

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|                         |   |                |
|-------------------------|---|----------------|
| Larry Pazourek          | : |                |
|                         | : |                |
| v.                      | : | C-2023-3037951 |
|                         | : |                |
| West Penn Power Company | : |                |

**INITIAL DECISION**

Before  
Charece Z. Collins  
Administrative Law Judge

**INTRODUCTION**

This decision grants a motion to dismiss a Formal Complaint, with prejudice, for failure to prosecute because the Complainant failed to appear for the hearing at the designated date and time, despite being given notice of the hearing.

**HISTORY OF THE PROCEEDING**

On January 19, 2023, Larry Pazourek (Complainant or Mr. Pazourek) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against West Penn Power Company (West Penn)<sup>1</sup>. In his Complaint, Mr. Pazourek alleged that West Penn trespassed onto his property and destroyed an “iconic tree” that he owned. Mr. Pazourek further alleged that his property was “ravished” by the branches. Mr. Pazourek did not make a specific request for relief in his Complaint. Mr. Pazourek’s Complaint was served on West Penn on January 31, 2023.

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<sup>1</sup> This Formal Complaint is an untimely appeal from a determination regarding Complainant’s informal complaint by the Commission’s Bureau of Consumer Services (BCS) at BCS Case No. 3879396.

On February 21, 2023, West Penn filed a timely answer and new matter in response to Mr. Pazourek's Complaint. In its answer, West Penn denied that it trespassed onto or damaged Mr. Pazourek's property. West Penn averred that its actions have been reasonable and performed in accordance with all applicable laws, as well as the Company's Commission-approved Tariff, the Pennsylvania Public Utility Code (Code), Commission regulations and orders. In its new matter, which was accompanied by a notice to plead, West Penn averred that a customer-owned tree fell onto Complainant's property and was outside of West Penn's control. West Penn requested that the Complaint be dismissed with prejudice or denied in its entirety.

On March 22, 2023, the Commission served an initial telephonic hearing notice setting a formal call-in telephonic hearing for this matter for May 9, 2023 at 1:30 p.m. and assigning me as the presiding officer. In anticipation of the hearing, I served a prehearing order on March 22, 2023, which set forth hearing information and the rules that would govern the proceeding.

The hearing notice and prehearing order were served via first-class U.S. mail to Mr. Pazourek at the address that he provided to the Commission. Neither the hearing notice nor the prehearing order was returned to the Commission as undeliverable.

The May 9, 2023 hearing was held as scheduled. Margaret A. Morris, Esquire appeared on behalf of West Penn with three witnesses, and she was ready to proceed. The start of the hearing was delayed ten minutes to allow Mr. Pazourek additional time to call in, but Mr. Pazourek did not call in for the hearing. Mr. Pazourek did not contact the Commission to explain why he did not call in to the hearing. During the hearing, Ms. Morris made a motion to dismiss the Complaint with prejudice for Complainant's failure to appear and prosecute his Complaint after having received notice of the hearing date and time. This Initial Decision grants the motion of West Penn made at the conclusion of the hearing to dismiss the Complaint with prejudice for failure to prosecute.

The record in this case consists of the transcript of 12 pages that was submitted to the Commission on May 29, 2023. The record closed on May 29, 2023, upon the filing of the hearing transcript with the Commission.

#### FINDINGS OF FACT

1. The Complainant is Larry Pazourek. Tr. 6.
2. The Respondent is West Penn Power Company. Tr. 6.
3. The service address is 12605 Pennersville Rd. Waynesboro, PA 17268.  
Tr. 6.
4. On January 19, 2023, Mr. Pazourek filed a Formal Complaint against West Penn. Tr. 6.
5. The Complaint was served on West Penn on January 31, 2023. Tr. 6.
6. On February 21, 2023, West Penn filed a timely answer and new matter to Mr. Pazourek's Complaint. Tr. 6.
7. On March 22, 2023, a hearing notice was served establishing an initial telephonic hearing in this matter for May 9, 2023 at 1:30 p.m. Tr. 7.
8. In anticipation of the May 9, 2023 hearing, a prehearing order was served on March 22, 2023, listing the hearing date and setting forth rules that would govern the proceeding. Tr. 7.
9. The hearing notice served on March 22, 2023 stated that a party may lose the case if it does not take part in the hearing and present evidence on the issues raised. Tr. 7.

10. The prehearing order served on March 22, 2023 stated, among other things, “You may lose the case if you do not take part in this hearing and present evidence on the issues raised. Your case may be dismissed ‘with prejudice’ which means that you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.” Tr. 7.

11. The hearing notice and the prehearing order were served to Mr. Pazourek via first-class U.S. mail to the address he provided to the Commission. Tr. 7.

