

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Debbie Trowell	:	
	:	
v.	:	C-2017-2600355
	:	
Pennsylvania American Water Company	:	

INITIAL DECISION

Before
Dennis J. Buckley
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses a formal Complaint due to the Complainant's disappearance and failure to provide a valid address for service of process.

HISTORY OF THE PROCEEDING

On April 5, 2017, the Complainant, Debbie Trowell, filed a formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania American Water Company (PAWC), at Docket No. C-2017-2600355. In paragraph 4 of the Complaint form, Ms. Trowell checked the box indicating that she would like a payment agreement.

On May 15, 2017, PAWC filed an answer to Ms. Trowell's Complaint denying the averments contained therein.

On May 22, 2017, the Commission sent the parties a hearing notice scheduling an initial telephonic hearing for June 27, 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 June 6, 2017, I continued the hearing after having been advised by counsel for PAWC on June 5, 2017, that the parties wished to continue settlement talks. The hearing was rescheduled for August 22, 2017.

On August 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 instructed the parties that if their telephone number had changed, to provide the new number to me prior to the hearing, and stated, “you may lose this case if you do not take part in this hearing and present evidence on the issues raised.” Both the rescheduled hearing notice and the prehearing order were sent to Ms. Trowell at the address listed by her on her Complaint form.

On August 2, 2017, a hearing notice was issued setting September 28, 2017, as the date for a rescheduled hearing in this case. The rescheduling from August 22, 2017, was necessary because of a conflict with the date for a public input hearing in the case of *Pennsylvania American Water Company v. Pa. Pub. Util. Comm’n*, et al, Docket No. R-2017-2595853, *et seq.*

On August 14, 2017, the envelope containing the August 2, 2017 rescheduled hearing notice that was sent to the Complainant was returned as undelivered. The notation on the returned envelope stated, “Return to sender - Vacant.”

On August 17, 2017, I was advised by counsel for PAWC that Ms. Trowell’s water service had been shut-off at her request in 2015. PAWC’s records reflect that a new customer initiated service at the property on August 11, 2017. Neither PAWC nor I received any information from Ms. Trowell regarding a new address or telephone number for her. Counsel’s last contact with her occurred on June 5, 2017, at which time she indicated that she would like to establish a new payment plan to restore service at the property. Counsel attempted

to contact Ms. Trowell one last time on August 14, 2017, using the phone number listed on her Complaint, but the number was not in service. PAWC has no other phone number associated with her.

One more attempt was made by the Office of Administrative Law Judge (OALJ) to deliver the rescheduled hearing notice for September 28, 2017, to Complainant, but on or about September 5, 2017, the envelope containing the rescheduled hearing notice was returned as undelivered. This time, the notation on the returned envelope stated, "Not deliverable at address. Unable to forward." The address on the Commission's envelope in which the hearing notice was sent was identical to the address provided by the Complainant on her formal complaint form.

As it proved impossible to notify the Complainant of the September 28, 2017 hearing, I cancelled the hearing.

FINDINGS OF FACT

1. The Complainant in this proceeding is Debbie Trowell.
2. The Respondent in this proceeding is Pennsylvania American Water Company.
3. On April 5, 2017, the Complainant filed a formal Complaint against PAWC in which she requested a payment agreement.
4. On May 15, 2017, PAWC filed an Answer in which it denied that the Complainant is entitled to a new payment arrangement.
5. On May 22, 2017, the Commission sent the parties a telephonic hearing notice scheduling an initial telephonic hearing for June 27, 2017.

6. On June 6, 2017, the June 27, 2017 hearing was continued until August 22, 2017.

7. The hearing of August 22, 2017 was subsequently continued until September 28, 2017.

8. All hearing notices were sent to the Complainant at the address that she provided in her formal Complaint.

9. Complainant has never contacted the Commission or PAWC advising of any change of address.

10. The notices to Complainant for both the August 22, 2017 and September 28, 2017 rescheduled hearings were returned to the Commission by the United States Postal Service as undeliverable.

11. Neither the Commission nor PAWC has received any communication from the Complainant requesting a continuance or providing a new address.

DISCUSSION

In her Complaint, Ms. Trowell requested that she be given a payment arrangement.

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof and, initially, the burden of going forward pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S. § 332(a). In *Waldron v. Philadelphia Electric Company*, 54 Pa. PUC 98 (1980) (*Waldron*), the Commission explained the process for initially meeting the burden of proof. A complainant must first establish a *prima facie* case, showing that the utility breached some duty owed to the complainant, in that the utility violated the Public Utility Code or a regulation or order of the Commission. 66 Pa.C.S. § 701. The burden of going forward then shifts to the utility.

The original hearing notice and the prehearing order were sent to Ms. Trowell by first class mail to the address provided by her on her Complaint form. Neither the original hearing notice nor the prehearing order was returned to the Commission as undeliverable. Accordingly, it must be presumed that those documents sent to the Complainant in the ordinary course of business were received by her. *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 required that a party notify the Commission of any change in contact information.

The hearing notices for the rescheduled hearings on August 22, 2017 and September 28, 2017, were returned to the Commission as undeliverable. They had been sent to Ms. Trowell at the only address she provided to the Commission. The Commission's regulation at 52 Pa.Code § 1.53(d) requires parties to proceedings to promptly notify the Commission of any address change. Ms. Trowell did not contact me or the Commission at any point with a different address. Complainant's whereabouts are unknown, and there is no way to contact her. It was her responsibility to contact the Commission to provide any new address. She did not do so. No request for a continuance of the hearing has been received by my office from Complainant.

The Complainant'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). Complainant has failed to go forward with her Complaint. If the Commission or the presiding officer finds, after notice and opportunity for hearing, that the actions of a party in a proceeding obstruct the orderly conduct of the proceeding and are inimical to the public interest, the Commission or the presiding officer may take appropriate action, including dismissal of the complaint, application, or petition, if the action is that of complainant, applicant, or petitioner. 52 Pa. Code § 5.245(c).

In short, Complainant has disappeared, and there is no way to notify her of the date, time and place for a hearing in this case because she has failed to provide contact information to the Commission. Her Complaint must, therefore, be dismissed.

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 and, initially, the burden of going forward. 66 Pa.C.S. § 332(a).

3. 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.*

4. It is the duty of a party to apprise the Commission promptly of changes to the party's current address. 52 Pa.Code § 1.53(d).

5. Ms. Trowell'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).

6. If the Commission or the presiding officer finds, after notice and opportunity for hearing, that the actions of a party, including an intervenor, in a proceeding obstruct the orderly conduct of the proceeding and are inimical to the public interest, the Commission or the presiding officer may take appropriate action, including dismissal of the complaint, application, or petition, if the action is that of complainant, applicant, or petitioner. 52 Pa. Code § 5.245(c).

