

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Maurice Vaughn	:	
	:	
v.	:	C-2019-3013295
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Kailey B. Maguire
Special Agent

INTRODUCTION

This Decision grants a motion to dismiss for failure to prosecute because the Complainant failed to appear for the hearing at the designated date and time despite being given notice of the hearing.

HISTORY OF THE PROCEEDING

On October 1, 2019, Maurice Vaughn (Complainant or Mr. Vaughn) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO) at Docket Number C-2019-3013295, seeking a payment arrangement to restore his electric service.

On October 11, 2019, PECO filed an Answer in response to Mr. Vaughn’s Complaint. In its Answer, PECO admitted Mr. Vaughn’s service was terminated on August 19, 2019, and denied all other material allegations in the Complaint. PECO concluded its Answer by requesting dismissal of the Complaint.

On October 14, 2019, a Telephonic Hearing Notice was issued establishing an Initial Call-In Telephonic Hearing for November 25, 2019 at 10:00 a.m. and assigning the undersigned as Presiding Officer. The Hearing Notice indicated to the parties: “*Attention: You may lose this case if you do not take part in this hearing and present facts on the issues raised.*” (emphasis in the original). The Hearing Notice was sent to Mr. Vaughn at the address provided on his Complaint via first-class mail. The postal authorities did not return the Hearing Notice to the Commission as being undeliverable.

A Prehearing Order was sent to the parties on October 16, 2019. The Prehearing Order reminded 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 a party could request a change of the scheduled hearing date if the date was not convenient for them. Additionally, the Prehearing Order advised the parties, “If you fail to participate in the hearing on the scheduled day and time, the hearing will proceed in your absence. You will be deemed to have waived the opportunity to participate in the hearing. **The case may be dismissed ‘with prejudice,’ whereby, you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.**” (emphasis in the original). The Prehearing Order was sent to Mr. Vaughn at the address provided on his Complaint via first-class mail. The postal authorities did not return the Prehearing Order to the Commission as being undeliverable.

The Hearing Notice and the Prehearing Order informed the parties the undersigned would call the parties by phone on the hearing date and time to connect the parties to the hearing.

The hearing convened on November 25, 2019, at 10:00 a.m., as scheduled. Mr. Vaughn was called at the phone number he provided but the call could not be completed as I received a disconnected message. In any event, I redialed the number and received the same disconnection message. Next, I called an alternative phone number Mr. Vaughn provided on his Complaint, but I received no answer and was unable to leave a message because the mailbox was full. I then redialed this number with the same result.

Counsel for PECO, Edward Fisher, Esquire, was successfully contacted, connected to the hearing, and was ready to proceed. In an abundance of caution, I delayed the hearing for approximately ten minutes. At 10:15 a.m., I called Mr. Vaughn again at both telephone numbers he provided and received no response.

The November 25, 2019 hearing was held in Mr. Vaughn's absence. No witnesses were presented, and no exhibits were introduced into the record. Attorney Fisher made an oral motion to dismiss the Complaint due to Mr. Vaughn's failure to appear and prosecute his case.

The record closed on November 25, 2019, following the conclusion of the telephonic hearing. As of the date of this Decision, no communication has been made to the Office of Administrative Law Judge on Mr. Vaughn's behalf to explain his absence from the hearing. For the reasons discussed below, PECO's Motion will be granted, and the Complaint will be dismissed with prejudice.

FINDINGS OF FACT

1. The Complainant is Maurice Vaughn.
2. The Respondent is PECO Energy Company.
3. The service address is 3605 N. Percy Street, Philadelphia, Pennsylvania.
4. By Hearing Notice served upon the parties on October 14, 2019, the Commission scheduled this matter for a telephonic hearing on November 25, 2019.
5. The Hearing Notice stated the following: *Attention: You may lose this case if you do not take part in this hearing and present facts on the issues raised.*" (emphasis in the original).

6. By Prehearing Order served upon the parties on October 16, 2019, the parties were informed of the date and time of the telephonic hearing and were provided with the method by which a party could request a continuance of the hearing date, if needed.

