

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Keturah Blanton	:	
	:	
v.	:	F-2017-2612729
	:	
Pennsylvania American Water Company	:	

INITIAL DECISION

Before
Dennis J. Buckley
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 to prosecute her Complaint.

HISTORY OF THE PROCEEDING

On July 5, 2017, the Complainant, Keturah Blanton, filed a formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania American Water Company (PAWC or Company), at Docket No. F-2017-2612729. In paragraph 4 of the Complaint form, Ms. Blanton checked the box indicating that she would like a payment arrangement. However, she stated that she wished to be removed from a Commission ordered payment arrangement (PAR) because that was keeping her from making an affordable PAR with PAWC. The Complaint is an appeal from a determination by the Commission’s Bureau of Consumer Services (BCS) at Case No. 3509267.

On July 25, 2017, PAWC filed an Answer to the Complaint. In its Answer, PAWC denied any violation of the Public Utility Code and contended that Ms. Blanton is not eligible for another PAR as she had broken a payment arrangement established with the Company and that the Commission had previously established a payment arrangement for her which she also broke.

On August 29, 2017, the Commission sent the parties a telephonic hearing notice by which it scheduled an initial telephonic hearing for Wednesday, October 18, 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, and that they may lose the case if they do not appear at the hearing. On September 13, 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 hearing notice and the prehearing Order were sent to Ms. Blanton at the address listed by her on her Complaint form.

The hearing notice and prehearing Order were not returned to the Commission as undelivered.

The hearing convened, as scheduled, at 10:00 a.m. on October 18, 2017. I was unable to preside at the hearing due to a family emergency, but Administrative Law Judge (ALJ) Benjamin J. Myers presided in my absence. Michael Gruin, Esquire appeared on behalf of PAWC. When Judge Myers called the telephone number listed by the Complainant on her Complaint form, he received a recorded message stating that the person he was trying to call had not yet set up a voice mailbox. Judge Myers called the number a second time at approximately 10:10 a.m. and received the same recorded message.

Neither Judge Myers nor the Commission received any contacts from the Complainant prior to the hearing about her availability. Accordingly, the hearing proceeded in

her absence. Counsel for PAWC stated that he had an identical experience when he tried to reach the Complainant by phone, but that the proposed hearing exhibits that he served on Complainant by Federal Express had not been returned. PAWC's counsel moved to dismiss the complaint, with prejudice, due to the Complainant's failure to appear at the hearing and to prosecute her case.

The hearing concluded and a brief transcript was generated. The record closed on October 25, 2017. This Initial Decision grants PAWC's motion to dismiss the Complaint for failure of the Complainant to appear and prosecute her case.

FINDINGS OF FACT

1. The Complainant in this proceeding is Keturah Blanton.
2. The Respondent in this proceeding is Pennsylvania American Water Company.
3. On July 5, 2017, the Complainant filed a formal complaint against PAWC in which she sought a new payment arrangement.
4. On July 25, 2017, PAWC filed an Answer in which it denied that the Complainant is entitled to a new payment arrangement.
5. On August 29, 2017, a telephonic hearing notice was sent to the parties which scheduled an initial telephonic hearing for Wednesday, October 18, 2017, at 10:00 a.m.
6. On September 13, 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. Both the prehearing Order and the hearing notice 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 Ms. Blanton by first class mail to the address provided by her on her Complaint form.

10. The prehearing Order that was sent to the Complainant was not returned to the Commission as undeliverable.

11. The hearing notice that was sent to the Complainant was not returned to the Commission as undeliverable.

12. The Complainant did not contact me or the Commission prior to the hearing to provide an alternate address or telephone number.

13. The presiding officer called the Complainant at the only number listed on her Complaint at 10:00 a.m. on October 18, 2017, and again at 10:10 a.m.

14. The Complainant did not answer either of her telephone calls on the morning of the hearing.

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

16. The Complainant did not withdraw or settle her Complaint against PAWC, nor did she request a continuance of the hearing.

DISCUSSION

In her Complaint, Ms. Blanton requested that she be released from a Commission payment arrangement so as to obtain an affordable payment arrangement from PAWC.

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, Ms. Blanton 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 Ms. Blanton on the date and time set for the hearing in her case, despite notice of the hearing having been sent to her at the only address provided by her.

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 Ms. Blanton by first class mail to the address provided by her on her Complaint form. The hearing notice and prehearing Order were not returned to the Commission as undeliverable. Accordingly, it must be presumed that these 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 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 or by the OALJ. Ms. Blanton had notice of the hearing and an opportunity to be heard in this proceeding, but chose not to appear. Therefore, 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).

During the hearing, counsel for PAWC moved for dismissal of the complaint, with prejudice, for lack of prosecution. By failing to appear and present any evidence in support of her complaint, Ms. Blanton failed to carry her burden. Thus, the Complaint will be dismissed with prejudice. *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995).

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

7. Ms. Blanton'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).

8. Ms. Blanton failed to carry her burden of proof in this proceeding.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Pennsylvania American Water Company to dismiss, with prejudice, the formal Complaint of Keturah Blanton at Docket Number F-2017-2612729 for failure to prosecute is granted.
2. That the formal complaint filed by Keturah Blanton at Docket Number F-2017-2612729 is dismissed with prejudice.
3. That this matter be marked closed.

Date: January 15, 2018

_____/s/
Dennis J. Buckley
Administrative Law Judge