

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kamil Abdelahad

v.

West Penn Power Company

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C-2019-3013416

INITIAL DECISION

Before
Conrad A. Johnson
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On October 4, 2019, Complainant Kamil Abdelahad (Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) seeking review of the Commission’s Bureau of Consumer Services’ (BCS) September 10, 2019 decision denying Complainant’s informal complaint against West Penn Power Company (West Penn) at BCS No. 3707874. Complainant alleged that due to a power surge because of West Penn’s negligence, he sustained damages to his circuit board and transformer. Complaint ¶ 4. As relief, he requested a Commission order directing West Penn to reimburse him \$1,092.21 for the costs he incurred to repair the damages. Complaint ¶ 5.

West Penn filed an Answer and New Matter and Preliminary Objections (PO) on October 29, 2019. West Penn denied “that the failure of Company equipment was due to

negligence or that the Company is responsible for the alleged damage to personal property.” Answer ¶ 4. In New Matter, West Penn asserted the Public Utility Code does not confer jurisdiction upon the Commission to award monetary damages. New Matter ¶ 11. As relief, West Penn requested dismissal of the Complaint with prejudice.

Complainant did not file a response to the New Matter.

In its PO, West Penn objected that Complainant was seeking a Commission order directing the Company to reimburse him for alleged personal property losses. PO ¶ 4. West Penn argued that the Commission does not have the power to award monetary damages.¹ *Id.* ¶ 10. For relief, West Penn requested dismissal of the Complaint or denial of the Complaint in its entirety for lack of subject matter jurisdiction.

West Penn served its PO upon Complainant on October 29, 2019, together with a Notice to Plead to the PO within ten (10) days of service. Complainant did not file a response to the PO.

By Call-In Telephone Hearing Notice dated December 2, 2019, the Parties were informed that this matter was assigned to me, pursuant to 52 Pa.Code § 56.173 for a call-in telephonic hearing on January 21, 2020 at 10:00 a.m. The Hearing Notice provided the Parties with the Toll-Free Bridge Number and the PIN to dial on the morning of the hearing in order to participate in the telephonic hearing. The Hearing Notice further stated, “*Attention: you may lose the case if you do not take part in this hearing and present facts on the issues raised.*” (emphasis in original).

On December 5, 2019, I issued to the Parties a First Interim Order, which sustained the PO and denied West Penn’s request to dismiss the Complaint. The PO were sustained because the Commission lacked subject matter jurisdiction to consider Complainant’s damage claim.² West Penn’s request for dismissal was denied because the Complaint raised a

¹ See *Elkin v. Bell Tel. Co. of PA.*, 420 A.2d 371 (Pa. 1980); *Feingold v. Bell of PA.*, 383 A.2d 791 (Pa. 1977) (*Feingold*).

² See *In Re: Melograne*, 812 A.2d 1164 (Pa. 2002) and *Feingold*.

factual dispute as to the reasonableness of West Penn's service under the Commission's statutory provisions.³ A factual *dispute* will prevent the grant of a preliminary Motion to Dismiss the case in its entirety.

On December 5, 2019, I also issued a Prehearing Order reminding the Parties to call, on the date and at the time of the hearing scheduled for January 21, 2020 at 10:00 a.m., the Toll-Free Bridge Number and enter the PIN in order to participate in the telephonic hearing. The Prehearing Order stated as follows: **“You must call into the hearing on the scheduled day and time. If you fail to do so, your case will be dismissed. You will not be called by the Administrative Law Judge.”** (emphasis in original). The Prehearing Order informed the Parties about the applicable procedural rules, including the procedure to follow to request a hearing continuance.

The Hearing Notice and Prehearing Order informing the Parties of the place, day, date and time of the hearing, were mailed in the ordinary course of the Commission's business to the address listed in Complainant's Complaint. The Hearing Notice and Prehearing Order were not returned by the U.S. Postal Service as undeliverable to Complainant.

On January 21, 2020, by 10:00 a.m., counsel for West Penn, Margaret Morris, Esquire, and I had entered the telephonic proceeding. The court reporter was also present. Mr. Abdelahad had not called into the telephonic proceeding. Attorney Morris was prepared to proceed with her witnesses, Shawn Highman from the engineering office and Dena Dietrich, an advanced customer services compliance specialist.

I recessed the hearing at 10:04 a.m., to permit additional time for Mr. Abdelahad to appear or to contact the Office of Administrative Law Judge (OALJ) to explain his absence. The telephonic proceeding remained open with counsel for West Penn and the court reporter in the telephonic hearing. I then left the hearing room to determine whether Mr. Abdelahad had called into the OALJ. Mr. Abdelahad had not called into the OALJ.

