

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Alison Frantz c/o Wendy Carter	:	
	:	
v.	:	C-2019-3012414
	:	
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 her Complaint.

HISTORY OF THE PROCEEDING

On August 22, 2019, Wendy Carter (Ms. Carter), on behalf of her daughter, Alison Frantz (Complainant or Ms. Frantz), filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania Electric Company (Respondent or Penelec) seeking a payment arrangement.

On September 12, 2019, Penelec filed an Answer to the Complaint, denying the material allegations in the Complaint. Penelec noted that Ms. Frantz was the Penelec customer of record. Penelec requested that the Commission deny and dismiss the Complaint.

By Hearing Notice served¹ on the parties on September 20, 2019, the Commission scheduled this matter for a telephonic hearing on November 4, 2019 and assigned the case to me as the presiding officer. A Prehearing Order, served on the parties on October 10, 2019, informed the parties of the procedures applicable to the hearing and the method by which a party could request a continuance of the hearing date, if needed.

The November 4, 2019, hearing was continued at the request of Penelec. Therefore, a Hearing Cancellation/Reschedule Notice was served on the parties on October 21, 2019, cancelling the November 4, 2019, hearing and rescheduling the hearing for January 23, 2020. Prehearing Order #2 was served on the parties on January 2, 2020.

The January 23, 2020 hearing was held as scheduled. Ms. Frantz was present as well as Attorney John L. Munsch, representing Penelec. Settlement discussions were held between the parties and it was determined that Ms. Frantz was eligible for reenrollment in Penelec's Pennsylvania Customer Assistance Program. In order to reenroll, however, Ms. Frantz had to first make a lump sum payment. The parties agreed to continue the hearing in order to give Ms. Frantz enough time to make the requisite payment.

By Further Hearing Notice served on the parties on January 23, 2020, the Commission scheduled this matter for a further telephonic hearing on March 10, 2020, at 10:00 a.m. As stated in every Hearing Notice served in this matter, the Further Hearing Notice stated the following: "*Attention: You may lose the case if you do not take part in this hearing and present facts on the issues raised.*" (emphasis in the original).

Prehearing Order #3 was served on the parties on February 24, 2020. Furthermore, as stated in every Prehearing Order served in this matter, Prehearing Order #3 stated the following: "**You must be available on the scheduled day and time. If you fail to be available, your case will be dismissed.**" (emphasis in the original).

¹ Every document that was filed in this matter was served to Ms. Carter as well, through the Commission's electronic service ("eService") system. Individuals signed up for eService are provided with a notification of filings as well as a link to the filings via e-mail. See 52 Pa. Code § 1.53(b)(3).

The Further Hearing Notice and Prehearing Order #3 informed the parties that the undersigned would call the parties by phone on the hearing date and time to connect the parties to the hearing.

On March 10, 2020, at 10:00 a.m., I called Ms. Frantz to connect her to the hearing, but she did not answer my phone call. I left a voice message for Ms. Frantz identifying myself and the purpose of my call, and informing her that I would attempt to call her again at 10:15 a.m.

Attorney Munsch was successfully contacted and connected to the hearing conference. Penelec was ready to proceed with the hearing with a witness.

At 10:15 a.m., I again called Ms. Frantz and again Ms. Frantz did not answer. I again left a voice message, this time informing Ms. Frantz that the hearing would begin without her and to contact the Commission if she wanted to provide a reason as to why she was unavailable to participate in the scheduled hearing.

The March 10, 2020 hearing was held at 10:15 a.m., without Ms. Frantz. No witnesses were presented, and no exhibits were introduced for the record. During the hearing, Attorney Munsch informed me that Ms. Frantz had called FirstEnergy's² customer service center on March 9, 2020 and communicated that she wished to finalize her account as of March 13, 2020. Further, given Ms. Frantz' failure to appear for the hearing, 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 March 10, 2020, following the conclusion of the telephonic hearing. As of the date of this Initial Decision, no communication has been made to the Office of Administrative Law Judge on Ms. Frantz' behalf to explain her absence from the hearing. For

² Penelec is a subsidiary of FirstEnergy Corporation.

