



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

September 1, 2023

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 Power Company
Docket No. C-2023-
I&E Formal Complaint

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Formal Complaint of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission in the above-referenced matter.

Copies are being served on the parties of record in accordance with the attached Certificate of Service.

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

Sincerely,

A handwritten signature in blue ink, appearing to read 'G. Rosul', written over a light blue horizontal line.

Grant Rosul
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 318204
(717) 783-5243
grosul@pa.gov

GR/ac
Enclosures

cc: Michael L. Swindler, Deputy Chief Prosecutor, I&E-Enforcement (*via email*)
As per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau of Investigation and Enforcement	:	
Complainant	:	
	:	
v.	:	Docket No.: C-2023-
	:	
West Penn Power Company	:	
Respondent	:	

NOTICE

A. You must file an Answer within twenty (20) days of the date of service of this Complaint. The date of service is the date as indicated at the top of the Secretarial Letter. See 52 Pa. Code § 1.56(a). The Answer must raise all factual and legal arguments that you wish to claim in your defense, include the docket number of this Complaint, and be verified. Pursuant to *Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements*, Docket No. M-2020-3019262 (Emergency Order ratified on March 20, 2020), you must eFile your Answer using the Commission’s website at www.puc.pa.gov. The link to eFiling is located under the Filing & Resources tab on the homepage.

Additionally, please electronically serve a copy on:

Grant Rosul, Prosecutor
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
grosul@pa.gov

B. If you fail to answer this Complaint within twenty (20) days, the Bureau of Investigation and Enforcement will request that the Commission issue an Order imposing the civil penalty and other requested relief.

C. You may elect not to contest this Complaint by paying the civil penalty within twenty (20) days and performing the corrective actions set forth in the requested relief. A certified check, cashier’s check or money order should be payable to the “Commonwealth of Pennsylvania” and mailed to:

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

Your payment is an admission that you committed the alleged violations and an agreement to cease and desist from committing further violations. Upon receipt of your payment, the Complaint proceeding shall be closed.

D. If you file an Answer, which either admits or fails to deny the allegations of the Complaint, the Bureau of Investigation and Enforcement will request the Commission to issue an Order imposing the civil penalty and granting the requested relief as set forth in the Complaint.

E. If you file an Answer which contests the Complaint, the matter will proceed before the assigned presiding Administrative Law Judge for hearing and decision. The Judge is not bound by the penalty set forth in the Complaint, and may impose additional and/or alternative penalties as appropriate.

F. If you are a corporation, you must be represented by legal counsel. 52 Pa. Code § 1.21.

G. Alternative formats of this material are available for persons with disabilities by contacting the Commission's ADA Coordinator at (717) 787-8714.

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FORMAL COMPLAINT

NOW COMES the Pennsylvania Public Utility Commission’s (“Commission”), Bureau of Investigation and Enforcement (“I&E”), by its prosecuting attorneys, pursuant to Section 2804(1)(ii) of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. § 2804(1)(ii), and files this Formal Complaint against West Penn Power Company alleging violations of 66 Pa. C.S. § 2804(1)(ii) requiring the “maintenance of transmission and distribution facilities in conformity with established industry standards and practices, including the standards set forth in the National Electric Safety Code [(“NESC”)]” and the attendant regulations at 52 Pa. Code § 57.194 and 52 Pa. Code § 57.28(a) in the 2022 calendar year. In support of its Complaint, I&E respectfully represents the following:

I. PARTIES AND JURISDICTION

1. The Pennsylvania Public Utility Commission (“Commission”), with a mailing address of 400 North Street, Harrisburg, PA 17120, is a duly constituted agency

of the Commonwealth of Pennsylvania authorized and obligated by Section 501(a) of the Code, 66 Pa. C.S. § 501(a), to execute and enforce the provisions of the Code.

2. Complainant's prosecuting attorneys are as follows:

Grant Rosul
Prosecutor
grosul@pa.gov
(717) 783-5243

Michael L. Swindler
Deputy Chief Prosecutor
mwindler@pa.gov

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
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3. Section 701 of the Code, 66 Pa. C.S. § 701, authorizes the Commission to, *inter alia*, hear and determine complaints alleging a violation of any law or regulation that the Commission has jurisdiction to administer.

4. Section 3301 of the Code, 66 Pa.C.S. § 3301, authorizes the Commission to impose civil penalties on any public utility or on any other person or corporation subject to the Commission's authority for violations of the Code, the Commission's regulations, or both. Section 3301 allows for the imposition of a fine for each violation and each day's continuance of such violation(s). 66 Pa.C.S. § 3301.

5. Respondent is a "public utility" as that term is defined at 66 Pa. C.S. § 102 as it is engaged in providing public utility service as an electric distribution company

(“EDC”) in the Commonwealth of Pennsylvania to the public for compensation, with its principal place of business at 800 Cabin Hill Drive, Greensburg, PA 15601.