12. Neither the hearing notice nor the prehearing order was returned to the Commission as undeliverable. Tr. 7.

13. The hearing was held as scheduled on May 9, 2023.

14. The start of the hearing was delayed ten minutes to accommodate any potential delay of Mr. Pazourek. Tr. 6, 7-8.

15. Mr. Pazourek failed to call in for the May 9, 2023 hearing, and no one appeared on behalf of Mr. Pazourek. Tr. 6-8, 9.

16. Mr. Pazourek has not contacted the Commission to explain his failure to appear for the hearing. Tr. 7-8.

#### 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 when the parties are provided notice and the opportunity to appear and be heard. Id.

The hearing notice and prehearing order were served upon Mr. Pazourek via first-class U.S. mail to the address that Mr. Pazourek provided to the Commission. The documents were not returned to the Commission as undeliverable. Accordingly, it must be presumed that Mr. Pazourek received the documents that were sent to him in the ordinary course of business. Berkowitz v. Mayflower Sec., 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 Mut. Ins. Co., 449 A.2d 658 (Pa. Super. 1982). Of note, the hearing notice and the prehearing order stated that, if a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party. Tr. 7. Furthermore, counsel for West Penn indicated during the hearing the efforts that the Company also took to provide Mr. Pazourek with notice of the hearing. Tr. 8-9.

Despite being provided notice, no one appeared on behalf of Mr. Pazourek at the time of the hearing, nor did he request a postponement or continuance of the hearing. Tr. 6-8, 9. As such, Mr. Pazourek had notice and an opportunity to be heard in this proceeding but chose not to appear. Because he was provided notice and an opportunity to be heard, Mr. Pazourek's due process rights in this proceeding have been fully protected. Sentner v. Bell Tel. Co. of Pa., Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993).

Commission regulations address circumstances when a party fails to appear in a proceeding. Section 5.245 of the Code provides:

**§ 5.245. Failure to appear, proceed or maintain order in proceedings.**

(a) After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will:

(1) Be deemed to have waived the opportunity to participate in the conference or hearing.

(2) Not be permitted thereafter to reopen the disposition of the matter accomplished at the conference or hearing.

(3) Not be permitted to recall witnesses who were excused for further examination.

52 Pa. Code § 5.245(a).

Moreover, Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). “Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa.P.U.C. 196 (1990) (Patterson). The offense must be a violation of the Public Utility Code, the Commission’s regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701. In his Complaint, Mr. Pazourek alleged that West Penn destroyed his property. Therefore, Mr. Pazourek has the burden of proof in this proceeding.

West Penn was present at the hearing with three witnesses and ready to proceed. Tr. 5, 9. The Commission also expended valuable resources in preparation for the hearing, to provide Mr. Pazourek with an opportunity to be heard. Mr. Pazourek’s failure to appear unfortunately resulted in the misspent resources of both the Commission and West Penn. During the hearing, counsel for West Penn moved to have the Complaint dismissed with prejudice for lack of prosecution. Tr. 9. By failing to appear and present any evidence in support of his Complaint, Mr. Pazourek has failed to carry his burden. 66 Pa.C.S. § 332(a); Patterson, 72 Pa.P.U.C.

Mr. Pazourek failed to appear for the hearing despite receiving notice. Mr. Pazourek also did not contact the Commission at any time on or after May 9, 2023, to explain why he did not appear at the May 9, 2023, hearing. Consequently, Mr. Pazourek waived the opportunity to participate in a hearing on the matters raised in his Complaint. 52 Pa. Code § 5.245(a)(1). Therefore, it is appropriate to dismiss the Complaint with prejudice. Brown v. PECO Energy Co., Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022);

Williams v. PECO Energy Co., Docket No. C-2018-300734 (Opinion and Order entered Mar. 14, 2019) (citing Jefferson v. UGI Utils., Inc., Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995)); 52 Pa. Code § 5.245(a)(2)-(3). Accordingly, the merits of the Complaint need not be addressed in this Initial Decision.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.

2. The party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. “Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

4. Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. This due process requirement is satisfied when the parties are accorded notice and the opportunity to be heard. Schneider v. Pa. Pub. Util. Comm’n, 479 A.2d 10 (Pa. Cmwlth. 1984).

5. After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will: 1) Be deemed to have waived the opportunity to participate in the conference or hearing; 2) Not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing; and 3) Not be permitted to recall the witnesses who were excused for further examination. 52 Pa. Code § 5.245(a).

6. Mr. Pazourek’s due process rights have been fully protected. Sentner v. Bell Tel. Co. of Pa., Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993).

7. By failing to appear for the hearing and proffer any evidence to support his Complaint, Mr. Pazourek 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 with prejudice the Formal Complaint filed by Larry Pazourek at docket number C-2023-3037951 for failure to prosecute is hereby granted.
2. That the Formal Complaint filed by Larry Pazourek in Larry Pazourek v. West Penn Power Company, Docket number C-2023-3037951, is dismissed with prejudice.
3. That the Commission's Secretary mark this docket as closed.

Date: August 23, 2023

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/s/  
Charece Z. Collins  
Administrative Law Judge