³ The telephonic hearing was recorded over the phone by means of a digital recorder. No Court Reporter was present.

the reasons discussed below, Penelec's Motion will be granted, and the Complaint will be dismissed with prejudice.

FINDINGS OF FACT

1. The Complainant is Alison Frantz.
2. The Respondent is Pennsylvania Electric Company.
3. By Further Hearing Notice served upon the parties on January 23, 2020, the Commission scheduled this matter for a further telephonic hearing on March 10, 2020.
4. The Further Hearing Notice served in this matter stated the following: "Attention: *You may lose the case if you do not take part in this hearing and present facts on the issues raised.*" (emphasis in the original).
5. Prehearing Order #3 was served upon the parties on February 24, 2020, which reminded the parties of the date and time of the further telephonic hearing and provided the parties with the method by which a party could request a change of the scheduled hearing date, if needed.
6. Prehearing Order #3 served in this matter stated the following: "**You must be available on the scheduled day and time. If you fail to be available, your case will be dismissed.**" (emphasis in the original).
7. The Further Hearing Notice and Prehearing Order #3 served in this matter informed the parties that they would be contacted by phone on the hearing date and time to be connected to the hearing.

8. Neither the Further Hearing Notice nor Prehearing Order #3 served to the Complainant to her mailing address was returned to the Commission as being undeliverable by the postal authorities.

9. The Complainant was not available by phone to participate in the March 10, 2020 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.Cmwlt. 1990), alloc. den., 602 A.2d 863 (Pa. 1992); Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

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

Additionally, this Commission's decision must be supported by substantial evidence in the record. 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, 413 A.2d 1037 (Pa. 1980).

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.Cmwlt. 1984).

The Complainant did not participate in the March 10, 2020 hearing. The date and time of the hearing were provided in the Further Hearing Notice and Prehearing Order #3 served to the Complainant in this matter. The Notice and Order informed the Complainant that she was to be available by phone on March 10, 2020, at 10:00 a.m. to be contacted and connected to the hearing. The undersigned attempted to call and connect the Complainant to the hearing at 10:00 a.m. and 10:15 a.m. but was unable to do so. The Notice and Order warned the Complainant that she may lose her case if she failed to participate in the scheduled hearing.

The Notice and Order were sent to the Complainant by regular first-class mail. Neither document was returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents, which were sent to the Complainant in the ordinary course of business, were 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). Therefore, the Complainant is deemed to have had sufficient notice of the day, date and time of the scheduled hearing and for whatever reason chose not to appear at the hearing to prosecute her Complaint. The Complainant made no attempt to notify the presiding officer that she 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 her 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).

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 her Complaint. Therefore, the Respondent's Motion to dismiss the Complaint is granted. Accordingly, the Complaint in this matter will be dismissed in its entirety with prejudice. El-Ayazra v. West Penn Power Company, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); Volgstadt v. MET ED Penn Natural Gas, Inc., Docket No. F-02266429 (Opinion and Order entered September 12, 2008) and Jefferson v. MET ED Utilities, Inc., Docket No. Z-00269892 (Opinion and Order entered December 26, 1995).

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).

4. Documents sent to a party in the ordinary course of business and not returned to the Commission as undeliverable are presumed to be received by the party. 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).

5. 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).

6. By failing to appear at her scheduled hearing, the Complainant waived her 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).

7. 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).

8. 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 the Motion of Pennsylvania Electric Company to dismiss the Complaint at Docket No. C-2019-3012414 for failure to prosecute is granted.

2. That the Complaint filed at Docket No. C-2019-3012414 is hereby dismissed with prejudice.

3. That the docket at Docket No. C-2019-3012414 is marked closed.

Date: March 24, 2020

/s/
Alphonso Arnold III
Special Agent