

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Melanie Eisel	:	
	:	
v.	:	C-2020-3020340
	:	
Columbia Gas of Pennsylvania, Inc.	:	

INITIAL DECISION

Before
Conrad A. Johnson
Administrative Law Judge

INTRODUCTION

This decision dismisses the Complaint filed in this matter for Complainant’s failure to appear for the hearing to prosecute the Complaint.

HISTORY OF THE PROCEEDING

On May 1, 2020, Complainant Melanie Eisel (Complainant or Ms. Eisel) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Columbia Gas of Pennsylvania, Inc. (Columbia). Complainant alleged there were incorrect charges on her bill. Complaint ¶4. As relief, Complainant requested an adjustment of her bill or in the alternative that Columbia “be held liable for the entire thing.” *Id.* ¶5.

On June 25, 2020, Columbia filed an Answer to the Complaint, denying there were incorrect charges on Complainant’s bill.

On June 29, 2020, an Interim Order Setting Resolution Conference was electronically served upon the Parties that directed the Parties to the Commission's Mediation Unit to attempt a resolution of the dispute. Mediation did not achieve resolution of the Complaint.

On July 21, 2020, a Call-In Telephone Hearing Notice was electronically served¹ upon the Parties, informing them that a call-in telephonic hearing on the Complaint and Answer would be convened by me from Pittsburgh, on September 9, 2020, at 10:00 a.m. The Hearing Notice provided the Parties with the Toll-Free Bridge Number and the PIN to dial on the morning of the hearing to participate in the telephonic hearing. The Hearing Notice further stated, "*Attention: you may lose the case if you do not take part in this hearing and present facts on the issues raised.*" (emphasis in original).

On July 22, 2020, I issued a Prehearing Order, which was electronically served upon the Parties, reminding them to call, on the date and at the time of the hearing scheduled for September 9, 2020, at 10:00 a.m., the Toll-Free Bridge Number and enter the PIN to participate in the telephonic hearing. The Prehearing Order stated as follows: "**You must call into the hearing on the scheduled day and time. If you fail to do so, your case will be dismissed. You will not be called by the Administrative Law Judge.**" (emphasis in original). The Prehearing Order informed the Parties about the applicable procedural rules, including the procedure to follow to request a hearing continuance.

The Hearing Notice and Prehearing Order informing the Parties of the manner, date, and time of the hearing, were emailed in the ordinary course of the Commission's business to the email address provided by Ms. Eisel to the Commission. The Commission did not receive

¹ In mid-March 2020, in response to the COVID-19 pandemic, the Commission's offices began closing throughout the Commonwealth and with staff teleworking, thereby precluding the Commission from sending or receiving mail through the U.S. Postal Service. Consequently, on March 20, 2020, the Commission issued an Emergency Order at Docket No. M-2020-3019262, which in relevant part stated as follows. "All service *upon* the Commission or its staff, and service *by* the Commission, shall be performed electronically, consistent with this Order, until further notice."

a return electronic message that delivery of the Hearing Notice or the Prehearing Order to Ms. Eisel's email address had failed.

On September 9, 2020, by 10:00 a.m., counsel for Columbia, Larry R. Crayne, Esquire, and I had dialed into the telephonic proceeding, and the hearing convened at 10:03 a.m. The court reporter was also present. Ms. Eisel had not called into the telephonic proceeding. Attorney Crayne was prepared to proceed with his witness, Lynn Cottrell, a compliance analyst for Columbia.

I recessed the hearing at 10:06 a.m., to permit additional time for Ms. Eisel to appear or to contact the Office of Administrative Law Judge (OALJ) to explain her absence. The telephonic proceeding remained open with counsel for Columbia and the court reporter in the telephonic hearing, and I waited for Ms. Eisel to join the hearing. The hearing reconvened at approximately 10:25 a.m. When the hearing reconvened, Ms. Eisel had not dialed into the hearing nor contacted the OALJ to explain her absence.

