

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

James S. Lederach	:	
	:	
v.	:	C-2024-3046327
	:	
West Penn Power Company	:	

**INITIAL DECISION**

Before  
Mary D. Long  
Administrative Law Judge

**INTRODUCTION**

A Formal Complaint filed by a public utility customer is dismissed because the Complainant failed to appear for the hearing without good cause.

**HISTORY OF THE PROCEEDINGS**

James S. Lederach (Complainant) filed a Formal Complaint against West Penn Power Company (West Penn Power) on February 12, 2024. The Complainant checked the box on the complaint form noting that he had a reliability, safety or quality problem. In the narrative, he explained that West Penn Power refused to provide utility service to a residential apartment which he intended to lease. As relief, the Complainant requested the Commission direct West Penn Power to initiate service and pay “money damages in the form of lost rent.”

West Penn Power filed an Answer and New Matter on March 4, 2024, denying the material allegations of the complaint. West Penn Power also filed preliminary objections averring that the Commission lacks jurisdiction to award money damages.

By hearing notice dated April 8, 2024, the Commission assigned the complaint to me and scheduled a hearing for May 13, 2024. On April 9, 2024, I issued a Prehearing Order which noted the date, time and call-in instructions for the hearing and explained the procedures for the conduct of the hearing. Also on April 9, 2024, I issued an interim order sustaining the preliminary objections and striking the Complainant's request for monetary damages.

The hearing convened as scheduled. Margaret A. Morris, Esquire, appeared on behalf of the utility, along with a witness, Charles Howlett, who was prepared to testify. The Complainant did not appear. Ms. Morris moved to dismiss the complaint with prejudice due to the Complainant's failure to appear and prosecute the complaint. I took the motion under advisement. Following the receipt of the transcript, I issued an order closing the record on May 23, 2024.

#### FINDINGS OF FACT

1. The Complainant is James S. Lederach.
2. The Respondent is the West Penn Power Company, a jurisdictional public utility.<sup>1</sup>
3. The Complainant did not call the conference number at 10:00 a.m. on May 13, 2024.
4. The Complainant did not contact the Commission to explain why his failure to appear at the hearing was unavoidable.

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<sup>1</sup> On January 1, 2024, FirstEnergy's Pennsylvania operating companies (i.e., Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company) merged into FirstEnergy Pennsylvania Electric Company. Due to the merger transaction, the affected operating companies' tariffs were consolidated into a single tariff, with each former operating company's rates becoming its own rate district. As such, the customers of the former West Penn Power Company have their own separate and distinct rate district under FirstEnergy Pennsylvania Electric Company's tariff.

5. On April 8, 2024, the hearing notice with the date and time of the hearing was served to by U.S. First-Class mail to the Complainant to the address provided on the complaint form.

6. On April 9, 2024, a prehearing order, with the date and time of the hearing was served on the Complainant by U.S.-First Class mail to the address provided on the complaint form.

7. Neither the hearing notice nor the prehearing order were returned as undeliverable by the U.S. Postal Service.

### DISCUSSION

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them.<sup>2</sup> The fundamental tenets of due process are notice and an opportunity to be heard.<sup>3</sup> However, the right to due process is not absolute.<sup>4</sup> The Commonwealth Court has consistently held that where a party fails to avail themselves of the opportunity to be heard without good cause, the proceeding may be dismissed and there is no violation of due process.<sup>5</sup> This principle is codified in the Public Utility Code as well as in the Commission's regulations.<sup>6</sup>

The Complainant had adequate notice of the time and date of the hearing, yet he failed to appear or explain why he could not attend the hearing at the scheduled time. Both the

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<sup>2</sup> *Pa. Bankers Ass'n v. Pa. Dep't of Banking*, 965 A.2d 956 (Pa. 2008) (*Pa. Bankers Ass'n.*); *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

<sup>3</sup> *Pa. Bankers Ass'n.*

<sup>4</sup> *Goetz v. Dep't of Env't Res.*, 613 A.2d 65 (Pa. Cmwlth. 1992).

<sup>5</sup> *See Fountain Cap. Fund, Inc. v. Pa. Sec. Comm'n*, 948 A.2d 208 (Pa. Cmwlth. 2008), and the cases cited therein.

<sup>6</sup> 52 Pa. Code § 5.245; *see also* 66 Pa.C.S. § 332(f).

hearing notice and the prehearing order included information to enable the Complainant to contact the Commission. Therefore, it is appropriate to dismiss the Complaint. The hearing notice and prehearing order were served on the Complainant by First-class Mail and were not returned by the postal service. Notice mailed to a party's last known address and not returned by the post office is presumed to have been received.<sup>7</sup> Therefore, the Complainant is deemed to have received these documents and had sufficient notice of the Commission's procedures and notice of the date and time of the scheduled hearing.

