

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nikola Warren	:	
	:	
v.	:	C-2023-3041611
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

Nikola Warren (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) on July 5, 2023, requesting a payment arrangement and a review of her bill which Complainant alleges is excessively high. Complainant utilized a complaint form provided by the Commission and provided her mailing address on the complaint form. Complainant failed to initial any portion of the Complaint indicating a preference for receiving service of documents and pleadings, and therefore effectively chose First-Class Mail as her method to receive service, consistent with the instructions set forth on the Complaint form.

On July 26, 2023, West Penn Power Company (West Penn, WPP or Respondent) timely filed an Answer denying the material averments set forth in the Complaint.

On August 1, 2023, a Call-in Telephonic Hearing Notice (Hearing Notice) was issued scheduling the evidentiary hearing for October 5, 2023, 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).

On August 3, 2023, a prehearing order was entered, which also provided the date and time of the hearing as well as other procedural requirements related to the hearing, including instructions for requesting a continuance if the hearing date and time were not convenient. The prehearing order also reminded the parties to call in, on the date and at the time of the hearing, the Toll-Free Bridge Number and to 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 served upon Complainant by First-Class Mail at the address provided by Complainant in her Complaint, in the ordinary course of the Commission’s

business. The Commission did not receive a return of the Hearing Notice or Prehearing Order, or any other indication that service to Complainant had failed.

The hearing convened as scheduled. Complainant did not appear. Attorney Margaret Morris appeared along with her witness on behalf of Respondent and made a motion to dismiss for failure of Complainant to appear and prosecute the Complaint. No request for a continuance was made by any party and no explanation was provided by Complainant regarding her failure to attend the hearing.

The record closed on October 5, 2023, upon conclusion of the hearing.

FINDINGS OF FACT

1. Complainant in this proceeding is Nikola Warren.
2. Respondent, West Penn Power Company, is a jurisdictional public utility providing electric service to Pennsylvania customers.
3. On July 5, 2023, Nikola T. Warren filed a Complaint against West Penn Power Company with the Commission.
4. On July 26, 2023, West Penn Power Company filed an Answer to the Complaint.
5. By Call-In Telephone Hearing Notice dated August 1, 2023, the Parties were informed that a call-in telephonic hearing in this proceeding would convene on October 5, 2023, at 10:00 a.m.
6. On August 3, 2023, a Prehearing Order was entered providing the Parties with procedural rules regarding the conduct of the hearing, how to participate in the hearing and the procedure to follow to request a continuance of the evidentiary hearing.

7. 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.

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

9. The Hearing Notice and Prehearing Order were served upon Ms. Warren by First-Class Mail at the address provided by her to the Commission.

10. There is no indication in the record that there was a failure in the delivery of the Hearing Notice or Prehearing Order to Ms. Warren.

11. Respondent's counsel and witness was present on October 5, 2023, when the telephonic hearing convened at 10:00 a.m.

12. By approximately 10:20 a.m. on October 5, 2023, Ms. Warren had not appeared for the telephonic hearing.

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

14. When Ms. Warren 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 to the complaint and the opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984). Once a hearing is scheduled and the parties are duly notified by the Commission, it is the responsibility of the parties to appear and participate in the hearing. *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered Jan. 24, 2002).

The record shows that Complainant was provided notice and the opportunity to be heard. On August 1, 2023, the Call-In Telephone Hearing Notice and on August 3, 2023, the Prehearing Order was served upon Complainant by First-Class Mail at the address she provided to the Commission. The Commission did not receive any indication that delivery of the Hearing Notice or Prehearing Order to Complainant had failed. Accordingly, there is a presumption that Ms. Warren received notice of the hearing and elected not to participate in the hearing. *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). 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. Warren had the burden of proving she was entitled to the relief requested in her Complaint. West Penn Power Company was present for the hearing through its attorney and witnesses. However, Ms. Warren was not present for the hearing. By failing to

participate and proffer any evidence to support the complaint, Complainant has failed to meet her burden.

Section 332(f) of the Code 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[.]

66 Pa.C.S. § 332(f).

Since Ms. Warren failed to appear and participate in the scheduled hearing by telephone, her Complaint may be dismissed with prejudice. *See Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F2021-3027107 (Opinion and Order entered Feb. 7, 2022); *El-Ayazra v. W. Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); 52 Pa. Code § 5.245. There is nothing in the record to indicate that Ms. Warren's failure to appear for the telephonic hearing was unavoidable.¹ Accordingly, in the ordering paragraphs below the Complaint will be dismissed. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 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. 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

¹ The party who failed to appear at the hearing has the burden of explaining why his/her failure to appear was unavoidable. 66 Pa.C.S. § 332(a); *Herr v. West Penn Power Co.*, Docket No. C-2021-3028202 (Opinion and Order entered Sept. 15, 2022).

notice and the opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm'n.*, 479 A.2d 10 (Pa. Cmwlth. 1984).

3. Notice served to a party with no notification that service failed 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. Hartwick*, 698 A.2d 71 (Pa. Super. 1997); *Judge v. Celina Mut. Ins. Co.*, 449 A.2d 658 (Pa. Super. 1982).

4. 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 Apr. 22, 2022); 52 Pa. Code § 5.245.

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

6. By failing to participate in the hearing and proffer any evidence to support the complaint, the Complainant has failed to meet her burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of West Penn Power Company to dismiss the Complaint of Nikola Warren for failure to prosecute her Complaint is granted consistent with this decision and these ordering paragraphs.

2. That the Formal Complaint in Nikola Warren v. West Penn Power Company, at Docket No. C-2023-3041611 is dismissed.

3. That the Secretary's Bureau mark Docket No. C-2023-3041611 closed.

Date: December 19, 2023

/s/
Jeffrey A. Watson
Administrative Law Judge