

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Robert Murphy	:	
	:	
v.	:	C-2018-3004586
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Alphonso Arnold III
Special Agent

INTRODUCTION

This Initial Decision dismisses the Complaint because the Complainant failed to appear for the hearing to prosecute his Complaint.

HISTORY OF THE PROCEEDING

On September 6, 2018, Robert Murphy (Complainant or Mr. Murphy) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against West Penn Power Company (Respondent or West Penn). The Complainant in his Complaint indicated that West Penn is threatening to shut off his service or has already shut of his service and requested a payment arrangement.

On October 2, 2018, West Penn filed an Answer to the Complaint. The Respondent admitted that it had issued a termination notice to the Complainant, but that the termination of the Complainant's service was being held in abeyance pending the resolution of the Formal Complaint. The Respondent averred that the Complainant had received a payment

arrangement from the Commission and is not entitled to a subsequent payment arrangement. The Respondent requested that the Commission dismiss the Complaint.

By Hearing Notice served upon the parties on December 20, 2018, the Commission scheduled this matter for a telephonic hearing on Wednesday, February 6, 2019 at 10:00 a.m., and assigned the case to me. Furthermore, the Hearing Notice stated the following: “Attention: *You may lose the case if you do not take part in this hearing and present facts on the issues raised.*” (emphasis in the original).

A Prehearing Order, served upon the parties on December 28, 2018, reminded the parties of the date and time of the hearing and addressed, inter alia, the procedures applicable to the hearing and the method by which a party could request a change of the scheduled hearing date if the date was not convenient for them. Furthermore, the Prehearing Order stated the following: “**You must be available on the scheduled day and time. If you fail to be available, your case will be dismissed.**” (emphasis in the original).

Both the Hearing Notice and the Prehearing Order informed the parties that the undersigned would contact the parties by phone at the scheduled date and time to connect the parties to the hearing conference phone line.

I conducted the February 6, 2019 telephonic hearing as scheduled. At 10:00 a.m., I called the home phone number that I had on file for Mr. Murphy. Mr. Murphy did not answer, and I was unable to leave a voice message as a voice message system was not set up for the home phone number. I then called the mobile phone number that I had on file for Mr. Murphy. Mr. Murphy did not answer. I was able to leave a voice message, whereupon I reminded Mr. Murphy of the hearing, informed him that I would attempt to call him again at 10:15 a.m., and informed him that if he was not available during my second phone call that the hearing would proceed without him and his case would be dismissed.

The attorney for West Penn, Aron J. Beatty, Esquire, was successfully contacted and connected to the hearing conference phone line. Attorney Beatty was joined by a witness and was ready to proceed with the hearing.

At 10:15 a.m., I again called Mr. Murphy's home and mobile phone numbers and again Mr. Murphy did not answer either phone call. I left a second voice message on Mr. Murphy's mobile phone, whereupon I informed him that the hearing would proceed without him and to contact the Office of Administrative Law Judge (OALJ) if he desired to provide an excuse as to why he was unable to appear for the scheduled hearing.

The hearing was held without the Complainant. No witnesses were presented, and no exhibits were introduced for the record. West Penn moved to have the Complaint dismissed with prejudice for failure to prosecute. No communication was made to the OALJ on the Complainant's behalf to explain his absence.

The record¹ closed on February 6, 2019 following the conclusion of the telephonic hearing. For the reasons discussed below, the Complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant is Robert Murphy.
2. The Respondent is West Penn Power Company.
3. The Complainant filed a Complaint against West Penn on September 6, 2018.
4. The Respondent filed an Answer to the Complaint on October 2, 2018.

¹ The telephonic hearing was recorded by means of a tape recorder. No Court Reporter was present.

5. By Hearing Notice served upon the parties on December 20, 2018, a telephonic hearing in this matter was scheduled for February 6, 2019 at 10:00 a.m.

6. By Prehearing Order served upon the parties on December 28, 2018, the parties were again informed of the date and time of the telephonic hearing and were provided with the method by which a party could request a continuance of the hearing date, if needed.

7. Both the Hearing Notice and the Prehearing Order warned the Complainant of the consequences of failing to participate in the scheduled telephonic hearing.

8. Both the Hearing Notice and the Prehearing Order informed the Complainant that he would be contacted by phone on the hearing date and time to be connected to the hearing conference phone line.

9. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.

