior to commencing excavation.

2. As a result of the above-described violation, I&E’s Complaint sought an administrative penalty be imposed upon West Penn Utilities in the amount of Two Thousand Five Hundred Dollars (\$2,500).

3. I&E hereby incorporates by reference the Complaint that it filed in this proceeding on April 11, 2022.

4. Attached to the Complaint was a Notice advising West Penn Utilities that it must file an Answer within twenty (20) days of service of the Complaint.

5. The Notice also advised West Penn Utilities that if it failed to answer the Complaint within twenty (20) days, I&E would request that the Commission issue an Order imposing the administrative penalty and other relief set forth in the Complaint.

6. The Notice further provided West Penn Utilities with detailed instructions related to filing an answer to the Complaint.

7. The twenty (20) days to file an Answer to the Complaint expired on May 1, 2022.

8. On May 24, 2022, I&E filed and served a Motion for Default Judgment for Respondent's failure to timely file an Answer to I&E's Complaint.

9. Respondent failed to respond to I&E's Motion for Default Judgment.

10. By Opinion and Order of the Commission entered October 27, 2022 ("October 27 Order"), the Commission granted I&E's Motion for Default Judgment and directed Respondent to pay the administrative penalty of \$2,500 within thirty (30) days of the date of the October 27 Order.

11. On October 31, 2022, Respondent filed a Petition for Reconsideration of the Commission's October 27 Order.

12. On November 9, 2022, I&E filed its Answer in Opposition to Respondent's Petition for Reconsideration.

13. On November 10, 2022, the Commission granted Respondent's Petition for Reconsideration, pending further review of, and consideration on, the merits.

14. By communication dated November 11, 2022<sup>1</sup>, West Penn Utilities provided, via email, a "courtesy copy" of its Answer and New Matter filed that date to the undersigned prosecutor.

15. Respondent's Answer and New Matter, filed nearly eight (8) months after the filing of I&E's Complaint and during the pendency of a ruling on the Respondent's Petition for Reconsideration, is procedurally deficient on both counts and should be stricken.

## **II. BASIS FOR MOTION TO STRIKE**

16. Pursuant to Section 1.11(a)(4) of the Commission's regulations, a pleading, submittal or other document is deemed to be filed:

[o]n the date stated on the confirmation of receipt from the Commission's electronic filing system, when the time shown is prior to 4:30 p.m. local prevailing time in the Eastern Time Zone (United States of America) and the date shown is a day on which the Commission offices are open.

52 Pa. Code § 1.11(a)(4).

17. Pursuant to Section 1.11(a)(4), when a document is filed electronically when the Commission is closed, the document will be deemed to be filed at the time the offices next open. 52 Pa. Code § 1.11(a)(4). Accordingly, based on the date of West Penn Utilities' email to the undersigned prosecutor, dated November 11, 2022, West Penn Utilities' Answer and New Matter was filed on November 14, 2022. Accordingly, West Penn Utilities has submitted an Answer 197 days beyond the due date.

---

<sup>1</sup> The Commission was closed on Friday, November 11, 2022, in observation of Veterans Day.

18. Pursuant to Section 5.61(c) of the Commission's regulations, a Respondent who fails to file an Answer to a Complaint within the applicable time period may be deemed in default, and the relevant facts stated in the Complaint may be deemed admitted. 52 Pa. Code § 5.61(c).

19. The Commonwealth Court has upheld the Commission's authority to sustain complaints that are not answered within twenty days. *See Fusaro v. Pa. Pub. Util. Comm'n*, 382 A.2d 794, 797 (Pa. Cmwlth. 1978).

20. In *Hickory Hollow Farms c/o Lamar Harnish v. Liberty Power Holdings LLC and United Energy Alliance LLC*, Docket No. C-2016-2559494 (Final Order entered August 31, 2017), the Commission adopted the Administrative Law Judge's decision to grant a motion for default judgment upon an unrepresented, *pro se* respondent's failure to file a timely answer to an amended complaint. The unanswered allegations of the complaint were treated as admissions and a civil penalty was imposed.

21. In the instant matter, West Penn Utilities is presently represented by counsel and offered no reasonable explanation, let alone good cause, for the failure to timely file an answer to I&E's Complaint.

22. Moreover, Respondent filed its Answer to Complaint and New Matter during the pendency of the Commission's ruling on Respondent's Petition for Reconsideration. The outcome of this Petition could well determine whether Respondent will even be afforded an opportunity – at the appropriate time – to file a late Answer to the Complaint or whether the proceeding is deemed closed and the Answer rendered moot.

23. For the reasons set forth above, West Penn Utilities should not be afforded any leniency for its failure to comply with the Commission's regulations. West Penn Utilities'

untimely-filed Answer and New Matter should be stricken and I&E's Complaint sustained and Motion for Default Judgment in the instant proceeding should be granted.

**WHEREFORE**, I&E respectfully requests that it's Motion to Strike Respondent's Answer and New Matter be granted, that Respondent's Petition for Reconsideration be denied and that West Penn Utilities be directed to comply with the Commission's October 27 Order as follows:

- a. That West Penn Utilities pay the administrative penalty of \$2,500 for the above-described violation of the PA One Call Law, in accordance with Section 180.10, 73 P.S. § 180.10;
- b. That the Commission order such other relief as the Commission may deem to be appropriate.

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](mailto:efarren@pa.gov)

Date: November 17, 2022

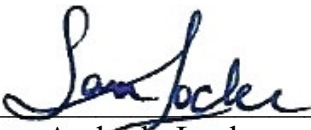
**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**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 to be able to prove the same at a 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 17, 2022

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



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

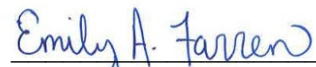
Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement,	:	
Complainant	:	
	:	
v.	:	Docket No. C-2022-3031862
	:	
West Penn Utilities, LLC,	:	
Respondent	:	

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document 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](mailto: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](mailto:efarren@pa.gov)

Dated: November 17, 2022