

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nancy A. Hogan and Daniel Bernard Hogan	:	
	:	
v.	:	C-2017-2610177
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Mary D. Long
Administrative Law Judge

INTRODUCTION

A formal complaint filed by customers of an electric distribution company is dismissed because the complainants failed to appear for the hearing without good cause.

PROCEDURAL HISTORY

On June 17, 2017, Nancy A. Hogan filed a formal complaint against West Penn Power Company. In her complaint, she checked boxes noting that she was subject to termination of her electric service and that she would like a payment arrangement. As relief, she requested “a fair and equal” payment arrangement, and represented that she was willing to pay \$400.00 per month.

West Penn Power Company (West Penn) filed an answer on July 10, 2017, admitting that it had issued a termination notice on June 6, 2017 for a past-due balance in the amount of \$19,435.06. The company further averred that Mrs. Hogan had been enrolled in West Penn’s customer assistance program, but had failed to reverify and was therefore removed from

the program in 2016. West Penn took the position that Mrs. Hogan should not be granted a further payment arrangement.

By notice dated July 18, 2017, this matter was assigned to me and scheduled for a telephonic hearing on Thursday, September 14, 2017. On July 19, 2017, I issued a prehearing order which set forth procedural information for the conduct of the hearing, including instructions for requesting a continuance.

The hearing convened as scheduled. Mrs. Hogan did not appear. However, her husband, Daniel Bernard Hogan appeared and stated that Mrs. Hogan was unavailable because she was having surgery. Mr. Hogan represented that he and Mrs. Hogan were married and had lived together at the service address and that he was responsible for the bill. West Penn had no objection to amending the complaint to include Mr. Hogan as a complainant. Therefore, Mr. Hogan was added as a party to the complaint. Mr. and Mrs. Hogan are hereafter referred to as Complainants.

West Penn also appeared at the September 14, 2017 hearing. West Penn was represented by John L. Munsch, Esquire.

The parties agreed to engage in the settlement judge process in an attempt to resolve the complaint. Following a discussion, the parties agreed to a further hearing which would take place on October 23, 2017. On September 14, 2017, a hearing notice was served which scheduled the further hearing for Monday, October 23, 2017 at 10:00 a.m.

The further hearing convened on October 23, 2017, as scheduled. Mr. Munsch appeared on behalf of West Penn, along with Tammy J. Taylor, a Senior Customer Service Representative. Neither of the Complainants called into the scheduled hearing. A short recess was provided to allow the Complainants additional time to call into the hearing. They did not call to participate in the hearing. The hearing was reconvened and proceeded in their absence. Following brief testimony by Ms. Taylor, West Penn made a motion to dismiss the complaint. The motion was taken under advisement.

Later in the day the Complainants faxed a letter claiming that they were unable to call into the conference number provided in the hearing notice. The Complainants also represented that a relative would be loaning them money to pay off their bill. The Complainants requested a 30-day continuance of the hearing.

The record closed by interim order dated October 30, 2017.

As explained in more detail below, the Complainants' request for a continuance will be denied and their complaint will be dismissed.

FINDINGS OF FACT

1. The Complainants are Nancy A. and Daniel Bernard Hogan, who receive electric distribution service from West Penn Power Company.
2. The Respondent, West Penn Power Company is a jurisdictional public utility.
3. On September 14, 2017, Mr. Hogan agreed to pay West Penn \$2,300 by money order before October 23, 2017. (N.T. 10)
4. On September 14, 2017, Mr. Hogan agreed to provide West Penn with income information for the purpose of evaluating his income eligibility for customer assistance programs. (N.T. 10)
5. On September 14, 2017, the parties agreed that if Mr. Hogan failed to make the promised payment, the hearing would proceed on October 23, 2017, and evidence would be received from the parties. (N.T. 10)
6. Neither of the Complainants appeared at the October 23, 2017 hearing.

