

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

William Degitz	:	
	:	
v.	:	C-2017-2615287
	:	
Pennsylvania Power Company	:	

INITIAL DECISION

Before
Steven K. Haas
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses, with prejudice, a formal complaint due to the Complainant's failure to appear at the initial hearing and prosecute his complaint.

HISTORY OF THE PROCEEDING

On July 21, 2017, the Complainant, William Degitz, filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania Power Company (Respondent or Penn Power), at Docket No. C-2017-2615287. In paragraph 4 of the complaint form, Mr. Degitz checked the boxes indicating that the utility was threatening to shut off his service or had already shut off his service, and that he would like a payment arrangement. He stated that he got a good paying job and requested that the company give him a new payment arrangement.

On August 7, 2017, Penn Power filed an answer to Mr. Degitz's complaint. In its answer, Penn Power denied that Mr. Degitz was entitled to a new payment arrangement. It averred that he had broken several payment arrangements established with the company and that

the Commission had already given him two Level I payment arrangements which he also broke. It further averred that his income had increased since the last Commission-ordered payment arrangement. Penn Power requested that the complaint be dismissed or denied in its entirety.

On August 30, 2017, the Commission issued a Telephonic Hearing Notice by which it scheduled an initial telephonic hearing for Wednesday, October 11, 2017, at 10:00 a.m., and assigned me as the Presiding Officer. The Hearing Notice instructed the parties that if their telephone number had changed, to provide the new number to me prior to the hearing. On September 1, 2017, I issued a Prehearing Order in which I set forth certain procedural requirements pertaining to the hearing. The Prehearing Order also provided the date and time of the hearing. The Prehearing Order stated, “you may lose this case if you do not take part in this hearing and present evidence on the issues raised.” Both the Hearing Notice and the Prehearing Order were sent to Mr. Degitz at the address listed by him on his complaint form. Neither was returned to the Commission as undeliverable.

The hearing convened, as scheduled, at 10:00 a.m. on October 11, 2017. Margaret A. Morris, Esquire appeared on behalf of Penn Power. When I called the telephone number listed by Mr. Degitz on his complaint form, I received a recorded message stating that the voice mail box for the number was full. I called the number a second time at approximately 10:08 a.m. Again, Mr. Degitz did not answer the phone.

I checked with the Office of Administrative Law Judge, as well as my e-mail and phone messages. None of the notices sent to Mr. Degitz were returned to the Commission as undeliverable, and I did not receive any contacts from Mr. Degitz prior to the hearing about his availability. Accordingly, the hearing proceeded in his absence. Penn Power’s counsel indicated that she had talked to Mr. Degitz the afternoon before the hearing to discuss his complaint and the upcoming hearing. She stated that she asked him if he intended to participate in the hearing and that he did not provide a definitive answer. Ms. Morris then moved to dismiss the complaint, with prejudice, due to Mr. Degitz’s failure to appear at the hearing and prosecute his case.

The hearing concluded and a brief transcript was generated. The record closed on October 11, 2017, at the conclusion of the hearing. This Initial Decision grants Penn Power's motion to dismiss the complaint for failure of Mr. Degitz to appear and prosecute his case.

FINDINGS OF FACT

1. The Complainant in this proceeding is William Degitz.
2. The Respondent in this proceeding is Pennsylvania Power Company.
3. On July 21, 2017, the Complainant filed a formal complaint against Penn Power in which he sought a new payment arrangement.
4. On August 7, 2017, Penn Power filed an answer in which it denied that the Complainant is entitled to a new payment arrangement.
5. On August 30, 2017, a Telephonic Hearing Notice was sent to the parties which scheduled an initial telephonic hearing for Wednesday, October 11, 2017, at 10:00 a.m.
6. On September 1, 2017, a Prehearing Order was sent to the parties which set forth certain procedural requirements associated with the initial hearing.
7. Both the Prehearing Order and the Hearing Notice instructed the parties that if their telephone numbers changed, they should provide the new number to me prior to the hearing.
8. The Prehearing Order warned the parties that they may lose the case if they did not take part in the hearing and present evidence on the issues raised.
9. The Hearing Notice and the Prehearing Order were sent to the Complainant by first class mail to the address provided by him on his complaint form.

10. Neither the Hearing Notice nor the Prehearing Order that were sent to the Complainant was returned to the Commission as undeliverable.

11. The Complainant did not contact me prior to the hearing to provide an alternate telephone number.

12. I called the Complainant at the number listed on his complaint at 10:00 a.m. on October 11, 2017, and again at 10:08 a.m.

13. The Complainant did not answer either of my telephone calls on the morning of the hearing.

14. The Complainant failed to appear at the scheduled date and time for the hearing.

15. The Complainant did not withdraw or settle his complaint against Penn Power, nor did he request a continuance of the hearing.

DISCUSSION

In his complaint, Mr. Degitz averred that he recently got a good paying job and requested a new payment arrangement.

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, 364 Pa. 54, 70 A.2d 854 (1950). As the party seeking relief from the Commission, Mr. Degitz bears the burden of proof.

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 with notice and an opportunity to be heard. Id.

No one appeared on behalf of Mr. Degitz at the date and time set for the hearing in his case, despite notice of the hearing having been provided.

Commission regulations address circumstances when a party fails to appear in a proceeding. Section 5.245 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 to reopen the disposition of a 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).

The Hearing Notice and the Prehearing Order were sent to Mr. Degitz by first class mail to the address provided by him on his complaint form. Neither the Hearing Notice nor the Prehearing Order was returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents sent to Mr. Degitz in the ordinary course of business were received by him. Berkowitz v. Mayflower Securities, Inc., 455 Pa. 531, 317 A.2d 584 (1974); Meierdierck v. Miller, 394 Pa. 484, 147 A.2d 406 (1959); Samaras v. Hartwick, 698 A.2d 71 (Pa.Super. 1997); Judge v. Celina Mutual Insurance Co., 303 Pa.Super. 221, 444 A.2d 658

(1982). As noted above, the Prehearing Order stated that the parties may lose the case if they fail to appear and present evidence on the issues raised.

No request for a postponement or continuance of the hearing was received by my office. Mr. Degitz had notice of the hearing and an opportunity to be heard in this proceeding, but chose not to appear. Therefore, Mr. Degitz's due process rights have been fully protected. Sentner v. Bell Telephone Company of Pennsylvania, Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa.Code § 5.245(a).

During the hearing, counsel for Penn Power moved for dismissal of the complaint, with prejudice, for lack of prosecution. By failing to appear and present any evidence in support of his complaint, Mr. Degitz failed to carry his burden. Thus, the complaint will be dismissed with prejudice. El-Ayazra v. West Penn Power Company, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016).

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. 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).

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, 364 Pa. 54, 70 A.2d 854 (1950).

4. 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 with notice and an opportunity to be heard. Id.

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 to reopen the disposition of a matter accomplished at the conference or hearing, and (3) not be permitted to recall witnesses who were excused for further examination. 52 Pa.Code § 5.245(a).

6. Mr. Degitz's due process rights have been fully protected. Sentner v. Bell Telephone Company of Pennsylvania, Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa.Code § 5.245(a).

7. Mr. Degitz failed to carry his burden of proof in this proceeding. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Pennsylvania Power Company to dismiss, with prejudice, the formal complaint of William Degitz at Docket Number C-2017-2615287 for failure to prosecute is granted.

2. That the formal complaint filed by William Degitz at Docket Number C-2017-2615287 is dismissed with prejudice.

3. That this matter be marked closed.

Date: October 12, 2017

/s/
Steven K. Haas
Administrative Law Judge