7. The Prehearing Order served in this matter stated the following: “If you fail to participate in the hearing on the scheduled day and time, the hearing will proceed in your absence. You will be deemed to have waived the opportunity to participate in the hearing. **The case may be dismissed ‘with prejudice,’ whereby, you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.**” (emphasis in the original).

8. The Hearing Notice and the Prehearing Order informed the parties they would be contacted by phone on the scheduled hearing date and time, to be connected to the hearing.

9. Neither the Hearing Notice nor the Prehearing Order served to the Complainant were returned to the Commission as being undeliverable by the postal authorities.

10. The Complainant was not available by phone to participate in the November 25, 2019 Telephonic 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). To satisfy this burden, the Complainant must show the named utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa. PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than presented by the other party. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlt. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

Additionally, the Commission's decision must be supported by substantial evidence in the record. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

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 be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlth. 1984).

The Complainant did not participate in the November 25, 2019 hearing. The date and time of the hearing were provided in both the Hearing Notice and Prehearing Order served to the Complainant in this matter. The Notice and Order informed the Complainant he was to be available by phone on November 25, 2019 at 10:00 a.m. to be contacted and connected to the hearing. The undersigned attempted to contact and connect the Complainant to the hearing several times between 10:00 a.m. and 10:15 a.m., using the Complainant's phone numbers provided in the Complaint. Both the Notice and Order warned the Complainant he may lose his case if he failed to participate in the scheduled hearing.

The Hearing Notice and Prehearing Order were sent to the Complainant by regular first-class mail to the address provided by Mr. Vaughn in his Complaint. Neither document was returned to the Commission as undeliverable. Accordingly, it must be presumed these documents, which were sent to the Complainant in the ordinary course of business, were received. *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, 449 A.2d 658 (1982). Therefore, the Complainant is deemed to have had sufficient notice of the day, date and time of the scheduled hearing and chose not to appear to prosecute his Complaint. The Complainant made no attempt to notify the presiding officer he did not plan on participating in the scheduled hearing.

Under these circumstances, the Complainant had ample opportunity to appear and be heard in this proceeding but chose not to do so. Once notice of a hearing and the opportunity to be heard have been provided to the parties, it is the responsibility of both parties to appear and participate in the hearing. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlth. 1984). Therefore, the due process rights of the Complainant have been fully protected. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993).

A party who fails to be represented at a scheduled hearing shall waive the opportunity to participate in the hearing and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat.

§ 332. Procedures in general.

(f) Actions of parties and counsel.--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, or to recall for further examination of witnesses who were excused, unless the presiding officer shall determine that failure to be represented was unavoidable and that the interests of the other parties and the public would not be prejudiced by permitting such reopening or further examination. . . .

66 Pa.C.S. § 332(f).

§ 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).

As the party seeking relief from the Commission, the Complainant bears the burden of proof. By choosing not to participate in the hearing and proffer any evidence to support the Complaint, the Complainant has failed to satisfy the burden.

The due process rights of the Complainant have been duly protected. The Complainant had ample notice of the scheduled hearing yet failed to appear to prosecute his Complaint. Therefore, the Respondent's Motion to Dismiss the Complaint is granted. Accordingly, the Complaint in this matter will be dismissed in its entirety with prejudice. *El-Ayazra v. West Penn Power Company*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); *Volgstadt v. UGI Penn Natural Gas, Inc.*, Docket No. F-02266429 (Opinion and Order entered September 12, 2008) and *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. § 701.
2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).
3. Administrative agencies 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. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlth. 1984).
4. 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).

5. By failing to appear at his scheduled hearing, the Complainant waived his opportunity to participate in the hearing and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat, or to recall for further examination of witnesses who were excused. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

6. 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); 52 Pa.Code § 5.245(a).

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

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PECO Energy Company to dismiss the Complaint at Docket Number C-2019-3013295 for failure to prosecute is granted.

2. That the Complaint filed by Maurice Vaughn against PECO Energy Company at Docket Number C-2019-3013295 is hereby dismissed with prejudice.

3. That the Secretary's Bureau shall mark Docket Number C-2019-3013295 as closed.

Date: December 17, 2019

/s/
Kailey B. Maguire
Special Agent