

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Allison Lyn Gaiser

v.

West Penn Power Company

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C-2022-3036684

**INITIAL DECISION**

Before  
Mark A. Hoyer  
Deputy Chief Administrative Law Judge

**INTRODUCTION**

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

**HISTORY OF THE PROCEEDING**

On October 31, 2022, Allison Lyn Gaiser (Complainant) filed a Formal Complaint (Complaint) against West Penn Power Company (West Penn or Respondent) with the Pennsylvania Public Utility Commission (Commission) alleging there are incorrect charges on her electric bill and that she was “signed up with Eligio” even though she never signed up with Eligio. As relief, Complainant requested a refund of any additional charges because she never signed up with Eligio, and she wanted the lowest rate possible through West Penn.

On November 29, 2022, West Penn filed its answer and new matter to the Complaint. West Penn denied Complainant’s allegation that there were incorrect charges on her bill and further denied Complainant’s allegations pertaining to her enrollment with Eligio as her electric supplier. In new matter, West Penn averred that Complainant is disputing the charges

and billing practices of Eligio and any finding of a refund due and owing to Complainant based upon her electric generation supplier (EGS) charges directly relate to Eligio, not West Penn.

On January 4, 2023, a Call-In Telephone Hearing Notice was served on both parties scheduling a hearing for March 14, 2023, at 1:30 p.m. and providing the instructions for calling into the hearing.<sup>1</sup> On January 5, 2023, a Prehearing Order for Telephone Hearing was served on the parties.<sup>2</sup> The Prehearing Order included the date and time of the scheduled hearing as well as call-in instructions for participating in the hearing. Paragraph 1 of the Prehearing Order for Telephone Hearing informed Complainant that if she failed to participate in the hearing and present evidence in support of her Complaint, the Complaint may be dismissed with prejudice.<sup>3</sup>

On March 14, 2023, the hearing was held as scheduled. Complainant failed to appear for the hearing and failed to present any evidence that her absence was unavoidable. Complainant did not request a continuance and her absence from the hearing was unexplained. West Penn was represented at the hearing by Margaret A. Morris Esquire. West Penn's proposed witness for the hearing, Charles Howlett, was also on the call. West Penn's counsel made a motion to dismiss the Complaint with prejudice for failure to appear and prosecute the Complaint. Tr. 7. The motion was taken under advisement.

The hearing record was closed by Interim Order Closing the Hearing Record dated April 4, 2023, after receipt of the hearing transcript. The Interim Order was served on the parties.

### FINDINGS OF FACT

1. Complainant in this case is Allison Lyn Gaiser.

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<sup>1</sup> The hearing notice was served on Complainant by U.S. First-Class Mail.

<sup>2</sup> The prehearing order was served on Complainant by U.S. First-Class Mail.

<sup>3</sup> *See also*, 52 Pa. Code § 5.245.

2. Respondent in this case West Penn.
3. On October 31, 2022, Complainant filed a Formal Complaint against Respondent.
4. On November 29, 2022, Respondent filed an answer and new matter to the Complaint.
5. On January 4, 2023, a Call-In Telephone Hearing Notice was served on Complainant scheduling an initial telephonic hearing on March 14, 2023 at 1:30 p.m.
6. On January 5, 2023, a Prehearing Order for Telephone Hearing was served on Complainant providing additional information to the parties regarding the hearing.
7. Both the Hearing Notice and Prehearing Order were served on Complainant by U.S. First-Class Mail to the address provided by Complainant to the Commission.
8. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.
9. Complainant did not call the conference number at 10:00 a.m. on March 14, 2023, to participate in the scheduled hearing.
10. Complainant did not contact the Commission to explain her failure to appear for the hearing.

## DISCUSSION

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them.<sup>4</sup> However, this due process requirement is satisfied when the parties are provided notice and the opportunity to appear and be heard.<sup>5</sup> Complainant had adequate notice of the time and date of the hearing, yet she failed to appear or explain why she could not attend the hearing at the scheduled time.<sup>6</sup> Complainant failed to present evidence that her absence was unavoidable. Therefore, it is appropriate to dismiss the Complaint with prejudice.

By hearing notice dated and served January 4, 2023, the Commission scheduled this matter for a telephone hearing to be held on March 14, 2023, at 10:00 a.m. A prehearing order served on January 5, 2023, also advised the parties of the date and time of the scheduled hearing.