6. Respondent, as an EDC, is subject to the power and authority of the Commission pursuant to Section 501(c) of the Code, 66 Pa. C.S. § 501(c), which requires a public utility to comply with Commission regulations and orders.

7. Pursuant to the provisions of the applicable Commonwealth statutes and regulations, the Commission has jurisdiction over the subject matter of this Complaint and the actions of Respondent related thereto.

II. BACKGROUND

8. Pursuant to Sections 331(a) and 506 of the Code, 66 Pa. C.S. §§ 331(a) and 506, and Section 3.113 of the Commission’s regulations, 52 Pa. Code § 3.113, Commission staff has the authority to conduct informal investigations or informal proceedings in order to gather data and/or to substantiate allegations of potential violations of the Commission’s regulations.

9. I&E instituted an informal investigation of West Penn based on information referred to I&E by the Commission’s Bureau of Consumer Services (“BCS”) regarding an incident where a West Penn primary distribution line made contact with a light pole causing damage. I&E determined that this complaint warranted further investigation to examine whether the actions of West Penn violated the Code, Commission regulations, and NESC.

10. The 7,200-volt phase-to-ground primary line is near the public parking lot of the Hyatt Place Hotel located at 212 Racetrack Drive, Washington, PA 15301.

11. I&E's Electric Safety Division initiated an investigation. The following background consists of a summary of the findings of I&E Safety Division's investigation:

- a. On or about November 15, 2020, a windstorm hit the Washington, Pennsylvania area displacing an energized primary distribution line of West Penn, located on the property of Meadows Racetrack and Casino at 212 Racetrack Road in Washington, Pennsylvania.
- b. The energized primary line came into contact with one of the light poles located in the parking lot of Meadows Racetrack and Casino.
- c. The cause of the extended primary line displacement was due to excessive sag.
- d. The high voltage from this primary line burned the light pole and sent high voltage through the grounding system of the property's inter-connected exterior lighting circuits, causing extensive over voltage damages to the lighting system lines and electrical protection equipment.
- e. On November 15, 2020, Meadows Hotel Associates LLC reported a power outage to West Penn.
- f. The following day, on November 16, 2020, a West Penn hazard responder arrived at the scene of the incident and noted that the customer still had power.
- g. On November 25, 2020, West Penn removed the excessive sag from all three primary line(s) that had allowed the field-side line to blow

into the light pole and cause damage.

- h. Upon further inspection by an electrical contractor, Rozzo Electric, it was determined that West Penn's line made contact with the pole twice, created burn marks on the pole and the primary conductor, and the high voltage travelling through the pole while trying to find ground damaged grounding conductors on two poles and the hotel lighting panel.
- i. The horizontal clearance of the primary line in question was measured by West Penn to be eight (8) feet to the light pole under ordinary conditions.
- j. The absence of West Penn oversight contributed to the creation of an unsafe condition/environment which allowed the primary distribution line to be displaced during a windstorm and cause damage to the parking lot lighting system.
- k. I&E determined that West Penn failed to maintain adequate horizontal (wind displacement) clearance to the light pole and that West Penn failed to recognize the compliance issue during their overhead circuit inspections.

III. ALLEGED VIOLATIONS

12. All allegations in paragraphs 1-11 are incorporated as if fully set forth herein.

13. Respondent violated Section 57.194 of the Commission’s regulations, 52 Pa. Code § 57.194, 52 Pa. Code § 57.28(a), the NESC, and the Code in that West Penn failed to maintain the required horizontal clearance with wind displacement from the primary line to the light pole, which created an ongoing unsafe and hazardous condition, resulted in property damage, and placed the public safety in danger, and additionally failed to notice the compliance issue during inspection of its overhead circuits.

Count 1

14. Respondent’s energized primary line had excessive slack to such an extent that it sagged and was able to be blown by the wind into a light pole 8 feet away in the parking lot of Meadows Racetrack and Casino.

If proven, by allowing its line to be in such a condition, this is a violation of NESC § 234(C), which requires a horizontal clearance from a conductor over 720V to 22kV to an installation to not be less than 4.5 feet when displaced by the wind. In so doing, Respondent violated 52 Pa. Code § 57.194(b), which requires an EDC to “install, maintain and operate its distribution system in conformity with the applicable requirements of the [NESC]”), as well as Section 2804(1)(ii) of the Code, 66 Pa. C.S. § 2804(1)(ii), which also requires the “maintenance of transmission and distribution facilities in conformity with established industry standards and practices, including the standards set forth in the [NESC].”

Count 2

15. Respondent’s energized primary line had excessive slack to such an extent that it sagged and was able to be blown by the wind into a light pole 8 feet away in the

parking lot of Meadows Racetrack and Casino. The line made contact with the pole twice, created burn marks on the pole and the primary conductor, and the high voltage travelling through the pole while trying to find ground damaged grounding conductors on two poles and the hotel lighting panel.

