

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Monique Williams	:	
	:	
v.	:	C-2018-3002571
	:	
Pennsylvania-American Water Company	:	

INITIAL DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

INTRODUCTION

The undersigned grants Respondent’s oral motion to dismiss a formal complaint because Complainant failed to appear at the initial hearing and prosecute the case.

HISTORY OF THE PROCEEDING

On May 30, 2018, Monique Williams (Ms. Williams or Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania-American Water Company (PAWC or Respondent), alleging PAWC was threatening to terminate or had terminated water service, she wanted a payment agreement and there were incorrect charges on the bill. In addition, under “Other,” Complainant alleged the bill did not belong to her, “Briana” had not lived at 2012 Dellrose Street and Complainant had not had service since 2013.

On June 28, 2018, PAWC filed an answer. PAWC admitted it terminated water service due to non-payment on the account which included balances transferred from two prior accounts. PAWC denied there were incorrect charges on Ms. Williams' account. PAWC asserted Complainant was responsible for the transferred balances and she was not eligible for a new payment arrangement because she has defaulted on prior Company-issued payment arrangements as well as payment arrangements issued by the Commission's Bureau of Consumer Services.

By Telephone Hearing Notice dated July 2, 2018, the Office of Administrative Law Judge notified the parties an initial telephonic hearing in this case was scheduled for Wednesday, August 29, 2018, at 10:00 a.m. On July 31, 2018, the presiding officer issued a Prehearing Order which, *inter alia*, advised the parties continuances would only be granted if requested and only in rare situations where sufficient cause was shown to exist.

The time and date of the August 29, 2018 hearing was included in the July 2, 2018 hearing notice and in the July 31, 2018 Prehearing Order. The hearing notice specified how to call into the hearing on the scheduled day and at the scheduled time. The hearing notice stated in bold, underlined print that the case would be dismissed if Complainant failed to call into the hearing.

After verifying the name and job title of PAWC's witness and what attempts PAWC made to communicate with Complainant prior to the hearing, the presiding officer attempted to convene the telephonic hearing as scheduled on August 29, 2018, at 10:05 a.m. Complainant failed to appear for the hearing. PAWC was present and prepared to present its evidence along with the testimony of one witness. The presiding officer called a recess in order to ascertain from her staff if Ms. Williams had called or sent any form of communication explaining her absence and/or requesting a continuance.

The presiding officer went back on the record at 10:25 a.m., at which time Ms. Williams continued to be absent from the initial hearing. Counsel for Respondent made an

oral motion to dismiss the complaint due to Complainant's failure to appear and prosecute the complaint.

Counsel averred Complainant's current account balance was \$4,971.11 as of the day of the hearing and noted Complainant currently receives water service. The presiding officer noted on the record the motion to dismiss would be taken under advisement. The hearing concluded at 10:26 a.m. The hearing record closed on August 29, 2018, upon the conclusion of the telephonic hearing.

FINDINGS OF FACT

1. Complainant and ratepayer of record is Monique Williams, who resides at 2012 Dellrose Street, Pittsburgh, Pennsylvania (service address).

2. Respondent in this proceeding is Pennsylvania-American Water Company which provides water service at the service address.

3. The hearing notice dated July 2, 2018, and the Prehearing Order dated July 31, 2018, were sent to the address provided by Complainant in the formal complaint and were not returned as undeliverable.

4. Complainant was not present and did not participate in the August 29, 2018 hearing.

5. Respondent was ready to proceed with its witness at the date and time scheduled for the hearing.

DISCUSSION

Pursuant to Section 332(a) of the Public Utility Code, 66 Pa.C.S.A. § 332(a), the burden of proof is on the proponent of a rule or order. In this proceeding, Complainant is the

proponent of a rule or order. Therefore, Complainant bears the burden of proving by a preponderance of the evidence that Respondent violated the Public Utility Code or a regulation or order of the Commission.¹ Complainant must show the utility is responsible or accountable for the problem described in the complaint.²

Administrative agencies, like the Public Utility Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard.³

Ms. Williams did not appear at the time scheduled for the August 29, 2018 hearing, and she did not participate in the August 29, 2018 hearing. The date, time and location of the hearing were listed in the hearing notice, dated July 2, 2018, and in the Prehearing Order, dated July 31, 2018.

