

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Abigail Sindelar	:	
	:	
v.	:	C-2023-3041667
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Conrad A. Johnson
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 her case.

HISTORY OF THE PROCEEDING

On July 11, 2023, Abigail Sindelar (Ms. Sindelar or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against West Penn Power Company (West Penn or Respondent), alleging she was under threat of service termination, and she wanted a new payment arrangement with West Penn. Complainant seeks review of the Commission’s Bureau of Consumer Services’ (BCS) June 15, 2023, decision denying Complainant’s informal complaint against West Penn at BCS No. 3911013, which found that Complainant was not eligible for a second Commission payment arrangement (PAR).¹

¹ A timely BCS appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

On July 31, 2023, West Penn filed its Answer and New Matter. Respondent averred that it sent a 10-day notice, dated June 21, 2023, advising the Complainant that her service was subject to termination on or after July 5, 2023, for a delinquent amount of \$3,571.01. However, West Penn alleged that termination was stayed upon receipt of the Formal Complaint. West Penn also alleged that Complainant had defaulted on two Company PARs, and she was not entitled to a Commission PAR because she had defaulted on a Commission PAR in 2022.²

In New Matter, West Penn reiterated its allegation that Complainant had defaulted on a Commission PAR and requested that the matter be referred to the Mediation Unit of the Office of the Administrative Law Judge (OALJ). The case was referred to mediation; however, mediation was unsuccessful. Consequently, the case was assigned to me via a September 19, 2023, Initial Call-In Telephonic Hearing Notice (Hearing Notice), scheduling a telephone hearing for November 21, 2023. On September 20, 2023, I issued a Prehearing Order, which informed the Parties about the hearing procedures including the procedure to follow to request a hearing continuance.

Complainant had requested eService of documents upon her when she filed the Complaint and Complainant registered for the Commission's eFiling system.³ Accordingly, the Hearing Notice and Prehearing Order were eServed to Complainant in the ordinary course of the Commission's business to the email address she registered with the Commission. There is no indication in the record that eService of the Hearing Notice or the Prehearing Order failed as undeliverable to Complainant.

On September 19, 2023, a Call-In Telephone Hearing Notice was served on the parties. The Hearing Notice informed the Parties that a call-in telephonic hearing on the Complaint would be convened by me on November 21, 2023, at 10:00 a.m. The Hearing Notice

² BCS provided Complainant with a payment arrangement on May 9, 2022, at BCS Decision No. 3837032.

³ During the hearing, without objection from Respondent, I took official notice of the Complaint. Section 332(e) of the Public Utility Code, 66 Pa.C.S. § 222(3) and Section 5.408 of the Commission's regulations, 52 Pa. Code § 5.408, permit a presiding officer to take judicial or official notice of facts not appearing in the evidence of record of a particular case.

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 September 20, 2023, a Prehearing Order was served on the parties. The Prehearing Order reminded the Parties to call on the date and at the time of the hearing scheduled for November 21, 2023, 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**.

On November 21, 2023, the hearing convened at 10:04 a.m. However, Complainant was not present or represented by counsel. Respondent was represented by Margaret A. Morris, Esquire, who appeared with witness, Laurie Parker, Advanced Customer Services Compliance Specialist. Ms. Parker testified that Complainant continues to receive electric service from Respondent, and the current balance was \$4,513.87, on the day of the telephonic hearing. Respondent moved for the admission of 4 exhibits, which were admitted as West Penn Exhibits 2, 3, 5 and 6. Due to Ms. Sindelar’s failure to appear at the hearing, West Penn made an oral motion to dismiss the Complaint with prejudice for Complainant’s failure to

appear to prosecute her case. The motion was taken under advisement. The hearing adjourned at 10:45 a.m. The hearing record closed on November 21, 2023, upon the conclusion of the telephonic hearing, pursuant to 52 Pa. Code § 5.431(a).⁴

This case is procedurally ready for ruling.

FINDINGS OF FACT

1. Complainant is Abigail Sindelar, who resides at 1771 Gill Hall Road, Finleyville Pennsylvania 15332. Complainant ¶ 1.

2. Respondent is West Penn Power Company, a jurisdictional electric distribution company which provides residential electric service at the service address. West Penn Exhibit 3.

3. As of the date of the initial telephonic hearing, the unpaid balance on Complainant's electric service account was more than \$4,000.00. West Penn Exhibit 3.

