

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Sherrie Webb	:	
	:	
v.	:	C-2019-3013420
	:	
Pennsylvania Power Company	:	

**INITIAL DECISION**

Before  
Kailey B. Maguire  
Special Agent

**INTRODUCTION**

This Decision grants a motion to dismiss for failure to prosecute because the Complainant failed to appear for the hearing at the designated date and time despite being given notice of the hearing. The Decision denies the Respondent’s oral request to bar the Complainant from filing further complaints against the company until the outstanding arrearage is paid.

**HISTORY OF THE PROCEEDING**

On October 4, 2019, Sherrie Webb (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania Power Company (Respondent or Penn Power) at Docket No. C-2019-3013420. In her complaint, Ms. Webb alleges Penn Power is threatening to shut off her service or has already shut off her service. As relief, Complainant requests a payment arrangement.

On October 29, 2019, Penn Power filed an Answer to Ms. Webb’s complaint. In its Answer, Respondent admitted it provides residential retail electric service to Complainant at

1042 Beckford Street, New Castle, Pennsylvania 16101 (service address), and denied all other material allegations in the complaint. Penn Power concluded its Answer by requesting dismissal of the complaint.

On October 31, 2019, the Commission issued a Telephonic Hearing Notice to the parties, establishing an Initial Telephonic Hearing for December 9, 2019, at 10:00 a.m. and assigning the undersigned as Presiding Officer. The Hearing Notice indicated to the parties: “*Attention: You may lose this case if you do not take part in this hearing and present facts on the issues raised.*” (emphasis in the original). The Hearing Notice was sent to Ms. Webb at the address provided on her complaint via first-class mail. The postal authorities did not return the Hearing Notice to the Commission as undeliverable.

A Prehearing Order was served upon the parties on November 1, 2019. The Prehearing Order reminded the parties of the date and time of the hearing and addressed, *inter alia*, the procedures applicable to the hearing including the method by which a party could request a change of the scheduled hearing date if the date was not convenient for them. Additionally, the Prehearing Order advised the parties “If you fail to participate in the hearing on the scheduled day and time, the hearing will proceed in your absence. You will be deemed to have waived the opportunity to participate in the hearing. **The case may be dismissed ‘with prejudice,’ whereby, you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.**” (emphasis in the original). The Prehearing Order was sent to Ms. Webb at the address provided on her complaint via first-class mail. The postal authorities did not return the Prehearing Order to the Commission as undeliverable.

Both the Hearing Notice and the Prehearing Order informed the parties the undersigned would call the parties by phone on the hearing date and time to connect the parties to the hearing.

The hearing convened on December 9, 2019, at 10:00 a.m., as scheduled. Ms. Webb was called at the phone number she provided in her complaint; I received no answer and

was unable to leave her a voice message. Next, I called an alternative phone number Ms. Webb provided in her complaint; I received no answer but was able to leave a voice message informing Ms. Webb I would attempt to call her again to connect her to the hearing and advised her that in the event she was again unavailable, the hearing would proceed in her absence.

Counsel for Penn Power, Tori L. Giesler, Esquire, was successfully contacted and connected to the hearing and ready to proceed with two witnesses. In an abundance of caution, I delayed the hearing for approximately fifteen minutes. At 10:14 a.m., I called Ms. Webb again at both telephone numbers she provided and again received no response.

The December 9, 2019 hearing was held in Ms. Webb's absence. Counsel for the Respondent reported Penn Power made multiple efforts to contact the Complainant without success or response. Counsel also indicated Ms. Webb had previously failed to appear at a hearing for a prior formal complaint against the company at Docket No. F-2018-3004328, relating to the same arrears. At the conclusion of the hearing Attorney Giesler made an oral motion to dismiss the complaint due to Ms. Webb's failure to appear and prosecute her case. Additionally, Counsel requested that the Commission issue an order barring Ms. Webb from filing further informal or formal complainants against Penn Power until all arrearages are paid in full. I advised counsel I would take the motions under advisement.