7. As of the hearing on October 23, 2017, the Complainants had not made payments in the amount of \$2,300. (Testimony of Tammy Taylor)¹

8. The last good payment received by West Penn on the Complainants' account was in March 2017. (Testimony of Tammy Taylor)

9. On September 15, 2017, a representative of West Penn contacted the Complainants to solicit income information. (Testimony of Tammy Taylor)

10. Mr. Hogan provided verbal information, but did not send the documentation to support the Complainants' income information as requested by West Penn. (Testimony of Tammy Taylor)

11. As of October 23, 2017, the balance on the Complainants' account was \$22,540.31. (Testimony of Tammy Taylor)

12. Neither the hearing notices nor the prehearing order were returned to the Commission by the U.S. Postal Service.

13. The Complainants' representation in the October 23, 2017 letter stating that they were unable to connect to the Commission's conference bridge to participate in the hearing is not credible.

DISCUSSION

The Complainants bear the burden of proof.² This means that they must prove facts which would permit judgment in their favor. Commission policy promotes settlements.³ In

¹ As of this writing the transcript has not yet been received by the Commission.

² 66 Pa.C.S. § 332.

³ 52 Pa.Code § 5.231(a).

keeping with that policy, the Complainants and West Penn agreed to attempt to resolve their dispute with the use of the Commission's settlement judge process.⁴

At the conclusion of the settlement discussion on September 14, 2017, the Complainants agreed to pay \$2,300.00 by October 23, 2017. In return, West Penn agreed to the continuance of the hearing and agreed to work with the Complainants and consider their eligibility for inclusion in the company's customer assistance program. The Complainants were warned that if they failed to show good faith by making the promised payment, that evidence would be received and that a decision would be rendered.

On October 23, 2017, I called into the conference number promptly at 10:00 a.m. Mr. Munsch was on the line. I waited several minutes to give the Complainants a chance to call into the hearing. When they did not call in, I convened the hearing and then provided a further recess. After the recess, the hearing proceeded in the Complainants' absence. The testimony of Ms. Taylor was taken.

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them.⁵ However, this due process requirement is satisfied when the parties are provided notice and the opportunity to appear and be heard.⁶ The Complainants had adequate notice of the time and date of the hearing, yet they failed to appear. Indeed, Mr. Hogan agreed to the October 23, 2017 hearing date at the September 14, 2017 hearing. Neither of the hearing notices nor the prehearing order were returned by the U.S. Postal Service. Notice mailed to a party's last known address and not returned by the post office is presumed to have been received.⁷ Therefore, the Complainants are deemed to have received these documents

⁴ 52 Pa.Code § 5.223.

⁵ *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlth. 1984).

⁶ *Id.*

⁷ *Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 531, 317 A.2d 584 (1974); *Chartiers Industrial and Commercial Dev. Auth. v. Allegheny County Bd. of Property Assessment Appeals and Rev.*, 645 A.2d 944 (Pa.Cmwlth. 1994); *Geary v. Verizon Pennsylvania Inc.*, Docket No. C-2009-2118625 (Commission Opinion and Order entered September 16, 2010).

and had sufficient notice of the Commission's procedures and notice of the location, date and time of the scheduled hearing.

The Complainants did not contact the Commission's Office of Administrative Law Judge in Pittsburgh to say that they were having difficulty connecting with the conference bridge. I find the representation that they did not call because they could not get connected unconvincing. Mr. Hogan had used the conference bridge number successfully on September 14, 2017. The telephone number for the Commission's Pittsburgh office is set forth on the front page of the hearing notice, yet the Complainants did not contact the office before the conclusion of the hearing to inform me that they were having difficulty dialing into the conference bridge.

The Complainants' October 23, 2017 letter also does not set forth sufficient reason to grant a continuance. The prehearing order provided instructions for requesting a continuance if the scheduled date and time of the hearing became inconvenient.⁸ The letter requesting the continuance is silent as to why the Complainants failed to live up to the promise to make a payment on their account. Commission regulations provide that a continuance will only be granted for "good cause shown."⁹ The Complainants' letter provides neither good cause for failing to participate in the hearing, nor does it provide good cause for granting a further continuance.

