

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ronald Grimes	:	
	:	
v.	:	C-2020-3019250
	:	
Pennsylvania Electric Company	:	

INITIAL DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

INTRODUCTION

This Initial Decision grants Respondent’s oral motion to dismiss a formal complaint with prejudice because Complainant failed to appear at the initial hearing and prosecute the case.

HISTORY OF THE PROCEEDING

On March 13, 2020, Ronald Grimes (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania Electric Company (Penelec or Respondent) alleging Penelec was threatening to terminate his electric service. Mr. Grimes averred he wanted lower monthly bills because he was recovering from cancer, his wife had medical issues and he only made approximately \$1,590 per month in SSD income.

On April 2, 2020, Penelec filed its Answer and New Matter, in which Penelec requested expedited handling of the formal complaint due to a high delinquent balance totaling

more than \$9,400. Penelec acknowledged it had attempted to terminate electric service due to the high delinquent balance and because Mr. Grimes only made four payments since establishing electric service at the service address on August 18, 2018. Penelec alleged the Commission's Bureau of Consumer Services (BCS) provided a payment arrangement to Complainant on May 3, 2019, at BCS Case No. 3697633, but Mr. Grimes defaulted on the payment arrangement. Penelec averred Mr. Grimes is not entitled to receive a second payment arrangement from the Commission, absent a change in income or significant circumstances, pursuant to 66 Pa.C.S.A. §§ 1405(d) and (e). Penelec pointed out the last payment Mr. Grimes made on the account was in the amount of \$526 which posted on October 3, 2019.

By Telephone Hearing Notice dated May 4, 2020, the Office of Administrative Law Judge notified the parties an initial call-in telephonic hearing in this case was scheduled for Friday, June 5, 2020, at 10:00 a.m. On May 4, 2020, the presiding officer issued a Prehearing Order setting forth various procedural matters, including how parties may request a continuance.

On May 12, 2020, Complainant contacted the office of the presiding officer, via electronic mail, and requested a continuance. Complainant's electronic mail stated the hearing in June would not work for him because he has chemotherapy and radiation every day until the end of July.

Because Complainant did not copy Respondent on the electronic mail request, the office of the presiding officer forwarded the electronic mail message to counsel for Respondent. Counsel for Respondent sent a reply to the presiding officer on May 13, 2020, which indicated Penelec had no objection to the continuance request based on Mr. Grimes' reported current health situation but asked that the presiding officer remind Mr. Grimes he must pay current charges while the formal complaint is pending. Penelec noted the account balance on Mr. Grimes' electric service account totaled \$9,871.42 as of May 13, 2020 and his last payment was in the amount of \$526 which posted on October 3, 2019.

On May 14, 2020, the presiding officer issued the First Interim Order which granted the continuance request due to Complainant's stated medical concern and treatment. The

First Interim Order cancelled the hearing scheduled for June 5, 2020 and ordered a new hearing to be scheduled for the week of August 2, 2020. The Order noted Complainant had not made any payment on his electric service account since October 3, 2019 and his account balance totaled almost \$10,000. The Order advised Mr. Grimes that the Commission requires all complainants to pay the current undisputed amounts listed on the utility's monthly billing statement but if Mr. Grimes continued to fail to pay the current undisputed amount each month, then Penelec was permitted to begin new termination efforts against Mr. Grimes, pursuant to 66 Pa.C.S.A. § 1406(a)(1) and 52 Pa.Code § 56.141. Ordering Paragraph No. 4 ordered Mr. Grimes to "make payments each month on the current undisputed amounts which accrued that month."

By Telephone Hearing Notice dated May 14, 2020, the Office of Administrative Law Judge notified the parties the initial call-in telephonic hearing scheduled for June 5, 2020 was cancelled and was rescheduled to Tuesday, August 4, 2020, at 10:00 a.m.

The time and date of the hearing on August 4, 2020, was included in the hearing notice, dated May 14, 2020. The hearing notice specified how to call into the hearing on the scheduled day and at the scheduled time. The hearing notice stated in bold, underlined print that the case would be dismissed if Complainant failed to call into the hearing.

The presiding officer convened the telephonic hearing as scheduled on August 4, 2020, at 10:03 a.m. Complainant failed to appear for the hearing, but counsel for Respondent was present and prepared to present Respondent's evidence along with the testimony of two witnesses. Respondent's counsel indicated Penelec had attempted to contact Complainant by telephone calls, voicemail messages and email attempts but had not heard from Complainant. Counsel indicated the last attempt to contact Complainant had been on August 3, 2020, at which time Respondent did not speak with Complainant but was able to leave a message for him on his cellular telephone number.

