

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Barbara Gray and Shane Gaut

v.

West Penn Power Company

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C-2019-3009191

INITIAL DECISION

Before
Benjamin J. Myers
Administrative Law Judge

INTRODUCTION

This decision dismisses the complaint filed in this matter for failure of the Complainants to appear for the hearing and prosecute the complaint.

HISTORY OF THE PROCEEDING

On April 15, 2019, Barbara Gray and Shane Gaut (Complainants) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against West Penn Power Company (Respondent). The complaint indicates that the Complainants seek a new payment arrangement and to have charges from certain suppliers removed from their bill.

On May 6, 2019, the Respondent filed an answer to the complaint. The answer admitted or denied the various averments of the complaint. The Respondent, however, denied that Complainants had received incorrect supplier charges on their bill or that they were eligible for a new or different Commission-ordered payment arrangement.

By notice dated May 16, 2019 the Commission scheduled this matter for an initial telephonic hearing on June 27, 2019 at 10:00 a.m. and assigned the case to me. A prehearing order was issued on May 17, 2019, addressing, inter alia, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

Neither the notice nor the prehearing order sent to the Complainants by the Office of Administrative Law Judge was returned as undeliverable by the postal authorities.

The telephonic hearing was conducted as scheduled on June 27, 2019. The Complainants failed to participate in the hearing. Additional time was given for the Complainants to call into the conference number to participate in the hearing; however, the Complainants never appeared.

Upon commencement of the hearing at 10:17 a.m., Attorney Aron Beatty, counsel for the Respondent, moved to dismiss the complaint for failure to appear and prosecute. The Respondent was advised that its motion would be taken under advisement.

The record closed on June 27, 2019, at the conclusion of the hearing. The Complainants have had no communication with the Office of Administrative Law Judge subsequent to the hearing in this matter. This decision grants the Respondent's motion to dismiss the complaint.

FINDINGS OF FACT

1. The Complainants in this case are Barbara Gray and Shane Gaut.
2. The Respondent in this case is West Penn Power Company.
3. By notice dated May 16, 2019, the Commission scheduled this matter for an initial telephonic hearing on June 27, 2019 at 10:00 a.m.

4. This notice was sent to the Complainants' correct address of record and was not returned as undeliverable by the postal authorities.

5. On May 17, 2019, a prehearing order was issued to the Complainants at this same address and was not returned as undeliverable by the postal authorities.

6. The Complainants failed to participate in the June 27, 2019 telephonic hearing.

DISCUSSION

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. Schneider v. Pa. Pub. Util. Comm'n., 479 A.2d 10 (Pa.Cmwlth. 1984). This due process requirement is satisfied, however, when the administrative agency provides the parties notice and the opportunity to be heard.

The Commission sent notice of the telephonic hearing in this case to the Complainants on May 16, 2019, by regular first-class mail to the Complainants' address of record. This notice scheduled the parties for a telephonic hearing on June 27, 2019. This notice was never returned to the Commission as being undeliverable by the postal authorities.

A prehearing order was issued on May 17, 2019, which provided the parties with information on how to participate in a hearing by telephone. The prehearing order, which was again mailed to the Complainants at their address of record, was never returned as being undeliverable by the postal authorities.

Given that none of the correspondence sent to the Complainants' address of record was ever returned as undeliverable, it must be presumed that this mail was received by the Complainants. Berkowitz v. Mayflower Securities, Inc., 317 A.2d 584 (Pa. 1974); Meierdierck v. Miller, 147 A.2d 406 (Pa. 1959); Samaras v. Hartwick, 698 A.2d 71 (Pa.Super. 1997); Judge v. Celina Mutual Insurance Co., 449 A.2d 658 (Pa.Super. 1982).

The Complainants did not call into the conference number on June 27, 2019 to participate in the hearing despite being given additional time to do so. The Complainants have had a full and fair opportunity to appear and be heard in this proceeding; however, they have chosen not to do so. The due process rights of the Complainants have been fully protected. Sentner v. Bell Telephone Co. of Pa., Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

Finally, 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 Complainants bear the burden of proving by a preponderance of the evidence that they are entitled to relief. By failing to participate and proffer any evidence to support their complaint, the Complainants have failed to meet this burden. Under these circumstances, the complaint should be dismissed. 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.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa.C.S. § 701.
2. The due process rights of the Complainants have been fully protected in this proceeding. Sentner v. Bell Telephone Co. of Pa., Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).
3. By failing to participate in the hearing and proffer any evidence to support the complaint, the Complainants have failed to meet their burden of proving that they are entitled to the relief that they seek from the Commission. 66 Pa.C.S. § 332(a).

