

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tina Reid	:	
	:	
v.	:	C-2024-3048383
	:	
First Energy Pennsylvania Electric Company	:	
f/k/a West Penn Power	:	

INITIAL DECISION

Before
Mary D. Long
Administrative Law Judge

INTRODUCTION

A Formal Complaint filed by a public utility customer is dismissed because Complainant failed to appear for the hearing without good cause.

HISTORY OF THE PROCEEDINGS

On April 11, 2024, Tina Reid (Complainant) filed a Formal Complaint (complaint) against FirstEnergy Pennsylvania Electric Company f/k/a West Penn Power (Company).¹ She checked the boxes on the complaint form noting that the utility is threatening to terminate her service and that she would like a payment arrangement.

¹ On January 1, 2024, FirstEnergy’s Pennsylvania operating companies (i.e., Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company) merged into FirstEnergy Pennsylvania Electric Company. Due to the merger transaction, the affected operating companies’

The Company filed an answer on May 2, 2024, denying the material allegations of the Complaint. On May 29, 2024, Chief Administrative Law Judge Rainey issued an order directing the parties to attempt to resolve their dispute with the assistance of the Mediation Unit. The parties did not resolve their dispute.

On July 1, 2024, the Complaint was assigned to me and scheduled for a hearing by telephone on August 15, 2024. The Hearing Notice provided the parties with the Toll-Free Bridge Number and the PIN to call and participate in the telephonic hearing. The hearing notice also warned that a party may lose the case if they did not take part in this hearing.

On July 1, 2024, I issued a Prehearing Order which set forth instructions for the conduct of the hearing.

The Hearing Notice and Prehearing Order were eServed to Complainant in the ordinary course of the Commission's business. Nothing on the Commission's docket for this case indicates that either the Hearing Notice or the Prehearing Order were returned to the Commission as undeliverable.

The hearing convened as scheduled on August 15, 2024. Counsel for the Company, Margaret A. Morris, Esquire appeared. Complainant did not call in to participate. After a brief recess to permit Complainant additional time to call in to the hearing conference bridge, the hearing reconvened. Complainant still did not call in to participate. The Company made a motion to dismiss the complaint with prejudice. Ms.

tariffs were consolidated into a single tariff, with each former operating company's rates becoming its own rate district. As such, the customers of the former West Penn Power Company have their own separate and distinct rate district under FirstEnergy Pennsylvania Electric Company's tariff.

Morris noted that she had made several attempts to contact Complainant by telephone and by email.² I took the motion under advisement. Following the receipt of the transcript, I closed the record by interim order on September 3, 2024.

FINDINGS OF FACT

1. Complainant is Tina Reid.
2. The Company is a jurisdictional public utility.
3. On July 1, 2024, the Hearing Notice noting the date and time of the hearing was eServed to Complainant.
4. On July 1, 2024, a Prehearing Order for Telephone Hearing was eServed on Complainant providing additional information to the parties regarding the hearing.
5. Both the Hearing Notice and Prehearing Order were eServed on Complainant to the email address provided to and registered by Complainant with the Commission.
6. Both the Hearing Notice and Prehearing Order provided Complainant with the toll-free bridge telephone number and PIN to call and participate in the hearing, and, among other things, the procedure for requesting a continuance and the possible consequences of failing to appear at the hearing.

² Tr. 7-9.

7. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.

8. Complainant did not call the conference number at 1:00 p.m. on August 15, 2024.

9. Complainant did not contact the Commission to explain why her failure to appear at the hearing was unavoidable.

DISCUSSION

Complainant filed a Formal Complaint seeking relief from the Commission in the form of a payment arrangement. Complainant must prove that she is entitled to this relief from the Commission.³ Complainant did not appear at the hearing scheduled for her benefit and therefore did not take the opportunity to explain why the Commission should award her a payment arrangement.

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them.⁴ The fundamental tenets of due process are notice and an opportunity to be heard.⁵ However, the right to due process is not absolute.⁶ 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

³ 66 Pa.C.S. § 332.

⁴ *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).

⁵ *Pa. Bankers Ass'n*.

⁶ *Goetz v. Dep't of Env't Res.*, 613 A.2d 65 (Pa. Cmwlth. 1992).

be dismissed and there is no violation of due process.⁷ 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.^[8]

Complainant received adequate notice of the date and time of the hearing. Complainant elected to receive service by eService and registered her email address with the Commission. Commission records do not indicate that service to Complainant was unsuccessful. Accordingly, the Commission presumes that she received the hearing notice and order that the Commission eServed in connection with the hearing.⁹

⁷ See *Fountain Cap. Fund, Inc. v. Pa. Sec. Comm'n*, 948 A.2d 208 (Pa. Cmwlth. 2008), and the cases cited therein.

⁸ 52 Pa. Code § 5.425.

⁹ *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

Complainant also had notice of the consequences if she did not appear and participate in the hearing. The Hearing Notice 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. Yet she did not contact the Commission to attempt to reschedule.

Further, counsel for the Company noted that both she and representatives from the Company attempted to contact Complainant by e-mail and by telephone.¹⁰ Complainant did not respond productively to any of their attempts to communicate with her.

In sum, the Commission afforded Complainant 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 Complainant to appear

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

¹⁰ Tr. 4-7.

and participate in the hearing.¹¹ If Complainant could not appear, for any reason, then it was her responsibility to notify the presiding officer immediately about the impediment or dilemma.¹²

Section 332(a) of the Public Utility Code¹³ places the burden of proof upon the proponent of a rule or order. 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 must be dismissed.

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 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.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of the dispute. 66 Pa.C.S. § 701.

¹¹ *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 (Opinion and Order entered Jan. 28, 2002).

¹² 66 Pa.C.S. § 332(a); *Herr v. West Penn Power Co.*, Docket No. C-2021-3028202 (Opinion and Order entered Sept. 15, 2022); *Williams v. PECO Energy Co.*, Docket No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019).

¹³ 66 Pa.C.S. § 332(a).

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

3. Notice eServed to a party who has elected to receive service in this manner is presumed to have received it. *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).

4. By failing to appear at the scheduled hearing, Complainant has waived her claims and has failed to sustain her burden of proof. 66 Pa.C.S. § 332; 52 Pa. Code § 5.245.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion to dismiss the Formal Complaint of Tina Reid at Docket C-2024-3048383, is granted.

2. That the Formal Complaint of Tina Reid in *Tina Reid v. First Energy Pennsylvania Electric Company f/k/a West Penn Power*, C-2024-3048383, is dismissed.

