

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Teri Carbaugh	:	
	:	
v.	:	C-2019-3012785
	:	
Pennsylvania Electric Company	:	

INITIAL DECISION

Before
Alphonso Arnold III
Special Agent

INTRODUCTION

This Initial Decision dismisses the Complaint because the Complainant failed to appear for the hearing to prosecute his Complaint.

HISTORY OF THE PROCEEDING

On August 30, 2019, Teri Carbaugh (Complainant or Mr. Carbaugh) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania Electric Company (Respondent or Penelec), seeking to stop termination of his service through receiving a payment arrangement from the Commission.

On September 19, 2019, Penelec filed an Answer to the Complaint, wherein it denied that the Complainant is eligible for a payment arrangement. Penelec requested that the Commission deny and dismiss the Complaint.

By Hearing Notice served on the parties on September 23, 2019, the Commission scheduled this matter for a telephonic hearing on November 19, 2019 and assigned the case to

me as presiding officer. The telephonic hearing was cancelled and rescheduled to January 27, 2020 at 10:00 a.m. by Hearing Cancellation/Reschedule Notice served on the parties on October 23, 2019. A Prehearing Order, served on the parties on January 6, 2020, reminded the parties of the date and time of the January 27, 2020 hearing. The Hearing Notices and Prehearing Order indicated that I would call the parties at the numbers they had on file with the Commission to connect the parties to the hearing.

The January 27, 2020 hearing was held as scheduled. John L. Munsch, Esquire, appeared on behalf of Penelec with one witness. Mr. Carbaugh did not appear for the hearing, as he was unavailable when I called him at 10:00 a.m. and 10:15 a.m. No witnesses were presented, and no exhibits were introduced for the record. Penelec made a Motion to dismiss the Complaint for failure to prosecute. Penelec was informed that the Motion would be taken under advisement. The record¹ closed on January 27, 2020, following the conclusion of the telephonic hearing.

On January 28, 2020, I received a voicemail from Mr. Carbaugh. The voicemail was left on my phone on January 27, 2020, at 5:47 p.m. On the voicemail, Mr. Carbaugh stated that he picked up his phone when I had called him but that he did not hear anything on the other end. Attempts to return Mr. Carbaugh's call were unsuccessful.

On March 2, 2020, an Order Reopening the Record was served to the parties. The record was reopened to give the Complainant another opportunity to participate in an evidentiary hearing in this matter.²

By Further Hearing Notice served on the parties on February 28, 2020, the Commission scheduled this matter for a further telephonic hearing on March 17, 2020.

¹ The telephonic hearing was recorded over the phone by means of a digital recorder. No Court Reporter was present.

² The Order also denied Penelec's Motion to dismiss.

A Hearing Cancellation Notice, served on the parties on March 16, 2020, cancelled the March 17, 2020 further telephonic hearing and informed the parties that the further hearing would be rescheduled at a later date.

By Further Hearing Notice served on the parties on April 22, 2020, the Commission scheduled this matter for a further telephonic hearing on May 20, 2020 at 10:00 a.m.

A Prehearing Order #2, served on the parties on May 11, 2020, reminded the parties of the date and time of the further telephonic 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.

The April 22, 2020 Further Hearing Notice, and the May 11, 2020 Prehearing Order #2 were served to Mr. Carbaugh electronically, at the email address Mr. Carbaugh listed on his Complaint form. These documents were served electronically instead of through first-class mail in compliance with the Commission's March 20, 2020, Emergency Order, which provides that service by the Commission on parties will be exclusively electronic during the pendency of the Proclamation of Disaster Emergency issued by Pennsylvania Governor Wolf in response to the COVID-19 pandemic. See, Emergency Order re Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements, M-2020-3019262, at 4.

Both the April 22, 2020 Further Hearing Notice and Prehearing Order #2 informed the parties that in order to participate in the May 20, 2020 hearing they would need to call a toll-free Conference Number and enter a Participant Passcode. To that end, the Notice and Order stated the following: **“At the above date and time, you must in call into the hearing. If you fail to do so, your case will be dismissed. You will not be called by the Special Agent.”** (emphasis in the originals).

The May 20, 2020 hearing was held as scheduled. John L. Munsch, Esquire, appeared on behalf of Penelec with one witness. Mr. Carbaugh did not appear for the hearing at 10:00 a.m., thus the hearing was delayed to give Mr. Carbaugh additional time to call in. The

hearing began at 10:15 a.m. without Mr. Carbaugh having called in to participate. No witnesses were presented, and no exhibits were introduced for the record. Penelec made a Motion to dismiss the Complaint for failure to prosecute. Penelec was informed that the Motion would be taken under advisement.

The record³ closed on May 20, 2020, following the conclusion of the further telephonic hearing. As of the date of this Initial Decision, I have received no communication on Mr. Carbaugh's behalf to explain his absence from the further telephonic hearing. For the reasons discussed below, Penelec's Motion to dismiss will be granted, and the Complaint will be dismissed without prejudice.

