

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Melena Bearfield	:	
	:	
v.	:	C-2019-3009023
	:	
West Penn Power Company	:	

**INITIAL DECISION**

Before  
Conrad A. Johnson  
Administrative Law Judge

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

**HISTORY OF THE PROCEEDING**

On April 8, 2019, Melena Bearfield (Complainant) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) seeking review of the Commission’s Bureau of Consumer Services’ (BCS) June 26, 2018, decision denying Complainant’s informal complaint against West Penn Power Company (Respondent or West Penn) at BCS No. 3594042. The BCS decision denied Complainant’s request for a subsequent Commission-ordered payment arrangement.<sup>1</sup> The only allegation raised in the Complaint reads as follows: “I would like a payment arrangement.”

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<sup>1</sup> While Complainant did not seek timely review within 20 days of the BCS decision under 52 Pa.Code § 56.172(c), the failure to do so did not foreclose Complainant from filing a formal complaint at a later time as provided for under 52 Pa.Code § 56.172(e)

On April 29, 2019, Respondent filed an Answer averring that the allegation raised in the Complaint was a request for relief to which a response was not required, and the account balance was \$11,234.41. Respondent further averred as follows: “The Complainant is not entitled to a subsequent Commission payment arrangement as there has been no alleged change in income as required by 66 Pa.C.S. § 1405(d).” As relief, Respondent requested dismissal of the Complaint with prejudice or in the alternative, referral of the matter to the Commission’s Mediation Unit. Mediation proved unsuccessful.

By Notice dated July 18, 2019, the Commission scheduled this matter for a call-in telephonic hearing on September 6, 2019, at 10:00 a.m. and assigned the case to me. I issued a Prehearing Order dated July 22, 2019, addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation and the Commission’s policy encouraging settlements.

On August 19, 2019, Margaret A. Morris, Esquire, requested a continuance of the September 6, 2019 hearing, because she has been recently retained to represent Respondent; however, she was unavailable for the September 6, 2019 hearing because of previously scheduled out-of-town travel. Complainant did not object to the continuance request. Accordingly, by interim order issued on August 23, 2019, the continuance request was granted

By Notice dated September 25, 2019, the Commission rescheduled this matter before me for a call-in telephonic hearing on November 8, 2019, at 10:00 a.m. By 10:00 a.m. on November 8, 2019, Complainant had not called the conference number as shown on the September 25, 2019 hearing notice. Therefore, I convened the telephonic hearing on November 8, 2019, at 10:01 a.m. Respondent was represented by Margaret A. Morris, 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 her 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 she would be unable to participate in the hearing.

After verifying that Complainant had not contacted OALJ in Pittsburgh, I returned to the hearing room and reconvened the hearing at 10:30 a.m. Complainant had not called into the telephonic hearing. Accordingly, the hearing proceeded in Complainant's absence. Testimony was received from Respondent's witness, who sponsored Exhibits 1 through 9, which were admitted into the record. 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 11:15 a.m. on November 8, 2019, and the record was closed.

#### FINDINGS OF FACT

1. Complainant in this case is Melena Bearfield.
2. Respondent in this case is West Penn Power Company.
3. On April 8, 2019, Complainant filed a Complaint with the Commission against Respondent.
4. By notice dated September 25, 2019, the Commission scheduled this matter for an initial telephonic hearing on November 8, 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 November 8, 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 notice and the opportunity to be heard.

The Commission sent notice of the telephonic hearing in this case to Complainant on September 25, 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 22, 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 November 8, 2019, which was the date shown on the September 25, 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 her 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 her burden of proving that she is entitled to the relief that she seeks from the Commission. 66 Pa.C.S. § 332(a).

4. When Complainant fails to appear and proffer any evidence to support the Complaint, 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.