During the hearing, the presiding officer noted there was no message left by Complainant on the Commission's telephone for the Pittsburgh office.¹ The presiding officer also noted Complainant had an email account which had been used previously (when requesting the continuance on May 12, 2020) but no message was received from Mr. Grimes indicating he would be unable to attend the hearing on August 4, 2020.

Counsel for Respondent averred on the record that Complainant owed \$10,593.99, as of August 4, 2020 and the last payment to post on Mr. Grimes' account with Penelec was a payment of \$526 made on October 3, 2019. Counsel indicated service remains on at the service address. Respondent made an oral motion to dismiss with prejudice due to Complainant's failure to appear and because there was no good faith attempt by Mr. Grimes to pay for the service he continues to receive. Respondent noted 3 formal complaints have been filed by Mr. Grimes but Mr. Grimes continued to not make any payments, despite receiving payment arrangements, refused to provide any documentation of his income and did not apply for any assistance program, including LIHEAP.²

The presiding officer noted on the record the motion to dismiss would be taken under advisement and the hearing concluded at 10:11 a.m. The hearing record closed on August 4, 2020, upon the conclusion of the telephonic hearing, pursuant to 52 Pa.Code § 5.431(a) and (b).

FINDINGS OF FACT

1. Complainant is Ronald Grimes, who resides at 118 Pacific Road, P.O. Box 10, Defiance, Pennsylvania (service address).

¹ On March 16, 2020, the Commission's Pittsburgh office was closed by Order of Governor Tom Wolf due to the Coronavirus 2019 pandemic. The office remained closed through the date of this Initial Decision and staff continued to telework, while the Commission's telephone system continued to accept voicemail messages. Administrative staff were able to listen to voicemail messages left on the Commission's telephone system and were notified while teleworking if someone left a voicemail message.

² LIHEAP is the Low Income Home Energy Assistance Program administered through Pennsylvania's Department of Health and Human Services.

2. Respondent is Pennsylvania Electric Company, an electric distribution company which provides electric service at the service address.

3. The Prehearing Order dated May 4, 2020, was sent to the electronic mail address provided by Complainant and was not returned as undeliverable.

4. A hearing notice dated May 14, 2020, was sent to the electronic mail address provided by Complainant, which was the same electronic mail address Complainant used to request the continuance.

5. The hearing notice dated May 4, 2020 warned the formal complaint might be dismissed if Complainant failed to appear at the telephonic hearing on August 4, 2020. The hearing notice was not returned as undeliverable.

6. Complainant was not present and did not participate in the August 4, 2020 telephonic hearing.

7. Respondent was ready to proceed with its witnesses at the date and time scheduled for the hearing.

DISCUSSION

Pursuant to Section 332(a) of the Public Utility Code, 66 Pa.C.S.A. § 332(a), the burden of proof is on the proponent of a rule or order. In this proceeding, Mr. Grimes, as the Complainant, is the proponent of a rule or order. Therefore, Complainant bears the burden of proving by a preponderance of the evidence that Respondent violated the Public Utility Code or a regulation or order of the Commission.³ Mr. Grimes must show the utility is responsible or accountable for the problem described in the complaint.⁴ Administrative agencies, like the

³ *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

⁴ *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976).

Public Utility Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are provided with notice and the opportunity to appear and be heard.⁵

Mr. Grimes did not appear at the time scheduled for the August 4, 2020 hearing, and he did not participate in the August 4, 2020 hearing. The date, time and instructions on how to participate in the hearing were listed in the hearing notice, dated May 14, 2020.

The Office of Administrative Law Judge served the hearing notice on Complainant using the same electronic mail address Mr. Grimes provided.⁶ Once notice of a hearing and the opportunity to be heard was provided, it was the responsibility of Mr. Grimes to appear and participate in the hearing.⁷ If Mr. Grimes could not appear, for any reason, then it was the responsibility of Mr. Grimes to notify the presiding officer immediately about the impediment or dilemma.

Section 332(f) of the Public Utility Code, 66 Pa.C.S.A. § 332(f), provides in pertinent part:

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...

Since Mr. Grimes did not appear or participate in the hearing, despite receiving notice of the date and time of the hearing, the hearing was held in accordance with 66 Pa.C.S.A.

⁵ *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlth. 1984).

⁶ *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).

⁷ *Sentner v. Bell Telephone Co. of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993); *Mumma v. PPL Electric Utilities Corporation*, Docket No. C-00014869 (Order entered January 24, 2002).

