

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Albert P. Carson	:	
	:	
v.	:	C-2019-3013885
	:	
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 28, 2019, Albert P. Carson (Complainant) filed a Formal Complaint against West Penn Power Company (West Penn). Complainant alleged damages to his household appliances. As relief, Complainant requested monetary damages in the amount of \$1,065.96.

West Penn filed an Answer and New Matter on November 18, 2019, 1) admitting that the Company is responsible for the alleged damage to Complainant's personal property; 2) denying the Company provided unreasonable or inadequate service in handling Complainant's concerns/issues; and 3) arguing that the Commission cannot grant Complainant's request for monetary damages. West Penn also filed Preliminary Objections on November 18, 2019, which

included a Notice to Plead. The basis for the Preliminary Objections was that the Commission lacked jurisdiction to award monetary damages. Therefore, West Penn requested that the Complaint be dismissed with prejudice or denied in its entirety for lack of subject matter jurisdiction.

Complainant did not file a response to the Preliminary Objections.

By Call-In Telephone Hearing Notice dated January 23, 2020, 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 March 4, 2020, at 10:00 a.m. (Hearing Notice).

Considering Complainant was self-represented, I issued an Interim Order Holding Respondent's Preliminary Objections in Abeyance (Interim Order) on February 5, 2020. The Interim Order noted that "in the normal course, the Commission would not dismiss a complaint of a self-represented person without first providing a hearing during which self-represented complainants could further explain their position and the factual basis for their complaint." Interim Order at 2. The Interim Order emphasized that West Penn's preliminary motion for dismissal of the Complaint was held in abeyance to afford Complainant an opportunity to present his case. *Id.* The Interim Order reiterated the date and time for the telephonic hearing.

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 February 10, 2020, I issued a Prehearing Order reminding the Parties to call, on the date and at the time of the hearing scheduled for March 4, 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 Interim Order, 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 Interim Order, Hearing Notice and Prehearing Order were not returned by the U.S. Postal Service as undeliverable to Complainant.

On March 4, 2020, by 10:00 a.m., counsel for West Penn, Margaret A. Morris, Esquire, West Penn’s three witnesses and I had appeared for the telephonic proceeding. The court reporter was also present. Complainant had not called into the telephonic proceeding. Attorney Morris was prepared to proceed with her three witnesses.

I recessed the hearing at 10:09 a.m., to permit additional time for Complainant 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 Complainant had called into the OALJ. Complainant had not called into the OALJ.

When I returned to the hearing room at 10:28 a.m., Complainant had not appeared for the proceeding nor had he called into the OALJ to explain his absence. Accordingly, the hearing proceeded in Complainant’s absence. As a result, counsel for West Penn moved for dismissal of the Complaint with prejudice for lack of prosecution. Considering Complainant’s absence, I informed counsel that the Preliminary Objections were moot, the dismissal motion would be taken under advisement, and an Initial Decision would be issued. The record closed upon adjournment of the hearing at 10:35 a.m. on March 4, 2020.

FINDINGS OF FACT

1. Complainant in this proceeding is Albert P. Carson.
2. Respondent West Penn Power Company is a jurisdictional public utility providing electric service to Complainant and Pennsylvania customers.
3. On October 28, 2019, Mr. Carson filed a Complaint against Respondent with the Commission.
4. On November 18, 2019, West Penn filed an Answer and New Matter to the Complaint.
5. By Call-In Telephone Hearing Notice dated January 23, 2020, the Parties were informed that a call-in telephonic hearing in this proceeding would convene on March 4, 2020, at 10:00 a.m.
6. On February 10, 2020, 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. Carson at the address provided by Mr. Carson in his Complaint.
9. The Hearing Notice and Prehearing Order were not returned by the U.S. Postal Service as undeliverable to Mr. Carson.

10. Counsel for Respondent and its witness were present by 10:00 a.m. on March 4, 2020, for the telephone hearing.

11. By 10:28 a.m. on March 4, 2020, Mr. Carson had not appeared for the telephone hearing.

12. When Mr. Carson 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.Cmwlt. 1984).

The January 23, 2020, Call-In Telephone Hearing Notice and the February 10, 2020, Prehearing Order were mailed, in the ordinary course of the Commission's business, to Complainant's address listed in the Complaint. The Hearing Notice and Prehearing Order were not returned to the Commission by the U.S. Postal Service as undeliverable to Mr. Carson. There is a presumption in the law that Mr. Carson received the copies of 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. Carson 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. Carson 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. Carson 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 Albert P. Carson at Docket No. C-2019-3013885 is granted.

2. That the Complaint of Albert P. Carson against West Penn Power Company at Docket No. C-2019-3013885 is dismissed, for the failure of Albert P. Carson to prosecute his Complaint.

3. That the Secretary's Bureau shall mark Docket No. C-2019-3013885 closed.

Date: March 27, 2020

_____/s/_____
Conrad A. Johnson
Administrative Law Judge