

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kevin Leadbeater	:	C-2023-3041229
	:	
v.	:	
	:	
West Penn Power Company	:	

**INITIAL DECISION**

Before  
Mary D. Long  
Administrative Law Judge

INTRODUCTION

This decision grants Respondent’s oral motion to dismiss a Formal Complaint because Complainant failed to appear at the initial hearing to prosecute the complaint.

HISTORY OF THE PROCEEDING

On June 13, 2023, Kevin Leadbeater (Complainant) filed a Formal Complaint seeking a more affordable payment arrangement. West Penn Power Company filed an Answer and New Matter on June 29, 2023. West Penn alleged that the Complainant has a balance in excess of \$11,000 and was granted a Commission payment arrangement in April 2022. The Company therefore takes the position that the Complainant is not entitled to a further payment arrangement.

By notice dated July 17, 2023, the complaint was assigned to me and scheduled for a hearing on September 21, 2023, at 10:00 a.m. I issued a prehearing order explaining the hearing procedures on July 18, 2023.

At 9:20 a.m. on September 21, 2023, I received an email from Sherre Wellington stating that she did not realize that her husband had to attend the hearing, that he was unable to take off work and that he could not be reached by cell phone. I instructed Ms. Wellington to call in to the conference bridge.

I convened the hearing. Ms. Wellington appeared. Attorney Margaret Morris appeared on behalf of West Penn Power. Ms. Wellington explained that her husband was unavailable and asked for a continuance of the hearing. Ms. Morris strenuously objected to the continuance on the grounds that the Complainant owed a substantial balance on the account. She further stated that she had attempted to contact the Complainant several times at the telephone number and email address provided on the complaint form, but he did not respond. She also noted that Ms. Wellington is not an authorized user on the account.

Ms. Wellington responded that she is the Complainant's wife. The email address and telephone number on the complaint are hers.<sup>1</sup> She provided a telephone number for the Complainant and agreed that he could be available for a hearing on October 3, 2023, at 1:00 p.m. I issued an order on September 21, 2023, which granted the request for a continuance and directed that the hearing be rescheduled. The Office of Administrative Law Judge scheduling unit issued a hearing notice rescheduling the hearing for October 3, 2023, at 1:00 p.m.

On October 3, 2023, the hearing convened as scheduled. Ms. Morris appeared representing West Penn, along with one witness. Neither Mr. Leadbeater nor Ms. Wellington called in to participate in the hearing. Ms. Morris made a motion to dismiss the complaint with prejudice. I reserved ruling on the motion. After the transcript was filed with the Commission, I issued an order on October 17, 2023, closing the record.

---

<sup>1</sup> The Complainant elected and registered for eService.

## FINDINGS OF FACT

1. The Complainant is Kevin Leadbeater.
2. The Respondent, West Penn Power Company, is a jurisdictional public utility.
3. Mr. Leadbeater did not call the conference number at 1:00 p.m. on October 3, 2023.
4. Mr. Leadbeater did not contact the Commission after the October 3, 2023, hearing to explain why his failure to appear at the hearing was unavoidable.
5. Commission records indicate that Mr. Leadbeater elected to receive service by eService and that he registered for eService.
6. The hearing notice dated September 21, 2023, which notified Mr. Leadbeater of the date and time of the hearing were eServed on Mr. Leadbeater.
7. The July 18, 2023, Prehearing Order and September 21, 2023, Interim Order were eServed on Mr. Leadbeater.

## DISCUSSION

Mr. Leadbeater filed a Formal Complaint seeking relief from the Commission in the form of payment arrangement. Mr. Leadbeater must prove that he is entitled to this relief from the Commission.<sup>2</sup> Mr. Leadbeater did not appear at the hearing scheduled for his benefit and therefore did not take the opportunity to explain why the Commission should award him a further payment arrangement.

---

<sup>2</sup> 66 Pa.C.S. § 332.

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them.<sup>3</sup> The fundamental tenets of due process are notice and an opportunity to be heard.<sup>4</sup> However, the right to due process is not absolute.<sup>5</sup> The Commonwealth Court has consistently held that where a party fails to avail themselves of the opportunity to be heard without good cause, the proceeding may be dismissed and there is no violation of due process.<sup>6</sup> The Commission has codified this principle in its regulations:

(a) After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will:

(1) Be deemed to have waived the opportunity to participate in the conference or hearing.

(2) Not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing.

(3) Not be permitted to recall witnesses who were excused for further examination.

(b) Subsection (a)(1)—(3) does not apply if the presiding officer determines that the failure to be represented was unavoidable and that the interests of the other parties and of the public would not be prejudiced by permitting the reopening or further examination. Counsel shall be expected to go forward with the examination of witnesses at the hearing under § 5.242 (relating to order of procedure), or as has been otherwise stipulated or has been directed by the presiding officer.<sup>[7]</sup>

Mr. Leadbeater received adequate notice of the date and time of the hearing. When he filed his complaint, he elected to register for eService and elected to use Ms. Wellington's email address for that purpose. Accordingly, the Commission presumes that he

---

<sup>3</sup> *Pa. Bankers Ass'n v. Pa. Dep't of Banking*, 965 A.2d 956 (Pa. 2008) (Pa. Bankers Ass'n); *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

<sup>4</sup> Pa. Bankers Ass'n.