10. The Complainant was not available by phone to participate in the February 6, 2019 hearing.

11. The Complainant did not withdraw or settle his Complaint with West Penn, nor did he request a continuance of the hearing date.

DISCUSSION

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). To satisfy this burden, the Complainant must show that the named utility is responsible or accountable for the problem described in the Complaint. Patterson v. Bell Telephone Co. of Pa., 72 Pa. PUC 196 (1990); Feinstein v. Philadelphia Suburban Water Co., 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the

smallest amount, than that presented by the other party. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa.Cmwlt. 1990), alloc. den., 602 A.2d 863 (Pa. 1992); Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980).

In this proceeding, Mr. Murphy filed a Complaint against West Penn seeking legal relief in the form of a payment arrangement. As a result, the burden of proof is on Mr. Murphy to show that he is eligible for a payment arrangement.

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

Mr. Murphy did not participate in the February 6, 2019 hearing. The date and time of the hearing were provided in the Hearing Notice and the Prehearing Order. The Notice and Order informed the Complainant that he was to be available by phone on February 6, 2019 at 10:00 a.m. to be contacted and connected to the hearing conference phone line. The undersigned attempted to call and connect the Complainant to the hearing conference phone line at 10:00 a.m. and 10:15 a.m., using the phone numbers on file for the Complainant, but was unable to do so. Both the Notice and Order warned Mr. Murphy of the potential consequences that could result from choosing to not participate in the scheduled hearing, including dismissal of the Complaint.

The Hearing Notice and Prehearing Order were sent separately to Mr. Murphy by regular first-class mail. Neither the Notice nor the Order were returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents, which were sent to Mr. Murphy in the ordinary course of business, were received by him. 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, 449 A.2d 658 (1982). Therefore, the Complainant is deemed to have had sufficient notice of the day, date and time of the scheduled hearing and for whatever reason chose not to appear at the hearing to prosecute his Complaint. The Complainant made no attempt to notify the presiding officer that he did not plan to participate in the scheduled February 6, 2019 hearing.

Under these circumstances, the Complainant had ample opportunity to appear and be heard in this proceeding but chose not to do so. Once notice of a hearing and the opportunity to be heard have been provided to the parties, it is the responsibility of both parties to appear and participate in the hearing. Schneider v. Pa. Pub. Util. Comm'n, 479 A.2d 10 (Pa.Cmwlt. 1984). Therefore, the due process rights of the Complainant have been fully protected. Sentner v. Bell Tel. Co. of Pa., Docket No. F-00161106 (Opinion and Order entered October 25, 1993). The Complainant did not appear, and the hearing proceeded in his absence. 66 Pa.C.S.A. § 332(f) and 52 Pa.Code § 5.245(a) provide that a party that fails to be represented at a scheduled hearing shall waive the opportunity to participate in the hearing and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat.

§ 332. Procedures in general.

(f) Actions of parties and counsel.--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, or to recall for further examination of witnesses who were excused, unless the presiding officer shall determine that failure to be represented was unavoidable and that the interests of the other parties and the public would not be prejudiced by permitting such reopening or further examination. . . .

66 Pa.C.S. § 332(f).

§ 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 thereafter to reopen the disposition of a matter accomplished at the conference or hearing.

. . .

52 Pa. Code § 5.245(a).

As stated, the Complainant bears the burden of proving by a preponderance of the evidence that he is eligible for relief. By choosing not to participate in the hearing and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden.

The due process rights of the Complainant have been protected. The Complainant had notice of the scheduled hearing and failed to appear to prosecute his Complaint. Therefore, the Respondent's Motion to Dismiss the Complaint for Lack of Prosecution is granted.

Accordingly, the Complaint in this matter will be dismissed in its entirety with prejudice. El-Ayazra v. West Penn Power Company, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); Volgstadt v. UGI Penn Natural Gas, Inc., Docket No. F-02266429 (Opinion and Order entered September 12, 2008) and Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Opinion and Order entered December 26, 1995).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. § 701.

2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).

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

4. 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 (Opinion and Order entered October 25, 1993).

5. By failing to appear at his scheduled hearing, the Complainant waived his opportunity to participate in the hearing and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat, or to recall for further examination of witnesses who were excused. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

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

7. By failing to appear and proffer any evidence in support of the Complaint, the Complainant has failed to meet his burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of West Penn Power Company to dismiss the Complaint at Docket Number C-2018-3004586 for failure to prosecute is granted.

