

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Shelly Moyer

v.

West Penn Power Company

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C-2015-2475942

INITIAL DECISION

Before
Dennis J. Buckley
Administrative Law Judge

INTRODUCTION

This decision dismisses a formal Complaint for failure to appear and prosecute.

HISTORY OF THE PROCEEDING

On April 6, 2015, Shelly Moyer (Complainant) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against West Penn Power Company (West Penn or Respondent). The Complainant claimed that West Penn was improperly attempting to hold her accountable for another person's electric bill. The Complaint is an untimely appeal from a determination by the Commission's Bureau of Consumer Services (BCS) at Decision No. 3266550.

West Penn filed an Answer and New Matter April 29, 2015. In that Answer, West Penn asserted that from September 16, 2013, Complainant had been a resident at the address although electric service was in another person's name. That prior account had an outstanding balance owed of \$1,537.23. The account was enrolled in West Penn's low income assistance

program from 2012. The Answer further averred that Complainant tried to establish an account in her name on July 10, 2014, but that West Penn declined to provide service in her name due to the outstanding balance on the account. Service was terminated on April 2, 2015. The Complainant contacted West Penn, accepted responsibility for the account, and a payment arrangement (PAR) was established on April 6, 2015, with the \$1,537.23 being transferred into Complainant's name. The same day, Complainant filed a formal Complaint at this docket, disputing responsibility for the \$1,537.23 balance.

In its New Matter, West Penn cited the Public Utility Code (Code) at 66 Pa.C.S. § 1407(c), and contended that Complainant accepted responsibility for the prior account balance by entering into a PAR for that balance in order to establish service.

Complainant filed no answer or responsive pleading to the New Matter.

By notice dated May 28, 2015, the Commission scheduled this matter for an initial telephonic hearing on July 1, 2015 at 10:00 a.m. and assigned the case to me. I issued a Prehearing Order dated June 23, 2015. That Prehearing Order clearly set forth that failure to participate in the hearing might result in a decision being entered against the non-appearing party.

A standard form Prehearing Order was issued on June 23, 2015, and was not returned by the United States Postal Service.

I convened a telephonic hearing on July 1, 2015, at 10:00 a.m. as scheduled. The Complainant failed to appear for that hearing. I attempted to call the Complainant at approximately 10:00 a.m. at the cell phone number listed on the Complaint, and again at two, ten minute intervals thereafter. I checked the Atrium of the Keystone State Office Building to assure myself that the Complainant was not there. Counsel for West Penn advised me that she had received a voicemail from Complainant on June 30, 2015, in which Complainant said that she would hire an attorney and ask for a continuance. No attorney entered an appearance on behalf

of the Complainant. No request for a continuance was received. Complainant failed to appear for the hearing.

Upon commencement of the hearing, Margaret A. Morris, Esquire, counsel for West Penn, asked permission to put on evidence in support of its New Matter. Though I granted that request, the reason for dismissal of the Complaint is Complainant's failure to appear and to prosecute her Complaint.

On July 22, 2015, the court reporting service filed the transcript in this proceeding. The record closed on that date. This decision dismisses the formal Complaint at Docket No. C-2015-2475942, due to Complainant's failure to appear.

FINDINGS OF FACT

1. The Complainant in this case is Shelly Moyer.
2. The Respondent in this case is West Penn Power Company.
3. On April 6, 2015, the Complainant filed a Complaint with the Commission against the Respondent.
4. The Respondent filed an Answer on April 29, 2015.
5. By notice dated May 28, 2015, the Commission scheduled this matter for an initial telephonic hearing on July 1, 2015 at 10:00 a.m.
6. On June 23, 2015, a prehearing order was issued addressing, inter alia, requests for continuance, the potential consequences of non-appearance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

7. The prehearing order was not returned to the Office of Administrative Law Judge by the United States Postal Service.

8. The Commission sent notice of the telephonic hearing in this case to the Complainant by regular first-class mail to the address stated on the Complaint.

9. The Commission's hearing notice was never returned to the sender.

10. The Complainant failed to appear at the July 1, 2015 telephonic hearing.

DISCUSSION

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. *Schneider v. Pa. Pub. Util. Comm'n.*, 479 A.2d 10 (Pa.Cmwlth. 1984). This due process requirement is satisfied, however, when the administrative agency provides the parties notice and the opportunity to be heard.

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. As the party bringing this complaint, the Complainant bears the burden of proving by a preponderance of the evidence that he is entitled to relief. By failing to appear and proffer any evidence to support his complaint, the Complainant has failed to meet this burden. Under these circumstances, the complaint should be dismissed with prejudice. *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995); 52 Pa.Code § 5.245.

The Commission sent notice of the telephonic hearing in this case to the Complainant on May 28, 2015, by regular first-class mail to the address stated on the Complaint. To my knowledge this piece of mail was never returned to the sender, the scheduling staff for the Office of Administrative Law Judge (OALJ) in Harrisburg. In addition, I issued a Prehearing Order dated June 23, 2015, which, *inter alia*, directed the parties to notify me if the telephone numbers where they could be reached at the time of the hearing changed. This order, which was

also mailed to the Complainant at the address stated on the Complaint, was never returned. Accordingly, I must presume that this mail, which was sent in the ordinary course of business, was received by the Complainant. *Berkowitz v. Mayflower Securities, Inc.*, 317 A.2d 584 (Pa. 1974); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa.Super. 1997); *Judge v. Celina Mutual Insurance Co.*, 444 A.2d 658 (Pa.Super. 1982).

The Complainant did not appear for the scheduled hearing. She was not available at the telephone number listed on the telephonic hearing notice.

Under these circumstances, it appears the Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. Therefore, the due process rights of the Complainant have been fully protected. *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-00161106 (Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

In this proceeding, Complainant bears the burden of proving by a preponderance of the evidence that he is entitled to relief. 66 Pa.C.S. § 332(a). By failing to appear and present any evidence in support of her Complaint, Complainant has failed to meet this burden. Thus, the Complaint must be dismissed with prejudice. *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995). Accordingly, the merits of the Complaint will not be addressed. *Jones v. The Peoples Natural Gas Company, d/b/a Dominion Peoples*, Docket No. C-20054885 (Order entered February 14, 2006); and *Mya Lau v. PPL Electric Utilities Corp.*, Docket No. F-01816882 (Order entered October 19, 2005).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa.C.S. 702.

2. The due process rights of the Complainant have been fully protected in this proceeding. *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-00161106 (Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

3. By failing to appear and proffer any evidence to support her Complaint, the Complainant has failed to meet her burden of proving that she is entitled to the relief that she seeks from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Shelly Moyer against West Penn Power Company at Docket No. C-2015-2475942 is dismissed with prejudice for failure to appear and prosecute.
2. That the docket in this case is closed.

Date: December 20, 2016

/s/
Dennis J. Buckley
Administrative Law Judge