

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joseph Greenleaf	:	
	:	
v.	:	C-2018-3002624
	:	
Pennsylvania Electric Company	:	

INITIAL DECISION

Before
Gail M. Chiodo
Special Agent

INTRODUCTION

This decision grants a motion to dismiss the complaint for the failure to prosecute because the complainant failed to appear for the hearing despite being given notice of the hearing.

HISTORY OF THE PROCEEDING

On June 8, 2018, Joseph Greenleaf (Complainant) filed a formal complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania Electric Company (Penelec or Respondent) in which he alleged that Respondent is threatening to shut off his service or has already shut of his service and as relief requested a payment arrangement.

On July 2, 2018, Penelec filed an answer in which it admitted that it had issued a termination notice to Complainant, but that termination of service was being held in abeyance pending the resolution of the Complaint. Further, the Respondent averred that the Complainant

is not eligible for a payment arrangement because he broke a prior Commission-issued payment arrangement, has a poor payment history, and an outstanding balance of \$7,802.10. The Respondent requested that the Commission dismiss the Complaint.

On January 28, 2019, the Commission issued a Call-In Telephone Hearing Notice setting an initial telephonic hearing on March 13, 2019 at 10:00 a.m., and the case was assigned to me pursuant to 52 Pa. Code § 56.174.¹ Of note, the Hearing Notice stated the following: “*Attention: You may lose the case if you do not take part in this hearing and present facts on the issues raised.*” (emphasis in original).

On March 6, 2019, the undersigned issued a Prehearing Order reminding the parties of the date and time of the hearing and addressed, *inter alia*, the procedures applicable to the hearing and the method by which the parties could request a change of the scheduled hearing date if the date was not convenient for them. Furthermore, the Prehearing Order stated that the Complainant’s failure to participate in the hearing will result in the case being dismissed for the failure to appear.

Both the Hearing Notice and the Prehearing Order were sent by first-class mail to Complainant at the address provided on his complaint. Neither of these documents were returned as undeliverable.

The hearing convened as scheduled on March 13, 2019 at 10:00 a.m. Ms. Teresa Harrold, Esquire, appeared on behalf of Respondent, along with a potential witness, and was prepared to proceed. Mr. Greenleaf did not appear. After waiting for approximately fifteen minutes for Mr. Greenleaf to appear, which he did not, the hearing proceeded in Complainant’s absence. No witnesses were presented and no exhibits were introduced for the record.² Attorney

¹ 52 Pa. Code § 56.174 (providing for review by a special agent of decisions of the BCS and any other case in which the issue is solely the ability to pay). Further, the Hearing Notice was issued after mediation was not successful in resolving this matter.

² Pursuant to 52 Pa. Code § 56.174(3), the hearing was tape recorded. No court reporter was present.

Harrold made an oral motion to dismiss the Complaint with prejudice for the failure to prosecute. I took this motion under advisement.

The record closed at the end of the day on March 13, 2019. No communication has been made to the Office of Administrative Law Judge by, or on behalf of, Complainant explaining his absence. For the reasons discussed below, the motion of Penelec will be granted and the Complaint will be dismissed with prejudice.

FINDINGS OF FACT

1. The Complainant is Joseph Greenleaf.
2. The Respondent is Pennsylvania Electric Company, which provides electric service to Complainant.
3. On January 28, 2019, a Call-In Telephone Hearing Notice was issued by the Commission scheduling an initial telephonic hearing for March 13, 2019 at 10:00 a.m.
4. On March 6, 2019, a Prehearing Order was issued which reminded the parties of the date and time of the scheduled hearing and informed them of various procedures applicable to this proceeding, including the method by which a party could request a continuance of the hearing date, if needed.
5. The Hearing Notice stated the following: “*Attention: You may lose the case if you do not take part in this hearing and present facts on the issues raised.*” (emphasis in original).
6. The Prehearing Order stated that the Complainant’s failure to participate in the hearing will result in the case being dismissed for the failure to appear.

7. Both the Hearing Notice and the Prehearing Order provided the parties with the toll-free bridge telephone number and PIN number to participate in the telephonic hearing.

8. Both the Hearing Notice and the Prehearing Order were sent to the Complainant by first-class mail to the address provided on his Complaint.

9. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission by the United States Postal Service as undeliverable.

