

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Carol Mattox	:	
	:	
v.	:	C-2019-3013618
	:	
Pennsylvania Electric Company	:	

INITIAL DECISION

Before
Steven K. Haas
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 October 17, 2019, the Complainant, Carol Mattox, filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania Electric Company (Penelec) at Docket No. C-2019-3013618. On her complaint form, Ms. Mattox checked the box indicating that she is having a reliability, safety or quality problem with her electric service. She averred that her area experienced an approximately 12-hour power outage over the evening of May 19, 2019 and May 20, 2019 that was caused by Penelec's negligence. She averred that, as a result of the power outage, she lost two days of work and that a minimum of \$400.00 worth of food in her home was spoiled. She requested, by way of relief, payment from the company in the amount of \$600.00 to reimburse her for lost wages and spoiled food.

On November 6, 2019, Penelec filed an answer and new matter to Ms. Mattox's complaint, as well as preliminary objections (POs). In its answer, Penelec admitted that a power outage had occurred on the evening of May 19, 2019 and May 20, 2019 but denied that the outage was caused by the company's negligence. To the contrary, Penelec averred that the outage was caused by storms that moved through the area on the dates in question. In its new matter, Penelec averred that the Commission does not have the legal authority to order the payment of monetary damages, as sought by the Complainant. In its POs, Penelec again argues that the Commission does not have the legal authority to order the payment of monetary damages and requests, therefore, that the portions of the complaint by which Ms. Mattox seeks the payment of monetary damages be stricken as impertinent matter.

By order dated January 6, 2020, Administrative Law Judge Andrew Calvelli granted in part and dismissed in part Penelec's POs. The POs were granted on the issue of the Commission's legal inability to order the payment of monetary damages, as sought by Ms. Mattox. Accordingly, the request by Ms. Mattox that Penelec be ordered to pay her \$600.00 to reimburse her for lost wages and spoiled food was stricken from the complaint as impertinent matter. The POs were denied on the issue of the cause of the power outage and whether Penelec provided reasonable service to the Complainant as related to the power outage. Accordingly, that issued was permitted to proceed to an evidentiary hearing.

On March 4, 2020, the Commission issued a Call-In Telephone Hearing Notice by which it scheduled an initial telephonic hearing for Tuesday, May 5, 2020, at 10:00 a.m. The May 5, 2020 hearing was subsequently canceled and, by notice dated April 28, 2020, the call-in telephonic hearing was rescheduled for Thursday, June 4, 2020, at 10:00 a.m., and I was assigned as the Presiding Officer. The Hearing Notice instructed the parties to connect to the hearing by dialing a toll-free telephone number and PIN. The notice informed the parties that they may lose the case if they do not appear at the hearing.

On May 20, 2020, I issued a prehearing order in which I set forth certain procedural requirements pertaining to the hearing. The prehearing order provided the date and time of the hearing, as well as the conference bridge number and PIN for use to connect to the hearing. The prehearing order informed the parties that their case would be dismissed if they

failed to appear at the hearing. The prehearing order also informed the parties that any requests to reschedule the hearing must be made at least five days before the hearing. Both the April 28, 2020 hearing notice and the May 20, 2020 prehearing order were sent to Ms. Mattox at the electronic mail address provided by her on her complaint form.¹ Neither document was returned to the Commission as undeliverable.

Under cover letter dated May 27, 2020, counsel to Penelec, Margaret A. Morris, Esquire, sent to Ms. Mattox and me copies of the company's proposed hearing exhibits. The cover letter and cover page to the exhibits indicated the date and time of the hearing and provided the call-in telephone number and PIN for use by the parties to connect to the hearing.

On May 28, 2020, a scheduler in the Commission's Office of Administrative Law Judge called Ms. Mattox to remind her of the date and time of the telephonic hearing and the call-in numbers to connect to the hearing. Ms. Mattox did not answer this call. The scheduler left a voice mail message for Ms. Mattox in which she reminded Ms. Mattox of the date and time of the hearing and reviewed the necessary instructions for connection to and participation in the telephonic hearing.

Finally, during the hearing, Ms. Morris stated that she spoke with Ms. Mattox on Thursday, May 28, 2020 about the June 4, 2020 hearing. Ms. Morris stated that she reviewed with Ms. Mattox the date and time of the hearing and the call-in numbers and procedures for connection to the hearing. In addition, Ms. Morris mailed, via first class mail, Penelec's proposed hearing exhibits to Ms. Mattox to the address provided by her on her complaint form.

