

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Melissa Frain	:	
	:	
v.	:	C-2019-3014703
	:	
Pennsylvania Electric Company	:	

**INITIAL DECISION**

Before  
Katrina L. Dunderdale  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision grants Respondent’s oral motion to dismiss a formal complaint because Complainant failed to appear at the initial hearing and prosecute the case.

**HISTORY OF THE PROCEEDING**

On December 2, 2019, Melissa Frain (Ms. Frain or Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania Electric Company (Penelec or Respondent). Complainant alleged Penelec was threatening to shut off electric service and she wanted a payment arrangement. Complainant contended Penelec was making her pay the unpaid balances of prior renters and she needed a more affordable payment arrangement due to her limited income.

On February 5, 2020, Penelec filed its Answer in which it admitted it had attempted to terminate service due to the large unpaid balance totaling \$2,008.63 and Complainant’s failure to make payments on time and in full. Penelec alleged Complainant had

defaulted on one utility payment arrangement in 2018 and one Commission payment arrangement in 2019. Accordingly, Penelec asserted Ms. Frain was not entitled to a payment arrangement. Penelec also alleged Ms. Frain was responsible for an unpaid balance that accrued at two previous addresses, which it transferred to her electric service account in December 2018. Respondent asked the Commission to dismiss the complaint and deny the relief sought by Complainant.

By Call-In Telephone Hearing Notice dated April 22, 2020, the Office of Administrative Law Judge notified the parties an initial telephonic hearing was scheduled for Tuesday, June 2, 2020, at 10:00 a.m. On April 23, 2020, the presiding officer issued a Prehearing Order which, *inter alia*, advised the parties that continuances would only be granted if requested and only in rare situations where sufficient cause was shown to exist.

The time and date of the hearing on June 2, 2020, was included in the hearing notice, dated April 22, 2020, and in the Prehearing Order, dated April 23, 2020. The hearing notice and the Prehearing Order specified how to call into the hearing on the scheduled day and at the scheduled time. The hearing notice and the Prehearing Order stated in bold, underlined print that the case would be dismissed if Complainant failed to call into the hearing.

The presiding officer convened the telephonic hearing as scheduled on June 2, 2020, at 10:01 a.m. Complainant failed to appear for the hearing, but counsel for Respondent was present and prepared to present Respondent's evidence along with the testimony of two witnesses. Respondent's counsel indicated the last attempt to contact Complainant had been on Wednesday, May 27, 2020, at which time Respondent and Complainant had attempted to negotiate a settlement. Counsel advised Penelec and Ms. Frain were unable to settle the complaint, and Complainant was aware of the hearing on June 2, 2020.

At 10:05 a.m., the presiding officer went briefly off the record to contact her legal assistant and ascertain if Ms. Frain had left a message on the Commission's voicemail for the

Pittsburgh office.<sup>1</sup> At 10:10 a.m., the presiding officer resumed the initial hearing at which time Complainant remained absent from the hearing. The presiding officer noted no voicemail message, electronic mail or filing were received from Complainant which would explain her continued absence from the hearing. Counsel for Respondent made an oral motion to dismiss due to Complainant's failure to appear. The presiding officer noted on the record the motion to dismiss would be taken under advisement and the hearing concluded at 10:12 a.m. The hearing record closed on June 2, 2020, upon the conclusion of the telephonic hearing. On June 9, 2020, the transcript consisting of 8 pages was filed with the Commission.

### FINDINGS OF FACT

1. Complainant is Melissa Frain, who resides at 728 North Fifth Avenue, Indiana, Pennsylvania (service address).
2. Respondent is Pennsylvania Electric Company, an electric distribution company which provides electric service at the service address.
3. A hearing notice dated April 22, 2020, was e-served and sent to the electronic mail address provided by Complainant, and warned the formal complaint might be dismissed if Complainant failed to appear at the initial telephonic hearing on June 2, 2020. The hearing notice was not returned as undeliverable.
4. The Prehearing Order dated April 23, 2020, was e-served and sent to the electronic mail address provided by Complainant and was not returned as undeliverable.
5. Complainant was not present and did not participate in the June 2, 2020 hearing.

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<sup>1</sup> On March 16, 2020, the Commission's Pittsburgh office was closed by Order of Governor Tom Wolf due to the Coronavirus 2019 pandemic. The office remained closed through the date of this Initial Decision and staff continued to telework, while the Commission's telephone system continued to accept voicemail messages. Administrative staff were able to listen to voicemail messages left on the Commission's telephone system and were notified while teleworking if someone left a voicemail message.

