

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Desiree Beira	:	
	:	
v.	:	C-2019-3014910
	:	
Peoples Natural Gas Company LLC	:	

INITIAL DECISION

Before
Dennis J. Buckley
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses a formal Complaint due to the Complainant's failure to appear at the initial hearing and prosecute her Complaint.

HISTORY OF THE PROCEEDING

On December 10, 2019, the Complainant, Desiree Beira, filed a formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Peoples Natural Gas Company LLC (Peoples), at Docket No. C-2019-3014910. Complainant denied responsibility for a bill dated November 2018, contending that she had paid the bill. She asked that the Commission investigate the matter.

On December 30, 2019, Peoples filed an Answer to the Complaint. In its Answer, Peoples objected to the Complaint as lacking in specificity and failing to state a defined allegation against the Company. Peoples also answered that Complainant owes an outstanding balance on a final bill for service up to April 30, 2019.

On January 3, 2020, the Commission sent the parties a telephonic hearing notice by which it scheduled an initial telephonic hearing for February 13, 2020, at 10:00 a.m., and assigned me as the Presiding Officer. Notably, the hearing notice stated: “*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 January 7, 2020, I issued a prehearing Order which reminded the parties of the date and time of the hearing. The prehearing Order also set forth certain procedural requirements pertaining to the hearing. Notably, the prehearing Order stated, “**You must call in and participate or you may lose this case.**” (emphasis in original). Both the hearing notice and the prehearing Order were sent to Ms. Beira at the address listed by her on her Complaint form by U.S. Mail.¹

The hearing notice was not returned to the Commission as undelivered. However, the prehearing Order was returned. The staff at the Office of Administrative Law Judge (OALJ) contacted Complainant by telephone and, based upon this conversation, resent the prehearing Order to another address, but the prehearing Order was again returned to the Commission.

The hearing convened, as scheduled, at 10:00 a.m. on February 13, 2020. Jennifer Petrisek, Esquire, appeared on behalf of Peoples. Complainant did not appear by 10:10 a.m. nor during the course of the hearing. I checked with the staff of the OALJ, as well as my e-mail and phone messages. Neither I nor the Commission received any contacts from the Complainant prior to the hearing about her availability.

Accordingly, the hearing proceeded in Complainant’s absence. Attorney Petrisek noted for the record that she called Complainant about a week before the hearing was scheduled—i.e., on February 5, 2020, reminded Complainant of the date and time of the hearing, provided her with the bridge number and passcode that was on the hearing notice, as well as the phone number for the OALJ. N.T. 4-5. People’s counsel moved to dismiss the Complaint with prejudice due to the Complainant’s failure to appear at the hearing and prosecute her case.

¹ According to the Complaint, Complainant has relocated to Florida.

The record closed on February 28, 2020, when the seven-page transcript of the hearing was filed. This Initial Decision will grant People's Motion to Dismiss the Complaint for failure of Complainant to appear and to prosecute her case but will grant the dismissal without prejudice.

FINDINGS OF FACT

1. The Complainant in this proceeding is Desiree Beira.
2. The Respondent in this proceeding is Peoples Natural Gas Company, LLC, a Commission jurisdictional natural gas distribution company.
3. On December 10, 2019, the Complainant filed a formal Complaint against Peoples.
4. On December 30, 2019, Peoples filed an Answer in which it denied the material allegations in the Complainant.
5. On January 3, 2020, a telephonic hearing notice was sent to the parties which scheduled an initial telephonic hearing for February 13, 2020, at 10:00 a.m.
6. On January 7, 2020, a prehearing Order was sent to the parties which set forth certain procedural requirements associated with the initial hearing.
7. Both the prehearing Order and the hearing notice warned the parties that they may lose the case if they did not take part in the hearing and present evidence on the issues raised.
8. The hearing notice and the prehearing Order were sent to Ms. Beira by first-class mail to the address provided by her on her Complaint form.