4. As of the date of the initial telephonic hearing, Complainant's electric service provided by Respondent was active. Tr. 10.

5. The Hearing Notice dated September 19, 2023, and the Prehearing Order dated September 20, 2023, were eServed on Complainant and were not returned to the Commission as undeliverable.

6. Complainant was not present and did not participate in the hearing on November 21, 2023. Tr. 18-19.

7. Complainant did not contact the Commission or the presiding officer to explain whether her failure to appear at the hearing was unavoidable. Tr. 18-19.

⁴ The regulation at 52 Pa. Code § 5.431(a) indicates the hearing record closes at the conclusion of a hearing unless otherwise directed by the presiding officer or the Commission.

DISCUSSION

Burden of Proof

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 these proceedings, Ms. Sindelar, as the 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.⁵ Ms. Sindelar must show the utility is responsible or accountable for the problem described in the Complaint.⁶

Due Process

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.⁷

Dismissal of Complaint for Failure to Appear and Prosecute

Ms. Sindelar did not appear at the time scheduled for the November 21, 2023, hearing and no one appeared to represent Ms. Sindelar at the hearing. The date, time, and manner of the hearing, as well as how to call into the telephonic hearing, was listed in the hearing notice, dated September 19, 2023, and in the Prehearing Order, dated September 20, 2023.

The Office of Administrative Law Judge electronically served the Hearing Notice and the Prehearing Order to Complainant via her preferred method, which was eService. There

⁵ *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

⁶ *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976).

⁷ *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

is no indication in the record that electronic service failed as undeliverable to Ms. Sindelar. Accordingly, it must be presumed that these documents sent to Complainant were received by Complainant.⁸ Once notice of a hearing and the opportunity to be heard was provided, it was the responsibility of Ms. Sindelar to appear and participate in the hearing.⁹ If Ms. Sindelar could not appear, for any reason, then it was her responsibility to notify the presiding officer immediately about the impediment or dilemma.¹⁰

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[.]

In this proceeding, Ms. Sindelar did not call into the telephonic hearing as specified in the hearing notice and in the Prehearing Order. The hearing notice clearly indicated Complainant was to call in to the hearing and provided Complainant with the Commission's toll-free conference bridge number and PIN number to do so. The hearing notice also provided an address and telephone number where Ms. Sindelar could reach the presiding officer if additional information was needed prior to the hearing.

Since Ms. Sindelar did not appear or participate in the hearing, despite receiving two written 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. Accordingly, Respondent's attorney moved to dismiss the Complaint with prejudice for failure to appear.

⁸ *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).

⁹ *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).

¹⁰ *Williams v. PECO Energy Co.*, Docket No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019).

The party who fails to appear at a hearing has the burden of explaining the reasons(s) his/her failure to appear was unavoidable.¹¹ When there are no facts in the record that the party's failure to appear was unavoidable, a complaint may be dismissed with prejudice.¹² To date, there has been no communication to the Office of Administrative Law Judge or myself by, or on behalf of, Complainant explaining why Complainant's failure to appear at the hearing was unavoidable. Further, a large balance remains on the electric service account.

Because Ms. Sindelar did not contact the presiding officer or the Office of Administrative Law Judge to explain her absence or to explain why she was unavailable, Complainant failed to take advantage of the opportunity provided in which to appear and prosecute the Complaint against Respondent by presenting evidence to support the allegations. As a result, Complainant failed to sustain her burden of proof. Accordingly, Respondent's oral motion to dismiss the Complaint with prejudice will be granted in the ordering paragraphs below.

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).
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).

¹¹ 66 Pa.C.S. § 332(a); *Herr v. West Penn Power Co.*, Docket No. C-2021-3028202 (Opinion and Order entered Sept. 15, 2022).

¹² *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Volgstadt v. UGI Penn Nat. 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).

4. Complainant, by failing to appear at the scheduled hearing, waived the opportunity to participate in the hearing. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

5. Notice eServed to a party with no notification that service failed is presumed received. *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); and *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 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 Oct. 25, 1993).

7. When a complainant fails to appear for a scheduled conference or hearing and a complainant's failure to appear does not appear to be avoidable, the complaint may be dismissed with prejudice. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *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); 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 that Complainant is entitled to the relief requested. 66 Pa.C.S. § 332(a).