The Office of Administrative Law Judge mailed both the hearing notice and Prehearing Order to Complainant at the address provided in the formal complaint. Once notice of a hearing and the opportunity to be heard has been provided, it is the responsibility of Complainant to appear and participate in the hearing.⁴ If Complainant cannot appear, for any reason, then it is the responsibility of Ms. Williams to notify the presiding officer immediately of the impediment.

Section 332(f) of the Public Utility Code, 66 Pa.C.S.A. § 332(f), provides in pertinent part:

Any party who shall fail to be represented at a scheduled conference or hearing after being duly notified thereof, shall be deemed to have waived the opportunity to participate in such conference or hearing, and shall not be

¹ *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

² *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976).

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

⁴ *Sentner v. Bell Telephone Co. of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993).

permitted thereafter to reopen the disposition of any matter accomplished thereat....

Once notice of a hearing and the opportunity to be heard have been provided by the Commission, it is the responsibility of the parties to appear and participate in the hearing. *Mumma v. PPL Electric Utilities Corporation*, Docket No. C-00014869 (Order entered January 24, 2002) (*Mumma*); *Sentner v. Bell Tel. Co. of PA*, Docket No. F-00161106 (Order entered October 25, 1993) (*Sentner*).

Since Complainant did not appear or participate in the hearing, despite receiving two notices of the date and time of the hearing, the hearing was held in accordance with 66 Pa.C.S.A. § 332(f) and 52 Pa.Code § 5.245. Respondent's attorney moved to dismiss the complaint for failure to prosecute. Respondent's motion was taken under advisement.

The hearing record closed on August 29, 2018, pursuant to 52 Pa.Code § 5.431(a) and (b) which provides:

(a) The record will be closed at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission.

(b) After the record is closed, additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion.

In this proceeding, Complainant did not call into the hearing as specified in the hearing notice and Prehearing Order. The hearing notice and Prehearing Order clearly indicated Complainant was to call. These documents provided the Commission's toll-free conference bridge number and PIN number. The hearing notice and Prehearing Order clearly provided an address and telephone number where Complainant could reach the presiding officer if a continuance request and/or additional information was needed by Complainant prior to the hearing.

Complainant failed to take advantage of the opportunity provided in which to appear and prosecute the formal complaint against PAWC by presenting evidence to support the allegations. As a result, Complainant failed to sustain the burden of proof. Accordingly, Respondent's oral motion to dismiss the formal complaint will be granted, and the formal complaint in this matter will be dismissed in the Ordering Paragraphs below.⁵

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter in this proceeding. 66 Pa.C.S.A. § 701.

2. Complainant has the burden of proof in this matter pursuant to 66 Pa.C.S.A. § 332(a).

3. The hearing record closed at the conclusion of the hearing on August 29, 2018. 52 Pa.Code § 5.431(a).

4. Complainant, by failing to appear at the scheduled hearing, waived the opportunity to participate in the hearing. 66 Pa.C.S.A. § 332(f).

5. Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *Berkowitz v. Mayflower Securities*, 455 Pa. 531, 317 A.2d 584 (1974); *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 1994).

6. Once notice of a hearing and the opportunity to be heard has been provided, it is the responsibility of the parties to appear and participate in the hearing. *Sentner v. Bell Telephone Co. of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993).

⁵ *Volgstadt v. Pennsylvania-American Water Company*, Docket No. F-02266429 (Order entered September 12, 2008) and *Martin Jefferson v. PAWC Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995); *El-Ayazra v. Pennsylvania-American Water Company*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016).

7. Complainant failed to sustain the burden of proof. 66 Pa.C.S.A. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the oral motion of Pennsylvania-American Water Company to dismiss the formal complaint filed by Monique Williams against Pennsylvania-American Water Company at Docket No. C-2018-3002571 is granted.
2. That the formal complaint filed by Monique Williams against Pennsylvania-American Water Company at Docket No. C-2018-3002571 is dismissed.
3. That the Secretary mark this case as closed.

Date: August 30, 2018

/s/
Katrina L. Dunderdale
Administrative Law Judge