If proven, this is a violation of 66 Pa. C.S. § 1501. By allowing its energized primary line to have excessive slack and failing to recognize the compliance issue during its circuit inspections, Respondent failed to furnish adequate, efficient, safe, and reasonable service and facilities in violation of Section 1501 of the Code, which requires that public utilities “furnish and maintain adequate, efficient, safe, and reasonable service and facilities” and to “make all such repairs, changes . . . and improvements in or to such service and facilities” for the “safety of its patrons, employees, and the public” and that such service and facilities “be in conformity with the regulations and orders of the Commission.” 66 Pa. C.S. § 1501.

Count 3

16. Respondent failed identify the excessive sag and to remedy the compliance issue in a timely fashion, which led to its energized line coming into contact with a light pole and created a serious danger to the public, including guests and employees of Meadows Racetrack and Casino.

If proven, this is a violation of 52 Pa. Code § 57.28(a)(1), which requires an electric utility to “use reasonable effort to properly warn and protect the public from danger” and to “exercise reasonable care to reduce the hazards to which employees,

customers, the public and others may be subjected to by reason of its provision of electric utility services and its associated equipment and facilities.”

Count 4

17. Respondent failed to notice the sag and to remedy the compliance issue during its inspection of overhead circuits, which led to its energized line coming into contact with a light pole and created a serious danger to the public, including guests and employees of Meadows Racetrack and Casino.

If proven, this is a violation of 52 Pa. Code § 57.194(a), wherein Respondent’s failure to notice and rectify the out-of-compliance line constituted a failure to furnish and maintain adequate and safe service and facilities, as well as a failure to make repairs necessary for the safety of the guests and employees of Meadows Racetrack and Casino. The Commission’s regulation at 52 Pa. Code § 57.194(a) requires an EDC to “furnish and maintain adequate, efficient, safe and reasonable service and facilities” and “to make repairs, changes, alterations, substitutions, extensions and improvements in or to the service and facilities necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public.”

Count 5

18. Respondent failed to notice the sag and to remedy the compliance issue during its inspection of overhead circuits, which led to its energized line coming into contact with a light pole and created a serious danger to the public, including guests and employees of Meadows Racetrack and Casino.

If proven, this is a violation of 66 Pa. C.S. § 1501, wherein Respondent’s failure to identify the excessive sag and rectify the out-of-compliance line constituted a failure to make repairs to its facilities for the safety of the public and the guests and employees of Meadows Racetrack and Casino. Section 1501 of the Code requires that public utilities “furnish and maintain adequate, efficient, safe, and reasonable service and facilities” and to “make all such repairs, changes . . . and improvements in or to such service and facilities” for the “safety of its patrons, employees, and the public” and that such service and facilities “be in conformity with the regulations and orders of the Commission.” 66 Pa. C.S. § 1501.

IV. RELIEF REQUESTED:

19. Based on the foregoing allegations, the Bureau of Investigation and Enforcement hereby requests that:

- a. Respondent be ordered to adhere to Sections 1501 and 2804(1)(ii) of the Code, 66 Pa. C. S. § 1501 and § 2804(1)(ii) respectively, as well as the Commission’s regulations at 52 Pa. Code § 57.194 and 52 Pa. Code §57.28(a)(1), and the standards required by the NESC on a going-forward basis.
- b. Respondent be ordered to pay a civil penalty in the amount of Twenty-Five Thousand Dollars (\$25,000). Said payment shall be made within thirty (30) days of the date of entry of the Commission’s Final Order in this case.
- c. The Commission grant such other relief as the Commission deems appropriate.

WHEREFORE, for all the foregoing reasons, the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission respectfully requests that, after consideration of the record, the Office of Administrative Law Judge and the

Commission find West Penn Power Company in violation of each and every count as set forth herein and grant the relief specified above.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "G. Rosul", written over a horizontal line.

Grant Rosul
Prosecutor
PA Attorney ID No. 318204
(717) 783-5243
grosul@pa.gov

Michael L. Swindler
Deputy Chief Prosecutor
PA Attorney ID No. 43319

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Date: September 1, 2023

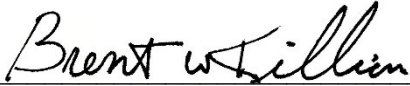
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VERIFICATION

I, Brent Killian, Electric Safety Division Supervisor of the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement, Electric Safety Division, 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 that the Bureau of Investigation and Enforcement 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: September 1, 2023



Brent Killian
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Electric Safety Division
400 North Street
Harrisburg, PA 17120

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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).

Service by Electronic Mail

Tori L. Giesler
Supervising Counsel
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612-6658
tgeisler@firstenergycorp.com



Grant Rosul
Prosecutor
PA Attorney ID No. 318204

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
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Harrisburg, PA 17120
(717) 783-5243
grosul@pa.gov

Dated: September 1, 2023