

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

North Buffalo Township	:	
	:	
v.	:	C-2017-2636341
	:	
Windstream Pennsylvania, LLC	:	

INITIAL DECISION

Before
Mark A. Hoyer
Deputy Chief Administrative Law Judge

INTRODUCTION

This decision grants the Respondent’s motion to dismiss and dismisses the complaint filed in this matter for failure of Complainant to participate in the prehearing conference or prosecute the complaint.

HISTORY OF THE PROCEEDING

On November 29, 2017, North Buffalo Township (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against Windstream Pennsylvania, LLC (Respondent or Windstream). Complainant alleges, among other things, that the telephone service provided by Windstream is inaudible and all of the services provided by Windstream are “terrible.” Complainant requested that Windstream install new lines for telephone and internet to the township building and police station; and credit the account for all bills for poor or no service for the township building and police station.

Respondent filed an answer and new matter on January 25, 2018. The answer denied the material allegations contained in the complaint and requested that the complaint be dismissed. Complainant did not file a reply to the new matter.

On January 30, 2019, a call-in telephone prehearing conference notice was issued scheduling a conference for Tuesday, March 5, 2019. A prehearing conference order was issued by the undersigned on February 4, 2019.

The prehearing conference was held as scheduled. Counsel for Windstream, Charles E. Thomas, III, participated in the conference. A representative for Complainant failed to appear for the conference. Counsel for Windstream made a motion on the record to dismiss the complaint for failure to prosecute. I directed counsel to reduce the motion to writing and serve it on Complainant's representative with a notice to plead attached. Counsel for Windstream filed a motion to dismiss on April 23, 2019. Complainant did not file a response to the motion to dismiss.

The record closed by interim order dated June 18, 2019. This decision grants Respondent's motion to dismiss the complaint.

FINDINGS OF FACT

1. Complainant in this case is North Buffalo Township.
2. Respondent in this case is Windstream Pennsylvania, LLC.
3. By notice dated January 30, 2019, the Commission scheduled this matter for a call-in telephone prehearing conference on March 5, 2019.
4. A prehearing conference order was issued on February 4, 2019.

5. Both the notice and the prehearing conference order were sent to Complainant's representative by regular first-class mail.
6. The Commission's prehearing conference notice and the prehearing conference order were never returned to the sender.
7. Complainant did not participate in the March 5, 2019 conference.
8. Complainant did not settle, withdraw or request a continuance of the matter.
9. On April 23, 2019, Respondent filed a motion to dismiss the complaint.
10. Complainant did not file a response to Respondent's motion to dismiss.

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).

In *Treffinger v. PPL Electric Utilities Corp.*, C-20027978, 2003 Pa. PUC LEXIS 3 (March 3, 2003), the chief administrative law judge (CALJ) issued an interim order directing the Respondent, PPL Electric Utilities Corporation, to contact the Treffingers by July 29, 2002 and to convene a settlement conference by August 12, 2002. The Respondent scheduled a telephonic settlement conference with the Treffingers for August 12, 2002. In a letter, the Respondent advised the Treffingers of the call in number and requested that the Treffingers contact Respondent's counsel should they not be able to participate. *Treffinger v. PPL Electric Utilities Corp.*, C-20027978, 2003 Pa. PUC LEXIS 3 (March 3, 2003).

The Treffingers did not participate in the settlement conference nor did they contact the Respondent. On August 28, 2002, the CALJ issued a Second Interim Order instructing the Treffingers to contact the Respondent's counsel by September 9, 2002 to discuss settlement or face dismissal for lack of prosecution. On October 3, 2002, the Respondent filed a Motion to Dismiss for lack of prosecution. The CALJ then sent a letter to the Treffingers instructing them to respond in writing by November 15, 2002, demonstrating their interest in pursuing the complaint, or face dismissal of the complaint. By Initial Decision, the CALJ dismissed the Treffingers' complaint, with prejudice, for lack of prosecution. *Treffinger v. PPL Electric Utilities Corp.*, C-20027978, 2003 Pa. PUC LEXIS 3 (March 3, 2003).

The *Treffinger* Initial Decision was reviewed by the Commission and modified. In its discussion, the Commission stated, in pertinent part, as follows:

We empathize with the CALJ's frustration due to the Complainants' lack of participation in the settlement process. However, at this time, it is not proper to dismiss this Complaint with prejudice. The Commission routinely determines that complaints should be dismissed, with prejudice, for failure to prosecute if a complainant does not appear at hearing after due notice, not, if a complainant fails to participate in voluntary settlement proceedings (citations omitted).

* * *

...while we understand the aggravation of the CALJ and the Respondent, the Complainants' failure to participate in a Settlement Conference does not amount to a failure to prosecute warranting the dismissal of the Complaint with prejudice. As such, this matter should be dismissed without prejudice.

Treffinger v. PPL Electric Utilities Corp., C-20027978, 2003 Pa. PUC LEXIS 3 (March 3, 2003).

In *Snyderville Community Development Corp. v. Philadelphia Gas Works*, 2006 Pa. PUC LEXIS 64 (July 31, 2006), the Commission ruled that the Complainant's failure to comply with multiple orders directing the entry of appearance of an attorney to represent the Complainant at the hearing warrants the dismissal of the complaint. Citing *Treffinger*, the

Commission held that “[a]n ALJ’s Orders must be complied with, and such a lack of compliance presents a sufficient basis to dismiss the complaint without hearing.” *Snyderville Community Development Corp. v. Philadelphia Gas Works*, 2006 Pa. PUC LEXIS 64 (July 31, 2006).

Complainant is represented in this complaint proceeding by counsel. The Commission sent notice of the telephone prehearing conference in this case to Complainant’s counsel on January 30, 2019, by regular first-class mail. To my knowledge this piece of mail was never returned to the sender, the scheduling staff for OALJ in Harrisburg. Accordingly, I must presume that this mail, which was sent in the ordinary course of business, was received by Complainant. *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).

I issued a prehearing conference order dated February 4, 2019. The prehearing conference order was also mailed to Complainant’s representative by regular first-class mail and it was not returned to sender.

Counsel for Respondent filed a motion to dismiss the complaint and served it on Complainant. Complainant did not file a response to the motion to dismiss. Complainant has not participated in a conference, despite being ordered by the undersigned to do so. Complainant’s representative did not request a continuance of the conference, settle or withdraw the complaint.

The motion to dismiss is granted in the ordering paragraphs to follow, however, the complaint will be dismissed without prejudice.

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 Complainant 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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Windstream Pennsylvania, LLC to dismiss the complaint filed by North Buffalo Township, is granted.
2. That the complaint of North Buffalo Township against Windstream Pennsylvania, LLC at Docket No. C-2017-2636341, is dismissed without prejudice.
3. That the docket at Docket No. C-2017-2636341 is marked closed.

Date: September 3, 2019

/s/
Mark A. Hoyer
Deputy Chief Administrative Law Judge