The Complainant also had notice of the consequences if he did not appear and participate in the hearing. The Hearing Notice stated as follows:

**FAILURE TO APPEAR:** You may lose the case if you do not take part in this hearing and present evidence on the issue(s) 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.

**CONTINUANCES.** You may request a continuance of the hearing if you have a good reason. All continuances will be granted only for good cause. To request a continuance, you must submit a written request (a "motion") at least five (5) days before the hearing. Your motion should include: 1) The case name, number, and hearing date; 2) The reason for the request; and 3) Whether the other party agrees (or if you do not know).

The Prehearing Order included my contact information and instructions for requesting a continuance of the hearing if the date and time were inconvenient. Yet the Complainant did not contact the Commission to attempt to reschedule.

Counsel for the Company, Ms. Morris, noted that both she and Mr. Howlett spoke with the Complainant on May 6, 2024. The Complainant represented that he was a licensed

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<sup>7</sup> *Berkowitz v. Mayflower Sec., Inc.*, 317 A.2d 584 (Pa. 1974); *Chartiers Indus. and Com. Dev. Auth. v. Allegheny Cnty. Bd. of Prop. Assessment Appeals and Rev.*, 645 A.2d 944 (Pa. Cmwlth. 1994); *Geary v. Verizon Pa. Inc.*, Docket No. C-2009-2118625 (Opinion and Order entered Sept. 16, 2010).

attorney and would be representing himself in that capacity.<sup>8</sup> Ms. Morris also noted that she mailed the Complainant a set of proposed exhibits for the hearing, which included the date, time, call-in number and PIN.<sup>9</sup>

In sum, the Commission afforded the Complainant an ample opportunity to appear and request relief from the Commission. Once notice of a hearing and the opportunity to be heard was provided, it was the responsibility of the Complainant to appear and participate in the hearing.<sup>10</sup> If the Complainant could not appear, for any reason, then it was his responsibility to notify the presiding officer immediately about the impediment or dilemma.<sup>11</sup> When there are no facts in the record that the party's failure to appear was unavoidable, the complaint should be dismissed.<sup>12</sup>

Section 332(a) of the Public Utility Code<sup>13</sup> places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, the Complainant has the burden of demonstrating that the facts alleged in his Complaint are true and that he is entitled to the relief that he requested. By not appearing for the scheduled hearing to present evidence, the Complainant failed to meet this burden of proof. Consequently, I will dismiss the Complaint.

In conclusion, the Complainant was notified of the scheduled hearing call-in procedure, date and time, as well as how to contact the Office of Administrative Law Judge but

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<sup>8</sup> Tr. 5. Mr. Lederach completed the legal representation portion on page 7 of the complaint form with his contact information, including an email address.

<sup>9</sup> Tr. 8.

<sup>10</sup> *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993); *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered Jan. 24, 2002).

<sup>11</sup> *Herr v. West Penn Power Co.*, Docket No. C-2021-3028202 (Opinion and Order entered Sept. 15, 2022); *Williams v. PECO Energy Co.*, Docket No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019).

<sup>12</sup> *Brown v. Metro. Edison Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022); *Williams v. Metro. Edison Co.*, Docket No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995).

<sup>13</sup> 66 Pa.C.S. § 332(a).

failed to appear without explanation. Under these circumstances, the Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. The due process rights of the Complainant have been fully protected.

#### CONCLUSIONS OF LAW

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

2. The due process rights of the Complainant have been fully protected. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

3. Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *Berkowitz v. Mayflower Sec.s, Inc.*, 317 A.2d 584 (Pa. 1974); *Chartiers Indus. and Com. Dev. Auth. v. Allegheny Cnty. Bd. of Prop. Assessment Appeals and Rev.*, 645 A.2d 944 (Pa. Cmwlth. 1994); *Geary v. Verizon Pa. Inc.*, Docket No. C-2009-2118625 (Opinion and Order entered Sept. 16, 2010).

4. By failing to appear at the scheduled hearing, the Complainant has waived his claims and has failed to sustain his burden of proof. 66 Pa.C.S. § 332; 52 Pa. Code § 5.245.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion to dismiss the Formal Complaint of James S. Lederach at Docket C-2024-3046327, by West Penn Power Company, is granted.
2. That the Formal Complaint of James S. Lederach at Docket C-2024-3046327, is dismissed.
3. That the Secretary mark the docket closed.

Date: August 19, 2024

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/s/  
Mary D. Long  
Administrative Law Judge