

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Byron Goldstein

v.

PECO Energy Company

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C-2022-3030777

INITIAL DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

INTRODUCTION

This Initial Decision grants Respondent’s oral motion to dismiss with prejudice a formal complaint because Complainant failed to appear at the initial hearing and prosecute the case, despite receiving notice and being advised the formal complaint might be dismissed with prejudice if he failed to appear at the hearing.

HISTORY OF THE PROCEEDING

On January 28, 2022, Byron Goldstein (Complainant or Mr. Goldstein) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (Respondent or PECO Energy) regarding gas service to his residence (service address). Complainant alleged PECO Energy’s natural gas supply charges increased up to 47% and he contended the increase was outrageous and irresponsible due to record high inflation. Mr. Goldstein requested the Commission revisit the rate increase.

On February 24, 2022, PECO Energy filed the Answer with New Matter in which it denied generally the allegations. PECO Energy averred in its Answer that Complainant receives electric and gas service. PECO Energy asserted Complainant, as a customer, was informed through a bill insert and publication that PECO Energy filed a request with the Commission to increase the natural gas supply rate in October 2020. Respondent asserted the notices explained how customers could challenge PECO Energy's request to increase the natural gas rate. PECO Energy also averred that, after investigation and litigation, the Commission approved on June 17, 2021, PECO Energy's request to increase the rate it charges to deliver natural gas, effective on July 13, 2021, at Docket No. R-2020-3018929. In New Matter, PECO Energy asks the Commission to dismiss the formal complaint to the extent Complainant request the Commission review its prior approval of the natural gas rate, approved on June 17, 2021. PECO Energy requests the dismissal on the grounds the Commission lacks jurisdiction to address the approval of a gas rate case in a formal complaint proceeding after the Commission has approved a rate increase.

On February 25, 2022, PECO Energy filed Preliminary Objections against Complainant. The Preliminary Objections included a Notice to Plead (pursuant to 52 Pa. Code § 5.101) and was served upon Complainant via First Class mail. Through its Preliminary Objections, PECO Energy requests the Commission sustain the preliminary objection and dismiss the formal complaint as a matter of law because the formal complaint is legally insufficient. PECO Energy contends the formal complaint is the wrong forum or means in which to dispute a gas rate increase after the Commission approves the increase and the new rates are effective. Respondent notes the request to increase the natural gas rate was granted by the Commission on June 17, 2021 and became effective on July 13, 2021. The Commission having granted the increase because the increase was just and reasonable, the Commission's approval has the weight of law especially since Complainant, as a customer, had an opportunity to complain about the increase prior to its approval.

On April 6, 2022, the presiding officer issued the First Interim Order concerning Respondent's Preliminary Objections in which the presiding officer denied the Preliminary Objections. The presiding officer determined Complainant should have the opportunity to prove

significant changes in circumstances existed which were so great as to render the Commission's approved supply charge as no longer reasonable and just. The presiding officer acknowledged the burden to prove his allegations lies squarely on Mr. Goldstein to demonstrate recent significant changes in circumstances, after June 17, 2021, which caused the Commission's approved rate to become unjust and unreasonable, but he should be afforded the opportunity

On April 11, 2022, the Office of Administrative Law Judge issued a hearing notice, which scheduled a telephonic initial hearing to be conducted on May 24, 2022. On April 11, 2022, the presiding officer issued a Prehearing Order which specified procedural matters including how to request a continuance of the hearing.

The time and date of the hearing on May 24, 2022, was included in the hearing notice, dated April 11, 2022, and in the Prehearing Order, dated April 11, 2022. Both 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 stated in bold, underlined print that the case would be dismissed if Complainant failed to call into the hearing. The Prehearing Order stated in bold print on the first page "FAILURE TO APPEAR" and indicated the case might be dismissed with prejudice if Complainant failed to take part in the hearing on May 24, 2022.

The presiding officer attempted to convene the telephonic hearing as scheduled on May 24, 2022, at 10:00 a.m. but both Complainant and Respondent failed to appear for the hearing. After attempting to ascertain why both parties were absent, the presiding officer convened the telephonic hearing at 10:15 a.m. Counsel for Respondent appeared along with four other individuals who used the wrong telephone number to access the Commission's conference bridge. After Respondent's counsel and representatives appeared, Respondent was prepared to present evidence along with testimony.

The presiding officer noted on the record that Complainant did not send an email or leave a voicemail message with the presiding officer's legal assistant or at the Commission's Pittsburgh office or communicate that he would be unable to join the bridge conference call.

Respondent made an oral motion to dismiss the complaint with prejudice 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 10:28 a.m. The hearing record closed on May 24, 2022, upon the conclusion of the telephonic hearing, pursuant to 52 Pa.Code § 5.431(a) and (b).

