

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Howard E. Weightman	:	
	:	
v.	:	C-2016-2565520
	:	
Pennsylvania Electric Company	:	

**INITIAL DECISION**

Before  
Mary D. Long  
Administrative Law Judge

**INTRODUCTION**

This decision dismisses the complaint filed in this matter for failure of the complainant to appear for the hearing and prosecute the complaint.

**HISTORY OF THE PROCEEDING**

Howard E. Weightman (Complainant) filed a formal complaint against the Pennsylvania Electric Company (Penelec) on September 6, 2016. The Complainant checked all of the boxes on the formal complaint form alleging that his service had been terminated; he would like a payment arrangement; there are incorrect charges on his bill; and he is experiencing a reliability or service problem because his neighbor is using service from his meter. Penelec filed an answer on September 27, 2016, which admitted that the Complainant's service had been terminated and taking the position that he was not entitled to a payment arrangement and that his claims regarding his neighbor's usage of his meter had been resolved in a prior formal complaint proceeding. Penelec also included a "new matter" which alleged that the Complainant's claim

that he has been paying for service to his neighbor is precluded because it was raised in a 2015 formal complaint which was dismissed with prejudice.

By hearing notice dated November 4, 2016, this matter was assigned to me and scheduled for a telephonic hearing on January 6, 2017. A prehearing order was issued on November 11, 2016, setting forth the procedures for the conduct of the hearing. The hearing convened as scheduled. The Complainant appeared and was represented by Jason M. Imler, Esquire. Penelec also appeared and was represented by Margaret A. Morris, Esquire. The parties represented that they had undertaken substantial negotiations in order to resolve the dispute and had achieved an agreement in principle.

This matter was continued several times in order to provide the parties with an opportunity to finalize their agreement. However, on February 23, 2017, counsel for the Complainant filed a petition to withdraw as counsel. Counsel for Penelec did not object to the withdrawal. By interim order dated February 23, 2017, the Complainant was invited to file an objection, if any, on or before March 7, 2017. The Complainant did not file an objection. That order also set a deadline for the filing of a settlement agreement on or before March 14, 2017.

No settlement agreement was filed. By hearing notice dated March 16, 2017, a further hearing was set for April 21, 2017. A second prehearing order was also served on March 16, 2017, which set forth the procedure for the conduct of hearing, including instructions for requesting a continuance. Both the hearing notice and second prehearing order were served directly upon the Complainant, his counsel having withdrawn his appearance.

The hearing convened as scheduled. The Complainant appeared representing himself. Penelec appeared and was represented by Margaret A. Morris, Esquire. The Complainant requested a continuance in order to secure the representation of counsel. Penelec objected to the continuance. By interim order dated April 21, 2017, the Complainant's request for a continuance was granted until May 22, 2017. Penelec was also directed to file a motion in limine which substantiated its claim that the Complainant was precluded from raising issues which have been resolved with the dismissal of the 2015 formal complaint. Penelec also

contended that the Complainant's failure to respond to a request for admission deemed certain facts admitted. The interim order also directed the Complainant to file a response to Penelec's motion by May 12, 2017.

Penelec filed a motion in limine on May 2, 2017. Penelec argued that the Complainant raised the same issue in his current complaint that was already raised and disposed of in a formal complaint filed in 2015. That complaint was dismissed with prejudice because the Complainant failed to appear for the hearing without good cause. Penelec also argues that these facts are deemed admitted by the Complainant's failure to respond to a request for admissions. Penelec sought to preclude the Complainant from challenging charges on his bill which resulted from his neighbor's usage being recorded on his meter.

The Complainant did not file a response.

By interim order dated May 23, 2017, Penelec's motion was granted in part and denied in part. The Complainant was barred from contesting any of the bills or charges which accrued up to November 12, 2015, when his first complaint was filed. However, he was not barred from challenging the accuracy of bills or his meter after November 12, 2015, up to the point that he filed his second complaint on September 6, 2016.

By hearing notice dated May 26, 2017, a further call-in telephonic hearing was scheduled for July 19, 2017. On June 21, 2017, Penelec filed a motion to compel answers to discovery. Counsel stated in her motion that she attempted to reach the Complainant by email and by telephone on two separate occasions, but received no response. The Complainant did not file a response to the motion and by interim order dated July 3, 2017, the motion to compel was granted.

On July 12, 2017, Penelec filed a motion for sanctions seeking dismissal of the complaint due to the Complainant's failure to comply with the July 3, 2017 interim order by responding to discovery. The Complainant did not respond to Penelec's motion.

The hearing convened as scheduled on July 19, 2017, at 10:00 a.m. The Complainant failed to appear for that hearing. The Complainant did not call the conference number shown on the hearing notice on July 19, 2017 at 10:00 a.m. The hearing was recessed until 10:20 a.m. to permit the Complainant additional time to call into the hearing. The Complainant did not call into the hearing.

Margaret A. Morris, Esquire, counsel for the Respondent, moved to dismiss the complaint for failure to appear and prosecute. I advised the Respondent that I would take its motion under advisement. The record closed at the conclusion of the hearing. This decision grants the Respondent's motion to dismiss the complaint.

#### FINDINGS OF FACT

1. The Complainant in this case is Howard E. Weightman.
2. The Respondent in this case is Pennsylvania Electric Company.
3. On September 6, 2016, the Complainant filed a complaint with the Commission against the Respondent.
4. The Respondent filed an answer on September 27, 2016.
5. By notice dated May 26, 2017, the Commission scheduled this matter for an initial telephonic hearing on July 19, 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 Complainant failed to appear at the July 19, 2017 telephonic hearing.

## 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 May 26, 2017, 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 addition, several interim orders have been served on the Complainant noting the date of the hearing. 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 he did not call the conference number shown on the May 26, 2017 hearing notice. In view of the extensive procedural history in this matter and the time and effort expended by the Commission as well as utility counsel, 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 he is entitled to relief. By failing to appear for the hearing and proffer any evidence to support the complaint, the Complainant has failed to meet his burden of proving that he is entitled to the

relief that he seeks from the Commission. 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 for the hearing and proffer any evidence to support the complaint, the Complainant 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 Pennsylvania Electric Company to dismiss the complaint filed by Howard E. Weightman at Docket C-2016-2565520 is granted.

2. That the complaint of Howard E. Weightman against Pennsylvania Electric Company at Docket C-2016-2565520, is dismissed with prejudice for failure of the Complainant to appear for the hearing and prosecute the complaint.

3. That the docket at Docket No. C-2016-2565520 is marked closed.

Date: July 28, 2017

\_\_\_\_\_/s/\_\_\_\_\_  
Mary D. Long  
Administrative Law Judge