

November 30, 2022

Via Electronic Filing

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

**Re: Docket No. C-2022-3032717
Candy Scott v. West Penn Power Company
Answer of West Penn to Motion for Continuance**

Dear Secretary Chiavetta:

Attached for filing is the Answer of West Penn Power Company (Respondent) to the Motion of Candy Scott (Complainant) in the above-referenced proceeding.

A copy of the enclosed Answer to Motion for Continuance has been forwarded 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. Gail M. Chiodo, PA Public Utility Commission [w/encls.]
Tori Giesler, Esquire, FirstEnergy Service Company [w/encls.]
Candy Scott [w/encls.]

**Re: Docket No. C-2022-3032717
Candy Scott v. West Penn Power Company
Answer of West Penn to Motion for Continuance**


CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following person(s), in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Via Electronic Mail

Candy Scott
candee68@hotmail.com
candyskolosky@gmail.com

Dated: November 30, 2022



Margaret A. Morris, Esquire

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

CANDY SCOTT	:	
	:	
v.	:	Docket No. C-2022-3032717
	:	
WEST PENN POWER COMPANY	:	

**ANSWER OF WEST PENN POWER COMPANY
TO THE MOTION FOR CONTINUANCE OF CANDY SCOTT**

In accordance with the *Order Fixing Response Date to Complainant’s Motion*, dated November 15, 2022, West Penn Power Company (Respondent or Company), by and through its attorneys, Reger Rizzo & Darnall LLP, pursuant to 52 Pa. Code § 5.103, hereby submits its Answer to the Motion for Continuance (Motion) filed by Candy Scott (Complainant).

In response thereto, Respondent avers and represents as follows:

Relevant Background

1. On June 2, 2022, the Commission served West Penn with the present Formal Complaint in which the Complainant checked boxes indicating that her service was subject to termination and that she would like a second Commission payment arrangement (PAR) or an extension of the defaulted Commission PAR.

2. On June 22, 2022, West Penn filed its Answer and New Matter which denied the material allegations in the Formal Complaint. Specifically, West Penn disputed that the Complainant was entitled to a subsequent Commission PAR for the arrears on her Account. Due to the size of the delinquent balance, West Penn requested that a hearing be scheduled as soon as practicable.

3. By Hearing Notice, dated June 24, 2022, the Commission initially scheduled the matter for a telephonic hearing on July 12, 2022 before Administrative Law Judge Gail M. Chiodo (Judge Chiodo).

4. On June 24, 2022, Judge Chiodo issued a *Prehearing Order*, setting forth the procedures for the conduct of hearings, including the consequences for failing to appear as well as instructions for requesting a continuance

5. By Hearing Notice, dated July 12, 2022, the matter was scheduled for Further Hearing on August 16, 2022.

6. On August 16, 2022, the Further Hearing was held as scheduled and the terms of a resolution to Complainant's Informal and Formal Complaints (Settlement Agreement) was agreed upon.

7. By email, dated September 7, 2022, the undersigned counsel advised Judge Chiodo that the Complainant had failed to honor the terms of the Settlement Agreement and, respectfully requested that the matter be scheduled for hearing as soon as practicable. A copy of the email exchange between the undersigned counsel, Judge Chiodo and the Complainant is provided as Attachment 1.

8. By Hearing Notice, dated September 8, 2022, the matter was scheduled for Further Hearing on October 28, 2022.

9. By email, dated October 20, 2022, the Company submitted its Proposed Exhibits for the October 28, 2022, hearing. The Proposed Exhibits were sent to two email addresses for the Complainant.

10. On October 28, 2022, the Further Hearing convened as scheduled. The Complainant did not appear at the scheduled hearing to prosecute her complaint. West Penn and

its witness appeared and testified in support of its allegation that the Complainant was abusing the Commission's complaint process to avoid lawful termination. All Proposed Exhibits were admitted into the record.

11. By email, dated October 28, 2022, the Complainant apologized for her failure to attend the hearing as scheduled and requested the proceeding be rescheduled to a future date. Later that afternoon, Judge Chiodo responded *via* email, advising the Complainant to file a written Motion on or before November 4, 2022, to request a Further Hearing.