³ 66 Pa.C.S. § 1501; also see *DiSanto v. Dauphin Consolidated Water Supply Company*, 291 Pa.Super. 440, 436 A.2d 197 (1981).

When I returned to the hearing room at 10:25 a.m., Mr. Abdelahad had not entered the proceeding nor had he called into the OALJ to explain his absence.

Accordingly, the hearing proceeded in Mr. Abdelahad's absence. As a result, counsel for West Penn moved for dismissal of the Complaint with prejudice for lack of prosecution. I informed counsel that the motion would be taken under advisement and an Initial Decision would be issued. The record closed upon adjournment of the hearing at 10:30 a.m. on January 21, 2020.

FINDINGS OF FACT

1. Complainant in this proceeding is Kamil Abdelahad.
2. Respondent West Penn Power Company is a jurisdictional public utility providing electric service to Complainant and Pennsylvania customers.
3. On October 4, 2019, Mr. Abdelahad filed a Complaint against Respondent with the Commission.
4. On October 29, 2019, West Penn filed an Answer and New Matter to the Complaint.
5. By Call-In Telephone Hearing Notice dated December 2, 2019, the Parties were informed that a call-in telephonic hearing in this proceeding would convene on January 21, 2020, at 10:00 a.m.
6. On December 5, 2019, a Prehearing Order was issued to the Parties reminding them of the date, time, and manner of the hearing and advising them of the applicable procedural rules, including the procedure to request a continuance at least five days before the scheduled hearing date.

7. The Prehearing Order stated as follows: “**You must call into the hearing on the scheduled day and time. If you fail to do so, your case will be dismissed. You will not be called by the Administrative Law Judge.**” (emphasis in original).

8. The Hearing Notice and Prehearing Order were mailed, by first-class mail, postage prepaid, to Mr. Abdelahad at the address provided by Mr. Abdelahad in his Complaint.

9. The Hearing Notice and Prehearing Order were not returned by the U.S. Postal Service as undeliverable to Mr. Abdelahad.

10. Counsel for Respondent and its two witnesses were present by 10:00 a.m. on January 21, 2020, for the telephone hearing.

11. By 10:25 a.m. on January 21, 2020, Mr. Abdelahad had not appeared for the telephone hearing.

12. When Mr. Abdelahad did not appear for the telephone hearing, Respondent moved for dismissal of the Complaint with prejudice for lack of prosecution.

DISCUSSION

Due Process

The Commission satisfies the requirement of affording a complainant with administrative due process, by providing timely notice of the hearing on the complaint and the opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm’n*, 479 A.2d 10 (Pa.Cmwlth. 1984).

The December 2, 2019, Call-In Telephone Hearing Notice and the December 5, 2019, Prehearing Order were mailed, in the ordinary course of the Commission’s business, to Complainant’s address listed in his Complaint. The Hearing Notice and Prehearing Order were not returned to the Commission by the U.S. Postal Service. There is a presumption in the law that Mr. Abdelahad received the Hearing Notice and Prehearing Order. *Berkowitz v. Mayflower*

Securities, Inc., 317 A.2d 584 (Pa. 1974); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Judge v. Celina Mutual Ins. Co.*, 449 A.2d 658 (Pa.Super. 1982); and *Samaras v. Hartwick*, 698 A.2d 71 (Pa.Super. 1997). Accordingly, Complainant's due process rights have been fully protected.

Burden of Proof

Pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S. § 332(a), the burden of proof is on the proponent of a rule or order. In this proceeding, Complainant is the proponent of a rule or order. Therefore, Mr. Abdelahad had the burden of proving he was entitled to the relief requested in his Complaint. Respondent was present for the hearing through its attorney and witnesses. However, Mr. Abdelahad was not present for the hearing.

Section 332(f) of the Code, 66 Pa.C.S. § 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,

Since Mr. Abdelahad failed to appear and participate in the scheduled hearing, personally or by telephone, his Complaint may be dismissed with prejudice. See *Martin 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); 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. Complainant, as the proponent of a rule or order, has the burden of proof. 66 Pa.C.S. § 332(a).

3. When a complainant fails to appear for a scheduled conference or hearing, the complaint may be dismissed with prejudice. *Martin 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); 52 Pa.Code § 5.245.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of West Penn Power Company to dismiss the Complaint of Kamil Abdelahad at Docket No. C-2019-3013416 is granted.

2. That the Complaint of Kamil Abdelahad against West Penn Power Company at Docket No. C-2019-3013416 is dismissed, for the failure of Kamil Abdelahad to prosecute his Complaint.

3. That the Secretary's Bureau shall mark Docket No. C-2019-3013416 closed.

Date: February 18, 2020

/s/
Conrad A. Johnson
Administrative Law Judge