

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|                         |   |                |
|-------------------------|---|----------------|
| Richard Ramsey III      | : |                |
|                         | : |                |
| v.                      | : | C-2023-3042827 |
|                         | : |                |
| West Penn Power Company | : |                |

**INITIAL DECISION**

Before  
Alphonso Arnold III  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Formal Complaint of Richard Ramsey III (“Complainant”) against West Penn Power Company due to Complainant’s failure to appear for the telephonic evidentiary hearing to prosecute his Complaint.

**HISTORY OF THE PROCEEDINGS**

On September 8, 2023, Complainant filed a Formal Complaint (“Complaint”) with the Pennsylvania Public Utility Commission (“Commission”) against West Penn Power Company (“Respondent”) requesting a payment arrangement.

On September 28, 2023, Respondent filed an answer with new matter, properly endorsed with a Notice to Plead, to the Complaint denying that Complainant was eligible for a Commission-issued payment arrangement due to being enrolled in Respondent’s customer assistance program. Respondent reiterated the same in its new matter. Complainant did not file a reply to Respondent’s new matter.

On November 1, 2023, the Commission issued an Initial Telephonic Hearing Notice to the parties, scheduling a telephonic evidentiary hearing in this matter for December 18, 2023, at 10:00 a.m. and assigning this matter to the undersigned. The Notice provided the parties with the method by which they could call in to a conference line to participate in the hearing and warned the parties that they may lose their case if they do not participate in the hearing and present evidence on the issues raised.

On November 3, 2023, the undersigned issued a Prehearing Order to the parties, setting forth the procedures for the conduct of hearings. The Order also reminded the parties of the date and time of the evidentiary hearing, provided the parties with the method by which they were to call in to a conference line for participation in the hearing, and warned the parties that they may lose their case if they do not participate in the hearing and present evidence on the issues raised.

The service of all Commission documents in this matter, including the Hearing Notice and Prehearing Order, were served to the Complainant electronically, as Complainant affirmatively agreed to receive electronic service of Commission documents by registering with the Commission's electronic filing system.

On December 18, 2023, at 10:00 a.m., the evidentiary hearing was held as scheduled. The Complainant did not call in to the conference line to participate in the hearing. Counsel for the Respondent, Margaret Morris, Esquire, called in to the conference line with a witness and was prepared to proceed. The hearing was delayed until 10:15 a.m. to give the Complainant additional time to call in. The Complainant failed to call in.

No witnesses were presented, and no exhibits were admitted into the record. During the hearing, Respondent made a Motion to Dismiss the Complaint with prejudice for failure of the Complainant to appear at the hearing to prosecute his Complaint. Respondent was informed that the Motion would be taken under advisement.

The record closed on January 3, 2024, upon the filing of the electronic hearing transcript with the Commission. For the reasons discussed below, Respondent's Motion will be granted, and the Complaint will be dismissed with prejudice.

### FINDINGS OF FACT

1. The Complainant is Richard Ramsey III.
2. The Respondent is West Penn Power Company
3. On September 8, 2023, Complainant filed a Complaint with the Commission against Respondent.
4. On September 28, 2023, Respondent filed an answer and new matter to the Complaint.
5. On November 1, 2023, the Commission issued a Telephonic Hearing Notice to the parties, scheduling an evidentiary hearing in this matter for December 18, 2023, at 10:00 a.m. and assigning the matter to the undersigned.
6. On November 3, 2023, the undersigned issued a Prehearing Order to the parties, setting forth the procedures for the conduct of hearings.
7. The November 1, 2023, Hearing Notice and November 3, 2023, Prehearing Order provided the parties with the date and time of the telephonic evidentiary hearing, the method by which the parties were to call in to a conference line to participate in the hearing, and warned the parties that they may lose their case if they do not participate in the hearing and present evidence on the issues raised.
8. The November 1, 2023, Hearing Notice and November 3, 2023, Prehearing Order were served to the Complainant electronically, as Complainant affirmatively agreed to

receive electronic service of Commission documents by registering with the Commission's electronic filing system.

9. There is no notification, through the Commission's internal electronic activity for electronic service, that either the November 1, 2023, Hearing Notice or November 3, 2023, Prehearing Order failed to be electronically served to the Complainant's email address.

10. The Complainant did not call in to the conference line to participate in the December 18, 2023, evidentiary hearing.

11. The Complainant did not settle or withdraw his Complaint against the Respondent.

12. The Complainant did not request a continuance of the December 18, 2023, evidentiary hearing, nor did he contact the Commission to explain why his failure to appear for the hearing was unavoidable.

## DISCUSSION

### *Administrative Due Process and Waiver of Hearing*

As an administrative agency of the Commonwealth, the Commission is required to provide due process to the parties appearing before it. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10, 15 (Pa. Cmwlth. 1984) (*Schneider*) (citing *Fusaro v. Pa. Pub. Util. Comm'n*, 382 A.2d 794 (Pa. Cmwlth. 1978)). Due process is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider* at 15.

The Commission is required to fix the time and place of a hearing in a complaint proceeding and to serve notice thereof upon the parties in interest. *See* 66 Pa.C.S. § 703(a)-(b). Service on interested persons is sufficient to provide notice. 52 Pa. Code § 5.201(a). A Notice electronically served to a party's registered email address with no notification that service failed to be delivered to that email address is presumed to have been received. *Zirkel v. Phila. Gas*

*Works*, Docket No. C-2016-2561176 (Final Order entered Apr. 7, 2017) (*Zirkel*); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017) (*Morella*).