9. The hearing notice sent to Complainant was not returned to the Commission as undeliverable.

10. The prehearing Order sent to Complainant was returned to the Commission as undelivered; the staff at the Office of Administrative Law Judge contacted Complainant by telephone and, based upon this conversation, resent the prehearing Order to another address, but the prehearing Order was again returned to the Commission.

11. The Complainant failed to appear at the scheduled date and time for the hearing.

DISCUSSION

In her Complaint, Ms. Beira averred that Peoples had improperly billed her for service in November 2018. Complainant stated that she had paid the bill on her account. Complainant asked that the Commission investigate the matter.

The Commission does not undertake such investigations on the basis of a formal Complaint with respect to a billing dispute. 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). In this case, the party with the burden of proof is the Complainant. "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*, 364 Pa. 54, 70 A.2d 854 (1950). As the party seeking relief from the Commission, Ms. Beira 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 provided with notice and an opportunity to be heard. *Id.*

No one appeared on behalf of Ms. Beira at the date and time set for the hearing in her case, despite notice of the hearing having been sent to her at the only address provided by her.

Commission regulations address circumstances when a party fails to appear in a proceeding. Section 5.245 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.
- (3) Not be permitted to recall witnesses who were excused for further examination.

52 Pa.Code § 5.245(a).

The hearing notice and the prehearing Order were sent to Ms. Beira by first-class mail to the address provided by her on her Complaint form. The hearing notice was not returned to the Commission as undeliverable. Accordingly, it must be presumed that the hearing notice which was sent to the Complainant in the ordinary course of business was received by her. *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). As noted above, the hearing notice and the prehearing Order stated that the parties may lose the case if they fail to appear and present evidence on the issues raised.

Also as noted above, the prehearing Order was returned to the Commission as undelivered. Therefore, OALJ staff contacted Complainant by the telephone number provided by Complainant on her Complaint and, based upon this conversation, resent the prehearing Order to another address, but the prehearing Order was again returned to the Commission. N.T. 4-5. Further, at the hearing, counsel for Peoples noted for the record that she called Complainant about a week prior to when the hearing was scheduled—i.e., on February 5, 2020, reminded Complainant of the date and time of the hearing, provided her with the bridge number and passcode that was on the hearing notice, as well as the phone number for the OALJ. N.T. 4-5.

Next, during the hearing, counsel for Peoples moved for dismissal of the Complaint with prejudice for lack of prosecution.

No request for a postponement or continuance of the hearing was received by my office. Ms. Beira had notice of the hearing and an opportunity to be heard in this proceeding but chose not to appear. Therefore, 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); *see also*, 52 Pa.Code § 5.245(a).

By failing to appear and present any evidence in support of her Complaint, Ms. Beira failed to carry her burden of proof. Thus, the Complaint will be dismissed. The Complaint will not, however, be dismissed with prejudice as Complainant, who is not an attorney, filed the Complaint under the mistaken impression that it might lead to a Commission investigation. While the prehearing Order clarified this point, the Complainant is appearing *pro se* in this proceeding. Traditionally, the Commission has been hesitant to rule unfavorably against *pro se* litigants based on technical grounds. *See e.g.*, *Destefano v. Peoples Natural Gas Company*, 56 Pa. P.U.C. 489 (1982); *Halpern v. The Bell Telephone Company of Pennsylvania*, Docket No. C-00923950 (October 19, 1992); *Schlinder v. The Bell Telephone Company of Pennsylvania*, Docket No. F-00161252 (March 26, 1993). It is in the public interest that all litigants, particularly *pro se* litigants, be afforded a meaningful opportunity to be heard, and while that opportunity has been afforded, here, it would be unnecessarily punitive to dismiss this case with prejudice.

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. 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. "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*, 364 Pa. 54, 70 A.2d 854 (1950).

4. 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 provided with notice and an opportunity to be heard. *Id.*

5. 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; and 3) not be permitted to recall witnesses who were excused for further examination. 52 Pa.Code § 5.245(a).

6. Ms. Beira's due process rights have been fully protected. *Sentner v. Bell Telephone Company of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa.Code § 5.245(a).

7. Ms. Beira failed to carry her burden of proof in this proceeding.