The Commission is granted discretion to dismiss a complaint without a hearing if a hearing is not necessary in the public interest.¹⁰ In the circumstances of this case, no purpose would be served by holding a further hearing. The Complainants have not contested the charges on their account, but seek a payment arrangement. While the Commission has the authority to establish a payment arrangement, the Commission exercises this authority very judiciously. Specifically, the Commission exercises its discretion only on behalf of customers, "who have

⁸ The October 23, 2017 date was agreed to by the parties at the September 14, 2017 hearing. At that time Mr. Hogan did not mention the surgery that he references in the continuance letter.

⁹ 52 Pa.Code § 1.15(b).

¹⁰ 66 Pa.C.S. § 703(b); 52 Pa.Code § 5.21(d).

demonstrated some evidence of good faith efforts to pay their utility bills or who have experienced a significant change of circumstance outside of their control.”¹¹

The Complainants have made no payments on their account since March 2017. The Complainants did not attempt to make even a partial payment between the September 14, 2017, and October 23, 2017 hearings, as a demonstration of a good faith attempt to retire their substantial balance. The Complainants did not provide income documentation to West Penn, which would have permitted an evaluation of their eligibility for customer assistance. The Complainants have offered nothing but promises and have failed to follow up with any action which would suggest that they would keep any payment arrangement that the Commission might direct. The award of a payment arrangement is not mandatory.¹² It is not fair to West Penn’s other ratepayers to continue to carry the burden of the Complainants’ failure to make any payment on their account or to meet even the most basic obligation of providing income documentation.

The Complainants in this case have an extremely high balance. A utility has a right to expect to be paid for services rendered.¹³ When a customer fails to make regular payments for utility service, the service isn’t “free.” Rather, the costs are reflected in the utility’s rates and borne by the other customers of the utility.¹⁴ At the same time, the Complainants have suffered financial hardship and as winter approaches, utility service is important. While the Commission is sensitive to the needs of those in financial distress, it must also keep in mind its obligations to all of a utility’s ratepayers. In light of the circumstances set forth above, the

¹¹ *Stormer v. Pennsylvania American Water Company*, Docket No. C-2011-2249169 (Final Order March 28, 2012). *See also Crawford v. National Fuel Gas Distribution Corporation*, Docket No. C-20066348 (Order entered December 6, 2007); *Maye v. National Fuel Gas Distribution Corporation*, Docket No. F-02140445 (Order entered October 22, 2008); *Sayre v. UGI Utilities, Inc.*, Docket No. F-02292619 (Order entered November 4, 2008); *Thomas v. National Fuel Gas Distribution Corporation*, Docket No. F-02144645 (Order entered December 9, 2008).

¹² *Buchanan v. Pike County Light and Power Company*, PUC Docket No. F-2009-2137873 (Final Order entered December 12, 2011).

¹³ *Scaccia v. West Penn Power Company*, 55 Pa. PUC 637 (1982).

¹⁴ *Knight v. West Penn Power Company*, Docket F-2015-2508344 (Final Order entered September 8, 2016); *Bolt v. Duquesne Light Company*, Docket No. Z-8712758 (Order entered April 8, 1988).

Complainants' request for a continuance is denied. West Penn's motion to dismiss will be granted and the complaint is dismissed.

CONCLUSIONS OF LAW

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

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

3. By failing to appear at the scheduled hearing, the Complainants have waived their claims and have failed to sustain their burden of proof. 66 Pa.C.S. § 332.

4. A continuance will only be granted on good cause shown. 52 Pa.Code § 1.15(b).

5. The Commission is granted discretion to dismiss a complaint without a hearing if a hearing is not necessary in the public interest. 66 Pa.C.S. § 703(b); 52 Pa.Code § 5.21(d).

ORDER

THEREFORE

IT IS ORDERED:

1. That the request for a continuance of the hearing by the Complainants Nancy A. and Daniel Bernard Hogan is denied.

2. That the motion to dismiss the complaint of Nancy A. and Daniel Bernard Hogan at Docket C-2017-2610177, is granted.

3. That the formal complaint of Nancy A. and Daniel Bernard Hogan at Docket C-2017-2610177, is dismissed.

4. That the Secretary shall mark the docket closed.

Date: October 30, 2017

_____/s/
Mary D. Long
Administrative Law Judge