

June 6, 2019

Via Electronic Filing

Rosemary Chiavetta, Esquire
Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Docket No. C-2018-3004845 & Docket No. C-2018-3005059
Chris Paluti and Doug Walls v. West Penn Power Company
Motion to Dismiss**

Dear Secretary Chiavetta:

Attached for filing is the Motion of Pennsylvania Electric Company (Penelec), to dismiss the Complaint of Doug Walls in the above-referenced consolidated proceeding.

A copy of the Motion to Dismiss has been forwarded to both Complainants in the manner indicated on the attached Certificate of Service.

If there are any questions, please contact me.

Very truly yours,

Reger Rizzo & Darnall LLP



Margaret A. Morris

MAM/lam
Attachment

cc: Hon. Katrina Dunderdale, OALJ [w/enc.]
Aron J. Beatty, Esquire, FirstEnergy Service Company [w/enc.]
Chris Paluti [w/enc.]
Doug Walls [w/enc.]

**Re: Docket No. C-2018-3004845 & Docket No. C-2018-3005059
Chris Paluti and Doug Walls v. West Penn Power Company
Motion to Dismiss**

CERTIFICATE OF SERVICE


I hereby certify that a true and correct copy of the foregoing document has been served upon the person(s) listed below, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Via First Class Mail

Chris Paluti
205 Foley Road
Waynesburg, PA 15370

Doug Walls
245 Foly Road
Waynesburg, PA 15370

Dated: June 6, 2019


Margaret A. Morris, Esquire

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

CHRIS PALUTI	:	
	:	
v.	:	Docket No. C-2018-3004845
	:	
WEST PENN POWER COMPANY	:	
	:	
DOUG WALLS	:	
	:	
v.	:	Docket No. C-2018-3005059
	:	
WEST PENN POWER COMPANY	:	

**MOTION OF WEST PENN POWER COMPANY
TO DISMISS THE COMPLAINT OF DOUG WALLS**

West Penn Power Company (West Penn), by and through its attorneys, Reger Rizzo & Darnall LLP, and pursuant to 52 Pa. Code §§ 5.103, hereby moves the Honorable Katrina L. Dunderdale (Judge Dunderdale) of the Pennsylvania Public Utility Commission (Commission) for an order dismissing the Formal Complaint (Complaint) of Doug Walls (Complainant) against West Penn, in the above-captioned consolidated proceeding, for failure to appear and prosecute his Complaint at the duly noticed scheduled hearing on June 3, 2019. As Complainant has evidenced no good faith effort to pursue his Complaint by failing to appear at the scheduled hearing, West Penn respectfully requests that the Complaint be dismissed with prejudice.

In support thereof, West Penn avers as follows:

I. Relevant Procedural History

1. On September 17, 2018, the Complainant filed his Formal Complaint alleging a reliability, safety or quality problem with the electric service provided by West Penn.

2. On October 19, 2018, West Penn filed an Answer and New Matter denying the material allegations and that West Penn violated the Pennsylvania Public Utility Code (Code), Commission regulations or orders.

3. On March 21, 2019, a Call-In Telephonic Pre-Hearing Conference Notice was issued scheduling a prehearing conference for April 11, 2019.

4. On April 11, 2019, the prehearing conference was held and the Complainant's Formal Complaint was consolidated with the Complaint filed by Chris Paluti against West Penn at Docket No. C-2018-3005059.

5. On April 12, 2019, a Call-In Telephonic Hearing Notice was issued scheduling a hearing for June 3, 2019.

6. On April 14, 2019, a Prehearing Order was issued containing a warning in bold type advising that: **"THE COMPLAINT WILL BE DISMISSED IF THE CUSTOMER FAILS TO PARTICIPATE IN THE HEARING AND PRESENT EVIDENCE IN SUPPORT OF THE COMPLAINT."** (Emphasis in Original).

7. The hearing was held on June 3, 2019. The Complainant failed to call into the hearing and Judge Dunderdale directed the filing of the instant Motion.

II. Legal Standard

8. An administrative agency of the Commonwealth, the Commission is required to provide due process to the parties appearing before it. *Schneider v. Pa. PUC*, 479 A.2d 10, 15 (Pa. Cmwlth. 1984), citing *Fusaro v. Pa. PUC*, 382 A.2d 794 (Pa. Cmwlth. 1978). Due process is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. PUC*, 479 A.2d 10, 15 (Pa. Cmwlth. 1984).

9. The Commission is required to fix the time and place of a hearing in a complaint proceeding and to serve notice thereof upon the parties in interest. *See* 66 Pa. C.S. § 703(a)-(b). Service on interested persons is sufficient to provide notice. 52 Pa. Code § 5.201(a). Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *See, Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 531, 317 A.2d 584 (Pa. 1974) (*Mayflower*); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959) (*Miller*); *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. 1997) (*Samaras*); *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944, 946 (Pa. Cmwlth. 1994), *appeal denied* 539 Pa. 696, 653 A.2d 1234 (1994); *Geary v. Verizon Pennsylvania Inc.*, Docket No. C-2009-2118625 (Order entered September 16, 2010) (*Geary*).

10. 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*).

11. If a party fails to attend a scheduled hearing, such failure to appear will be deemed a waiver of the party's opportunity to participate in a hearing, unless the presiding officer determines that such failure was "unavoidable" and that the interests of the other parties and of the public would not be "prejudiced" by permitting such reopening or further examination. 66 Pa. C.S. § 332(f); 52 Pa. Code § 5.245(a)-(b).

III. Argument

12. All hearing notices and orders were sent to the Complainant by regular first-class mail. None of the documents mailed to the Complainant were returned as undeliverable.

13. The Complainant did not appear for the June 3, 2019 hearing. The Complainant did not contact the Commission to request a continuance nor has he withdrawn his Formal Complaint.

14. The Complainant was afforded every opportunity to participate in the duly noticed scheduled hearing but choose not to do so.

15. The due process rights of the Complainant have been fully protected. *Sentner, supra*; 52 Pa. Code § 5.245(a).

16. Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of any request for relief. As the party bringing this Complaint, the Complainant bears the burden of proving by a preponderance of the evidence that he is entitled to relief.

17. By failing to appear and proffer any evidence to support his Complaint, the Complainant has failed to meet this burden. Consistent with Commission precedent, the Formal Complaint should be dismissed with prejudice. *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); *El-Ayazra v. West Penn Power*

Company, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa. Code § 5.245.

18. Granting West Penn's Motion to Dismiss is in the public interest. Dismissing the Complaint will prevent the Commission from wasting time, energy, and money scheduling and convening a hearing or otherwise expending further Commission resources on this matter.

IV. Conclusion

19. The Complainant was afforded every opportunity to participate in the duly noticed scheduled hearing but choose not to do so. Consistent with Commission precedent, the Complaint should be dismissed with prejudice.

WHEREFORE, West Penn Power Company, requests that the Honorable Katarina L. Dunderdale grant this Motion to Dismiss the Complaint of Doug Walls with prejudice.

Respectfully submitted,



Margaret A. Morris, Esq.

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Dated: June 6, 2019