

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Shawn Kronenwetter	:	
	:	
v.	:	C-2016-2563930
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Conrad A. Johnson
Administrative Law Judge

This decision dismisses the Complaint filed in this matter for failure of Complainant to appear for the hearing and prosecute the Complaint.

HISTORY OF THE PROCEEDING

On August 26, 2016, Shawn Kronenwetter (Complainant) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against West Penn Power Company (Respondent or Company). Complainant alleges that 1) the utility is threatening service termination or has already terminated service; 2) incorrect charges are on his bill; and 3) a \$930.00 payment was made on November 16, 2015, but the payment was not credited to his account by Respondent. As relief, Complainant requested that the missing payment be found and credited to his account.

On September 2, 2016, Respondent filed an Answer admitting that the Company has threatened to terminate Complainant's electric service and denying that there are incorrect charges on Complainant's bill. Respondent averred that the Company has no record of a \$930.00 payment made to Complainant's account on or around November 16, 2015.

Respondent alleged that the current account balance was \$3,258.84. As relief, Respondent requested dismissal of the Complaint.

By notice dated March 13, 2017, the Commission scheduled this matter for a call-in telephonic hearing on April 20, 2017 at 10:00 a.m. and assigned the case to me. I issued a Prehearing Order dated March 20, 2017, addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

On April 14, 2017, the undersigned received a written request from Complainant for continuance of the April 20, 2017 hearing in order to gather documentary evidence. Respondent did not object to the continuance. Accordingly, Complainant's continuance request was granted.

By Rescheduled Hearing Notice dated April 26, 2017, the Parties were informed that a Rescheduled Call-In Telephonic Hearing was scheduled before me for Thursday, June 8, 2017, at 10:00 a.m.

I convened the telephonic hearing on June 8, 2017 at 10:00 a.m. Respondent was represented by John L. Munsch, Esquire. Respondent's witnesses, Senior Customer Service Compliance Specialist Tammy J. Taylor and Supervisor of Customer Services Carol Caltagrone were also present for the hearing. Complainant failed to appear for the hearing. Complainant did not call the conference number shown on the April 26, 2017 hearing notice at 10:00 a.m.

I recessed the hearing at 10:09 a.m. to permit additional time for Complainant to appear or to contact the Office of Administrative Law Judge (OALJ) in order to explain his absence. The telephonic proceeding remained open with counsel for Respondent and the court reporter in the telephonic hearing. I then left the hearing room to verify with the support staff for the OALJ in Pittsburgh that Complainant had not contacted the office to indicate that Complainant would be unable to participate in the telephonic hearing. My voice mail and email had no messages from Complainant stating that he would be unable to participate in the hearing.

After verifying that Complainant had not contacted OALJ in Pittsburgh, I returned to the hearing room and reconvened the hearing at approximately 10:30 a.m. The Complainant had not called into the telephonic hearing. Accordingly, the hearing proceeded in Complainant's absence. No testimony or evidence was offered by Respondent. Counsel for Respondent moved for dismissal of the Complaint for lack of prosecution. I informed counsel that the motion would be taken under advisement and an initial decision would be issued. The record was closed, and the hearing was adjourned at 10:40 a.m. on June 8, 2017.

FINDINGS OF FACT

1. Complainant in this case is Shawn Kronenwetter.
2. Respondent in this case is West Penn Power Company.
3. On August 26, 2016, Complainant filed a Complaint with the Commission against Respondent.
4. By notice dated March 13, 2017, the Commission scheduled this matter for an initial telephonic hearing on April 20, 2017, at 10:00 a.m.
5. By a letter received on April 14, 2017 OALJ in Pittsburgh, Complainant requested a continuance of the April 20, 2017 hearing, which was granted.
6. By notice dated April 26 2017, the Commission rescheduled this matter for an initial telephonic hearing on June 8, 2017, at 10:00 a.m.
7. The Commission sent notice of the telephonic hearing in this case to Complainant by regular first class mail to the address stated on the Complaint.
8. The Commission's hearing notice was never returned to the sender.

9. Complainant failed to appear at the June 8, 2017 telephonic hearing.

10. Complainant did not settle, withdraw or request an additional continuance of the matter.

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.

The Commission sent notice of the telephonic hearing in this case to Complainant on April 26, 2017, 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 OALJ in Pittsburgh.

In addition, I issued a Prehearing Order dated March 20, 2017, which, *inter alia*, provided the toll-free bridge number and the PIN in order for the parties to participate in the telephonic hearing. The Prehearing Order directed the parties to call into the hearing on the scheduled day and time. The Prehearing Order, which was mailed to Complainant at the address shown 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 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).

Complainant did not appear for the hearing scheduled and convened on June 8, 2017, which was the date shown on the April 26, 2017 hearing notice. Under these circumstances, 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

Complainant have been fully protected. *Sentner v. Bell Telephone Co. of Pa.* Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

Finally, 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, 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, Complainant has failed to meet this burden. Under these circumstances, the Complaint may be dismissed with prejudice. *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); *El-Ayazra v. West Penn Power Company*, 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 parties and subject matter of this proceeding. 66 Pa.C.S. § 701.

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

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

