



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY, PLEASE
REFER TO OUR FILE

ISSUED: December 22, 2005

C-20054947

MICHAEL GORI
1216 THOMAS STREET
MONONGAHELA PA 15063

Michael Gori
v.
West Penn Power Company

**DOCUMENT
FOLDER**

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Fred R. Nene. This decision is being issued and mailed to all parties on the above specified date.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION 2ND FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265, within **twenty (20) days** of the issuance date of this letter.** The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within **ten (10) days** of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

If no exceptions are received within **twenty (20) days**, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

Very truly yours,

James J. McNulty
Secretary

Encls.
Certified Mail
Receipt Requested
SS

JOHN L MUNSCH ESQUIRE
WEST PENN POWER COMPANY
800 CABIN HILL DRIVE
GREENSBURG PA 15601-1689

C-20054947 Michael Gori v. West Penn Power Company

Billing dispute.

MICHAEL GORI
1216 THOMAS STREET
MONONGAHELA PA 15063

JOHN L MUNSCH ESQUIRE
WEST PENN POWER COMPANY
800 CABIN HILL DRIVE
GREENSBURG PA 15601-1689

JL 20/10

NOV 21 2005

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael Gori

v.

West Penn Power Company

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:
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:
:

C-20054947

INITIAL DECISION

DOCKETED
DEC 22 2005

Before
Fred R. Nene
Administrative Law Judge

**DOCUMENT
FOLDER**

HISTORY OF THE PROCEEDING

In a formal complaint filed on July 8, 2005 Michael Gori ("Complainant") raised an issue concerning electric utility service provided by West Penn Power Company ("Respondent" or "West Penn"). On September 7, 2005 West Penn filed an answer to the complaint.

The Commission scheduled a telephonic hearing on the matter. The hearing was scheduled to be held at 10:00 a.m. on November 16, 2005. The Complainant failed to appear for the hearing. Counsel for West Penn did appear and made a motion requesting the Commission to dismiss the complaint based on the Complainant's failure to prosecute the matter.

The record in this matter consists of a yet-to-be-completed transcript of the hearing. The record closed immediately following the hearing.

For the reasons stated below, I am granting the Respondent's motion and dismissing Mr. Gori's complaint with prejudice.

FINDINGS OF FACT

1. Notice of the hearing was sent to the Complainant on October 13, 2005.
2. A prehearing order was mailed to the Complainant on October 31, 2005.
3. Both notices indicated the date and time of the hearing and how the parties would be contacted. The notices stressed the importance of participating in the proceeding and gave instructions on how to request a change in scheduling.
4. Both notices were sent by first class mail to the address listed on the Complainant's complaint.
5. Neither notice was returned by the United States Postal Service as undeliverable.
6. When I telephoned Michael Gori at 10:00 a.m. on November 16, 2005, at the number listed on the complaint (412-403-9398), the phone was answered with a recording requesting that I leave a message. I left a message identifying myself and stating the purpose of my call with instructions to return the call within 15 minutes or the hearing would be held in his absence. There was no return call.

DISCUSSION

In requesting the Commission to dismiss this complaint, Counsel for West Penn stated that the company's representatives had similarly tried unsuccessfully to contact the Complainant regarding this matter.

If the Commission has protected Mr. Gori's due process rights in providing an opportunity to appear and present evidence in support of his complaint, and if Mr. Gori fails to appear and present such evidence, then the Respondent is entitled to dismissal of the complaint

with prejudice. Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (entered December 26, 1995).

I find that the Commission has in fact protected Mr. Gori's due process rights. Notices sent to him by regular first-class mail set forth the date, time, and manner in which the hearing was to be held. Neither mailing was returned as undeliverable and accordingly the law presumes that Mr. Gori received notice of the hearing and elected not to participate. Samaras v. Hartwick, 698 A.2d 71 (Pa. Super. 1997).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and the subject matter of this dispute.
2. The Complainant's due process rights were fully protected in this proceeding.
3. By failing to appear and present evidence in support of his complaint, the Complainant has failed to meet his burden of proving that he is entitled to the relief he seeks.


ORDER

THEREFORE,

IT IS ORDERED:

1. That the complaint of *Michael Gori v. West Penn Power Company* at Docket No. C-20054947 is dismissed with prejudice for failure to prosecute.

Dated: November 16, 2005



Fred R. Nene
Administrative Law Judge

DOCUMENT FOLDER

FORM UCGD-12 8M (Rev. COMMONWEALTH OF PENN. PENNSYLVANIA PUBLIC UTILITY COMM. P.O. BOX 3265 HARRISBURG, PA 17105

7160 3901 9843 0829 9063 Return Receipt Requested



CERTIFIED MAIL™

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) *Michael Bori*

B. Date of Delivery *12-29-05*

C. Signature *[Signature]*

D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below:

2. Article Number *7160 3901 9843 0829 9063*

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) Yes No

1. Article Addressed to:

DI
C-2006-5006-C
Michael Bori

PS Form 3811, March 2005

Domestic Return Receipt

COMPLETE THIS SECTION ON DELIVERY

A. Received by (Please Print Clearly) *Kris Kowsteh*

B. Date of Delivery

C. Signature *[Signature]*

D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below:

2. Article Number *7160 3901 9843 0829 9063*

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee) Yes No

1. Article Addressed to:

DI
C-2006-5006-C
John Munch Esq

PS Form 3811, March 2005

Domestic Return Receipt

- 1st Article
- A INSUFFICIENT ADDRESS
 - C ATTEMPTED NOT KNOWN
 - S NO SUCH NUMBER/STREET
 - NOT DELIVERABLE AS ADDRESSED
 - UNABLE TO FORWARD
 - OTHER

RTS
RETURN TO SENDER

REFUSED



ID 0-80054947
SENT JAN 3-06
Reg mail

15063+274871850000

REFUSED