

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Angelika Metz	:	
	:	
v.	:	C-2017-2638348
	:	
West Penn Power Company	:	

**INITIAL DECISION**

Before  
Steven K. Haas  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses, with prejudice, a formal complaint due to the Complainant’s failure to appear at the initial hearing and prosecute her complaint.

**HISTORY OF THE PROCEEDING**

On December 12, 2017, the Complainant, Angelika Metz, filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against West Penn Power Company (West Penn) at Docket No. C-2017-2638348. In paragraph 4 of the complaint form, Ms. Metz checked the boxes indicating that the utility was threatening to or had already shut off her service and that she would like a new payment agreement. In her complaint, she averred that she was being billed more each month than the amount required under a prior agreement. She requests a new payment agreement.

On January 4, 2018, West Penn filed an answer and new matter to Ms. Metz’s complaint. In its answer, West Penn averred that Ms. Metz is enrolled in the company’s

Pennsylvania low-income customer assistance program (PCAP) and that all bills issued to her were correct as rendered. West Penn further averred that the last payment made by the Complainant was posted to her account on May 2, 2017, in the amount of \$132.00. West Penn stated that the total outstanding balance on Ms. Metz's account was \$7,291.56, and that \$1,990.28 of that total constitutes PCAP arrears. West Penn requested that the complaint be dismissed.

In its new matter, West Penn again noted the PCAP portion of the outstanding balance and averred that the PCAP part of the total outstanding balance may not be the subject of a Commission-ordered payment arrangement.

On February 13, 2018, the Commission issued a Call-In Telephone Hearing Notice by which it scheduled an initial telephonic hearing for Monday, April 2, 2018, at 10:00 a.m., and assigned me as the Presiding Officer. The hearing notice instructed the parties to connect to the telephonic hearing using the call-in number and PIN provided in the notice. The notice further instructed the parties that failure to connect to the hearing at the scheduled time could result in dismissal of their case.

On February 15, 2018, I issued a prehearing order in which I set forth certain procedural requirements pertaining to the hearing. The prehearing order provided the date and time of the hearing and instructed the parties to connect to the telephonic hearing at the scheduled time and provided the call-in number and PIN. The prehearing order also stated, "you may lose this case if you do not take part in this hearing and present evidence on the issues raised." Both the Hearing Notice and the Prehearing Order were sent to Ms. Metz at the address listed by her on her complaint form. Neither was returned to the Commission as undeliverable.

The hearing convened, as scheduled, on Monday, April 2, 2018, at 10:00 a.m. Margaret A. Morris, Esquire, connected to the hearing and appeared on behalf of West Penn. Ms. Metz had not connected to the hearing at 10:00 a.m., so I waited until approximately 10:10 a.m. before starting the hearing in case she was running late. She had not connected by

10:10 a.m., so the hearing began in her absence. West Penn's counsel moved to dismiss the complaint due to the Complainant's failure to appear at the hearing and prosecute her case.

The hearing concluded, and a brief transcript was generated. I closed the record on April 5, 2018<sup>1</sup>. As of the date of this initial decision, the Complainant has not contacted my office concerning her failure to connect to the hearing. This initial decision grants West Penn's motion to dismiss the complaint for failure of the Complainant to appear and prosecute her case.

### FINDINGS OF FACT

1. The Complainant in this proceeding is Angelika Metz.
2. The Respondent in this proceeding is West Penn Power Company.
3. On December 12, 2017, the Complainant filed a formal complaint against West Penn in which she sought a payment agreement.
4. On January 4, 2018, West Penn filed an answer in which it averred that all bills issued to Ms. Metz were correct and otherwise denied any wrongdoing.
5. On February 13, 2018, a Call-In Telephone Hearing Notice was sent to the parties which scheduled an initial telephonic hearing for Monday, April 2, 2018, at 10:00 a.m.
6. On February 15, 2018, a Prehearing Order was sent to the parties which set forth certain procedural requirements associated with the initial hearing.
7. Both the Prehearing Order and the Hearing Notice instructed the parties to connect to the telephonic hearing at 10:00 a.m. on April 2, 2018, using the call-in and PIN numbers provided on the notices.