Both the Hearing Notice and Prehearing Order were served on Complainant by U.S. First-Class Mail to the address provided by Complainant to the Commission. Neither the hearing notice nor the prehearing order were returned as undeliverable; therefore, it is presumed that Complainant received both documents and had adequate notice of the scheduled March 14, 2023, hearing.<sup>7</sup>

Paragraph 1 of the prehearing order served on January 5, 2023, informed Complainant that if she failed to participate in the hearing and present evidence in support of her Complaint, the Complaint may be dismissed with prejudice.<sup>8</sup> The prehearing order also provided instructions for contacting the Commission to request a change of the scheduled hearing date.

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

<sup>5</sup> *Id.*

<sup>6</sup> 52 Pa. Code § 5.245.

<sup>7</sup> *Berkowitz v. Mayflower Sec., Inc.*, 317 A.2d 584 (Pa. 1974); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. 1997); *Judge v. Celina Mut. Ins. Co.*, 449 A.2d 658 (Pa. Super. 1982).

<sup>8</sup> *See also*, 52 Pa. Code § 5.245.

Section 332(a) of the Public Utility Code places the burden of proof upon the proponent of a rule or order.<sup>9</sup> As the proponent of a rule or order, Complainant has the burden of demonstrating that the facts alleged in her Complaint are true and that she is entitled to the relief that she requested. By not appearing for the scheduled hearing to present evidence, Complainant failed to meet this burden of proof. Consequently, the Complaint is dismissed with prejudice.<sup>10</sup>

In conclusion, Complainant was notified of the scheduled hearing call-in procedure, date and time, as well as how to contact the Office of Administrative Law Judge, but she failed to appear without explanation. Under these circumstances, Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. The due process rights of Complainant have been fully protected. The Complaint is dismissed in the ordering paragraphs below.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding. 66 Pa.C.S. § 701.
2. The Commission is required to provide due process to the parties appearing before them; this due process requirement is satisfied when the parties are provided notice and the opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).
3. Notice mailed via U.S. First-Class Mail to a party and not returned to the Commission as undeliverable is presumed received. *Berkowitz v. Mayflower Sec., Inc.*, 317 A.2d 584 (Pa. 1974); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Samaras v.*

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<sup>9</sup> 66 Pa.C.S. § 332(a).

<sup>10</sup> *Armstrong v. Metro. Edison Co.*, Docket No. C-2022-3033882 (Order entered Apr. 20, 2023); *Long v. UGI Utils. Inc.*, Docket No. C-2022-3035404 (Order entered Apr. 20, 2023); *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Williams v. PECO Energy Co.*, Docket No. C-2018-300734 (Opinion and Order entered Mar. 14, 2019) (citing *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995)).

*Hartwick*, 698 A.2d 71 (Pa. Super. 1997); *Judge v. Celina Mut. Ins. Co.*, 449 A.2d 658 (Pa. Super. 1982).

4. If there are no facts in the record that a party's failure to appear at a hearing was unavoidable, the complaint should be dismissed with prejudice. *Armstrong v. Metro. Edison Co.*, Docket No. C-2022-3033882 (Order entered Apr. 20, 2023); *Long v. UGI Utils. Inc.*, Docket No. C-2022-3035404 (Order entered Apr. 20, 2023); *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Williams v. PECO Energy Co.*, Docket No. C-2018-300734 (Opinion and Order entered Mar. 14, 2019) (citing *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995)).

5. The due process rights of Complainant have been fully protected in this proceeding. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

6. By failing to appear for the hearing and proffer any evidence to support the Complaint, Complainant has failed to meet her burden of proving she is entitled to the relief she seeks from the Commission. 66 Pa.C.S. § 332(a); 52 Pa.Code § 5.245(a).

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of West Penn Power Company to dismiss the Formal Complaint of Allison Lyn Gaiser v. West Penn Power Company, at Docket No. C-2022-3036684, for failure to appear and prosecute, is granted, without prejudice.

2. That the Formal Complaint of Allison Lyn Gaiser in Allison Lyn Gaiser v. West Penn Power Company at Docket No. C-2022-3036684, is dismissed.

3. That the Secretary's Bureau shall mark Docket No. C-2022-3036684 as closed.

Date: June 27, 2023

\_\_\_\_\_/s/  
Mark A. Hoyer  
Deputy Chief Administrative Law Judge