Accordingly, the hearing proceeded in Ms. Eisel's absence. As a result, counsel for Columbia moved for dismissal of the Complaint for lack of prosecution. Counsel further asserted that Ms. Eisel's failure to appear for the hearing after having participated in mediation caused the expenditure of undue litigation costs and time by Columbia, thereby constituting an abuse of the Commission's processes. Accordingly, counsel requested that the Complaint be dismissed with prejudice. I informed counsel that the motion would be taken under advisement and an Initial Decision would be issued. The record was closed, and the hearing adjourned at 10:31 a.m. on September 9, 2020.

FINDINGS OF FACT

1. Complainant in this proceeding is Melanie Eisel.
2. Respondent Columbia Gas of Pennsylvania, Inc., is a jurisdictional public utility providing gas service to Complainant and Pennsylvania customers.

3. On May 1, 2020, Ms. Eisel filed a Complaint against Respondent with the Commission.

4. On June 25, 2020, Columbia filed an Answer to the Complaint.

5. By Call-In Telephone Hearing Notice dated July 21, 2020, the Parties were informed that a call-in telephonic hearing in this proceeding would convene on September 9, 2020, at 10:00 a.m.

6. On July 22, 2020, a Prehearing Order was issued to the Parties advising them of the applicable procedural rules, including the procedure to request a hearing continuance.

7. The Hearing Notice and Prehearing Order informed the Parties that failure to participate in the hearing would result in dismissal of their case.

8. The Hearing Notice and Prehearing Order were electronically served upon Ms. Eisel at the email address provided by her to the Commission.

9. There is no indication in the record that there was an electronic failure in the delivery of the Hearing Notice and Prehearing Order to Ms. Eisel.

10. Respondent's counsel and witness were present by 10:00 a.m. on September 9, 2020, for the telephonic hearing.

11. By 10:31 a.m. on September 9, 2020, Ms. Eisel had not appeared for the telephonic hearing.

12. When Ms. Eisel did not appear for the telephonic hearing, Respondent's counsel moved for dismissal of the Complaint with prejudice for lack of prosecution.

DISCUSSION

Due Process

The Commission satisfies the requirement of affording a complainant with administrative due process, by providing timely notice of the hearing on the complaint and the opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlth. 1984).

On July 21, 2020, the Call-In Telephone Hearing Notice was electronically served upon Complainant at the email address she provided to the Commission. The Commission did not receive a return electronic message that delivery of the Hearing Notice to Ms. Eisel's email address had failed. Accordingly, I must presume that Ms. Eisel received electronic notice of the hearing and elected not to participate in the hearing. *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). Therefore, Complainant's due process rights have been fully protected.

Burden of Proof

Pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S. § 332(a), the burden of proof is on the proponent of a rule or order. In this proceeding, Complainant is the proponent of a rule or order. Therefore, Ms. Eisel had the burden of proving she was entitled to the relief requested in her Complaint. Columbia was present for the hearing through its attorney and witness. However, Ms. Eisel was not present for the hearing.

Section 332(f) of the Code, 66 Pa.C.S. § 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. Eisel failed to appear and participate in the scheduled hearing by telephone, her Complaint may be dismissed with prejudice. See *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); 52 Pa.Code § 5.245. However, without additional facts, I do not find that Ms. Eisel's failure to appear for the hearing rises to the level of an abuse of the Commission's processes. Accordingly, in the ordering paragraphs below, the Complaint will be dismissed without prejudice.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the Parties and subject matter of this proceeding. 66 Pa.C.S. § 701.

2. Complainant as the proponent of a rule or order has the burden of proof. 66 Pa.C.S. § 332(a).

3. When a complainant fails to appear for a scheduled conference or hearing, the complaint may be dismissed with prejudice. *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); 52 Pa.Code § 5.245.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Columbia Gas of Pennsylvania, Inc., to dismiss the Complaint of Melanie Eisel is granted consistent with this decision.

2. That the Complaint of Melanie Eisel against Columbia Gas of Pennsylvania, Inc., at Docket No. C-2020-3020340 is dismissed without prejudice, for the failure of Melanie Eisel to prosecute her Complaint.

3. That the Secretary's Bureau shall mark Docket No. C-2020-3020340 closed.

Date: October 1, 2020

_____/s/_____
Conrad A. Johnson
Administrative Law Judge