The hearing convened, as scheduled, at 10:00 a.m. on June 4, 2020. Ms. Morris appeared on behalf of Penelec. Ms. Mattox did not connect to the hearing at 10:00 a.m., so we waited until 10:10 a.m. to proceed in the event that she was running late. Ms. Mattox never connected to the hearing. I checked my e-mail and phone messages. Ms. Mattox did not attempt to contact me to discuss the hearing schedule. Accordingly, the hearing was convened in

¹ In its *Emergency Order re Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements*, at Docket No. M-2020-3019262, p. 4, the Commission directed that service by the Commission on parties will be exclusively electronic during the pendency of the Governor's Proclamation of Disaster Emergency.

Ms. Mattox's absence. Penelec's counsel moved to dismiss the complaint due to the Complainant's failure to appear at the hearing and prosecute her complaint.

The hearing concluded and a brief transcript was generated. I closed the record on June 8, 2020. This initial decision grants Penelec's motion and dismisses the complaint with for failure of the Complainant to appear and prosecute her case.

FINDINGS OF FACT

1. The Complainant in this proceeding is Carol Mattox.
2. The Respondent in this proceeding is Pennsylvania Electric Company.
3. On October 17, 2019, the Complainant filed a formal complaint against Penelec.
4. On November 6, 2019, Penelec filed an answer with new matter and preliminary objections to the complaint.
5. On March 4, 2020, a Call-In Telephone Hearing Notice was sent to the parties which scheduled an initial call-in telephonic hearing for Tuesday, May 5, 2020, at 10:00 a.m.
6. The May 5, 2020 hearing was canceled and, by notice dated April 28, 2020, the hearing was rescheduled for Thursday, June 4, 2020, at 10:00 a.m.
7. On May 20, 2020, a prehearing order was sent to the parties which set forth certain procedural requirements associated with the initial hearing.
8. Both the prehearing order and the hearing notice instructed the parties to connect to the hearing using the toll-free bridge number and PIN provided.

9. 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.

10. The April 28, 2020 hearing notice and the May 20, 2020 prehearing order were sent to Ms. Mattox, via electronic mail, to the electronic mail address provided by her on her complaint form.

11. Neither the April 28, 2020 hearing notice nor the May 20, 2020 prehearing order that were sent to the Complainant was returned to the Commission as undeliverable.

12. On May 27, 2020, counsel to Penelec sent to Ms. Mattox and me copies of the company's proposed hearing exhibits.

13. The cover letter and cover page attached to Penelec's exhibits indicated the date and time of the hearing and provided the call-in telephone number and PIN for use by the parties to connect to the hearing.

14. The Complainant never connected to the call-in telephonic hearing.

15. The Complainant never contacted me prior to the hearing to discuss the June 4, 2020 hearing or ask that it be rescheduled.

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

DISCUSSION

Ms. Mattox filed a formal complaint against Penelec in which she sought the payment of damages to reimburse her for lost wages and spoiled food.

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). "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. Mattox bears the burden of proof in this proceeding.

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. Mattox at the date and time set for the hearing in her case, despite notice of the hearing having been provided. 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 both sent to Ms. Mattox via electronic mail to the electronic mail address provided by her on her complaint form. Neither of these notices were returned to the Commission as undeliverable. Accordingly, it may be presumed that these documents sent to the Complainant in the ordinary course of business were received by her. Zirkel v. Philadelphia Gas Works, Docket No. C-2016-2561176 (Opinion and

Order entered January 27, 2017; Morella v. PECO Energy Co., Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016). As noted above, both notices stated that the parties may lose the case if they fail to appear and present evidence on the issues raised.

Further, Ms. Morris stated that she spoke with Ms. Mattox on Thursday, May 28, 2020 about the June 4, 2020 hearing. Ms. Morris stated that she reviewed with Ms. Mattox the date and time of the hearing and the call-in numbers and procedures for connection to the hearing. In addition, Ms. Morris mailed, via first class mail, Penelec's proposed hearing exhibits to Ms. Mattox to the address provided by her on her complaint form.

No request for a postponement or continuance of the hearing was received by my office. Ms. Mattox had notice of the hearing and an opportunity to be heard in this proceeding but chose not to participate. 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).

During the hearing, counsel for Penelec moved for dismissal of the complaint due to lack of prosecution by the Complainant. By failing to appear and present any evidence in support of her complaint, Ms. Mattox failed to meet her burden of proof. Thus, the complaint will be dismissed. Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Order entered December 26, 1995).

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. Mattox'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. Mattox failed to carry her burden of proof in this proceeding.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Pennsylvania Electric Company to dismiss the formal complaint of Carol Mattox at Docket Number C-2019-3013618 for failure to prosecute is granted.

