

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John M. Crawford	:	
	:	
v.	:	C-2019-3011358
	:	
West Penn Power Company	:	

INITIAL DECISION

Before
Conrad A. Johnson
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On July 5, 2019, John Crawford (Complainant) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against West Penn Power Company (Respondent or Company).¹ Complainant alleges the following: 1) the utility is threatening service termination or has already terminated service; and 2) I would like a payment arrangement. As relief, Complainant requested that his service be kept on and “a payment arrangement besides PCAP or CAP.”²

¹ Complainant seeks review of the Commission’s Bureau of Consumer Services’ (BCS) June 7, 2019, decision at BCS No. 3699001, denying him a second Commission payment arrangement.

² PCAP is the Company’s low-income customer assistance program which provides assistance based on income, heat source and energy burden including a one-time opportunity at the time of initial enrollment to place a customer’s existing arrears into deferment followed by monthly forgiveness on the deferment until the balance is reduced to zero, if monthly payments are made timely and in full. See the Company Answer, fn. 3.

On July 25, 2019, Respondent filed an Answer admitting that the Company has threatened to terminate Complainant's electric service and denying that the Company has an active intent to terminate service as termination efforts ceased upon receipt of the Complaint. Respondent alleged Complainant was over-income for PCAP and his account balance was \$4,327.74. As relief, Respondent requested dismissal of the Complaint with prejudice.

By notice dated July 29, 2019, the Commission scheduled this matter for a call-in telephonic hearing on September 13, 2019, at 10:00 a.m. and assigned the case to me. I issued a Prehearing Order dated July 31, 2019, addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

By 10:00 a.m. on September 13, 2019, Complainant had not called the conference number as shown on the July 29, 2019, hearing notice. Therefore, I convened the telephonic hearing on September 13, 2019, at 10:03 a.m. Respondent was represented by Teresa Harrold, Esquire. Respondent's witness, Senior Customer Service Compliance Specialist Charles Howlett, was also present for the hearing. Complainant failed to appear for the hearing.

I recessed the hearing at 10:06 a.m. to permit additional time for Complainant to appear or to contact the Office of Administrative Law Judge (OALJ) in order to explain his absence. The telephonic proceeding remained open with counsel for Respondent and the court reporter in the telephonic hearing. I then left the hearing room to verify with the support staff for the OALJ in Pittsburgh that Complainant had not contacted the office to indicate that Complainant would be unable to participate in the telephonic hearing. My voice mail and email had no messages from Complainant stating that he would be unable to participate in the hearing.

After verifying that Complainant had not contacted the OALJ in Pittsburgh, I returned to the hearing room and reconvened the hearing at 10:27 a.m. Complainant had not called into the telephonic hearing. Accordingly, the hearing proceeded in Complainant's absence. No testimony or evidence was offered by Respondent. Counsel for Respondent moved for dismissal of the Complaint for lack of prosecution. I informed counsel that the motion would

be taken under advisement and an Initial Decision would be issued. The hearing was adjourned at 10:30 a.m. on September 13, 2019. After receiving the transcript for the hearing, I issued an Interim Order closing the record on October 11, 2019.

FINDINGS OF FACT

1. Complainant in this case is John M. Crawford.
2. Respondent in this case is West Penn Power Company.
3. On July 5, 2019, Complainant filed a Complaint with the Commission against Respondent.
4. By notice dated July 29, 2019, the Commission scheduled this matter for an initial telephonic hearing on September 13, 2019, at 10:00 a.m.
5. The Commission sent notice of the telephonic hearing in this case to Complainant by regular first-class mail to the address stated on the Complaint.
6. The Commission's hearing notice was never returned to the sender.
7. Complainant failed to appear at the September 13, 2019, telephonic hearing.
8. Complainant did not settle, withdraw or request a continuance of the matter.

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 with notice and the opportunity to be heard.

The Commission sent notice of the telephonic hearing in this case to Complainant on July 29, 2019, by regular first-class mail to the address stated on the Complaint. To my knowledge this piece of mail was never returned to the sender, the scheduling staff for OALJ in Pittsburgh.

In addition, I issued a Prehearing Order dated July 31, 2019, which, *inter alia*, provided the toll-free bridge number and the PIN for the parties to participate in the telephonic hearing. The Prehearing Order directed the parties to call into the hearing on the scheduled day and time. The Prehearing Order, which was mailed to Complainant at the address shown on the Complaint, was never returned. 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).

Complainant did not appear for the hearing scheduled and convened on September 13, 2019, which was the date shown on the July 29, 2019, hearing notice. Under these circumstances, Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. Therefore, the due process rights of Complainant 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, Complainant bears the burden of proving by a preponderance of the evidence that he is entitled to relief. By failing to appear and proffer any evidence to support his Complaint, Complainant has failed to meet this burden. Under these circumstances, the Complaint may 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.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of 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).

3. By failing to appear for the hearing and proffer any evidence to support the Complaint, Complainant has failed to meet his burden of proving that he is entitled to the relief that he seeks from the Commission. 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 No. C-2019-3011358 for failure to prosecute is granted.