12. The Complainant filed her Motion with the Commission on November 4, 2022. On November 10, 2022, West Penn was notified by Judge Chiodo *via* email that Complainant's Motion was improperly filed without Certificate of Service, and due to Complainant's failure, West Penn had until Wednesday, November 30, 2022, to file its Answer.

Legal Standard

13. 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). 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).

14. 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) (*Berkowitz*); *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) (*Chartiers*); *Geary v. Verizon Pennsylvania Inc.*, Docket No. C-2009-2118625 (Order entered September 16, 2010) (*Geary*).

15. 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).

16. 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).

17. 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).

Argument

18. The Complainant's failure to correctly "mark the date and time of the hearing" is a further example of her abuse of the Commission's complaint process.

19. On September 8, 2022, the Complainant provided 3 dates in October for the continued hearing: 14, 26 and 28. A copy of the Complainant's email is provided as Attachment 2.

20. The Complainant enrolled in eserve. The Hearing Notice was eserved on September 8, 2022. The Complainant has an obligation to check her email account.

21. The Complainant also had notice of the day, date and time of the hearing as reflected on the Certificate of Service for the Company's Proposed Exhibits and the index for those Proposed Exhibits. A copy of the Certificate of Service and index are provided as Attachment 3.

22. The Complainant's failure to appear at the scheduled hearing to provide testimony in support of her Formal Complaint was clearly avoidable; she admits it was her error.

23. The Complainant has not demonstrated a good faith attempt to attend the hearing. The Complainant does not explain how she remembered at 1:44 p.m. that the hearing was held at 10 a.m. that morning.

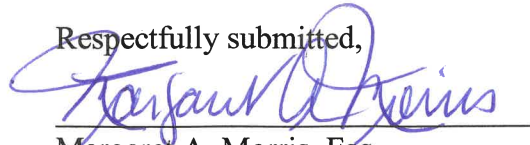
24. The Company and public will be prejudiced by permitting the reopening or further examination. The October 28, 2022, hearing was the third scheduled hearing. The Complainant's actions are simply a further attempt to prevent the Company from lawfully terminating the undisputed balance.

25. As Judge Chiodo stated, the Company's witness has already testified. Furthermore, all proposed exhibits were admitted into the record. The Complainant waived her right to cross examine or otherwise object to the record evidence taken on October 28, 2022. Should her request be granted, the Complainant should be required to take the record as it presently stands.

WHEREFORE, Respondent, West Penn Power Company, requests that the Motion for Continuance filed by Candy Scott be denied in its entirety.

Date: November 30, 2022

Respectfully submitted,



Margaret A. Morris, Esq.
Attorney ID No. 75048
Reger Rizzo & Darnall LLP
Cira Centre, 13th Floor
2929 Arch Street
Philadelphia, PA 19104
(215) 495-6524 tel.
mmorris@regerlaw.com

Counsel for West Penn Power Company

Docket No. C-2022-3032717
Candy Scott v. West Penn Power Company

Attachment 1

Email dated September 7, 2022
Re: Scott v. West Penn – Please schedule hearing

Margaret A. Morris, Esquire

From: Margaret A. Morris, Esquire
Sent: Wednesday, September 7, 2022 4:55 PM
To: Chiodo, Gail
Cc: c kolosky
Subject: Scott v West Penn Pls schedule hearing

Importance: High

Your Honor:

Please be advised that Certificate of Satisfaction cannot be filed. The Complainant has failed to honor the terms of the Settlement Agreement whereby she would become current with the Company PAR and timely pay current charges. The deadline for the catch-up payment was 8/23/22. As of today, the amount to re-instate the Company PAR is \$2,877.00. **West Penn respectfully requests that the matter be scheduled for hearing as soon as practicable so that the Company's claim of abuse of the PUC's complaint process can be litigated.**

The Complainant is copied on this email. Thank you.