The record<sup>1</sup> closed on December 9, 2019, following the conclusion of the telephonic hearing. As of the date of this Decision, no communication has been made to the Office of Administrative Law Judge (OALJ) on Ms. Webb's behalf to explain her absence from the hearing. For the reasons discussed below, the complaint will be dismissed with prejudice, and Penn Power's request to bar Ms. Webb from filing further complaints will be denied.

#### FINDINGS OF FACT

1. The Complainant is Sherrie Webb.

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<sup>1</sup> Pursuant to 52 Pa. Code § 56.174(3), the hearing was tape recorded. No court reporter was present.

2. The Respondent is Pennsylvania Power Company.
3. The service address is 1042 Beckford Street, New Castle, Pennsylvania.
4. By Hearing Notice served upon the parties on October 31, 2019, the Commission scheduled this matter for a telephonic hearing on December 9, 2019.
5. The Hearing Notice stated the following: *Attention: You may lose this case if you do not take part in this hearing and present facts on the issues raised.*” (emphasis in the original).
6. By Prehearing Order served upon the parties on November 1, 2019, the parties were informed of the date and time of the telephonic hearing and were provided with the method by which a party could request a continuance of the hearing date, if needed.
7. The Prehearing Order served in this matter stated the following: “If you fail to participate in the hearing on the scheduled day and time, the hearing will proceed in your absence. You will be deemed to have waived the opportunity to participate in the hearing. **The case may be dismissed ‘with prejudice,’ whereby, you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.**” (emphasis in the original).
8. The Hearing Notice and the Prehearing Order informed the parties they would be contacted by phone on the scheduled hearing date and time, to be connected to the hearing.
9. Neither the Hearing Notice nor the Prehearing Order served to the Complainant were returned to the Commission as undeliverable by the postal authorities.
10. The Complainant was not available by phone to participate in the December 9, 2019 telephonic hearing.

## DISCUSSION

Section 332(a) of the Public Utility Code provides that the proponent of any request for relief from the Commission bears the burden of proof. 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must show the named utility is responsible or accountable for the problem described in the complaint. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa. PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992); *Selling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

Additionally, the Commission's decision must be supported by substantial evidence in the record. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

Administrative agencies, like the Public Utility Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlth. 1984).

The Complainant did not participate in the December 9, 2019 hearing. The date and time of the hearing were provided in both the Hearing Notice and Prehearing Order served to the Complainant in this matter. The Notice and Order informed the Complainant she was to be available by phone on December 9, 2019, at 10:00 a.m. to be contacted and connected to the hearing. The undersigned attempted to contact and connect the Complainant to the hearing several times between 10:00 a.m. and 10:15 a.m., using the Complainant's phone numbers provided in the complaint. Both the Notice and Order warned the Complainant she may lose her case if she failed to participate in the scheduled hearing.

The Hearing Notice and Prehearing Order were sent to the Complainant by regular first-class mail to the address provided by Ms. Webb in her complaint. Neither document was returned to the Commission as undeliverable. Accordingly, it must be presumed these documents, which were sent to the Complainant in the ordinary course of business, were received by the Complainant. *Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 531, 317 A.2d 584 (1974); *Meierdierck v. Miller*, 394 Pa. 484, 147 A.2d 406 (1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. 1997); *Judge v. Celina Mutual Insurance Co.*, 303 Pa. Super. 221, 449 A.2d 658 (1982). Therefore, the Complainant is deemed to have had sufficient notice of the day, date, and time of the scheduled hearing and chose not to appear to prosecute her complaint. The Complainant made no attempt to notify the presiding officer she did not plan on participating in the scheduled hearing.

Under these circumstances, the Complainant had ample opportunity to appear and be heard in this proceeding but chose not to do so. Once notice of a hearing and the opportunity to be heard have been provided to the parties, it is the responsibility of both parties to appear and participate in the hearing. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlth. 1984). Therefore, the due process rights of the Complainant have been fully protected. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993).

Both the Public Utility Code and the Commission's regulations provide that, after being notified, a party who fails to appear at a scheduled hearing shall be deemed to have waived the opportunity to participate in the hearing and shall not be permitted thereafter to reopen the disposition of the matter accomplished at the hearing, and not be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f); 52 Pa.Code § 5.245(a), respectively. However, these provisions in the Code and the regulations do not apply if the presiding officer determines that the failure to be represented was unavoidable and that the interests of the other parties and the public would not be prejudiced by permitting the reopening or further examination. 66 Pa.C.S. § 332(f); 52 Pa.Code § 5.245(a).

