

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Shauntay Smith	:	
	:	
v.	:	C-2020-3022091
	:	
Pittsburgh Water and Sewer Authority	:	

INITIAL DECISION

Before
Emily I. DeVoe
Administrative Law Judge

INTRODUCTION

This decision dismisses the Complaint filed in this matter due to Complainant’s failure to appear for the hearing and prosecute the Complaint.

HISTORY OF THE PROCEEDING

On September 23, 2020, Shauntay Smith (Complainant) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against Pittsburgh Water and Sewer Authority (Respondent, Company, or PWSA) regarding her water service at 1125 Ridgeland Drive, Pittsburgh, PA (service location). Complainant alleged she has had water main breaks and frequent construction on her street, and she alleged there were incorrect charges on her bill. She alleged she received multiple high bills and plumbers confirmed there were no leaks on her property. As relief, Complainant requested that the Commission investigate why she would receive such high bills with no explanation.

On October 13, 2020, Respondent filed an Answer. Respondent admitted it provides residential utility service to Complainant, but averred that the Complainant's bills were based on actual meter reads and the bills were correct.

By Notice dated December 30, 2020, the Commission scheduled this matter for a telephonic hearing on February 24, 2021, at 10:00 a.m. The Notice advised the Parties they were responsible for calling into the conference at the scheduled date and time. The Notice reads, "**At the above date and time, you must call into the hearing. If you fail to do so, your case will be dismissed. You will not be called by the Administrative Law Judge.**" (emphasis in original). The Notice also provides, "*Attention: You may lose the case if you do not take part in this hearing and present facts on the issues raised.*" (emphasis in original). The Notice included the toll-free bridge number, the PIN number, and instructions on how to call into the conference bridge.

A Prehearing Order was issued on December 31, 2020, addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation, and the Commission's policy encouraging settlements. The Prehearing Order provides, "**You must call into the hearing on the scheduled day and time. If you fail to do so, your case may be dismissed. You will not be called by the Administrative Law Judge.**" (emphasis in original). The Prehearing Order also included the toll-free bridge number, the PIN number, and instructions on how to call into the conference bridge.

The Notice and Prehearing Order were e-served on the parties.

The undersigned called into the conference bridge for the hearing on February 24, 2021, at approximately 10:00 a.m. Respondent's counsel, Sarah Stoner, Esq., and a witness were on the conference bridge. Complainant was not on the conference bridge. In order to give Complainant an opportunity to participate in the hearing, the undersigned directed her legal assistant to contact Complainant, remind her of the hearing, and encourage her to call in to the conference bridge. The undersigned waited until approximately 10:10 a.m. to convene the hearing. The undersigned convened the hearing in Complainant's absence.

Respondent did not offer any testimony or evidence, but rather made a Motion to Dismiss the Complaint (Motion) due to Complainant's failure to appear at the hearing. The undersigned informed counsel that the Motion would be taken under advisement and adjourned the hearing. The hearing record closed upon the adjournment of the hearing.

FINDINGS OF FACT

1. Complainant in this case is Shauntay Smith.
2. Respondent in this case is Pittsburgh Water and Sewer Authority, a jurisdictional public utility.
3. The service address is 1125 Ridgeland Drive, Pittsburgh, PA.
4. On September 23, 2020, Complainant filed a Complaint with the Commission against Respondent.
5. By Notice dated December 30, 2020, the Commission scheduled this matter for an initial telephonic hearing on February 24, 2021, at 10:00 a.m.
6. On December 31, 2020, a Prehearing Order was issued.
7. The Notice and Prehearing Order were e-served on the Complainant.
8. The December 30, 2020 Notice and December 31, 2020 Prehearing Order advised the parties they must call into the hearing on the scheduled date and time using the toll-free bridge number and PIN number; the Administrative Law Judge would not call them for the February 24, 2021 hearing; and they may lose their case if they did not call into the February 24, 2021 hearing.

9. Complainant did not call into the conference bridge to participate in the hearing on February 24, 2021.

10. Complainant did not contact the undersigned to request a continuance.

DISCUSSION

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, however, when the administrative agency provides the parties notice and the opportunity to be heard.

By Notice dated December 30, 2020, the Commission scheduled this matter for a hearing to be held on February 24, 2021, at 10:00 a.m. A Prehearing Order issued December 31, 2020 also advised the parties of the date and time of the hearing.

The Notice and Prehearing Order were e-served on the parties consistent with the Commission's rules.¹ The documents were not returned, so Complainant is presumed to have received them. *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).

Under these circumstances, Complainant had an opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. Therefore, the due process rights of Complainant have been fully protected. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161101 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

Finally, Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of any request for relief. As the party bringing this Complaint, Complainant bears the burden of proving by a preponderance of the evidence that she

¹ See 52 Pa.Code § 1.53(b)(3).

is entitled to relief. By failing to appear and proffer any evidence to support the Complaint, Complainant has failed to meet this burden. Under these circumstances, the Complaint may be dismissed. *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); *El-Ayazra v. W. Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa.Code § 5.245.

CONCLUSIONS OF LAW

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

2. The due process rights of Complainant have been fully protected in this proceeding. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

3. By failing to appear for the hearing and proffer any evidence to support the Complaint, Complainant has failed to meet her burden of proving she is entitled to the relief she seeks from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Pittsburgh Water and Sewer Authority to dismiss the Complaint of Shauntay Smith at Docket No. C-2020-3022091 for failure to prosecute is granted.

2. That the Complaint Shauntay Smith against Pittsburgh Water and Sewer Authority at Docket No. C-2020-3022091 is dismissed.

3. That the Secretary's Bureau shall mark Docket No. C-2020-3022091 as closed.

Date: March 2, 2021

/s/
Emily I. DeVoe
Administrative Law Judge