

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Sadie Royster and Duane A. Royster, Jr.	:	
	:	
v.	:	C-2017-2625601
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

INTRODUCTION

The undersigned grants Respondent’s oral Motion to Dismiss a formal complaint with prejudice because Complainants failed to appear and prosecute the case.

HISTORY OF THE PROCEEDING

On September 20, 2017, Sadie Royster and Duane A. Royster, Jr. (Complainants) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against West Penn Power Company (West Penn Power or Respondent) alleging West Penn Power threatened to shut off Complainants’ electric service. Complainants requested assistance with negotiating a repayment plan.

On October 12, 2017, West Penn Power filed an answer. West Penn Power admitted it threatened to terminate service because there was an unpaid balance and Complainants had defaulted on previous payment arrangements. Otherwise, West Penn Power denied the allegations generally and requested mediation.

By Telephone Hearing Notice dated January 19, 2018, the Office of Administrative Law Judge notified the parties that an initial telephonic hearing in this case was scheduled for Tuesday, March 13, 2018 at 10:00 a.m.

On January 22, 2018, the presiding officer issued a Prehearing Order which, *inter alia*, advised the parties that continuances would only be granted if requested and only in rare situations where good cause was shown to exist.

The time and date of the March 13, 2018 hearing was included in the January 19, 2018 hearing notice and in the January 22, 2018 Prehearing Order. The hearing notice specified how to call into the hearing on the scheduled day and at the scheduled time. The hearing notice stated in bold, underlined print that the case would be dismissed if Complainants failed to call into the hearing.

On March 13, 2018, at 10:03 a.m., the presiding officer attempted to convene the telephonic hearing as scheduled but Complainants failed to appear for the hearing. The presiding officer kept the telephone line open until 10:20 a.m. at the telephone number shown on the January 19, 2018 hearing notice and the January 22, 2018 Prehearing Order. Complainants continued to be absent from the telephonic hearing. The presiding officer did not receive any telephone call, correspondence, electronic message or voicemail message prior to the close of business on March 13, 2018, indicating any reason why Complainants were unavailable at the time of the telephonic hearing. On March 13, 2018, counsel for West Penn Power was present and prepared to present its evidence along with the testimony of one witness. The hearing concluded at 10:22 a.m.

The record closed on March 13, 2018 upon the conclusion of the telephonic hearing.

FINDINGS OF FACT

1. Complainants and ratepayers of record are Sadie Royster and Duane A. Royster, Jr., who reside at 6 Elwood Street, Uniontown, Pennsylvania (service address).
2. Respondent in this proceeding is West Penn Power Company which provides electric service at the service address.
3. The hearing notice dated January 19, 2018, and the Prehearing Order dated January 22, 2018, were sent to the address provided by Complainants in the formal complaint and were not returned as undeliverable.
4. Complainants were not present and did not participate in the March 13, 2018 hearing.
5. Respondent was ready to proceed with its witness at the date and time scheduled for the hearing.

DISCUSSION

Pursuant to Section 332(a) of the Public Utility Code, 66 Pa.C.S.A. § 332(a), the burden of proof is on the proponent of a rule or order. In this proceeding, Complainants are the proponent of a rule or order. Therefore, Complainants bear the burden of proving by a preponderance of the evidence that Respondent violated the Public Utility Code or a regulation or order of the Commission.¹ Complainants must show the utility is responsible or accountable for the problem described in the complaint.²

¹ *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

² *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976).

Administrative agencies, like the Public Utility Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard.³

Neither Sadie Royster nor Duane A. Royster, Jr. appeared at the time scheduled for the March 13, 2018 hearing, and they did not participate in the March 13, 2018 hearing. The date, time and location of the hearing were listed in the hearing notice, dated January 19, 2018, and in the Prehearing Order, dated January 22, 2018.

Both the hearing notice and Prehearing Order were mailed to Complainants at the address provided in the formal complaint. Once notice of a hearing and the opportunity to be heard has been provided, it is the responsibility of the parties to appear and participate in the hearing.⁴ If Complainants cannot appear, for any reason, then it is the responsibility of Complainants to notify the presiding officer immediately. When Complainants received the hearing notice, they should have contacted the utility as well as the presiding officer to inform all the participants if they had a scheduling conflict.

Section 332(f) of the Public Utility Code, 66 Pa.C.S.A. § 332(f), provides in pertinent part:

Any party who shall fail to be represented at a scheduled conference or hearing after being duly notified thereof, shall be deemed to have waived the opportunity to participate in such conference or hearing, and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat....

Since Complainants did not appear or participate in the hearing, despite receiving notice of the date and time of the hearing, the hearing was held in accordance with 66 Pa.C.S.A. § 332(f) and 52 Pa.Code § 5.245. Respondent's attorney moved to dismiss the complaint with prejudice for failure to prosecute. Respondent's motion was taken under advisement.

³ *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlt. 1984).

⁴ *Sentner v. Bell Telephone Co. of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993).

The hearing record closed on March 13, 2018, pursuant to 52 Pa.Code § 5.431(a) and (b) which provides:

(a) The record will be closed at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission.

(b) After the record is closed, additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion.

In this proceeding, Complainants did not call into the hearing as specified in the hearing notice and Prehearing Order. The hearing notice and Prehearing Order clearly indicated Complainants were to call into the hearing. These documents provided the Commission's toll-free conference bridge number and PIN number. The hearing notice and Prehearing Order clearly provided an address and telephone number where Complainants could reach the presiding officer if a request and/or additional information was needed by Complainants prior to the hearing.

Complainants failed to take advantage of the opportunity provided in which to appear and prosecute the formal complaint against West Penn Power by presenting evidence to support the allegations. As a result, Complainants failed to sustain the burden of proof.

Accordingly, Respondent's oral motion to dismiss the formal complaint will be granted, and the formal complaint in this matter will be dismissed with prejudice in the Ordering Paragraphs below.⁵

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter in this proceeding. 66 Pa.C.S.A. § 701.

⁵ *Volgstadt v. Metropolitan Edison Company*, Docket No. F-02266429 (Order entered September 12, 2008) and *Martin Jefferson v. Met Ed Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995); *El-Ayazra v. West Penn Power Company*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016).

2. Complainants have the burden of proof in this matter pursuant to 66 Pa.C.S.A. § 332(a).

3. The hearing record closed at the conclusion of the hearing on March 13, 2018. 52 Pa.Code § 5.431(a).

4. Complainants, by failing to appear at the scheduled hearing, waived the opportunity to participate in the hearing. 66 Pa.C.S.A. § 332(f).

5. Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *Berkowitz v. Mayflower Securities*, 455 Pa. 531, 317 A.2d 584 (1974); *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 1994).

6. Once notice of a hearing and the opportunity to be heard has been provided, it is the responsibility of the parties to appear and participate in the hearing. *Sentner v. Bell Telephone Co. of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993).

7. Complainants failed to sustain the burden of proof.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the oral motion of West Penn Power Company to dismiss the formal complaint filed by Sadie Royster and Duane A. Royster, Jr. against West Penn Power Company at Docket No. C-2017-2625601 is granted.