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<sup>1</sup> I waited 3 days before closing the record in case Ms. Metz called in to discuss her failure to connect to the hearing.

8. Both the Prehearing Order and the Hearing Notice warned the parties that they may lose the case if they did not take part in the hearing and present evidence on the issues raised.

9. The Hearing Notice and the Prehearing Order were sent to Ms. Metz by first class mail to the address provided by her on her complaint form.

10. Neither the Hearing Notice nor the Prehearing Order that were sent to the Complainant was returned to the Commission as undeliverable.

11. The Complainant never connected to the telephonic hearing as instructed in the notices.

12. The Complainant failed to appear at the scheduled date and time for the hearing.

13. The Complainant did not withdraw or settle her complaint against West Penn, nor did she request a continuance of the hearing.

#### DISCUSSION

Ms. Metz filed a formal complaint against West Penn in which she requested that she be given a new payment agreement.

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950). As the party seeking relief from the Commission, the Complainant bears the burden of proof.

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 when the parties are provided with notice and an opportunity to be heard. Id.

No one appeared on behalf of Ms. Metz at the date and time set for the hearing in her case, despite notice of the hearing having been provided. Commission regulations address circumstances when a party fails to appear in a proceeding. Section 5.245 provides:

**§ 5.245. Failure to appear, proceed or maintain order in proceedings.**

(a) After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will:

- (1) Be deemed to have waived the opportunity to participate in the conference or hearing.
- (2) Not be permitted to reopen the disposition of a matter accomplished at the conference or hearing.
- (3) Not be permitted to recall witnesses who were excused for further examination.

52 Pa.Code § 5.245(a).

The call-in telephone hearing notice and my prehearing order were sent to Ms. Metz by first class mail to the address provided by her on her complaint form. Neither of these notices were returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents sent to the Complainant in the ordinary course of business were received by her. Berkowitz v. Mayflower Securities, Inc., 455 Pa. 531, 317 A.2d 584 (1974); Meierdierck v. Miller, 394 Pa. 484, 147 A.2d 406 (1959); Samaras v. Hartwick, 698 A.2d 71 (Pa.Super. 1997); Judge v. Celina Mutual Insurance Co., 303 Pa.Super. 221, 444 A.2d 658 (1982). As noted above, both notices stated that the parties may lose the case if they fail to appear and present evidence on the issues raised.

No request for a postponement or continuance of the hearing was received by my office. Ms. Metz had notice of the hearing and an opportunity to be heard in this proceeding, but chose not to appear. Therefore, the Complainant's due process rights have been fully protected. Sentner v. Bell Telephone Company of Pennsylvania, Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa.Code § 5.245(a).

During the hearing, counsel for West Penn moved for dismissal of the complaint, with prejudice, for lack of prosecution. By failing to appear and present any evidence in support of her complaint, Ms. Metz failed to meet her burden of proof. Thus, the complaint will be dismissed with prejudice. Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Order entered December 26, 1995).

#### 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. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).
3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950).
4. 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 when the parties are provided with notice and an opportunity to be heard. Id.
5. After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will: 1) be deemed to have waived the opportunity to

participate in the conference or hearing; 2) not be permitted to reopen the disposition of a matter accomplished at the conference or hearing; and 3) not be permitted to recall witnesses who were excused for further examination. 52 Pa.Code § 5.245(a).

6. Ms. Metz's due process rights have been fully protected. Sentner v. Bell Telephone Company of Pennsylvania, Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa.Code § 5.245(a).

7. Ms. Metz failed to carry her burden of proof in this proceeding.

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of West Penn Power Company to dismiss, with prejudice, the formal complaint of Angelika Metz at Docket Number C-2017-2638348 for failure to prosecute is granted.

2. That the formal complaint filed by Angelika Metz against West Penn Power Company at Docket Number C-2017-2638348 is dismissed with prejudice.

3. That this matter be marked closed.

Date: April 5, 2018

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/s/  
Steven K. Haas  
Administrative Law Judge