Margie Morris

REGER RIZZO DARNALL <small>Attorneys at Law</small>	Cira Centre, 13th Floor 2929 Arch Street Philadelphia, Pa 19104 Phone: 215.495.6500 Fax: 215.495.6600 Web: www.regerlaw.com	Margaret A. Morris, Esquire mmorris@regerlaw.com Direct: 215.495.6524 Cell: 215.870.5785
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Docket No. C-2022-3032717
Candy Scott v. West Penn Power Company

Attachment 2

Email exchange dated September 7 and 8, 2022
Re: C-2022-3032717, Candy Scott v. West Penn Power Company

Margaret A. Morris, Esquire

From: c kolosky <candee68@hotmail.com>
Sent: Thursday, September 8, 2022 11:53 AM
To: Chiodo, Gail; Margaret A. Morris, Esquire
Subject: Re: C-2022-3032717, Candy Scott v. West Penn Power Company

Thank you for this update. The below dates work with my availability.

October 14 10:00 a.m. and 2:00 p.m.
October 26 10:00 a.m. -----
October 28 10:00 a.m. and 2:00 p.m.

From: Chiodo, Gail <gchiodo@pa.gov>
Sent: Thursday, September 8, 2022 11:46 AM
To: c kolosky <candee68@hotmail.com>; Margaret A. Morris, Esquire <mmorris@regerlaw.com>
Subject: C-2022-3032717, Candy Scott v. West Penn Power Company

Ms. Morris – I am in receipt of your email requesting to schedule a hearing in this matter as soon as practicable.

Ms. Scott – I am in receipt of your email requesting that this matter not be scheduled before Sept. 21 and inquiring if I can speak to you alone. Please be advised that in order to avoid any ex parte communication, I cannot speak to you alone about this case, just as I would not speak to Ms. Morris alone. I do not believe you necessarily intended to do so and will regard your email as simply a scheduling preference. Further, as you can see below, I am forwarding to Ms. Morris your email, also to avoid any ex parte communication. However, in the future, as I have explained before, you **MUST** include Ms. Morris on any email to me.

Next, since this matter has not settled, it is appropriate that a hearing be scheduled on Ms. Scott’s complaint. And, in the interests of moving this case forward, and trying to accommodate all of our schedules, I have listed below the dates/times that I am available. Please respond to this email as to which dates/times below you are also available no later than Monday, September 12, 2022 at 4:00 p.m.

Once you both respond to this email, I will choose a date/time we are all available and a Hearing Notice will be issued. If I do not hear a response by Sept. 12, a hearing will be scheduled. If you are not available on any of the dates below, let me know and then my office will schedule a hearing.

I am available the following dates and times:

September 30 . . . 10:00 a.m. and 2:00 p.m.
October 4 10:00 a.m. and 2:00 p.m.
October 6 10:00 a.m. and 2:00 p.m.
October 13 10:00 a.m. and 2:00 p.m.
October 14 10:00 a.m. and 2:00 p.m.
October 26 10:00 a.m. -----
October 28 10:00 a.m. and 2:00 p.m.

Thank you for your anticipated cooperation.

Gail M. Chiodo

Administrative Law Judge
Pennsylvania Public Utility Commission
400 North Street | Harrisburg, PA 17120
Phone: 717-425-5987
Fax: 717-787-0481
Email: gchiodo@pa.gov



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From: c kolosky <candee68@hotmail.com>
Sent: Wednesday, September 7, 2022 7:14 PM
To: Chiodo, Gail <gchiodo@pa.gov>
Subject: [External] Re: Scott v West Penn Pls schedule hearing

ATTENTION: This email message is from an external sender. Do not open links or attachments from unknown senders. To report suspicious email, use the [Report Phishing button in Outlook](#).

