

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Elizabeth Bryant	:	
	:	
v.	:	C-2017-2624400
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Benjamin J. Myers
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On September 8, 2017, Elizabeth Bryant (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against West Penn Power Company (Respondent). The complaint alleges that the Complainant's current monthly payment amount is too high and therefore unaffordable for the Complainant. The complaint requested that the Commission lower the Complainant's monthly payment plan amount.

The Respondent filed an answer on October 4, 2017. The answer admitted that the Respondent provides electric service to the Complainant. The Respondent listed a series of previous payment arrangements the Complainant had received between 2011 and 2017 and averred that despite those arrangements the Complainant had failed to make required payments or recertify to maintain enrollment in the Respondent's customer assistance program. The

Respondent further averred that the Complainant had only made five payments toward her account in the previous 24 months and that the Complainant had an outstanding account balance in excess of \$12,000. The answer requested that the Commission deny the complaint.

By notice dated November 13, 2017, the Commission scheduled this matter for an initial telephonic hearing on January 5, 2018 at 10:00 a.m. and assigned the case to me. A prehearing order was issued on November 16, 2017 addressing, inter alia, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

On January 4, 2018, the Complainant made telephone contact with the Office of Administrative Law Judge (OALJ) and requested a continuance of the January 5, 2018 hearing. The Complainant asserted that she had been hospitalized since Christmas and was scheduled to undergo open heart surgery. Based on this information, the January 5 hearing was continued and counsel for the Respondent was notified.

On January 12, 2018, a second notice of hearing was issued rescheduling this matter for hearing on February 14, 2018 at 10:00 a.m. On or about February 5, 2018, the Complainant again made telephone contact with OALJ. The Complainant indicated that she was “scheduled for open heart surgery” and requested that the February 14, 2018 hearing be continued. At that time OALJ staff requested that the Complainant submit her second continuance request in writing and to provide additional information such as a surgery date.

The Complainant did not submit her second continuance request in writing or provide any additional information after her contact with OALJ on February 5, 2018.

A telephonic hearing was conducted on January 5, 2018 at 10:00 a.m. The Complainant failed to appear for that hearing. The Complainant did not call the conference number shown on the November 13, 2017 and January 12, 2018 hearing notices.

When the Complainant failed to call the conference number on February 14, 2018 to participate in the hearing by 10:00 a.m., additional time was given for her to call before commencement of the hearing. The hearing was delayed until 10:10 a.m. to give the Complainant additional time to participate – however there was no call to the conference number by the Complainant.

Upon commencement of the hearing, John Munsch, Esquire, counsel for the Respondent, moved to dismiss the complaint for failure to appear and prosecute. I advised the Respondent that I would take its motion under advisement.

The record closed on February 14, 2018, at the conclusion of the hearing. This decision grants the Respondent's motion to dismiss the complaint.

FINDINGS OF FACT

1. The Complainant in this case is Elizabeth Bryant.
2. The Respondent in this case is West Penn Power Company.
3. On September 8, 2017, the Complainant filed a complaint with the Commission against the Respondent.
4. The Respondent filed an answer on October 4, 2017.
5. By notice dated November 13, 2017, the Commission scheduled this matter for an initial telephonic hearing on January 5, 2018 at 10:00 a.m.
6. On January 4, 2018, the Complainant requested and was granted a continuance of the January 5, 2018 hearing due to health reasons.

7. On January 12, 2018, a second notice of hearing was sent to the parties rescheduling this matter for hearing on February 14, 2018 at 10:00 a.m.

8. The Commission sent both of the notices of telephonic hearing to the Complainant by regular first-class mail to the address stated on the complaint.

9. The Commission's notices of hearing were never returned as being undeliverable by the postal authorities.

10. On or about February 5, 2018, the Complainant requested a second continuance of the hearing scheduled in this matter on February 14, 2018 and was requested to submit this request in writing to OALJ with additional information so it could be considered.

11. The Complainant did not submit the continuance request in writing, provide additional information so her second request could be considered, or have any additional contact or communication with OALJ after February 5, 2018.

12. The Complainant failed to appear at the January 5, 2018 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.

The Commission sent notice of the January 5, 2018 telephonic hearing in this case to the Complainant on November 13, 2017, by regular first-class mail to the address

stated on the complaint. This notice of hearing was never returned to OALJ as being undeliverable by the postal authorities.

After the January 5, 2018 hearing was continued pursuant to the Complainant's request, a second notice was sent on January 12, 2018 scheduling this matter for hearing on February 14, 2018. This notice of hearing was also never returned to OALJ as being undeliverable by the postal authorities.

In addition to the two notices of hearing, a prehearing order was issued on November 16, 2017, which, inter alia, reminded the parties that they must call the toll-free number shown on the hearing notice to participate in the telephonic hearing and that failure to call the number and participate in the telephonic hearing would constitute a failure to appear.

The prehearing order, which was also mailed to the Complainant at the address shown on the complaint, was never returned to OALJ as being undeliverable by the postal authorities. Accordingly, it must be presumed 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 because she did not call the toll-free conference number shown on both the November 13, 2017 and January 12, 2018 hearing notices. While the Complainant did make telephone contact with OALJ on or about February 5, 2018 to request a second continuance of the hearing, the Complainant was requested to submit this request in writing to OALJ with additional information so that it could be considered. The Complainant however did not submit any such request or additional information in writing and as a result her second continuance request could not be properly considered. The February 14, 2018 hearing in this matter was therefore conducted as scheduled.

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 (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, the Complainant bears the burden of proving by a preponderance of the evidence that she is entitled to relief. By failing to appear and proffer any evidence to support her 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 (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 subject matter of and the parties to this proceeding. 66 Pa.C.S. § 701.
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 (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, 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).

