

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joseph S. Angell, III	:	
	:	
v.	:	C-2018-3002901
	:	
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 because Complainant failed to appear at the initial hearing and prosecute the case.

HISTORY OF THE PROCEEDING

On June 19, 2018, Joseph S. Angell, III (Mr. Angell or Complainant) filed a formal complaint against West Penn Power Company (West Penn or Respondent). In his formal complaint, Mr. Angell alleged West Penn was attempting to shut off his electric service, and he requested a payment arrangement. Mr. Angell asserted his unpaid balance rose while he underwent medical treatment out of town. Complainant averred he recently returned to work, and he now has income with which to pay.

On June 29, 2018, Respondent filed an Answer and denied Complainant was entitled to a payment arrangement due to a poor payment history and a large outstanding balance.

On July 10, 2018, the Office of Administrative Law Judge issued a Call-In Telephone Hearing Notice, which scheduled a telephonic initial hearing to be conducted on Wednesday, August 22, 2018. On July 26, 2018, the presiding officer issued a Prehearing Order which, *inter alia*, advised the parties concerning various procedural matters, including how to request a continuance, and that Complainant was responsible to prove the facts he alleged in his formal complaint.

On August 22, 2018, the presiding officer convened the initial hearing as scheduled. Complainant appeared *pro se*. Respondent was represented by John L. Munsch, Esquire. Complainant presented testimony but did not offer any exhibits. The parties engaged in settlement discussions off the record during which time the parties reached a tentative agreement. The parties asked to have a further telephonic hearing scheduled in order to provide Complainant with time in the interim in which to make payments for current usage as well as payments on the arrears. As a result, the parties orally requested the presiding officer issue an order which commemorates the terms of an interim payment plan which would remain in effect until the presiding officer could conduct a further telephonic hearing.

The parties agreed the proceeding should be continued until after December 1, 2018, and that Complainant would pay his monthly budget bill plus \$300 each month until the Commission issued a Final Order in this proceeding. Accordingly, on August 28, 2018, the presiding officer issued the First Interim Order to Establish Interim Payment Order Pending Further Telephonic Hearing. The First Interim Order established an interim payment plan and ordered a Further Telephonic Hearing to be scheduled after December 1, 2018. Under the payment plan, Complainant was to pay his current budget bill amount plus \$300 each month.

On August 28, 2018, the Office of Administrative Law Judge issued a Telephone Hearing Notice, which scheduled a further telephonic hearing to be conducted on Tuesday, December 4, 2018 at 10:00 a.m.

On December 4, 2018, the presiding officer contacted Complainant and Respondent and convened the further hearing as scheduled. Complainant appeared *pro se*.

Respondent was represented by John L. Munsch, Esquire. Respondent had one witness available to testify – Tammy J. Taylor, Senior Customer Services Compliance Specialist. At the outset, Complainant advised the presiding officer that his father died at 7:42 a.m. on the morning of the further hearing. Complainant acknowledged he had made no payments to Respondent on the electric service account since the August 22, 2018 hearing. Complainant explained the circumstances surrounding his father’s final illness and the recent decline in the health of Complainant’s mother, whose death appeared to be imminent.

After discussions between the parties, the presiding officer indicated the hearing would be continued until January 2019. The presiding officer reminded Complainant that he must make payments on the electric service account with West Penn, and those payments should include the budget bill amount plus \$300, as agreed to in August 2018. Complainant indicated he understood and indicated he would make those payments.

By Call-In Telephone Hearing Notice dated December 5, 2018, the Office of Administrative Law Judge notified the parties a further telephonic hearing in this case was scheduled for Thursday, February 7, 2019, at 10:00 a.m. On December 5, 2018, the presiding officer issued the Second Interim Order which continued the Further Telephonic Hearing scheduled for December 4, 2018 and ordered a further call-in telephonic hearing to be scheduled after January 1, 2019.

The time and date of the February 7, 2019 hearing was included in the December 5, 2018 hearing notice. 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.

The presiding officer attempted to convene the telephonic hearing as scheduled on February 7, 2019, at 10:05 a.m. Complainant failed to appear for the hearing, but West Penn was present and prepared to present its evidence along with the testimony of one witness. West Penn indicated Complainant left a message the previous evening on counsel’s telephone which indicated Complainant was in the hospital. No other information was provided.

