

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nakia Thomas	:	
	:	
v.	:	C-2019-3010451
	:	
Pennsylvania-American Water Company	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complaint of Nakia Thomas against Pennsylvania-American Water Company because she failed to appear for her hearing and prosecute her Complaint.

HISTORY OF THE PROCEEDING

On June 7, 2019, Nakia Thomas (Complainant or Ms. Thomas) filed a Formal Complaint (Complaint) against Pennsylvania-American Water Company (PAWC, Company or Respondent) with the Pennsylvania Public Utility Commission (Commission). In her Complaint, under paragraph 4 – Reason for Complaint, Ms. Thomas placed checkmarks next to the statements: “The utility is threatening to shut off my service;” “Incorrect charges are on my bill;” and “I am having a reliability, safety or quality problem with my utility service.”

On July 1, 2019, PAWC filed an Answer to the Complaint admitting that the Company issued a termination notice to the Complainant due to an outstanding balance on the

Complainant's account. The Company denied that there are incorrect charges on the Complainant's bill. The Company also denied that there is a safety, reliability, or quality problem with the Complainant's service.

By Hearing Notice dated October 31, 2019, an Initial Call-In Telephone Hearing was scheduled for December 12, 2019, at 10:00 a.m., and the matter was assigned to me. The Hearing Notice advised the parties of the date, time, and telephone number to call into the scheduled hearing and warned in bold and underlined type: "**At the above date and time, you must call into the hearing. If you fail to do so, your case will be dismissed. You will not be called by the Administrative Law Judge.**"

I issued a Prehearing Order on November 14, 2019. The Prehearing Order directed the parties to comply with various procedural requirements and directed that a request to change the scheduled hearing should be sent to me at least five days prior to the hearing date, be in writing and state the agreement or opposition of the other party. It also warned in bold type:

You will NOT be called by the Administrative Law Judge.

The parties must call the toll-free number shown on this prehearing order to participate in the initial telephonic hearing. Failure to call the toll-free number and participate in the telephonic hearing shall constitute a failure to appear and shall constitute a waiver of all objections to evidence submitted at the telephonic hearing and a waiver of all objections to any order or ruling. 52 Pa.Code § 5.222(e).

Prehearing Order, p. 1 (emphasis in original).

The hearing began on December 12, 2019, as scheduled. The Respondent appeared through counsel who called into the hearing with a witness and was ready to proceed. The Complainant failed to appear by calling into the hearing. The Complainant was given an additional ten minutes to appear but failed to do so.

No witnesses were presented, and no exhibits were introduced into the record. Counsel for PAWC moved that the Complaint be dismissed with prejudice for lack of prosecution pursuant to 52 Pa. Code § 5.245. In accordance with Commission policy, I am granting this Motion.

The record closed on January 2, 2020, upon my receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is Nakia Thomas.
2. The Respondent is Pennsylvania-American Water Company.
3. On June 7, 2019, the Complainant filed a Complaint with the Commission against the Respondent.
4. On July 1, 2019, the Respondent filed an Answer to the Complaint.
5. By Hearing Notice dated October 31, 2019, an Initial Call-In Telephone Hearing was scheduled for December 12, 2019, at 10:00 a.m.
6. The Hearing Notice warned in bold and underlined type: “**At the above date and time, you must call into the hearing. If you fail to do so, your case will be dismissed. You will not be called by the Administrative Law Judge.**”
7. On November 14, 2019, a Prehearing Order was sent to all parties containing, *inter alia*, a warning of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing.
8. Both the Hearing Notice and the Prehearing Order were sent to the Complainant by regular first-class mail.

9. Neither the Hearing Notice nor the Prehearing Order were returned as undeliverable.

10. The Complainant failed to appear at the December 12, 2019 hearing.

DISCUSSION

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, however, when the administrative agency provides the parties notice and the opportunity to be heard.

On October 31, 2019, the Commission sent notice of the Initial Hearing in this case to the Complainant by regular first-class mail. The Hearing Notice advised the parties of the date, time, and telephone number to call into the scheduled hearing and warned in bold and underlined type: “**At the above date and time, you must call into the hearing. If you fail to do so, your case will be dismissed. You will not be called by the Administrative Law Judge.**” In addition, I issued a Prehearing Order on November 14, 2019, also warning the parties of the potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing.

None of the documents mailed to the Complainant were returned as undeliverable. Accordingly, I must presume that these documents, which were sent in the ordinary course of business, were received by the Complainant. *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).

The Complainant did not appear for the hearing and has not contacted the Commission. Under these circumstances, the Complainant has had ample opportunity to appear and be heard in this proceeding. Therefore, the due process rights of the Complainant have been

fully protected. *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

Finally, Section 332(a) of the Public Utility Code places the burden of proof upon the proponent of any request for relief. 66 Pa.C.S. § 332(a). As the party bringing this Complaint, the Complainant bears the burden of proving by a preponderance of the evidence that she is entitled to relief. By failing to appear and proffer any evidence to support her Complaint, the Complainant has failed to meet this burden. Therefore, the Complaint should be dismissed with prejudice. *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); *El-Ayazra v. West Penn Power Company*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa.Code § 5.245.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa.C.S. § 701.
2. Notice properly 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, Inc.*, 317 A.2d 584 (Pa.1974); *Meirerdierck 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).
3. The due process rights of the Complainant have been fully protected in this proceeding. *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa. Code § 5.245(a).
4. By failing to appear for the hearing and proffer any evidence to support the Complaint, the Complainant has failed to meet her burden of proving that she is eligible to the relief that she seeks from the Commission. 66 Pa.C.S. § 332(a).

