

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Doug Walls	:	
	:	
v.	:	C-2018-3005059
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

INTRODUCTION

The undersigned grants Respondent’s Motion to Dismiss a formal complaint because Complainant failed to appear at the initial hearing and prosecute the case.

HISTORY OF THE PROCEEDING

On September 17, 2018, Doug Walls (Mr. Walls) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against West Penn Power Company. Mr. Walls’ service address is located at 245 Foly Road, Waynesburg, Greene County, Pennsylvania. Mr. Walls averred there was a reliability, safety or quality problem with his electric service. Mr. Walls specified sixteen (16) times between May 17, 2017 and August 16, 2018, when the service address experienced outages, flickers and/or service interruptions. Mr. Walls requested the Commission resolve the problem.

On October 19, 2018, West Penn Power Company (West Penn or Respondent) filed an Answer and New Matter. West Penn admitted it has provided service to Mr. Walls since

1982 and admitted that there were nine (9) outages at the service address in the previous two years caused by off-corridor trees hitting the electric lines. West Penn contended the “power flickers” referenced in the Formal Complaint are normal reclosure events and/or occurred either during a “minor storm” or within hours of a minor storm. West Penn denied there was a reliability, safety or quality problem with Mr. Walls’ electric service. West Penn averred that at all times relevant its actions had been reasonable and performed in accordance with the Commission’s regulations and Orders, the Public Utility Code and West Penn’s tariff. In New Matter, West Penn requested the Formal Complaint should be transferred to the Mediation Unit of the Office of Administrative Law Judge.

In a related matter, Mr. Walls’ neighbor, (Chris Paluti) had filed a formal complaint with the Commission against West Penn Power Company on September 4, 2018 at Docket No. C-2018-3004845. The allegations in both Formal Complaints were almost identical with one another. Accordingly, pursuant to 52 Pa.Code § 5.81, the presiding officer issued the First Interim Order on March 20, 2019 which ordered a prehearing conference to be scheduled for the purpose of determining if the two proceedings should be consolidated.

Thereafter, by Call-In Telephone Hearing Notice dated March 21, 2019, the Office of Administrative Law Judge notified the parties a prehearing conference in this case was scheduled for Thursday, April 11, 2019, at 10:00 a.m.

On April 11, 2019, the presiding officer conducted a prehearing conference at which the following individuals were present: Mr. Paluti; Mr. Walls; Margaret A. Morris, Esq. for West Penn; and Dominic Capitoni, engineer, for West Penn. After discussion between the parties and the presiding officer, both Mr. Paluti and Mr. Walls indicated they had no objection to the consolidation. Thereafter, on April 12, 2019, the Office of Administrative Law Judge issued a Call-In Telephone Hearing Notice and notified the parties an initial telephonic hearing in this case was scheduled for Monday, June 3, 2019, at 10:00 a.m. On April 15, 2019, the presiding officer issued the Second Interim Order which ordered a Call-In Telephonic Hearing to be scheduled in both consolidated matters. On the same date, 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 Mr. Walls, as a complainant, was responsible to prove the facts he alleged in his formal complaint.

On June 3, 2019, the presiding officer convened the parties for the initial hearing at 10:04 a.m. Complainant Chris Paluti was present and represented himself but Complainant Doug Walls was absent from the hearing. West Penn was represented by Margaret A. Morris, Esquire, who was present with two potential witnesses. Mr. Paluti testified and asked the presiding officer to take judicial notice of the dates and descriptions of the outage events listed in the formal complaint. West Penn requested a continuance in order to investigate Mr. Paluti's claims more fully. West Penn also made an oral motion to dismiss Mr. Walls' formal complaint due to Mr. Walls' failure to appear and prosecute his formal complaint. The presiding officer granted the request for a continuance and advised West Penn to submit a written motion to dismiss which would be served on Complainant Doug Walls with an attached Notice to Plead. The hearing concluded at 11:08 a.m.