FINDINGS OF FACT

1. Complainant is Byron Goldstein who resides at 2365 Geneva Avenue, Glenside, Pennsylvania 19038 (service address).
2. Respondent, PECO Energy Company - Gas, provides natural gas service to Complainant at the service address.
3. The Prehearing Order dated April 11, 2022, and the hearing notice dated April 11, 2022, were served upon Complainant to the email address provided by Complainant in the formal complaint.
4. The hearing notice, dated April 11, 2022, warned Complainant the formal complaint might be dismissed if Complainant failed to appear at the telephonic hearing on May 24, 2022. The hearing notice was not returned as undeliverable.
5. The Prehearing Order dated April 11, 2022, warned the formal complaint might be dismissed with prejudice if Complainant did not take part in the telephonic hearing on May 24, 2022. The Prehearing Order was not returned as undeliverable.
6. Complainant was not present, did not participate in the telephonic hearing on May 24, 2022, and did not contact the presiding officer or the Commission to explain his absence.
7. 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. § 332(a), the burden of proof is on the proponent of a rule or order. In this proceeding, Mr. Goldstein, 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.¹ Mr. Goldstein must show the utility is responsible or accountable for the problem described in the complaint.² 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.³

Mr. Goldstein did not appear at the time scheduled for the hearing on May 24, 2022, and he did not participate in the May 24, 2022, hearing. The date, time and instructions on how to participate in the hearing were listed in the hearing notice, dated April 11, 2022, and in the Prehearing Order, dated April 11, 2022.

The Office of Administrative Law Judge served the hearing notice on Complainant using the same email address Mr. Goldstein provided to the Commission in the formal complaint.⁴ Once notice of a hearing and the opportunity to be heard was provided, it was the responsibility of Mr. Goldstein to appear and participate in the hearing.⁵ If Mr. Goldstein could not appear, for any reason, then it was the responsibility of Mr. Goldstein to notify the presiding officer immediately about the impediment or dilemma.

¹ *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

² *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. P.U.C. 300 (1976).

³ *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

⁴ *Morella v. PECO Energy Co.*, 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).

⁵ *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); *Mumma v. PPL Electric Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered January 28, 2002).

Section 332(f) of the Public Utility 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....

When Mr. Goldstein did not appear or participate in the hearing, despite receiving notice of the date and time of the hearing, the hearing was held in accordance with 66 Pa.C.S. § 332(f) and 52 Pa. Code § 5.245. Respondent's attorney moved to dismiss the formal complaint with prejudice for Complainant's failure to appear. Respondent's motion was taken under advisement.

The hearing record closed on May 24, 2022, pursuant to 52 Pa. Code § 5.431(a) and (b) which provide:

(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, Mr. Goldstein did not call into the hearing as specified in the hearing notice. The hearing notice clearly indicated Complainant was to call. The document provided Complainant with the Commission's toll-free conference bridge number and PIN number. The hearing notice provided a telephone number where Mr. Goldstein could leave a voicemail message for the presiding officer if additional information was needed prior to the hearing or if there was an impediment to participation. The Prehearing Order provided the telephone number for the presiding officer's legal assistant if Mr. Goldstein wished to send further communications to the attention of the presiding officer. Lastly, the Prehearing Order

also specified the case might be dismissed with prejudice if Complainant did not take part in the hearing on May 24, 2022.

Mr. Goldstein did not contact the presiding officer or the Office of Administrative Law Judge to explain his 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. This formal complaint will be dismissed with prejudice in the Ordering Paragraphs below.⁶

CONCLUSIONS OF LAW

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

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

3. The hearing record closed at the conclusion of the hearing on May 24, 2022. 52 Pa. Code § 5.431(a).

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 Pa.*, Docket No. F-00161106 (Order entered October 25, 1993).

5. Notice provided to a party's last known electronic mail address, and not returned is presumed to have been received. *Morella v. PECO Energy Co.*, 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).

⁶ *Volgstadt v. UGI Penn Natural Gas*, Docket No. F-02266429 (Opinion and Order entered September 12, 2008); and *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); and *El-Ayazra v. West Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016).

6. Complainant, by failing to appear at the scheduled hearing, waived the opportunity to participate in the hearing and failed to sustain the burden of proof. 66 Pa.C.S. §§ 332(a) & (f).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the oral motion of PECO Energy Company, to dismiss with prejudice the formal complaint filed by Byron Goldstein against PECO Energy Company, at Docket No. C-2022-3030777 is granted.

2. That the formal complaint filed by Byron Goldstein against PECO Energy Company, at Docket No. C-2022-3030777 is dismissed with prejudice.

3. That the Secretary mark this case as closed.

Date: June 16, 2022

_____/s/
Katrina L. Dunderdale
Administrative Law Judge