

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lee B. Morgan	:	
	:	
v.	:	C-2018-2640846
	:	
Pennsylvania-American Water Company	:	

**INITIAL DECISION**

Before  
Mary D. Long  
Administrative Law Judge

**INTRODUCTION**

This decision dismisses the formal complaint of a water customer because he failed to prosecute his complaint and did not meet his burden of proof.

**HISTORY OF THE PROCEEDINGS**

On January 2, 2018, Lee B. Morgan (Complainant) filed a formal complaint alleging Pennsylvania-American Water Company (PAWC) damaged his water line. PAWC filed an answer on January 23, 2018, which denied the material allegations of the complaint. PAWC alleged that the line in question is the Complainant's service line which is not owned by the company. PAWC further alleged that its tariff rules state that the customer has full responsibility for the installation, repair, replacement and maintenance of service pipe.<sup>1</sup>

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<sup>1</sup> Answer ¶ 5.

This matter was assigned to me by hearing notice dated March 5, 2018, and scheduled for a telephonic hearing on April 17, 2018. On March 7, 2018, I issued my customary prehearing order which set forth the procedural instructions for the conduct of the hearing.

The hearing convened as scheduled. Mr. Morgan appeared and was self-represented. PAWC appeared and was represented by Michael A. Gruin, Esquire. The parties agreed to participate in the settlement judge process, and a discussion was held off the record. A potential resolution was discussed. The parties agreed that if an agreement could not be reached, a further hearing would be scheduled. The parties agreed to a hearing date of July 17, 2018.

The parties were unable to reach an accord, and a further hearing was conducted on July 17, 2018. The Complainant appeared and was self-represented. PAWC appeared and was represented by Michael A. Gruin, Esquire. PAWC was prepared to offer the testimony of one witness, James Hoover. The parties again agreed to participate in the settlement judge process, and a discussion was held off the record. The parties were not able to reach an agreement and the hearing was convened on the record. The Complainant declined to offer any testimony, but did not wish to withdraw his complaint. I explained to him that if he failed to provide testimony or other evidence in support of his complaint, his complaint would be dismissed. PAWC requested permission to offer its exhibits into the record. The Complainant expressed a desire to end the proceeding and disconnected from the telephonic hearing. PAWC's request to offer exhibits for admission into the record was denied. PAWC made a motion to dismiss the complaint for failure to prosecute. The motion was taken under advisement.

The hearing generated a transcript of 31 pages. By interim order dated July 27, 2018, the record was closed.

#### FINDINGS OF FACT

1. The complainant is Lee B. Morgan (Complainant).

2. The respondent is Pennsylvania-American Water Company (PAWC), a jurisdictional public utility.

3. A hearing was convened on July 17, 2018, and both the Complainant and PAWC appeared.

4. Following an off-the-record discussion, the hearing re-convened on the record and I explained to the Complainant that he had the burden of proving that he was entitled to the relief requested in his complaint. (N.T. 27).

5. The Complainant declined to offer testimony and stated, "I just intend to rest." (N.T. 28).

6. The Complainant declined to withdraw his complaint. (N.T. 28).

7. I informed the Complainant that if he failed to present testimony or exhibits that his complaint would be dismissed because he had the burden of proof. (N.T. 29).

8. The Complainant left the hearing and did not offer any evidence in support of his complaint. (N.T. 29-30).

### DISCUSSION

Section 332(a) of the Public Utility Code<sup>2</sup> places the burden of proof upon the proponent of a rule or order. This means that the Complainant has the burden of demonstrating that the facts alleged in his complaint are true and that he is entitled to the relief that he requested. By refusing to present any evidence to support the facts alleged in his complaint and claim for relief, the Complainant failed to meet this burden of proof. Consequently, the complaint must be dismissed.

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<sup>2</sup> 66 Pa.C.S. § 332(a).

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them.<sup>3</sup> However, this due process requirement is satisfied when the parties are provided notice and the opportunity to appear and be heard.<sup>4</sup> Here, the Complainant was presented with an opportunity to tell his story and explain why he was entitled to the relief he had requested. PAWC appeared and was prepared to proceed to present testimony and evidence in support of its defense. While self-represented parties are given some latitude by the Commission and excused from strict application of many of the Commission's procedural rules, when a complainant invokes the jurisdiction of the Commission, he is expected to at least participate by explaining his dispute with the utility.<sup>5</sup> By choosing to end his participation in the hearing, the Complainant failed to establish facts that might support his claim against PAWC and his complaint must be dismissed.<sup>6</sup>

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of the dispute. 66 Pa.C.S. § 701.
  
2. The due process rights of the Complainant have been fully protected. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlt. 1984).
  
3. By failing to present evidence at the scheduled hearing, the Complainant has failed to sustain his burden of proof. 66 Pa.C.S. § 332.

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<sup>3</sup> *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlt. 1984).

<sup>4</sup> *Id.*

<sup>5</sup> *Zeibari v. PECO Energy Company*, Docket No. C-2017-2617281 (Opinion and Order entered August 2, 2018).

<sup>6</sup> *See Forcash v. Verizon Pennsylvania, Inc.*, Docket No. C-2009-2092601 at p. 4 (Opinion and Order entered September 16, 2010)(dismissing the complainant's exceptions because she "failed to satisfy her burden of proof in this proceeding by choosing to end her participation in the case before the hearing had concluded."). *See also Zeibari* (even though *pro se* litigants are offered some degree of latitude, a complainant must offer evidence to support her claims at a hearing.).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion to dismiss the complaint of Lee B. Morgan, Docket No. C-2018-2640846, is granted.
2. That the formal complaint of Lee B. Morgan, Docket No. C-2018-2640846, is dismissed.
3. That the Secretary mark the docket closed.

Date: August 14, 2018

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Mary D. Long  
Administrative Law Judge