

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Anita Lincoski	:	
	:	
v.	:	C-2022-3032046
	:	
West Penn Power Company.	:	

INITIAL DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

INTRODUCTION

The undersigned 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.

HISTORY OF THE PROCEEDING

On April 18, 2022, Anita Lincoski (Ms. Lincoski or Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against West Penn Power Company (West Penn or Respondent). Complainant alleged West Penn threatened to shut off electric service. Complainant requested an affordable payment arrangement.

On May 11, 2022, West Penn filed its Answer and New Matter. Respondent acknowledged it provided electric service at the service address and that it sent a termination notice on April 18, 2022. West Penn averred the termination was stayed when the formal complaint was filed. West Penn further averred Complainant was not entitled to a payment

arrangement and her unpaid balance totaled \$9,173.31. In New Matter, West Penn averred the Commission should decline to establish a Commission Payment Arrangement (PAR) for non-PCAP¹ arrears Complainant owed based on her payment history and failure to keep a 2019 Commission PAR and a 2021 Company PAR. In all other regards, Respondent denied the material allegations and asked the Commission to dismiss the Complaint and deny the relief sought by Complainant.

By Call-In Telephone Hearing Notice dated June 13, 2022, the Office of Administrative Law Judge notified the Parties an initial telephonic hearing was scheduled for July 18, 2022. On June 14, 2022, the presiding officer issued a Prehearing Order which, *inter alia*, advised the Parties that continuances would only be granted if requested, the request must be received five business days prior to the hearing and requests would be granted only in rare situations where sufficient cause was shown to exist.

On July 18, 2022, the presiding officer convened the hearing as scheduled, at which time Complainant did not appear. Respondent was represented by Margaret A. Morris, Esquire, who appeared with Laurie Parker, an Advanced Customer Service Compliance Specialist for West Penn. West Penn made an oral motion to dismiss the proceeding with prejudice for failure to appear and for failure to prosecute the formal complaint. Further, West Penn averred the dismissal should be with prejudice due to mootness because Complainant was no longer a customer and was not an applicant for service. The hearing concluded at 10:17 a.m.

FINDINGS OF FACT

1. Complainant is Anita Lincoski, who resided at 28 Redstone Street, Republic, Pennsylvania (service address).
2. Respondent is West Penn Power Company, an electric distribution company which provided electric service at the service address until approximately June 2022.

¹ PCAP is the Pennsylvania Customer Assistance Program.

3. Prior to the date of the hearing, Respondent stopped providing electric service to Complainant at the service address or anywhere else in West Penn's territory.

4. The Prehearing Order dated June 14, 2022, and the hearing notice dated June 13, 2022, were served upon Complainant to the email address provided by Complainant in the formal complaint.

5. The hearing notice, dated June 13, 2022, warned Complainant the formal complaint might be dismissed if Complainant failed to appear at the telephonic hearing on July 18, 2022. The hearing notice was not returned as undeliverable.

6. The Prehearing Order dated June 14, 2022, warned the formal complaint might be dismissed with prejudice if Complainant did not take part in the telephonic hearing on July 18, 2022. The Prehearing Order was not returned as undeliverable.

7. Complainant was not present, did not participate in the telephonic hearing on July 18, 2022, and did not contact the presiding officer or the Commission to explain her absence or to indicate she was unavailable at that time.

8. Respondent was ready to proceed with its witness 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, Ms. Lincoski, as a 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.² Ms. Lincoski must show the utility is responsible or

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

accountable for the problem described in the Complaint.³ 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.⁴

Ms. Lincoski did not appear at the time scheduled for the hearing on July 18, 2022 and no one appeared to represent Ms. Lincoski at the hearing. Information concerning the date, time and the location of the hearing, as well as how to call into the telephonic hearing, was listed in the hearing notice, dated June 13, 2022, and in the Prehearing Order, dated June 14, 2022.

The Office of Administrative Law Judge electronically mailed the hearing notice and the Prehearing Order to Complainant at the email address Ms. Lincoski provided in her formal complaint. Neither the hearing notice nor the Prehearing Order were returned as undeliverable.⁵ Once notice of a hearing and the opportunity to be heard was provided, it was the responsibility of Ms. Lincoski to appear and participate in the hearing.⁶ If Ms. Lincoski could not appear or was unavailable, for any reason, then it was the responsibility of Ms. Lincoski to notify the presiding officer immediately about the impediment or dilemma.

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...

³ *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976).

⁴ *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

⁵ *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017).

⁶ *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered January 24, 2002).

In this proceeding, Ms. Lincoski did not call into the telephonic hearing as specified in the hearing notice and the Prehearing Order. The hearing notice clearly indicated Complainant was to call and provided Complainant with the Commission's toll-free conference bridge number and PIN number. The hearing notice also provided an address and telephone number where Ms. Lincoski could reach the presiding officer if additional information was needed prior to the hearing. Since Ms. Lincoski did not appear or participate in the hearing, despite receiving at least two notices 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 failure to appear.

Because Ms. Lincoski did not contact the presiding officer or the Office of Administrative Law Judge to explain her absence or to explain how she was unavailable, 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 with prejudice will be granted, and the formal complaint will be dismissed in the Ordering Paragraphs below.⁷

CONCLUSIONS OF LAW

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

2. The due process rights of Complainant have been fully protected in this proceeding. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa. Code § 5.245(a).

⁷ *Volgstadt v. UGI Penn Nat. 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); *El-Ayazra v. W. Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016).

3. Complainant, as the proponent of a rule or order, has the burden of proof in this matter pursuant to 66 Pa.C.S. § 332(a).

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

5. Notice served to a party's electronic mail address and not returned as undeliverable 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. Phila. Gas Works*, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017).

6. 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 Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993).

7. When a complainant fails to appear for a scheduled conference or hearing, the complaint may be dismissed with prejudice. *Little v. Pittsburgh Water & Sewer Auth.*, F-2021-3027107 (Opinion and Order entered February 7, 2022); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); *El-Ayazra v. W. Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa. Code § 5.245.

8. By failing to appear for the hearing and proffer any evidence to support the formal complaint, Complainant failed to meet the burden of proving he is entitled to the relief he seeks from the Commission. 66 Pa.C.S. § 332(a).

