

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lynn Murtland	:	
	:	
v.	:	C-2017-2613628
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On July 10, 2017, Lynn Murtland (Complainant) filed a formal complaint against West Penn Power Company (Respondent or Company) alleging Respondent threatened to terminate her electric service and requesting a payment arrangement. Respondent filed an answer to the formal complaint on July 28, 2017. Respondent essentially denied the material averments set forth in the formal complaint.

By notice dated August 8, 2017, the Commission scheduled this matter for a telephonic hearing on September 29, 2017 at 10:00 a.m. and assigned the case to me. I issued a prehearing order dated August 11, 2017, addressing, inter alia, requests for continuance,

subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

Respondent requested a continuance of the September 29, 2017 hearing. On September 15, 2017, an interim order was entered granting the continuance request.

By notice dated September 18, 2017, the Commission scheduled this matter for a telephonic hearing on November 14, 2017 at 10:00 a.m.

Complainant requested a continuance of the November 14, 2017 hearing. On November 7, 2017, an interim order was entered granting the continuance request.

By notice dated January 11, 2018, the Commission scheduled this matter for a telephonic hearing on March 5, 2018 at 10:00 a.m.

I conducted a telephonic hearing on March 5, 2018, at 10:00 a.m. Complainant failed to appear for that hearing. John L. Munsch, Esquire, counsel for Respondent, indicated that correspondence which included the hearing date was sent by Respondent to Complainant on February 23, 2018 at the address listed on Complainant's complaint by first-class mail and the correspondence was not returned to Attorney Munsch. A recess was taken at approximately 10:04 a.m. My legal assistant called the telephone number listed on Complainant's complaint and left a message that the hearing had been recessed but would resume at 10:20 a.m. and asked Complainant to call the telephone number to participate in the hearing not later than 10:20 a.m. The hearing was reconvened at approximately 10:20 a.m. Complainant did not participate. Upon reconvening the hearing, John L. Munsch, Esquire moved to dismiss the complaint for failure to appear and prosecute. I advised Respondent that I would take its motion under advisement.

The record closed on March 5, 2018 upon conclusion of the hearing. This decision grants Respondent's motion to dismiss the complaint.

FINDINGS OF FACT

1. Complainant in this case is Lynn Murtland.
2. Respondent in this case is West Penn Power Company.
3. By notice dated August 8, 2017, the Commission scheduled this matter for a telephonic hearing on September 29, 2017, at 10:00 a.m.
4. A prehearing order was entered on August 11, 2017, addressing, inter alia, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.
5. Respondent requested a continuance of the September 29, 2017 hearing and on September 15, 2017, an interim order was entered granting the continuance request.
6. By notice dated September 18, 2017, the Commission scheduled this matter for a telephonic hearing on November 14, 2017, at 10:00 a.m.
7. Complainant requested a continuance of the November 14, 2017 hearing and on November 7, 2017, an interim order was entered granting the continuance request.
8. By notice dated January 11, 2018, the Commission scheduled this matter for a telephonic hearing on March 5, 2018, at 10:00 a.m.
9. A telephonic hearing was conducted on March 5, 2018, at 10:00 a.m.
10. At the hearing, John L. Munsch, Esquire, counsel for Respondent, indicated that correspondence which included the hearing date, was sent by Respondent to Complainant on February 23, 2018 at the address listed on Complainant's complaint by first-class mail and the correspondence was not returned to Attorney Munsch.

11. A recess was taken at approximately 10:04 a.m. and a telephone call was placed to Complainant and a message left on her answering machine that the hearing had been recessed but would resume at 10:20 a.m. and asked Complainant to call the telephone number to participate in the hearing not later than 10:20 a.m.

12. The hearing was reconvened at approximately 10:20 a.m. and Complainant did not participate.

13. Upon reconvening the hearing, John L. Munsch, Esquire, counsel for Respondent, moved to dismiss the complaint for failure to appear and prosecute.

14. Complainant did not call the conference number shown on the January 11, 2018 hearing notice.

15. John L. Munsch, Esquire appeared for Respondent along with his witness and indicated he was prepared to proceed.

16. The Commission sent the hearing notices of the telephonic hearings and the prehearing order in this case to Complainant by regular first-class mail to the address stated on the formal complaint.

17. The Commission's hearing notices and prehearing order were never returned to the sender.

18. Complainant failed to appear at the March 5, 2018 telephonic hearing.

19. Complainant did not advise the undersigned presiding officer of any settlement, withdrawal or request for a continuance of the matter and did not contact the office of the undersigned presiding officer prior or subsequent to the March 5, 2018 hearing to explain her absence.

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 with notice and the opportunity to be heard.

The Commission sent notices of the telephonic hearings in this case to Complainant prior to the hearings scheduled for September 29, 2017, November 14, 2017, and March 5, 2018, by regular first-class mail to the address stated on the formal complaint. The notices were never returned to the sender.

In addition, a prehearing order dated August 11, 2017, was issued, 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. The prehearing order, which was mailed to Complainant at the address shown on the formal 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 scheduled hearing because she did not call the conference number shown on the January 11, 2018 hearing notice. Under these circumstances Complainant had ample opportunity to appear and be heard in this proceeding, but 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 she is entitled to relief. By failing to appear and proffer any evidence to support her complaint, 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 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 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 motion of West Penn Power Company to dismiss the formal complaint filed by Lynn Murtland at Docket No. C-2017-2613628 is granted.

2. That the formal complaint of Lynn Murtland v. West Penn Power Company at Docket No. C-2017-2613628 is dismissed with prejudice for failure of Complainant to appear for the hearing and prosecute the complaint.

3. That the docket at Docket No. C-2017-2613628 be marked closed.

Date: March 7, 2018

_____/s/
Jeffrey A. Watson
Administrative Law Judge