

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Florence Placha	:	
	:	
v.	:	C-2017-2630900
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Mary D. Long
Administrative Law Judge

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

HISTORY OF PROCEEDINGS

Florence Placha (Complainant) filed a formal complaint against West Penn Power Company (West Penn or Company) on October 26, 2017.¹ Her complaint noted that the utility was threatening to terminate her service and requested an affordable payment arrangement.

West Penn filed an answer on November 15, 2017, which averred that the Complainant's account balance was \$10,836.36. West Penn further averred that the Complainant had a poor payment history and was not entitled to an additional payment arrangement.

¹ Complainant also filed a virtually identical complaint on October 30, 2017, which was not separately docketed.

By hearing notice dated December 11, 2017, this matter was assigned to me and scheduled for a telephonic hearing on Thursday, January 25, 2018. On December 12, 2017, I issued a prehearing order which also provided the date and time of the hearing as well as other procedural requirements related to hearings, including instructions for requesting a continuance if the hearing date and time were not convenient.

The hearing convened as scheduled. John L. Munsch, Esquire appeared on behalf of the Company along with one witness, Laurie E. Parker. The Complainant did not call the conference call number. Mr. Munsch represented that the utility had attempted to contact the Complainant but the calls had not been returned. After a brief recess to provide the Complainant additional time to call, the hearing proceeded in her absence. The Company made a motion to dismiss, which was taken under advisement. The record closed upon receipt of the transcript, by order dated February 21, 2018.

FINDINGS OF FACT

1. The Complainant is Florence Placha.
2. The Respondent is West Penn Power Company, a jurisdictional public utility.
3. The Complainant did not call the conference number at 10:00 a.m. on Thursday, January 25, 2018.
4. The Complainant did not contact the Commission to explain her failure to appear.
5. Neither the hearing notice nor the prehearing order were returned as undeliverable by the U.S. Postal Service.

DISCUSSION

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them.² However, this due process requirement is satisfied when the parties are provided notice and the opportunity to appear and be heard.³ The Complainant had adequate notice of the time and date of the hearing, yet she failed to appear or explain why she could not attend her hearing at the scheduled time. Therefore, it is appropriate to dismiss her complaint.

A hearing notice and prehearing order were sent to the Complainant. Paragraph 10 of the prehearing order informed the Complainant that if she failed to appear for the hearing she could lose her case. Paragraph 8 of the order provided instructions for contacting the Commission to request a change of the scheduled hearing date. None of these pieces of mail 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.⁴ Therefore, the Complainant is deemed to have received these documents and had sufficient notice of the Commission's procedures and notice of the location, date and time of the scheduled hearing.

Section 332(a) of the Public Utility Code⁵ places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, the 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, the Complainant failed to meet her burden of proof. Consequently, the complaint must be dismissed.

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

³ *Id.*

⁴ *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.Cmwth. 1994); *Geary v. Verizon Pennsylvania Inc.*, Docket No. C-2009-2118625 (Commission Opinion and Order entered September 16, 2010).

⁵ 66 Pa.C.S. § 332(a).

The Complainant was notified of the scheduled hearing location, date and time, as well as how to contact the Office of Administrative Law Judge, but failed to appear without explanation. Under these circumstances, the Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. The due process rights of the Complainant have been fully protected. The motion to dismiss of the Company is granted, and the complaint is dismissed with prejudice.⁶

CONCLUSIONS OF LAW

1. The due process rights of the Complainant have been fully protected. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlth. 1984).
2. By failing to appear at her scheduled hearing, the Complainant has waived her claims and has failed to sustain her burden of proof. 66 Pa.C.S. § 332.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion to dismiss the complaint of Florence Placha at Docket No. C-2017-2630900, is granted.
2. That the complaint of Florence Placha at Docket C-2017-2630900, is dismissed with prejudice.

⁶ 66 Pa.C.S. § 332(f).

3. That this docket be marked closed and discontinued.

Date: February 22, 2018

/s/
Mary D. Long
Administrative Law Judge