§ 332(f) and 52 Pa.Code § 5.245. Respondent's attorney moved to dismiss the complaint with prejudice for failure to appear and for failure to participate in the hearing process with good faith. Respondent's motion was taken under advisement.

The hearing record closed on August 4, 2020, pursuant to 52 Pa.Code § 5.431(a) and (b) which provides:

(a) The record will be closed at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission.

(b) After the record is closed, additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion.

In this proceeding, Mr. Grimes did not call into the hearing as specified in the hearing notice. The hearing notice clearly indicated Complainant was to call. The document provided Complainant with the Commission's toll-free conference bridge number and PIN number. The hearing notice provided a telephone number where Mr. Grimes could leave a voicemail message for the presiding officer if additional information was needed prior to the hearing. Lastly, the hearing notice provided the email address for the presiding officer's legal assistant if Mr. Grimes wished to send further communications to the attention of the presiding officer.

Mr. Grimes did not contact the presiding officer or the Office of Administrative Law Judge to explain his absence from the hearing. Complainant failed to take advantage of the opportunity provided in which to appear and prosecute the formal complaint against Respondent by presenting evidence to support the allegations. As a result, Complainant failed to sustain the burden of proof.

In addition, according to the averments from Penelec, Mr. Grimes has not made a single payment in 10 months for the electric service he continues to receive. The First Interim Order specifically ordered Mr. Grimes to make payments while the formal complaint was pending

and that failure to make payment would enable Penelec to initiate termination proceedings as soon as the moratorium on terminations expires.⁸ While I am sympathetic to Mr. Grimes' medical condition and circumstances, he will have to pay Penelec for the electric service his household consumes. By law, a public utility is entitled to receive payment for the service it provides.⁹ When customers, such as Mr. Grimes, do not pay for their electric service, those customers' unpaid bills are included in the utility's uncollectible expense and ultimately paid by the remaining ratepayers.¹⁰ Mr. Grimes has amassed an enormous unpaid balance on his account which he has made no attempt to reduce in the past 10 months. He has not made any attempt to secure assistance through the utility or through LIHEAP grants. His behavior indicates a lack of good faith in paying for the utility service he consumes.

Accordingly, Respondent's oral motion to dismiss the formal complaint with prejudice will be granted, and the formal complaint will be dismissed in the Ordering Paragraphs below.¹¹

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter in this proceeding. 66 Pa.C.S.A. § 701.

⁸ On March 6, 2020, the Governor of the Commonwealth of Pennsylvania issued the *Proclamation of Disaster Emergency*, pursuant to 35 Pa.C.S.A. § 7101, *et seq.*, to address the exigencies created by the COVID-19 pandemic. On March 13, 2020, the Chairman of the Commission issued the Emergency Order at Docket No. M-2020-3019262, which ordered that all public utilities subject to the Commission's jurisdiction were prohibited from terminating utility service during the pendency of the Proclamation of Disaster Emergency. Thereafter, on March 20, 2020, the Commission ratified the Emergency Order and issued the *Emergency Order Re: Suspension of Regulatory and Statutory Deadlines: Modification to Filing and Service Requirements* at Docket No. M-2020-3019262.

⁹ *Scaccia v. West Penn Power Company*, 55 Pa. PUC 637 (1982).

¹⁰ Cf., *Bolt v. Duquesne Light Co.*, 66 Pa. P.U.C. 463 (1988); *O'Toole v. The Bell Telephone Co. of Pa.*, Docket Number C-923964 (Final Order entered August 20, 1992).

¹¹ *Volgstadt v. UGI Penn Natural Gas*, Docket No. F-02266429 (Order entered September 12, 2008) and *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995); *El-Ayazra v. West Penn Power Company*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016).

2. Complainant has the burden of proof in this matter pursuant to 66 Pa.C.S.A. § 332(a).
3. The hearing record closed at the conclusion of the hearing on August 4, 2020. 52 Pa.Code § 5.431(a).
4. Complainant, by failing to appear at the scheduled hearing, waived the opportunity to participate in the hearing. 66 Pa.C.S.A. § 332(f).
5. Notice provided to a party's last known address and/or electronic mail address, and not returned is presumed to have been received. *Berkowitz v. Mayflower Securities*, 455 Pa. 531, 317 A.2d 584 (1974); *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 1994); *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).
6. 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 Pa.*, Docket No. F-00161106 (Order entered October 25, 1993).
7. Complainant failed to sustain the burden of proof. 66 Pa.C.S.A. § 332(a).

