

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Thomas J. Shores	:	
	:	
v.	:	C-2019-3010272
	:	
Pennsylvania Electric Company	:	

INITIAL DECISION
ON REMAND

Before
Joel H. Cheskis
Deputy Chief Administrative Law Judge

INTRODUCTION

This initial decision on remand denies a formal complaint filed by a customer of an electric distribution company who averred that the utility is threatening to terminate his service or has already terminated his service, there are incorrect charges on his bill and he would like a payment arrangement to pay his outstanding balance. The complainant failed to appear for the remanded proceeding. Therefore, the complaint on remand will be denied for failure of the complainant to appear and prosecute the remanded complaint despite being given notice and opportunity to be heard regarding the remanded proceeding.

HISTORY OF THE PROCEEDING

On May 29, 2019, Thomas J. Shores filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania Electric Company (Penelec), docket number C-2019-3010272. In his complaint, Mr. Shores averred that Penelec is threatening to shut off his service or has already shut off his service, he would like a payment

agreement and there are incorrect charges on his bill. Mr. Shores requested, among other things, that a manual reading of his meter be taken and that an affordable payment plan be established. Mr. Shores noted that he is on oxygen and a CPAP machine that he needs to live and has other bills he needs to pay.

On June 20, 2019, Penelec filed an answer and new matter in response to the complaint. In its answer, Penelec admitted or denied the various averments in the complaint. Penelec admitted that it issued a 10-day termination notice advising that service was subject to termination for non-payment of undisputed charges and denied that there are incorrect charges on the bill. Penelec added that at all times relevant to this proceeding, the company's actions have been reasonable and performed in accordance with all applicable laws. Penelec added additional background regarding termination of service, payment arrangements and incorrect charges. In its new matter, which was accompanied by a notice to plead, Penelec averred that the Commission issued a payment arrangement in March 2017 that Mr. Shores defaulted on due to non-payment and that Mr. Shores is not entitled to a subsequent Commission payment arrangement or an extension of the defaulted Commission payment arrangement. Penelec requested that the complaint be dismissed with prejudice or denied in its entirety and attached various documents to its answer in support of its position.

On July 12, 2019, a call-in telephone hearing notice was issued setting an initial call-in telephonic hearing for this matter for Monday, August 12, 2019 at 10:00 a.m. and assigning me as the presiding officer. A prehearing order was issued on July 15, 2019 setting forth various procedural rules that would govern the hearing.

The hearing convened on August 12, 2019, as scheduled. Mr. Shores appeared *pro se* and provided oral testimony. Margaret Morris, Esquire, appeared on behalf of Penelec and presented two witnesses who sponsored 15 exhibits that were admitted into the record. A transcript of 59 pages was created. The record in this case closed on September 4, 2019 when the transcript was submitted to the Commission. An initial decision dated September 27, 2019 was issued denying the complaint on the basis that Mr. Shores failed to demonstrate that Penelec

violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company and failed to establish that he was eligible for a payment arrangement.

By Opinion and Order entered January 10, 2020, the Commission modified the initial decision and remanded the case to the Office of Administrative Law Judge for further proceedings limited to establishing whether Mr. Shores' medical issues and/or household damage meet the criteria for a significant change in circumstance pursuant to Section 1405(e) of the Public Utility Code. If so, the Commission may reinstate the payment arrangement and extend the remaining term for an initial period of six months.

As a result, a call-in telephone hearing notice was issued on January 14, 2020 scheduling a further call-in telephonic hearing for this matter for Thursday, February 20, 2020 and assigning me as the presiding officer. A second prehearing order was issued on January 15, 2020 setting forth various rules that would govern that hearing. Of note, the hearing notice stated that a party may lose the case if it does not take part in the hearing and present facts on the issues raised. Similarly, the prehearing order stated, among other things, that: "If a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party." Both the hearing notice and the prehearing order were sent to Mr. Shores via first-class mail. Neither was returned as undeliverable.

The hearing convened on February 20, 2020, as scheduled. Margaret Morris, Esquire, again appeared on behalf of Penelec. No one appeared on behalf of Mr. Shores.

