

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Stephen Gallo	:	
	:	
v.	:	C-2018-3001038
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Mary D. Long
Administrative Law Judge

A formal complaint filed by a customer of an electric distribution company is dismissed because the complainant failed to appear for the hearing without good cause.

HISTORY OF PROCEEDINGS

Stephen J. Gallo (Complainant) filed a formal complaint on April 9, 2018. The Complainant checked boxes noting that the utility is threatening to terminate service; he would like a payment arrangement; and that there are incorrect charges on the bill. In the “requested relief” section of the complaint form, the Complainant states that the account is in the name of his deceased grandfather. He further states that he has contacted West Penn Power on several occasions and requested that the account be placed in his name, but that he does not think he should be responsible for balances that accrued when he was not living at the service address.

West Penn Power filed an answer on April 26, 2018, which admitted that the account was in the name of a customer who the Company has reason to believe is deceased. The Company admits that the account is subject to termination because of a past-due balance in the amount of \$6,322.75. West Penn Power takes the position that the Complainant is responsible

for the balance because he has been “associated” with the address since 2006. West Penn Power’s answer does not address the customer service allegations mentioned in the formal complaint, but notes that several BCS complaints have been filed regarding the service address, and that a formal complaint by Michael C. Gallo concerning a request to open an account at the service address was dismissed due to Michael C. Gallo’s failure to appear for the hearing.¹

By hearing notice dated May 1, 2018, the complaint was assigned to me and scheduled for a telephonic hearing on June 7, 2018, at 10:00 a.m. On May 2, 2018, I issued a prehearing order which also provided the date and time of the hearing as well as other procedural requirements related to hearings, including instructions for requesting a continuance if the hearing date and time were not convenient.

The hearing convened as scheduled. John L. Munsch, Esquire, appeared on behalf of the Company along with two witnesses, Alison S. Walker and Cheryl A. Caltagirone. The Complainant did not call the conference call number to participate in the hearing. After a brief recess to provide the Complainant additional time to call, the hearing proceeded in his absence. The Company made a motion to dismiss, which was taken under advisement. The record closed upon the conclusion of the hearing.

FINDINGS OF FACT

1. The Complainant is Stephen Gallo.
2. The Respondent is West Penn Power Company, a jurisdictional public utility.
3. The Complainant did not call the conference number at 10:00 a.m. on June 7, 2018.

¹ *Gallo v. West Penn Power*, Docket C-2016-2541890 (Final Order entered June 29, 2017).

4. The Complainant did not contact the Commission to explain his failure to appear for the hearing.

5. Neither the hearing notice nor the prehearing order were returned as undeliverable by the U.S. Postal Service.

DISCUSSION

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them.² However, this due process requirement is satisfied when the parties are provided notice and the opportunity to appear and be heard.³ The Complainant had adequate notice of the time and date of the hearing, yet he failed to appear or explain why he could not attend the hearing at the scheduled time. Therefore, it is appropriate to dismiss the complaint.

A hearing notice and prehearing order were sent to the Complainant. Paragraph 10 of the prehearing order informed the Complainant that if he failed to appear for the hearing he could lose his case.⁴ Paragraph 8 of the order provided instructions for contacting the Commission to request a change of the scheduled hearing date. None of these pieces of mail were returned by the U.S. Postal Service. Notice mailed to a party's last known address and not returned by the post office is presumed to have been received.⁵ Therefore, the Complainant is deemed to have received these documents and to have had sufficient notice of the Commission's procedures and notice of the location, date and time of the scheduled hearing.

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

³ *Id.*

⁴ *See also* 52 Pa.Code § 5.245.

⁵ *Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 531, 317 A.2d 584 (1974); *Chartiers Industrial and Commercial Dev. Auth. v. Allegheny County Bd. of Property Assessment Appeals and Rev.*, 645 A.2d 944 (Pa.Cmwlt. 1994); *Geary v. Verizon Pennsylvania Inc.*, Docket No. C-2009-2118625 (Commission Opinion and Order entered September 16, 2010).

Section 332(a) of the Public Utility Code⁶ places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, the Complainant has the burden of demonstrating that the facts alleged in his complaint are true and that he is entitled to the relief that he requested. By not appearing for the scheduled hearing to present evidence, the Complainant failed to meet his burden of proof. Consequently, the complaint must be dismissed.

The Complainant was notified of the scheduled hearing location, date and time, as well as how to contact the Office of Administrative Law Judge, but failed to appear without explanation. Under these circumstances, the Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. The due process rights of the Complainant have been fully protected. The motion to dismiss of the Company is granted, and the complaint is dismissed.⁷

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of the dispute. 66 Pa.C.S. § 701.

2. The due process rights of the Complainant have been fully protected. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlt. 1984).

3. By failing to appear at the scheduled hearing, the Complainant has waived his claims and has failed to sustain his burden of proof. 66 Pa.C.S. § 332; 52 Pa.Code § 5.245.

⁶ 66 Pa.C.S. § 332(a).

⁷ 66 Pa.C.S. § 332(f).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion to dismiss the complaint of Stephen Gallo, Docket No. C-2018-3001038, is granted.
2. That the complaint of Stephen Gallo, Docket No. C-2018-3001038, is dismissed.
3. That this docket be marked closed and discontinued.

Date: June 29, 2018

/s/
Mary D. Long
Administrative Law Judge