

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Deena Welsh	:	
	:	
v.	:	C-2022-3031588
	:	
West Penn Power Company	:	

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 March 17, 2022, Complainant Deena Welsh (Complainant or Ms. Welsh) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against West Penn Power Company (West Penn). Complainant alleged her meter readings were much higher than her neighbors. According to Complainant, she did not use much electricity; however, her bill was always \$400.00 a month. Complaint ¶ 4. As relief, Complainant requested a Commission order directing West Penn to conduct a thorough inspection of her meter to determine why her electric bill was so high each month. Complaint ¶ 5.

West Penn filed an Answer and New Matter on April 14, 2022. West Penn denied the material allegations of the Complaint. Answer ¶ 4. In New Matter, West Penn

requested that the Complaint be referred to the Commission's Mediation Unit for resolution. New Matter ¶ 14.

The Parties were directed to the Commission's Mediation Unit to attempt a resolution of the dispute. Mediation did not achieve resolution of the Complaint.

By Call-In Telephone Hearing Notice dated June 14, 2022, the Parties were informed that a call-in telephonic hearing on the Complaint would be convened by me from the Commission's Pittsburgh offices, on August 17, 2022, 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 as follows:

FAILURE TO APPEAR: You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised. Your case may be dismissed "with prejudice" which means that you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.

CONTINUANCES. You may request a continuance of the hearing if you have a good reason. All continuances will be granted only for good cause. To request a continuance, you must submit a written request (a "motion") at least five (5) days before the hearing. Your motion should include: 1) The case name, number, and hearing date; 2) The reason for the request; and 3) Whether the other party agrees (or if you do not know).

(emphasis in original).

On June 14, 2022, I issued a Prehearing Order reminding the parties to call on the date and at the time of the hearing scheduled for August 14, 2022, at 10:00 a.m., the Toll-Free Bridge Number and enter the PIN to participate in the telephonic hearing. The Prehearing Order again stated the **FAILURE TO APPEAR** warning. Additionally, the Prehearing Order informed the Parties about the applicable procedural rules, and again included the procedure to follow for hearing **CONTINUANCES**.

The Hearing Notice and Prehearing Order informing the Parties of the manner, date and time of the hearing, were electronically served upon the Parties in the ordinary course of the Commission's business to the email addresses provided by them to the Commission. The Commission did not receive a return electronic message that delivery of the Hearing Notice or the Prehearing Order to Ms. Welsh's email address had failed.

On August 9, 2022, West Penn in accordance with the Hearing Notice and Prehearing Order emailed copies of its proposed exhibits to Ms. Welsh and my Legal Assistant Nicholas Miskanic.

On August 17, 2022, by 10:00 a.m., counsel for West Penn, Margaret A. Morris, Esquire, together with her two witnesses had dialed-in to participate in the telephonic hearing. The court reporter was also present. However, Ms. Welsh was not present when the hearing convened at 10:03 a.m.

I briefly recessed the hearing at 10:06 a.m., to permit additional time for Ms. Welsh to appear or to contact the Office of Administrative Law Judge (OALJ) to explain her absence. The telephonic proceeding remained open with counsel for West Penn and the court reporter in the telephonic hearing, and I waited for Ms. Welsh to join the hearing. When the hearing reconvened at 10:20 a.m., Ms. Welsh had not dialed into the hearing nor contacted the OALJ to explain her absence.

Accordingly, the hearing proceeded in Ms. Welsh's absence. As a result, counsel for West Penn moved for dismissal of the Complaint with prejudice for lack of prosecution. I informed counsel that the motion would be taken under consideration and an Initial Decision would be issued. The record was closed, and the hearing adjourned at approximately 10:26 a.m. on August 17, 2022.

FINDINGS OF FACT

1. Complainant in this proceeding is Deena Welsh.

2. Respondent West Penn Power Company is a jurisdictional public utility providing electric service to Pennsylvania customers.

3. On March 17, 2022, Ms. Welsh filed a Complaint against Respondent with the Commission.

4. On April 14, 2022, West Penn filed an Answer and New Matter to the Complaint.

5. By Call-In Telephone Hearing Notice dated June 14, 2022, the Parties were informed that a call-in telephonic hearing in this proceeding would convene on August 17, 2022, at 10:00 a.m.

6. 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.

7. The Hearing Notice informed the Parties that failure to participate in the hearing may result in dismissal of their case.

8. The Hearing Notice was electronically served upon Ms. Welsh 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 to Ms. Welsh.

10. Respondent's counsel and witnesses were present on August 17, 2022, when the telephonic hearing convened at 10:03 a.m.

11. By approximately 10:26 a.m. on August 17, 2022, Ms. Welsh had not appeared for the telephonic hearing.

12. There is nothing in the record to indicate that Ms. Welsh's failure to appear for the telephonic hearing was unavoidable.

13. When Ms. Welsh 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 June 14, 2022, 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. Welsh's email address had failed. Accordingly, there is a presumption that Ms. Welsh received electronic notice of the hearing and elected not to participate in the hearing. *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). Therefore, Complainant's due process rights have been fully protected.

Burden of Proof

Pursuant to Section 332(a) of the 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. Welsh had the burden of proving she was entitled to the relief requested in her Complaint. West Penn was present for the hearing through its attorney and witnesses. However, Ms. Welsh 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. Welsh failed to appear and participate in the scheduled hearing by telephone, her Complaint may be dismissed with prejudice. *See Little v. PWSA*, Docket No. 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. There is nothing in the record to indicate that Ms. Welsh's failure to appear for the telephonic hearing was unavoidable. Accordingly, in the ordering paragraphs below the Complaint will be dismissed with prejudice. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered April 22, 2022).

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 and there is no indication in the record to indicate that complainant's failure to appear for the hearing was unavoidable, the complaint shall be dismissed with prejudice. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered April 22, 2022); 52 Pa. Code § 5.245.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of West Penn Power Company to dismiss the Complaint of Deena Welsh for failure to prosecute her Complaint is granted consistent with this decision.

2. That the Complaint of Deena Welsh against West Penn Power Company at Docket No. C-2022-3031588 is dismissed with prejudice, for the failure of Complainant Deena Welsh to prosecute her Complaint.

3. That the Secretary's Bureau shall mark Docket No. C-2022-3031588 closed.

Date: September 28, 2022

_____/s/
Conrad A. Johnson
Administrative Law Judge