On June 6, 2019, West Penn filed a Motion to Dismiss the formal complaint of Mr. Walls at Docket No. C-2018-3005059 with prejudice for failure to proceed and prosecute his formal complaint. Mr. Walls did not respond to West Penn's Motion to Dismiss.

On June 27, 2019, the presiding officer closed the hearing record by the issuance of a Third Interim Order in Docket Nos. C-2018-3004845 and C-2018-3005059, which bifurcated the two formal complaints and closed the hearing record in Docket No. C-2018-3005059.

FINDINGS OF FACT

1. Complainant and ratepayer of record is Doug Walls, who resides at 245 Foly Road, Waynesburg, Pennsylvania (service address).
2. Respondent in this proceeding is West Penn Power Company which provides electric service at the service address.

3. On April 12, 2019, the Office of Administrative Law Judge issued a Call-In Telephone Hearing Notice and notified the parties an initial telephonic hearing in this case was scheduled for Monday, June 3, 2019, at 10:00 a.m.

4. The hearing notice dated April 12, 2019, and the Prehearing Order dated April 15, 2019, were sent to the address provided by Complainant in the formal complaint and were not returned as undeliverable.

5. Complainant was not present and did not participate in the June 3, 2019 hearing.

6. Respondent was ready to proceed with its witnesses at the date and time scheduled for the hearing.

7. On June 6, 2019, Respondent filed a written Motion to Dismiss and served the motion on Complainant, which contained a Notice to Plead advising Complainant he must respond.

8. Complainant did not respond to the Motion to Dismiss and did not contact the office of the presiding officer to explain his absence at the telephonic hearing on June 3, 2019.

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. Walls, 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. Walls did not appear at the time scheduled for the June 3, 2019 hearing, and did not participate in the June 3, 2019 hearing. The date, time and location of the hearing were listed in the hearing notice, dated April 12, 2019, and in the Prehearing Order, dated April 15, 2019.

The Office of Administrative Law Judge mailed both the hearing notice and the Prehearing Order to Complainant at the address provided in the formal complaint.

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

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).

January 24, 2002) (*Mumma*); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Order entered October 25, 1993) (*Sentner*).

In addition to receiving a hearing notice and a Prehearing Order which noted the date and time for the hearing, as well as including instructions for how to use the Commission's bridge conference telephone number, Mr. Walls also received a copy of the Motion to Dismiss filed by West Penn on June 6, 2019. Mr. Walls has not responded to the Motion to Dismiss or contacted the presiding officer to indicate why he was not present at the telephonic hearing on June 3, 2019.

Since Mr. Walls did not appear or participate in the hearing, despite receiving two notices 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. Mr. Walls also received Respondent's written request to dismiss the complaint for failure to prosecute, and Mr. Walls has not contacted the presiding officer or her office since the date of the prehearing conference on April 11, 2019.

The hearing record closed on June 27, 2019, when the presiding officer issued the Third Interim Order.

In this proceeding, Mr. Walls did not call into the hearing as specified in the hearing notice and Prehearing Order. The hearing notice and Prehearing Order clearly indicated Complainant was to call. These documents provided Complainant with the Commission's toll-free conference bridge number and PIN number. The hearing notice and Prehearing Order also provided an address and telephone number where Mr. Walls could reach the presiding officer, if a continuance request and/or additional information was needed prior to the hearing.

Mr. Walls 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. As a result, Complainant failed to sustain the burden of proof.

Accordingly, Respondent's written motion to dismiss the formal complaint will be granted, and the formal complaint in this matter will be dismissed in the Ordering Paragraphs below.⁴

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).

3. Complainant, by failing to appear at the scheduled hearing, waived the opportunity to participate in the hearing. 66 Pa.C.S.A. § 332(f).

4. 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).

5. 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).

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

⁴ *Volgstadt v. UGI Penn Natural Gas*, Docket No. F-02266429 (Order entered September 12, 2008) and *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).

