

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Brian D. Bodkin	:	
	:	
v.	:	C-2017-2625228
	:	
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 Complainant failed to appear and prosecute the case.

HISTORY OF THE PROCEEDING

On September 11, 2017, Brian D. Bodkin (Mr. Bodkin or Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against West Penn Power Company (West Penn or Respondent), alleging his ex-wife transferred the electric bill into his name while she lived in the service address. Complainant requested the Commission order West Penn to no longer require him to pay off the accrued amount on the account. On October 10, 2017, West Penn filed an answer with new matter. West Penn denied the allegations generally and requested mediation.

By Telephone Hearing Notice dated January 31, 2018, the Office of Administrative Law Judge notified the parties an initial telephonic hearing in this case was

scheduled for Thursday, March 29, 2018, at 10:00 a.m. On February 9, 2018, the presiding officer issued a Prehearing Order which, *inter alia*, advised the parties continuances would only be granted if requested and only in rare situations where sufficient cause was shown to exist.

The time and date of the March 29, 2018 hearing was included in the January 31, 2018 hearing notice and in the February 9, 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 Complainant failed to call into the hearing.

On March 29, 2018, at 10:05 a.m., the presiding officer attempted to convene the telephonic hearing as scheduled but Complainant failed to appear for the hearing. Counsel for Respondent made an oral motion to dismiss the complaint with prejudice due to Complainant's failure to appear and prosecute the complaint. The presiding officer noted on the record the request would be taken under advisement. The hearing record closed at 10:23 a.m.

The presiding officer did not receive any telephone call, correspondence, electronic message or voicemail message prior to the close of business on March 29, 2018 indicating any reason why Complainant was unavailable at the time of the telephonic hearing. On March 29, 2018, counsel for West Penn was present and prepared to present its evidence along with the testimony of one witness. The hearing concluded at 10:23 a.m. The record closed on March 29, 2018 upon the conclusion of the telephonic hearing.

FINDINGS OF FACT

1. Complainant and ratepayer of record is Brian Bodkin, who resides in Vanderbilt, Pennsylvania (service address).¹

¹ Complainant's address was originally blocked out and kept confidential due to his allegation that a current Protection from Abuse Order to protect him was in place. On February 9, 2018, Complainant was ordered to provide a true and correct copy of a current Protection from Abuse Order by February 28, 2018. Complainant did not respond to the February 9, 2018 Interim Order, and Complainant is no longer provided with the protections normally accorded to an individual who receives a Protection from Abuse Order.

2. Respondent in this proceeding is West Penn Power Company which provides electric service to the service address.

3. The hearing notice dated January 31, 2018, and the Prehearing Order dated February 9, 2018, were sent to the address provided by Complainant in the formal complaint and were not returned as undeliverable.

4. Complainant was not present and did not participate in the March 29, 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, Complainant is the proponent of a rule or order. Therefore, Complainant bears 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.² Complainant must show the utility is responsible or accountable for the problem described in the complaint.³

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.⁴

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

³ *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976).

⁴ *Schneider v. Pa. Pub. Util. Comm 'n*, 479 A.2d 10 (Pa.Cmwlth. 1984).

Mr. Bodkin did not appear at the time scheduled for the March 29, 2018 hearing, and he did not participate in the March 29, 2018 hearing. The date and time of the hearing were listed in the hearing notice, dated January 31, 2018, and in the Prehearing Order, dated February 9, 2018.

Both the hearing notice and Prehearing Order were mailed to Complainant 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.⁵ If Complainant cannot appear, for any reason, then it is the responsibility of Mr. Bodkin to notify the presiding officer immediately.

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 Complainant 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 for failure to prosecute. Respondent's motion was taken under advisement.

The hearing record closed on March 29, 2018, pursuant to 52 Pa.Code §§ 5.431(a) and (b) which provide:

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

⁵ *Sentner v. Bell Telephone Co. of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993).

(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, Complainant did not call into the hearing as specified in the hearing notice and Prehearing Order. 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 Complainant could reach the presiding officer if a request for a continuance and/or additional information was needed by Complainant prior to the hearing.

Complainant failed to take advantage of the opportunity provided in which to appear and prosecute the formal complaint against West Penn by presenting evidence to support the allegations. As a result, Complainant 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.⁶

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter in this proceeding. 66 Pa.C.S.A. § 701.
2. Complainant has 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 29, 2018. 52 Pa.Code § 5.431(a).

⁶ *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).

4. Complainant, 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. Complainant 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 Brian D. Bodkin against West Penn Power Company at Docket No. C-2017-2625228 is granted.

2. That the formal complaint filed by Brian D. Bodkin against West Penn Power Company at Docket No. C-2017-2625228 is dismissed with prejudice.

3. That the Secretary mark this case as closed.

Date: March 30, 2018

/s/
Katrina L. Dunderdale
Administrative Law Judge