10. The hearing convened as scheduled on March 13, 2019.

11. Ms. Teresa Harrold, Esquire, appeared on behalf of Respondent and was prepared to proceed.

12. The Complainant did not appear for the March 13, 2019 hearing.

DISCUSSION

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*, 70 A.2d 854 (Pa. 1950). In his Complaint, Mr. Greenleaf seeks relief in the form of a new Commission-issued payment arrangement. Thus, as the party seeking relief, Mr. Greenleaf 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 accorded notice and the opportunity to be heard. *Id.*

Mr. Greenleaf did not appear at the date and time set for the hearing in his case despite receiving notice of the hearing. Commission regulations address circumstances when a party fails to appear in a proceeding. Specifically, Section 5.245(a) 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 thereafter to reopen the disposition of a matter accomplished at the conference or hearing.

* * *

52 Pa. Code § 5.245(a)(1)-(2).

The Hearing Notice and Prehearing Order were sent separately to Mr. Greenleaf by regular first-class mail and neither of them was returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents, which were sent to Mr. Greenleaf in the ordinary course of business, were received by him. *Berkowitz v. Mayflower Securities, Inc.*, 317 A.2d 584 (Pa. 1974); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. 1997); *Judge v. Celina Mutual Insurance Co.*, 449 A.2d 658 (Pa. Super. 1982).

Consequently, Complainant had sufficient notice of the day, date and time of the scheduled hearing. *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016); *Zirkel v. UGI Utilities, Inc.*, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017). Further, both the Hearing Notice and Prehearing Order warned Mr. Greenleaf of the potential consequences that could result from choosing not to participate in the scheduled hearing, including dismissal of his Complaint.

Further, Attorney Harrold noted at the hearing that, in Penelec's efforts to resolve this matter, she called Complainant two days prior to the hearing, left a voicemail for him to return her call, but she did not receive any response from Complainant. I also note that by cover letter dated March 5, 2019, Attorney Harrold served Respondent's proposed exhibits to Complainant and the cover letter reminded Complainant of the date and time for the hearing.

Mr. Greenleaf did not appear at the time of the hearing, nor did he or anyone on his behalf request a continuance of the hearing. Mr. Greenleaf had notice and an opportunity to be heard in this proceeding but chose not to appear. Therefore, Mr. Greenleaf's due process rights have been fully protected. *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa. Code § 5.245(a).

During the hearing, counsel for Penelec moved to have the complaint dismissed with prejudice for lack of prosecution. By failing to appear and present any evidence in support of his Complaint, Mr. Greenleaf has failed to carry his burden. Further, the Commission has stated that when a complainant fails to appear without good cause, the public interest is prejudiced by the wasteful use of the agency's and a respondent's time and resources in addressing a complaint and it is appropriate to dismiss a complaint with prejudice. *Williams v. PECO Energy Co.*, Docket No. C-2018-3000734 (Opinion and Order entered March 14, 2019), citing, *inter alia*, *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995).

Accordingly, the merits of the Complaint will not be addressed in this Initial Decision and the motion of Respondent to dismiss the Complaint with prejudice will be granted.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and 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. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).

4. "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*, 70 A.2d 854 (Pa. 1950).

5. 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 accorded notice and the opportunity to be heard. *Id.*

6. After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will be deemed to have waived the opportunity to participate in the conference or hearing and not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing. 52 Pa. Code § 5.245(a).

7. 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 (Opinion and Order entered October 25, 1993).

8. By failing to appear at his scheduled hearing, the Complainant waived his opportunity to participate in the hearing. 52 Pa. Code § 5.245(a).

9. 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); 52 Pa.Code § 5.245(a).

10. By failing to appear and proffer any evidence in support of the Complaint, the Complainant has failed to meet his burden of proof. 66 Pa.C.S. § 332(a).

11. When a complainant fails to appear without good cause, the public interest is prejudiced by the wasteful use of the agency's and a respondent's time and resources in addressing a complaint and it is appropriate to dismiss a complaint with prejudice. *Williams v. PECO Energy Co.*, Docket No. C-2018-3000734 (Opinion and Order entered March 14, 2019),

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Pennsylvania Electric Company to dismiss the Complaint with prejudice at Docket Number C-2018-3002624 for the failure to prosecute is granted.

2. That the Complaint filed by Joseph Greenleaf against Pennsylvania Electric Company at Docket Number C-2018-3002624 is hereby dismissed with prejudice.

3. That the docket at Docket Number C-2018-3002624 is marked closed.

Date: March 20, 2019

/s/
Gail M. Chiodo
Special Agent