

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tiffany Crowe	:	
	:	
v.	:	C-2019-3013712
	:	
West Penn Power Company	:	

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 22, 2019, Complainant Tiffany Crowe (Complainant or Ms. Crowe) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against West Penn Power Company (West Penn). Complainant alleged she sustained damages to her “stuff,” resulting from a power surge caused when West Penn changed the wiring on the side of her house. Complaint ¶ 5. As relief, Complainant requested a Commission order directing West Penn to pay for the damages to her personal property. *Id.*

West Penn filed an Answer and New Matter and Preliminary Objections (PO) on November 12, 2019. West Penn denied that it was responsible for the alleged damage to Complainant’s 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 West Penn to pay unspecified damages. PO ¶ 4. West Penn again argued that the Commission does not have the power to award monetary damages. *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*). PO ¶ 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 November 12, 2019, together with a Notice to Plead to the PO within ten (10) days of service. Complainant has not filed a response to the PO.

The Parties were directed to the Commission's Mediation Unit to attempt a resolution of the dispute. Mediation did not achieve resolution of the Complaint.

On December 18, 2019, the PO was assigned to me for ruling. By Interim Order entered on December 30, 2019, the PO was granted. However, West Penn's request for dismissal of the Complaint was denied because there was a reasonable service issue which could not be resolved upon a preliminary motion.

By Call-In Telephone Hearing Notice dated March 5, 2020, the Parties were informed that a call-in telephonic hearing on the Complaint and Answer would be convened by me from the Commission's Pittsburgh offices, on April 22, 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 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 March 6, 2020, I issued a Prehearing Order reminding the parties to call, on the date and at the time of the hearing scheduled for April 22, 2020, at 10:00 a.m., the Toll-Free Bridge Number and enter the PIN 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, 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 March 17, 2020, the Commission’s Pittsburgh offices were closed due to the COVID-19 pandemic. As result, on April 7, 2020, via email, the Parties were informed that the April 22, 2020 telephonic hearing was cancelled and would be rescheduled. By Call-In Telephone Hearing Notice dated and electronically served on May 13, 2020, the Parties were informed that the rescheduled call-in telephonic hearing would convene on July 23, 2020, at 10:00 a.m. The Hearing Notice again provided the Parties with the Toll-Free Bridge Number and the PIN to dial on the morning of the hearing to participate in the telephonic hearing. The Hearing Notice again reminded the Parties that failure to participate in the hearing would result in dismissal of their case.

A second Prehearing Order was electronically served upon the Parties, on May 13, 2020. The second Prehearing Order again provided the Parties with the Toll-Free Bridge Number and PIN for the hearing, the applicable procedural rules, including the procedure to follow to request a hearing continuance.

On July 23, 2020, by 10:00 a.m., counsel for West Penn, Margaret A. Morris, Esquire, and I had dialed into the telephonic proceeding, and the hearing convened at 10:05 a.m.

The court reporter was also present. Ms. Crowe had not called into the telephonic proceeding. Attorney Morris was prepared to proceed with her three witnesses.

I recessed the hearing at 10:08 a.m., to permit additional time for Ms. Crowe to appear or to contact the Commission's Office of Administrative Law Judge (OALJ) to explain her absence. The telephonic proceeding remained open with counsel for West Penn and the court reporter in the telephonic hearing, and I waited for Ms. Crowe to join the hearing. The hearing reconvened at approximately 10:20 a.m. When the hearing reconvened, Ms. Crowe had not dialed into the hearing nor contacted the OALJ to explain her absence.

Accordingly, the hearing proceeded in Ms. Crowe'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 was closed, and the hearing adjourned at 10:27 a.m. on July 23, 2020.

FINDINGS OF FACT

1. Complainant in this proceeding is Tiffany Crowe.
2. Respondent West Penn Power Company is a jurisdictional public utility providing electric service to Complainant and Pennsylvania customers.
3. On October 22, 2019, Ms. Crowe filed a Complaint against Respondent with the Commission.
4. On November 12, 2019, West Penn filed an Answer to the Complaint.
5. By Call-In Telephone Hearing Notice dated May 13, 2020, the Parties were informed that a call-in telephonic hearing in this proceeding would convene on July 23, 2020, at 10:00 a.m.

6. On May 13, 2020, a second Prehearing Order was issued to the Parties advising them of the applicable procedural rules, including the procedure to request a hearing continuance.

7. The second Prehearing Order informed the Parties that failure to participate in the hearing would result in dismissal of their case.

8. The Hearing Notice and second Prehearing Order were electronically served upon Ms. Crowe at the email address provided by her in her Complaint.

9. There is no indication in the record that there was an electronic failure in the delivery of the Hearing Notice and second Prehearing Order to Ms. Crowe.

10. Respondent's counsel and three witnesses were present by 10:00 a.m. on July 23, 2020, for the telephonic hearing.

11. By 10:27 a.m. on July 23, 2020, Ms. Crowe had not appeared for the telephonic hearing.

12. When Ms. Crowe did not appear for the telephonic hearing, Respondent's counsel 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.Cmwlt. 1984).

The May 13, 2020, Call-In Telephone Hearing Notice and second Prehearing Order were electronically served upon Complainant at the email address listed in her Complaint.

The OALJ did not receive a return electronic message that delivery to Ms. Crowe's email address had failed. Therefore, I must presume that Ms. Crowe received electronic notice of the hearing and elected not to participate in the hearing. *Morella v. PECO Energy Company*, Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016); *Zirkel v. Philadelphia Gas Works*, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017). Therefore, 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, Ms. Crowe had the burden of proving she was entitled to the relief requested in her Complaint. West Penn was present for the hearing through its attorney and witnesses. However, Ms. Crowe 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 Ms. Crowe failed to appear and participate in the scheduled hearing by telephone, her Complaint may be dismissed with prejudice. See *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. *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 Tiffany Crowe at Docket No. C-2019-3013712 is granted.

2. That the Complaint of Tiffany Crowe against West Penn Power Company at Docket No. C-2019-3013712 is dismissed without prejudice, for the failure of Tiffany Crowe to prosecute her Complaint.

3. That the Secretary's Bureau shall mark Docket No. C-2019-3013712 closed.

Date: August 12, 2020

/s/
Conrad A. Johnson
Administrative Law Judge