

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rachael Testa	:	
	:	
v.	:	C-2018-3002619
	:	
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 THE PROCEEDINGS**

Rachael Testa (Complainant) filed a formal complaint on June 5, 2018, checking the boxes on the complaint form noting that the utility is threatening to terminate her service and that she would like a payment arrangement. As relief, she requested a new payment plan because her hours of work had been reduced. West Penn Power Company (West Penn or Company) filed an answer on June 26, 2018, admitting that termination of the Complainant's account was pending due to non-payment. West Penn further alleged that the Complainant was not eligible for a further payment arrangement. Specifically, West Penn alleged that her current balance is \$5,982.15 and only six payments have been received in the past two years.

By hearing notice dated June 29, 2018, the complaint was assigned to me and scheduled for a telephonic hearing on August 9, 2018, at 10:00 a.m. On July 5, 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 one witness, Alison S. Walker. The Complainant did not call the conference call number to participate in the hearing. Mr. Munsch represented that he had spoken to the Complainant the day before the hearing and that she was aware of the scheduled proceeding. After a brief recess to provide the Complainant additional time to call, the hearing proceeded in her 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 Rachael Testa.
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 August 9, 2018.
4. The Complainant did not contact the Commission to explain her failure to appear for the hearing.
5. The hearing notice and prehearing order were sent to the address printed by the Complainant on the formal complaint.
6. 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.<sup>1</sup> However, this due process requirement is satisfied when the parties are provided notice and the opportunity to appear and be heard.<sup>2</sup> The Complainant had adequate notice of the time and date of the hearing, yet she failed to appear or explain why she 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 she failed to appear for the hearing she could lose her case.<sup>3</sup> 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.<sup>4</sup> 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.

Section 332(a) of the Public Utility Code<sup>5</sup> 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 her complaint are true and that she is entitled to the relief that she requested. By not appearing for the scheduled hearing to present evidence, the Complainant failed to meet this burden of proof. Consequently, the complaint must be dismissed.

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<sup>1</sup> *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlth. 1984).

<sup>2</sup> *Id.*

<sup>3</sup> *See also* 52 Pa.Code § 5.245.

<sup>4</sup> *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.Cmwlth. 1994); *Geary v. Verizon Pennsylvania Inc.*, Docket No. C-2009-2118625 (Commission Opinion and Order entered September 16, 2010).

<sup>5</sup> 66 Pa.C.S. § 332(a).

In conclusion, 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.<sup>6</sup>

### 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.Cmwlth. 1984).
3. By failing to appear at the scheduled hearing, the Complainant has waived her claims and has failed to sustain her burden of proof. 66 Pa.C.S. § 332; 52 Pa.Code § 5.245.

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion to dismiss the complaint of Rachael Testa, Docket No. C-2018-3002619, is granted.
2. That the complaint of Rachael Testa, Docket No. C-2018-3002619, is dismissed.

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<sup>6</sup> 66 Pa.C.S. § 332(f).

3. That this docket be marked closed and discontinued.

Date: August 14, 2018

\_\_\_\_\_/s/  
Mary D. Long  
Administrative Law Judge