

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Iris Brown	:	
	:	
v.	:	C-2019-3008176
	:	
Aqua Pennsylvania, Inc.	:	

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 February 19, 2019, Iris Brown (Ms. Brown or Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Aqua Pennsylvania, Inc. (Aqua PA or Respondent). Complainant alleged Aqua PA had incorrect charges on her bill because the meter was broken, and the bills rendered by Aqua PA before the meter was replaced were incorrect. Complainant requested the Commission order Aqua PA to reduce the amount she owed from the time before Aqua PA replaced the broken meter.

On March 20, 2019, Aqua PA filed its Answer. Respondent acknowledged it provides water service to Complainant but generally denied the allegations. Aqua PA admitted Complainant disputed the balance due on her account but denied those charges were incorrect,

and further denied that the meter had been broken. Respondent averred Complainant does not make regular monthly payments on the account and that inconsistency is why there is a balance on the account. Respondent asked the Commission to dismiss the complaint and deny the relief sought by Complainant.

By Call-In Telephone Hearing Notice dated May 21, 2019, the Office of Administrative Law Judge notified the parties an initial telephonic hearing was scheduled for Thursday, June 27, 2019, at 10:00 a.m. On May 29, 2019, the presiding officer issued a Prehearing Order which, *inter alia*, advised the parties that 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 June 27, 2019 hearing was included in the May 21, 2019 hearing notice and in the May 29, 2019 Prehearing Order. The hearing notice and the Prehearing Order specified how to call into the hearing on the scheduled day and at the scheduled time. The hearing notice and the Prehearing Order stated in bold, underlined print that the case would be dismissed if Complainant failed to call into the hearing.

The presiding officer attempted to convene the telephonic hearing as scheduled on June 27, 2019, at 10:04 a.m. Complainant failed to appear for the hearing, but Aqua PA was present and prepared to present its evidence along with the testimony of two witnesses. At 10:06 a.m., the presiding officer called a recess for approximately 10 minutes in order to ascertain from her staff if Ms. Brown 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 10:17 a.m., at which time Ms. Brown continued to be absent from the initial hearing. The presiding officer advised Respondent's counsel that Complainant had not contacted the presiding officer's office to request a continuance or explain her absence.

Counsel for Respondent made an oral motion to dismiss due to Complainant's failure to appear. Counsel averred Complainant's current account balance was \$6,378.55 as of the day of the hearing. Counsel also averred Complainant was aware there was a hearing on

June 27, 2019 when Counsel engaged in settlement discussions with Complainant on June 25, 2019. Counsel advised Complainant still received water service at the service address.

The presiding officer noted on the record the motion to dismiss would be taken under advisement. The hearing concluded at 10:18 a.m. The hearing record closed on June 27, 2019, upon the conclusion of the telephonic hearing. The transcript, consisting of 8 pages, was received by the Commission on July 11, 2019.

FINDINGS OF FACT

1. Complainant and ratepayer of record is Iris Brown, who resides at 1533 Clifton Avenue, Sharon Hill, Pennsylvania (service address).
2. Respondent is Aqua Pennsylvania, Inc., which provides water service at the service address.
3. The hearing notice dated May 21, 2019, and the Prehearing Order dated May 29, 2019, 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 June 27, 2019 hearing.
5. Respondent was ready to proceed with its witnesses 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, Ms. Brown, as the 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 provided with notice and the opportunity to appear and be heard.³

Ms. Brown did not appear at the time scheduled for the June 27, 2019 hearing, and did not participate in the June 27, 2019 hearing. The date, time and location of the hearing were listed in the hearing notice, dated May 21, 2019, and in the Prehearing Order, dated May 29, 2019.

The Office of Administrative Law Judge mailed both the hearing notice and the Prehearing Order to Complainant at the address Ms. Brown provided in the formal complaint. Once notice of a hearing and the opportunity to be heard has been provided, it was the responsibility of Ms. Brown to appear and participate in the hearing.⁴ If Ms. Brown could not appear, for any reason, then it was the responsibility of Ms. Brown to notify the presiding officer immediately about the problem or dilemma.

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

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).

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 Ms. Brown 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 appear. Respondent's motion was taken under advisement.

The hearing record closed on June 27, 2019, 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.

52 Pa.Code §§ 5.431(a), (b).

In this proceeding, Ms. Brown 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 Complainant with the Commission's toll-free conference bridge number and PIN number. The hearing notice and Prehearing Order also provided an address and telephone number where Ms. Brown could reach the presiding officer if a continuance request and/or additional information was needed prior to the hearing. Ms. Brown did not contact the presiding officer or the Office of Administrative Law Judge to explain her absence or ask for a continuance. Complainant failed to take advantage of the opportunity provided in which to appear and prosecute the formal complaint against Respondent 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 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 June 27, 2019. 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 Pa.*, Docket No. F-00161106 (Order entered October 25, 1993).

⁵ *Volgstadt v. UGI Penn Natural Gas*, Docket No. F-02266429 (Order entered September 12, 2008) and *Martin Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995); *El-Ayazra v. West Penn Power 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 Aqua Pennsylvania, Inc., to dismiss the formal complaint filed by Iris Brown against Aqua Pennsylvania, Inc., at Docket No. C-2019-3008176 is granted.

2. That the formal complaint filed by Iris Brown against Aqua Pennsylvania, Inc., at Docket No. C-2019-3008176 is dismissed.

3. That the Secretary mark this case as closed.

Date: July 31, 2019

/s/
Katrina L. Dunderdale
Administrative Law Judge