<sup>5</sup> *Goetz v. Dep't of Env'tl. Res.*, 613 A.2d 65 (Pa. Cmwlth. 1992).

<sup>6</sup> *See Fountain Capital Fund, Inc. v. Pa. Sec. Comm'n*, 948 A.2d 208 (Pa. Cmwlth. 2008), and the cases cited therein.

<sup>7</sup> 52 Pa. Code § 5.425.

received the hearing notices and orders that the Commission eServed in connection with his hearing.<sup>8</sup>

Mr. Leadbeater also had notice of the consequences if he did not appear and participate in the hearing. The Hearing Notices 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). The prehearing order included my contact information and instructions for requesting a continuance of the hearing if the date and time was inconvenient. In this case, Ms. Wellington agreed that the October 3, 2023, hearing date was sufficient time for her husband to make arrangements to be off from work.<sup>9</sup> Mr. Leadbeater was eServed with an order and a hearing notice that included the date and time of the second hearing. Yet he did not contact the Commission to attempt to reschedule.

Further, counsel for West Penn, Ms. Morris, made several attempts to make contact with Mr. Leadbeater in an effort to negotiate a resolution of his complaint. Before the September 21, 2023, hearing she sent emails to the address provided on the complaint on September 6, 2023, and September 14, 2023. She telephoned the number provided on the

---

<sup>8</sup> *Hu v. PECO Energy Co.*, Docket No. C 2019-3012075 (Order entered Dec. 19, 2019); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Apr. 7, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017).

<sup>9</sup> I note that Mr. Leadbeater had more than two months notice of the hearing date and time for the September 21, 2023, hearing, which should have been more than ample to request time off of work or to request a different date and time for the hearing.

complaint on September 14, 2023, and left a voicemail message.<sup>10</sup> After the September 21, 2023, hearing, she called him at the cellphone number that Ms. Wellington provided to her as Mr. Leadbeater's. Ms. Morris reported that she left a message, but her telephone call was not returned.<sup>11</sup>

In sum, the Commission afforded Mr. Leadbeater an ample opportunity to appear and request relief from the Commission. Once notice of a hearing and the opportunity to be heard was provided, it was the responsibility of Mr. Leadbeater to appear and participate in the hearing.<sup>12</sup> If Mr. Leadbeater could not appear, for any reason, then it was his responsibility to notify the presiding officer immediately about the impediment or dilemma.<sup>13</sup>

West Penn Power is prejudiced by his failure to appear. West Penn Power expended significant resources to reach Mr. Leadbeater. Counsel prepared for two hearings, which included preparing a witness who attended two hearings and created and submitted proposed exhibits.<sup>14</sup> Ms. Morris noted that as of the date of the hearing Mr. Leadbeater carried a significant balance, in excess of \$17,000.<sup>15</sup>

West Penn Power's ratepayers are also prejudiced. Unpaid bills are included in the utility's uncollectible expenses. A utility's customers pay this expense as part of the utility's rates.<sup>16</sup> Mr. Leadbeater filed a complaint presumably to seek the Commission's assistance to retire his substantial balance. He did not engage with the West Penn Power or with the Commission, despite numerous opportunities to do so. Therefore, the likely result of his actions

---

<sup>10</sup> Tr. 5-6.

<sup>11</sup> Tr. 16.

<sup>12</sup> *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993); *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Order entered Jan. 24, 2002).

<sup>13</sup> *Williams v. PECO Energy Co.*, Docket No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019).

<sup>14</sup> Generally, the legal expenses incurred by a utility in defending consumer complaints are passed on to ratepayers. Similarly, uncollectible revenue, such as the Complainant's unpaid balance are recovered from other ratepayers of the utility.

<sup>15</sup> Tr. 6.

<sup>16</sup> 66 Pa.C.S. § 1402(1).

is that West Penn Power's other ratepayers will have to assume responsibility for his unpaid balance.

When there are no facts in the record that the party's failure to appear was unavoidable, a complaint may be dismissed with prejudice.<sup>17</sup> To date, there has been no communication to the Office of Administrative Law Judge or to me by, or on behalf of, Mr. Leadbeater explaining why Mr. Leadbeater's failure to appear at the hearing was unavoidable. Further, a large balance remains on the electric service account. Therefore, West Penn Power's motion to dismiss will be granted and his complaint will be dismissed with prejudice.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of the dispute. 66 Pa.C.S. § 701.
  
2. The due process rights of the Complainant have been fully protected. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).
  
3. By failing to appear at his scheduled hearing, the Complainant has waived his claims and has failed to sustain his burden of proof. 66 Pa.C.S. § 332; 52 Pa. Code § 5.245(a).

---

<sup>17</sup> *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Volgstadt v. UGI Penn Natural Gas*, Docket No. F-02266429 (Opinion and Order entered Sept. 12, 2008); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); *El-Ayazra v. West Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of West Penn Power to dismiss the complaint of Kevin Leadbeater at Docket C-2023-3041229, is granted.
2. That the Formal Complaint of Kevin Leadbeater in Kevin Leadbeater v. West Penn Power Company at Docket C-2022-3034296, is dismissed with prejudice.
3. That this docket be marked closed.

Date: January 10, 2024

\_\_\_\_\_/s/  
Mary D. Long  
Administrative Law Judge