At 10:07 a.m., the presiding officer called a recess for approximately 10 minutes in order to ascertain from her staff if Mr. Angell had called or sent any form of communication explaining the absence and/or requesting a continuance. The presiding officer went back on the record at 10:16 a.m., at which time Mr. Angell continued to be absent from the initial hearing. The presiding officer advised Respondent's counsel that Complainant had not contacted the presiding officer's office or filed a request with the Secretary's Bureau in Harrisburg to request a continuance or explain the absence.

Counsel for Respondent made an oral motion to dismiss due to Complainant's failure to appear and prosecute the complaint. Counsel averred Complainant's current account balance was \$11,229.05 as of the day of the hearing. Counsel contended Complainant made only two payments in the previous two years and has not made any payments since June 2018. Counsel also averred Complainant still received electric service at the service address. The presiding officer noted on the record the motion to dismiss would be taken under advisement. The hearing concluded at 10:20 a.m. The hearing record closed on February 7, 2019, upon the conclusion of the telephonic hearing.

FINDINGS OF FACT

1. Complainant and ratepayer of record is Joseph S. Angell, III, who resides at 1127 North Gallatin Avenue Ext., 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 December 5, 2018 was sent to the address provided by Complainant in the formal complaint and was not returned as undeliverable.
4. Complainant was not present and did not participate in the February 7, 2019 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, Mr. Angell, as the 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.¹ Complainant must show the utility is responsible or accountable for the problem described in the complaint.²

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 provided with a notice and the opportunity to appear and be heard.³

Mr. Angell did not appear at the time scheduled for the February 7, 2019 hearing, and did not participate in the February 7, 2019 hearing. The date and time of the hearing was listed in the hearing notice, dated December 5, 2018.

The Office of Administrative Law Judge mailed the hearing notice to Complainant at the address provided in the formal complaint, where the previous hearing notices were sent. Once notice of a hearing and the opportunity to be heard has been provided, it was the responsibility of Mr. Angell to appear and participate in the hearing.⁴ If Complainant cannot appear, for any reason, then it is the responsibility of Mr. Angell to notify the presiding officer immediately of the impediment.

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).

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

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

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....

Once notice of a hearing and the opportunity to be heard have been provided by the Commission, it is the responsibility of the parties to appear and participate in the hearing. *Mumma v. PPL Electric Utilities Corporation*, Docket No. C-00014869 (Order entered January 24, 2002) (*Mumma*); *Sentner v. Bell Tel. Co. of PA*, Docket No. F-00161106 (Order entered October 25, 1993) (*Sentner*).

Since Mr. Angell 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 February 7, 2019, 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, Mr. Angell did not call into the hearing as specified in the hearing notice. The hearing notice clearly indicated Complainant was to call. The hearing notice provided Complainant with the Commission's toll-free conference bridge number and PIN

number. The hearing notice provided an address and telephone number where Mr. Angell could reach the presiding officer if a continuance request and/or additional information was needed prior to the hearing. Mr. Angell did not contact the presiding officer's office to explain the absence or ask for a continuance.

Complainant failed to take advantage of the opportunity provided in which to appear and prosecute the formal complaint against Respondent by presenting evidence to support the allegations. In addition, Complainant admitted at the hearing on December 4, 2018 that he had not made any payment on his account since June 2018, despite his assurances at the hearing on August 22, 2018 that he would pay for current usage plus an additional \$300 each month. At both the hearing on August 22, 2018 as well as the hearing on December 4, 2018, Complainant indicated his medical condition or his parents' medical conditions were the reasons why he did not make any payments on his electric service account.

Mr. Angell did not appear at the telephonic hearing scheduled on February 7, 2019. Mr. Angell did not request a continuance before the hearing on February 7, 2019. Mr. Angell did not communicate with the presiding officer or her staff explaining he would not be available at the hearing on February 7, 2019. As a result, Complainant failed to appear at the scheduled hearing and 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 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.

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

⁵ *Volgstadt v. UGI Penn Natural Gas*, Docket No. F-02266429 (Order entered September 12, 2008) and *Martin Jefferson v. UGI 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).

3. The hearing record closed at the conclusion of the hearing on February 7, 2019. 52 Pa.Code § 5.431(a).

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 Pa.*, Docket No. F-00161106 (Order entered October 25, 1993).

7. Complainant failed to sustain the burden of proof. 66 Pa.C.S.A. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the oral motion of West Penn Power Company to dismiss the formal complaint filed by Joseph S. Angell, III against West Penn Power Company at Docket No. C-2018-3002901 is granted.

2. That the formal complaint filed by Joseph S. Angell, III against West Penn Power Company at Docket No. C-2018-3002901 is dismissed.