6. Respondent was ready to proceed with its witnesses at the date and time scheduled for the hearing.

### DISCUSSION

Pursuant to Section 332(a) of the Public Utility Code, 66 Pa.C.S.A. § 332(a), the burden of proof is on the proponent of a rule or order. In this proceeding, Ms. Frain, as the Complainant, is the proponent of a rule or order. Therefore, Complainant bears the burden of proving by a preponderance of the evidence that Respondent violated the Public Utility Code or a regulation or order of the Commission.<sup>2</sup> Ms. Frain must show the utility is responsible or accountable for the problem described in the complaint.<sup>3</sup> 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 provided with notice and the opportunity to appear and be heard.<sup>4</sup>

Ms. Frain did not appear at the time scheduled for the June 2, 2020 hearing, and she did not participate in the June 2, 2020 hearing. The date, time and location of the hearing was listed in the hearing notice, dated April 22, 2020, and in the Prehearing Order, dated April 23, 2020.

The Office of Administrative Law Judge e-served both the hearing notice and the Prehearing Order to Complainant at the electronic mail address Ms. Frain provided.<sup>5</sup> Once notice of a hearing and the opportunity to be heard was provided, it was the responsibility of Ms. Frain to appear and participate in the hearing.<sup>6</sup> If Ms. Frain could not appear, for any reason,

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<sup>2</sup> *Se-Ling Hosier v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

<sup>3</sup> *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976).

<sup>4</sup> *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlt. 1984).

<sup>5</sup> *Morella v. PECO Energy Company*, Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016); *Zirkel v. Philadelphia Gas Works*, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017).

<sup>6</sup> *Sentner v. Bell Telephone Co. of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993); *Mumma v. PPL Electric Utilities Corporation*, Docket No. C-00014869 (Order entered January 24, 2002).

then it was the responsibility of Ms. Frain to notify the presiding officer immediately about the impediment or dilemma.

Section 332(f) of the Public Utility Code, 66 Pa.C.S.A. § 332(f), provides in pertinent part:

Any party who shall fail to be represented at a scheduled conference or hearing after being duly notified thereof, shall be deemed to have waived the opportunity to participate in such conference or hearing, and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat...

Since Ms. Frain did not appear or participate in the hearing, despite receiving two notices of the date and time of the hearing, the hearing was held in accordance with 66 Pa.C.S.A. § 332(f) and 52 Pa.Code § 5.245. Respondent's attorney moved to dismiss the complaint for failure to appear. Respondent's motion was taken under advisement.

The hearing record closed on June 2, 2020, pursuant to 52 Pa.Code § 5.431(a) and (b) which provides:

(a) The record will be closed at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission.

(b) After the record is closed, additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion.

In this proceeding, Ms. Frain did not call into the hearing as specified in the hearing notice and Prehearing Order. The hearing notice and Prehearing Order clearly indicated Complainant was to call. These documents provided Complainant with the Commission's toll-free conference bridge number and PIN number. The hearing notice and Prehearing Order also provided an address and telephone number where Ms. Frain could reach the presiding officer if additional information was needed prior to the hearing.

Ms. Frain did not contact the presiding officer or the Office of Administrative Law Judge to explain her absence from the hearing. Complainant failed to take advantage of the opportunity provided in which to appear and prosecute the formal complaint against Respondent by presenting evidence to support the allegations. As a result, Complainant failed to sustain the burden of proof.

Accordingly, Respondent's oral motion to dismiss the formal complaint will be granted, and the formal complaint will be dismissed in the Ordering Paragraphs below.<sup>7</sup>

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter in this proceeding. 66 Pa.C.S.A. § 701.

2. Complainant has the burden of proof in this matter pursuant to 66 Pa.C.S.A. § 332(a).

3. The hearing record closed at the conclusion of the hearing on June 2, 2020. 52 Pa.Code § 5.431(a).

4. Complainant, by failing to appear at the scheduled hearing, waived the opportunity to participate in the hearing. 66 Pa.C.S.A. § 332(f).

5. Notice provided to a party's last known address and/or e-served at the electronic mail address, and not returned, is presumed to have been received. *Berkowitz v. Mayflower Securities*, 455 Pa. 531, 317 A.2d 584 (1974); *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlt. 1994); *Morella v. PECO Energy Company*, Docket No. C-2016-

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<sup>7</sup> *Volgstadt v. UGI Penn Natural Gas*, Docket No. F-02266429 (Order entered September 12, 2008) and *Martin Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995); *El-Ayazra v. West Penn Power Company*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016).