Here, the Complainant failed to appear for the hearing despite given written notice. Further, once the hearing began, the undersigned waited an additional fifteen minutes to

allow Complainant time to appear. To date, no communication has been received by me or the OALJ by, or on behalf of, Complainant regarding whether Complainant's absence was unavoidable. Consequently, I find that Complainant waived the opportunity to participate in a hearing on the matters raised in the complaint and Complainant's absence was not unavoidable.

As the proponent of the request for relief from the Commission, the Complainant bears the burden of proof. By failing to participate in the hearing and proffer any evidence to support the complaint, the Complainant has failed to satisfy her burden.

The due process rights of the Complainant have been duly protected. The Complainant had ample notice of the scheduled hearing yet failed to appear to prosecute her complaint. Therefore, the Respondent's Motion to Dismiss the Complaint will be granted. Accordingly, the merits of the complaint will not be addressed and the complaint will be dismissed in its entirety with prejudice. *El-Ayazra v. West Penn Power Company*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); *Volgstadt v. UGI Penn Natural Gas, Inc.*, Docket No. F-02266429 (Opinion and Order entered September 12, 2008) and *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995).

Finally, Penn Power requested Ms. Webb be precluded from filing further complaints against the company until the arrearage is paid in full, asserting that the Complainant was abusing the Commission's administrative process by her actions. There is Commission precedent to support the preclusion of a party from filing further informal or formal complaints when the party has abused the system. *See, Seidenstricker v. Metropolitan Edison Co.*, Docket No. F-2008-2019388 (Final Order entered July 28, 2009); *Argento's Pizza v. Philadelphia Gas Works*, Docket No. C-2009-2138055 (Final Order entered October 1, 2010) (*Argento's Pizza*). The factors to be considered as put forth in *Argento's Pizza* include the following: 1) the number and nature of complaints; 2) the number of defaulted payments; 3) the use of tactics to avoid payments and service terminations that became due; and 4) the history of payments.

Although the Complainant failed to appear for her hearing in this matter and in another matter in a different docket number, it cannot be concluded on the record evidence presented that the Complainant's conduct rises to the level of abusing the Commission's administrative processes. However, under the circumstances, a warning is warranted. Therefore, the Complainant is warned to refrain from the misuse of the Commission's processes or face the possibility of being barred from filing further complaints.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. § 701.
2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).
3. Administrative agencies are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlth. 1984).
4. Once notice of a hearing and the opportunity to be heard has been provided, it is the responsibility of the parties to appear and participate in the hearing. *Sentner v. Bell Telephone Co. of Pennsylvania*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993).
5. By failing to appear at the scheduled hearing, Ms. Webb waived her opportunity to participate in the hearing and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat, or to recall for further examination of witnesses who were excused. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

6. The Complainant's due process rights have been fully protected. *Sentner v. Bell Telephone Company of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993); 52 Pa. Code § 5.245(a).

7. By failing to appear and proffer any evidence in support of the complaint, the Complainant has failed to satisfy her burden of proof. 66 Pa.C.S. § 332(a).

8. There is Commission precedent to support the preclusion of a party from filing further informal or formal complaints when the party has abused the system. *See, Seidenstricker v. Metropolitan Edison Co.*, Docket No. F-2008-2019388 (Final Order entered July 28, 2009); *Argento's Pizza v. Philadelphia Gas Works*, Docket No. C-2009-2138055 (Final Order entered October 1, 2010).

#### ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Pennsylvania Power Company to dismiss the complaint filed against it at Docket No. C-2019-3013420 for failure of Complainant to prosecute the complaint is granted.

2. That the complaint filed by Sherrie Webb against Pennsylvania Power Company at Docket No. C-2019-3013420 is hereby dismissed with prejudice.

3. That the oral motion of Pennsylvania Power Company at Docket No. C-2019-3013420 to bar the Complainant, Sherrie Webb, from filing any further complaints against Pennsylvania Power Company until the outstanding arrearage is paid in full is denied.

