

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Heather Anderson	:	
	:	
v.	:	C-2016-2554913
	:	
Pennsylvania Power Company	:	

INITIAL DECISION

Before
David A. Salapa
Administrative Law Judge

INTRODUCTION

This decision dismisses a complaint for failure of the customer to appear at the telephonic hearing and prosecute the complaint.

HISTORY OF THE PROCEEDING

On July 6, 2016, Heather Anderson (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania Power Company (Respondent). The complaint alleged that the Respondent was threatening to shut off the complainant's service. The complaint also requested that the Commission order a payment arrangement for the Complainant.

The Respondent filed an answer on July 26, 2016. The answer admitted that the Respondent provided residential electric service to the Complainant at the address stated in the complaint. The answer admitted that the Respondent issued a service termination notice to the Complainant on June 13, 2016. The answer alleged that the Commission had previously ordered a payment arrangement for the Complainant and that the Complainant defaulted on that payment

arrangement. The answer requested that the Commission dismiss the Complainant's complaint or alternatively, refer the complaint to the Office of Administrative Law Judge's (OALJ's) Mediation Unit.

By notice dated November 7, 2016, the Commission scheduled this matter for a telephonic hearing on December 8, 2016, at 10:00 a.m. and assigned the case to me.

By notice dated November 16, 2016, the Commission rescheduled this matter for a telephonic hearing on January 4, 2017, at 10:00 a.m., due to a scheduling conflict. I issued a prehearing order dated November 18, 2016, addressing, inter alia, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

I conducted a telephonic hearing on January 4, 2017, at 10:00 a.m. The Complainant failed to appear for that hearing. I attempted to call the Complainant at approximately 10:00 a.m. at the telephone number shown on the November 7 and 16 hearing notices. I received a message that the Complainant was not available. I left a message on the Complainant's voice mail, identifying myself and the purpose of my call. I indicated that I would call the Complainant again in approximately ten minutes.

I then verified with the support staff for OALJ in Harrisburg that the Complainant had not contacted that office to indicate that she would be unable to participate in the telephonic hearing. My voice mail and email had no messages from the Complainant stating that she would be unable to participate in the hearing.

After verifying that the Complainant had not contacted OALJ in Harrisburg, I attempted to call the Complainant a second time at approximately 10:10 a.m. at the same telephone number I previously called. Again, I received a voice mail message indicating that the Complainant was not available. I left a message on the Complainant's voice mail, identifying myself and indicating that the hearing would proceed without the Complainant.

Upon commencement of the hearing, Amy M. Klodowski, Esquire, counsel for the Respondent, moved to dismiss the complaint for failure to appear and prosecute. N.T. 6. I advised the Respondent that I would take its motion under advisement. N.T. 6.

The record closed on January 17, 2017, the date the transcript was filed with the Secretary's Bureau. This decision grants the Respondent's motion to dismiss the complaint.

FINDINGS OF FACT

1. The Complainant in this case Heather Anderson.
2. The Respondent in this case is Pennsylvania Power Company.
3. On July 6, 2016, the Complainant filed a complaint with the Commission against the Respondent.
4. The Respondent filed an answer with new matter on July 26, 2016.
5. By notice dated November 16, 2016, the Commission rescheduled this matter for a telephonic hearing on January 4, 2017, at 10:00 a.m.
6. The Commission sent notice of the telephonic hearing in this case to the Complainant by regular first-class mail to the address stated on the complaint.
7. The Commission's hearing notice was never returned to the sender.
8. The Complainant failed to appear at the January 4, 2017 telephonic hearing.
9. The Complainant did not settle, withdraw or request a continuance of the matter.

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, however, when the administrative agency provides the parties notice and the opportunity to be heard.

The Commission sent notice of the telephonic hearing in this case to the Complainant on November 16, 2016, by regular first-class mail to the address stated on the complaint. To my knowledge this piece of mail was never returned to the sender, the scheduling staff for OALJ in Harrisburg.

In addition, I issued a prehearing order dated November 18, 2016, which, inter alia, directed the parties to notify me if the telephone numbers where they could be reached at the time of the hearing changed. This order, which was also mailed to the Complainant at the address stated on the complaint, was never returned. Accordingly, I must presume that this mail, which was sent in the ordinary course of business, was received by the Complainant. Berkowitz v. Mayflower Securities, 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 Mutual Insurance Co., 444 A.2d 658 (Pa.Super. 1982).

The Complainant did not appear for the scheduled hearing because she was not available at the telephone number listed on the telephonic hearing notice. The Complainant never notified me of another telephone number where she could be contacted for the hearing. Under these circumstances, it appears the Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. Therefore, the due process rights of the Complainant have been fully protected. Sentner v. Bell Telephone Co. of Pa., Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

Finally, Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of any request for relief. As the party bringing this complaint, the Complainant bears the burden of proving by a preponderance of the evidence that

she is entitled to relief. By failing to appear and proffer any evidence to support her complaint, the Complainant has failed to meet this burden. The Complainant's failure to appear has caused the Commission and the Respondent to waste resources. Under these circumstances, the complaint should be dismissed with prejudice. Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Opinion and 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 subject matter of and the parties to this proceeding. 66 Pa.C.S. § 701.

2. The due process rights of the Complainant have been fully protected in this proceeding. Sentner v. Bell Telephone Co. of Pa., Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

3. By failing to appear and proffer any evidence to support her complaint, the Complainant has failed to meet her burden of proving that she is entitled to the relief that she seeks from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Pennsylvania Power Company to dismiss the complaint filed by Heather Anderson at Docket No. C-2016-2554913 is granted.