The remanded record in this case consists of the hearing transcript of 8 pages created at the hearing on February 20, 2020. The record closed in this proceeding when the transcript was filed with the Commission on March 12, 2020.

This initial decision on remand grants the motion of Penelec made at the conclusion of the further hearing to dismiss the complaint for failure to prosecute.

FINDINGS OF FACT

1. The Complainant in this case is Thomas Shores.
2. The Respondent in this case is Pennsylvania Electric Company.
3. The service address is 3170 Route 414, Canton, Pennsylvania.
4. On September 27, 2019, an initial decision was issued denying Mr. Shores' complaint on the basis that Mr. Shores failed to demonstrate that Penelec violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the company and failed to establish that he was eligible for a payment arrangement.
5. By Opinion and Order entered January 10, 2020, the Commission modified the initial decision and remanded the case to the Office of Administrative Law Judge for further proceedings limited to establishing whether Mr. Shores' medical and/or household damage meet the criteria for a significant change in circumstance pursuant to Section 1405(e) of the Public Utility Code.
6. A call-in telephone hearing notice was issued on January 14, 2020 scheduling a further call-in telephonic hearing for this matter for Thursday, February 20, 2020 and assigning me as the presiding officer. Tr. 64.
7. A second prehearing order was issued on January 15, 2020 setting forth various rules that would govern the hearing scheduled for February 20, 2020. Tr. 64.
8. The hearing notice stated that a party may lose the case if it does not take part in the hearing and present facts on the issues raised. Tr. 64.

9. The prehearing order stated, among other things, that: “If a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party.” Tr. 64.

10. Both the hearing notice and the prehearing order were sent to Mr. Shores via first-class mail. Neither was returned as undeliverable.

11. Counsel for Penelec indicated during the hearing the efforts that the company took to provide Mr. Shores with notice of the hearing. Tr. 65.

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). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990). “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). The offense must be a violation of the Public Utility Code, the Commission’s regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, the Commission has remanded the case for a determination as to whether Mr. Shores’ medical and/or household damage meet the criteria for a significant change in circumstance pursuant to Section 1405(e) of the Public Utility Code.

If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant.

Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlth. 1982).

The decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that 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, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 166 A.2d 96 (Pa.Super. 1961); and Murphy v. Comm., Dept. of Public Welfare, White Haven Center, 480 A.2d 382 (Pa.Cmwlth.1984).

Furthermore, 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.

No one appeared on behalf of Mr. Shores at the date and time set for the hearing on remand despite notice of the hearing. 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 second prehearing order and hearing notice were sent to Mr. Shores by regular first-class mail and neither were returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents sent to Mr. Shores in the ordinary course of business were received by Mr. Shores. 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). Of note, the hearing notice and the prehearing order stated that, if a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party. Furthermore, counsel for Penelec indicated during the hearing the efforts that the company took to provide Mr. Shores with notice of the hearing. Tr. 65.

No one appeared on behalf of Mr. Shores at the time of the hearing on remand, nor did anyone ever request a postponement or continuance of the hearing. As such, Mr. Shores had notice and an opportunity to be heard in this proceeding but chose not to appear. Therefore, Mr. Shore'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).

During the hearing, counsel for Penelec moved to have the complaint dismissed for lack of prosecution. Tr. 65. By failing to appear and present any evidence in support of his complaint, Mr. Shores has failed to carry his burden. Thus, it is appropriate to dismiss the complaint. Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Order entered December 26, 1995). Accordingly, the merits of the issues raised in the Commission's remand will not be addressed in this initial decision.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter 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 accorded notice and the 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. Mr. Shores' 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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Pennsylvania Electric Company to dismiss the formal complaint of Thomas J. Shores at docket number C-2019-3010272 on remand for failure to prosecute is granted.

2. That the formal complaint filed by Thomas J. Shores against Pennsylvania Electric Company at docket number C-2019-3010272 is hereby dismissed.

3. That this remanded matter be marked closed.

Date: May 19, 2020

/s/
Joel H. Cheskis
Deputy Chief Administrative Law Judge