FINDINGS OF FACT

1. The Complainant is Teri Carbaugh.
2. The Respondent is Pennsylvania Electric Company.
3. Mr. Carbaugh did not appear at the initial telephonic hearing held in this matter on January 27, 2020.
4. The evidentiary record was closed on January 27, 2020.
5. On March 2, 2020, an Order Reopening the Record was served to the parties, reopening the evidentiary record.
6. By Further Hearing Notice served on the parties on April 22, 2020, the Commission scheduled this matter for a further telephonic hearing on May 20, 2020 at 10:00 a.m.

³ The electronic transcript of the May 20, 2020, hearing was filed with the Commission on May 22, 2020.

7. Prehearing Order #2, served on the parties on May 11, 2020, reminded the parties of the date and time of the further telephonic 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.

8. The April 22, 2020 Further Hearing Notice and Prehearing Order #2 were served to Mr. Carbaugh electronically, at the email address Mr. Carbaugh listed on his Complaint form.

9. The Commission did not receive any return email that indicated that the April 22, 2020 Further Hearing Notice or Prehearing Order #2 failed to be delivered electronically at the email address provided by the Complainant on his Complaint form.

10. Both the April 22, 2020 Further Hearing Notice and Prehearing Order #2 informed the parties that in order to participate in the May 20, 2020 hearing they would need to call a toll-free Conference Number and enter a Participant Passcode.

11. The April 22, 2020 Further Hearing Notice and Prehearing Order #2 stated the following: “**At the above date and time, you must in call into the hearing. If you fail to do so, your case will be dismissed. You will not be called by the Special Agent.**” (emphasis in the originals).

12. Mr. Carbaugh did not call in to participate in the May 20, 2020 further 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 that 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 that presented by the other party. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa.Cmwth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992); Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

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

The Complainant did not participate in the May 20, 2020 hearing. As a result of the Complainant's nonappearance, the Respondent made an oral Motion to dismiss the Complaint for failure to prosecute.

The date and time of the hearing were provided in the April 22, 2020 Further Hearing Notice and Prehearing Order #2 served to the Complainant in this matter. The Notice and Order were served electronically on the Complainant to the email address that the Complainant listed on his Complaint form. Although the Complainant has not agreed to receive electronic service in this matter,⁴ the Commission's March 20, 2020 Emergency Order provides that service by the Commission on parties will be exclusively electronic during the pendency of the Proclamation of Disaster Emergency issued by Pennsylvania Governor Wolf in response to the COVID-19 pandemic. See, Emergency Order re Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements, M-2020-3019262, at 4. Therefore, electronic service of the Notice and Order is in compliance with the Commission's Emergency Order.

The Commission did not receive any return email that indicated that the Notice or Order failed to be delivered electronically at the email address provided by the Complainant on his Complaint form. Therefore, the Complainant is deemed to have had sufficient notice of the

⁴ Service may be made electronically to filing users who have agreed to receive electronic service. Filing users will be sent an electronic mail notice informing them that a document was posted on the Commission's electronic filing system and providing a link to the document on the same day the document is posted. 52 Pa. Code § 1.53(b)(3).

day, date, and time of the scheduled hearing and for whatever reason chose not to appear at the hearing to prosecute his Complaint. Morella v. PECO Energy Company, Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016); Zirkel v. Philadelphia Gas Works, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017).

The Notice and Order informed the Complainant that on May 20, 2020 at 10:00 a.m., he was to dial a toll-free number and enter a passcode to call into the hearing to participate. The hearing was held without the Complainant because the Complainant never called into the hearing to participate. The Notice and Order warned the Complainant that his case would be dismissed if he failed to participate in the scheduled hearing. The Complainant made no attempt to notify the presiding officer that he did not plan to participate 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.Cmwlt. 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). The Complainant did not appear, and the hearing proceeded in his absence. Both 66 Pa.C.S.A. § 332(f) and 52 Pa.Code § 5.245(a) provide that 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)(1)-(2).

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 failed to meet this burden.

The due process rights of the Complainant have been protected. The Complainant had notice of the scheduled hearing and failed to appear to prosecute his Complaint. Therefore, the Respondent's Motion to dismiss the Complaint is granted.⁵

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).

⁵ Penelec moved for the Complaint be dismissed with prejudice. Due to the COVID-19 pandemic, the Complaint will be dismissed without prejudice.

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 meet the burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That Pennsylvania Electric Company's Motion to dismiss the Complaint in the matter of Teri Carbaugh v. Pennsylvania Electric Company, Docket No. C-2019-3012785 is granted.

2. That Teri Carbaugh's Complaint against Pennsylvania Electric Company at Docket No. C-2019-3012785 is dismissed without prejudice.

3. That the docket at Docket No. C-2019-3012785 is marked closed.

Date: June 22, 2020

/s/
Alphonso Arnold III
Special Agent