Once notice of a hearing and the opportunity to be heard have been provided 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 (Order entered Jan. 24, 2002); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Order entered Oct. 25, 1993).

If a party fails to attend a scheduled hearing, such failure to appear will be deemed a waiver of the party's opportunity to participate in a hearing, unless the presiding officer determines that such failure was "unavoidable" and that the interests of the other parties and of the public would not be "prejudiced" by permitting such reopening or further examination. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a)-(b).

#### *Burden of Proof*

Section 332(a) of the Code provides that a Complainant, as the party seeking affirmative relief from the Commission, has the burden of proof. 66 Pa.C.S. § 332(a). The evidentiary burden of proof for actions before the Commission is the "preponderance of the evidence" standard. *Suber v. Pa. Comm'n on Crime and Delinquency*, 885 A.2d 678, 682 (Pa. Cmwlth. 2005); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). To establish a fact or claim by a preponderance of the evidence means to offer the greater weight of the evidence, or evidence that outweighs, or is more convincing than, by even the smallest amount, the probative value of the evidence presented by the other party. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

As a matter of law, to establish a legally sufficient claim, a Complainant must show that the named utility is responsible or accountable for the problem described in the Complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990). The offense must be a violation of the Code, a Commission Regulation or Order or a violation of a Commission-approved tariff. 66 Pa.C.S. § 701

## *Analysis*

The Complainant in this matter affirmatively elected to receive electronic service (eService) of Commission documents and has an active electronic filer (eFiler) status as required by the Commission's regulations at Section 1.53(b)(3), 52 Pa. Code § 1.53(b)(3).<sup>1</sup> Therefore, all Commission documents in this matter, including the Hearing Notice and Prehearing Order, were eServed to the Complainant to the email address that he registered with the Commission when he registered with the Commission's eFiling system.

Commission internal electronic activity for eService shows that the Hearing Notice issued in this matter was eServed to the Complainant's registered email address at 02:48:56 p.m. on November 1, 2023. Commission internal electronic activity for eService shows that the Prehearing Order issued in this matter was eServed to the Complainant's registered email address at 01:49:28 p.m. on November 3, 2023. There is no notification that either document failed to be eServed to the Complainant's email address. Therefore, the Complainant is presumed to have received the Hearing Notice and Prehearing Order. *Zirkel; Morella*. The Hearing Notice and Prehearing Order both provided the date and time of the December 18, 2023, telephonic evidentiary hearing, the method by which the parties could call in to a conference line to participate in the hearing, and the consequences of failing to appear for the hearing (*i.e.* dismissal of the Complaint). Accordingly, the Complainant is deemed to have had sufficient notice of the day, date, and time of the scheduled hearing, as well as how to participate in the telephonic hearing.

As the Complainant had notice of the hearing, the Complainant had ample opportunity to appear and be heard in this proceeding but chose not to call in to the conference line to participate in the hearing. The Complainant did not request a continuance of the hearing date, nor did he contact the Commission following the hearing to explain why his failure to

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<sup>1</sup> (3) *Electronic*. Service may be made electronically to filing users who have agreed to receive electronic service. Filing users will be sent an electronic mail notice informing them that a document was posted on the Commission's electronic filing system and providing a link to the document on the same day the document is posted. 52 Pa. Code § 1.53(b)(3).

appear at the hearing was unavoidable.<sup>2</sup> Therefore, the due process rights of the Complainant have been fully protected in this proceeding. *Schneider*; 52 Pa. Code § 5.245(a).

Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of any request for relief. By failing to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden. As the Complainant failed to appear, the Complainant is not permitted to reopen the disposition of this matter. 52 Pa. Code § 5.245(a)(2). Consequently, the Respondent's Motion to Dismiss the Complaint will be granted, and the Complaint will be dismissed with prejudice. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 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.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to 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, 15 (Pa. Cmwlth. 1984) (citing *Fusaro v. Pa. Pub. Util. Comm'n*, 382 A.2d 794 (Pa. Cmwlth. 1978)).

3. A Notice eServed to a party's registered email address with no notification that service failed to be delivered to that email address is presumed to have been received. *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).

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<sup>2</sup> 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).

4. The due process rights of Complainant have been fully protected in this proceeding and Complainant's failure to appear was not unavoidable. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984); 52 Pa. Code § 5.245(a).

5. As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).

6. By failing to appear for the hearing and proffer any evidence to support the Complaint, Complainant has failed to meet his burden of proving he is eligible for the relief he seeks from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of West Penn Power Company to dismiss the Formal Complaint of Richard Ramsey III at Richard Ramsey III v. West Penn Power Company, Docket Number C-2023-3042827, is granted.

2. That the Formal Complaint of Richard Ramsey III at Richard Ramsey III v. West Penn Power Company, Docket Number C-2023-3042827, is dismissed with prejudice.

3. That the Secretary's Bureau shall mark Docket Number C-2023-3042827 as closed.

Date: March 28, 2024

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/s/  
Alphonso Arnold III  
Administrative Law Judge