Your Honor,

I am directly this solely to you. I do not feel comfortable talking to Ms. Morris without your presence at this time and I don't have the extra funds to retain a lawyer to assist. I am trying my hardest to get this rectified so I don't have to have contact with Ms. Morris or West Penn Power. Please do schedule after the 21st of the month. I am starting a new job within the same organization and will be training during the next 10 days. The bank had once again switched the accounts either by my error or theirs. I was on my way to the bank to rectify the situation when I had a medical emergency, rather a freak incident. My daughter responded to phone numbers on my phone to just let people aware of the situation with in regards to work and stumbled upon Ms. Morris's number and shot her a quick text not knowing the relationship between Ms. Morris and myself and proceeded in detail to inform her. My daughter felt uncomfortable at that time relaying any more information to Ms. Morris due to the fact that she was asking about medical conditions and wanted to verbally have my daughter call her and release my medical information and provide documentations.

If possible, I would like to speak with you directly? I'm not sure if that is even allowed in this type of situation.

Candy S Scott
candee68@hotmail.com
724-434-4047

From: Margaret A. Morris, Esquire <mmorris@regerlaw.com>
Sent: Wednesday, September 7, 2022 4:54 PM
To: Chiodo, Gail <gchiodo@pa.gov>

Cc: c kolosky <candee68@hotmail.com>

Subject: Scott v West Penn Pls schedule hearing

Your Honor:

Please be advised that Certificate of Satisfaction cannot be efiled. The Complainant has failed to honor the terms of the Settlement Agreement whereby she would become current with the Company PAR and timely pay current charges. The deadline for the catch-up payment was 8/23/22. As of today, the amount to re-instate the Company PAR is \$2,877.00. **West Penn respectfully requests that the matter be scheduled for hearing as soon as practicable so that the Company's claim of abuse of the PUC's complaint process can be litigated.**

The Complainant is copied on this email. Thank you.

Margie Morris



Cira Centre, 13th Floor
2929 Arch Street
Philadelphia, Pa 19104
Phone: 215.495.6500
Fax: 215.495.6600
Web: www.regerlaw.com

Margaret A. Morris, Esquire
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Docket No. C-2022-3032717
Candy Scott v. West Penn Power Company

Attachment 3

Certificate of Service for the Company's Proposed Exhibits
and the index for those Proposed Exhibits

October 20, 2022

Via Electronic Mail

The Honorable Gail M. Chiodo
gchiodo@pa.gov

**Re: Docket No. C-2022-3032717
Candy Scott v. West Penn Power Company
Proposed Hearing Exhibits of West Penn**

Your Honor:

In anticipation of the Telephonic Hearing scheduled Friday, October 28, 2022, at 10:00 a.m., attached please find the Proposed Exhibits of West Penn Power Company.

A copy of the Proposed Exhibits has been provided to the Complainant in the manner indicated on the enclosed Certificate of Service.

If there are any questions, please feel free to contact me.

Very truly yours,

Reger Rizzo & Darnall LLP


Margaret A. Morris

MAM/co
Enclosures

cc: Tori Giesler, Esquire, FirstEnergy Service Company [w/encls.]
Candy Scott [w/encls.]

**Re: Docket No. C-2022-3032717
Candy Scott v. West Penn Power Company
Proposed Hearing Exhibits of West Penn**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon the following person(s), in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Via Electronic Mail

Candy Scott
candee68@hotmail.com
candyskolosky@gmail.com

Dated: October 20, 2022


Margaret A. Morris, Esquire

Docket No. C-2022-3032717

Candy Scott v. West Penn Power Company

The Hon. Gail M. Chiodo

Hearing Date: Friday, October 28, 2022 at 10:00 AM

Call-In Hearing No.: 1.877.929.1529; PIN: 27666478#

PROPOSED EXHIBITS OF WEST PENN

1. Customer Contacts
2. Statement of Account
3. Med Cert History
4. Payment History
5. PAR History
6. Complaint Chart
7. BCS Decision No. 3558483, closed 9/11/17 (Level 1 PAR)
8. BCS Decision No. 3638195, closed 4/9/19 (§ 1405(d))
9. BCS Decision No. 3717719, closed 3/20/20 (§ 1405(d))
10. BCS Decision No. 3835528, closed 5/25/22 (§ 1405(d))
11. Collection History