

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John DeRaffele	:	
	:	
v.	:	C-2020-3022236
	:	
Pennsylvania-American Water Company	:	

INITIAL DECISION

Before
Joel H. Cheskis
Deputy Chief Administrative Law Judge

INTRODUCTION

This decision grants a motion to dismiss for failure to prosecute because the complainant failed to appear for the hearing at the designated date and time despite being given notice of the hearing.

HISTORY OF THE PROCEEDING

On September 15, 2020, John DeRaffele filed a formal complaint against Pennsylvania-American Water Company (PAWC), docket number C-2020-2022236. In his complaint, Mr. DeRaffele averred, among other things, that a home he rents out in Scranton, PA was vandalized while it was vacant and undergoing repairs. Mr. DeRaffele averred that such vandalism and repairs caused excessive use of water and water damage in his basement. Mr. DeRaffele requested that his account be credited for the amount of water he did not use due to vandalism. Mr. DeRaffele attached several documents to his complaint in support of his position.

On October 21, 2020, PAWC filed an answer to Mr. DeRaffele's complaint. In its answer, PAWC admitted or denied the various averments made by Mr. DeRaffele. In particular, PAWC denied that there are incorrect charges on Mr. DeRaffele's complaint but admitted that Mr. DeRaffele had higher than normal usage during the period in question. PAWC denied that Mr. DeRaffele is entitled to the relief requested.

On December 15, 2020, a hearing notice was issued establishing an initial telephonic hearing for this matter for Thursday, January 21, 2021 at 10:00 a.m. and assigning me as presiding officer. In anticipation of that hearing, a prehearing order was issued also on December 15, 2020 setting forth various rules that would govern that proceeding.

The initial hearing convened on January 21, 2021, as scheduled. Mr. DeRaffele appeared pro se. Timothy McHugh, Esquire, appeared on behalf of PAWC. Prior to commencing the formal hearing, the parties engaged in settlement discussions with my involvement pursuant to the Commission's settlement judge regulations. As a result of those discussions, progress was made toward settling the disputed matters. At the same time, however, additional issues arose. Mr. DeRaffele requested additional time to pursue the additional matters. It was determined that a continuance of 30 days would be appropriate for the additional issues to be considered and for further settlement discussions to occur to resolve the underlying issues in the complaint. As a result, the formal hearing was not held on January 21, 2021 and a further hearing notice was issued setting a further hearing for this matter for February 25, 2021 at 10:00 a.m. An order formally granting the request for a continuance was issued on January 22, 2021.

Of note, the further hearing notice, as well as the original hearing notice issued on December 15, 2020, stated that a party may lose the case if it does not take part in the hearing and present facts on the issues raised. Similarly, the prehearing order also issued on December 15, 2020 stated, "If a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party." Both hearing notices and

the prehearing order were sent to Mr. DeRaffele via email.¹ Neither was returned as undeliverable.

The hearing convened on February 25, 2021, as scheduled. Again, Timothy McHugh, Esquire, appeared on behalf of PAWC. No one, however, appeared on behalf of Mr. DeRaffele. As discussed further below, Mr. DeRaffele contacted the Office of Administrative Law Judge at approximately 10:35 a.m. on February 25, 2021 indicating that he was having problems with his internet service at the time of the hearing. An exchange of emails between Mr. DeRaffele and the presiding officer following the hearing were admitted into the record as ALJ Exhibit Number 1.

The record in this case consists of the transcript of nine pages that was submitted to the Commission on February 25, 2021. The record in this case closed on March 2, 2021 when the exchange of emails between Mr. DeRaffele and the presiding officer were admitted into the record as ALJ Exhibit Number 1. This Initial Decision grants the motion of PAWC made at the conclusion of the hearing to dismiss the complaint for failure to prosecute.

FINDINGS OF FACT

1. The Complainant in this case is John DeRaffele.
2. The Respondent in this case is Pennsylvania-American Water Company.
3. On September 15, 2020, Mr. DeRaffele filed a formal complaint against Pennsylvania-American Water Company.

¹ The hearing notices and prehearing order were sent to Complainant by email pursuant to the Commission's *Emergency Order re Suspension of Regulatory and Statutory deadlines, Modification to Filing and Service Requirements* at Docket No. M-2020-3019262, which provides that service by the Commission on parties will be exclusively electronic during the pendency of the Proclamation of Disaster Emergency. (Order entered March 20, 2020).

4. On October 21, 2020, PAWC filed an answer to Mr. DeRaffele's complaint.
5. On December 15, 2020, a hearing notice was issued establishing an initial telephonic hearing for this matter for Thursday, January 21, 2021 at 10:00 a.m.
6. In anticipation of the January 21, 2021 hearing, a prehearing order was issued on December 15, 2020 setting forth various rules that would govern that proceeding.
7. The original hearing notice issued on December 15, 2020, stated that a party may lose the case if it does not take part in the hearing and present facts on the issues raised.
8. The prehearing order issued on December 15, 2020 stated, among other things, "If a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party."
9. Neither the hearing notice nor the prehearing order were returned to the Commission as undeliverable.
10. The formal hearing was not held on January 21, 2021 but a request for a continuance was granted after settlement discussions were held so that settlement discussions could continue.
11. A further hearing notice was issued setting a further hearing for this matter for February 25, 2021 at 10:00 a.m.
12. The further hearing convened on February 25, 2021, as scheduled.
13. No one appeared on behalf of Mr. DeRaffele at the further hearing on February 25, 2021.

14. The start of the hearing was delayed approximately 15 minutes to accommodate any delay of Mr. DeRaffele.

15. Counsel for PAWC indicated during the hearing the numerous efforts that the company took to provide Mr. DeRaffele with notice of the hearing.

16. Mr. DeRaffele contacted the Office of Administrative Law Judge at approximately 10:35 a.m. on February 25, 2021 indicating that he was having problems with his internet service at the time of the hearing.

17. ALJ Exhibit Number 1 is a printout of an exchange of emails between the presiding officer and Mr. DeRaffele on February 25, 2021. ALJ Exh. No. 1.

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). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990). “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). The offense must be a violation of the Public Utility Code, the Commission’s regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, based on a reading of his complaint, Mr. DeRaffele requested that his account be credited for the amount of water he did not use due to vandalism. Mr. DeRaffele, therefore, has 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 afforded notice and the opportunity to be heard. Id.

No one appeared on behalf of Mr. DeRaffele at the date and time set for the hearing in his case despite notice of the hearing having been provided to him. 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 prehearing order and both hearing notices were sent to Mr. DeRaffele by emails and none were returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents sent to Mr. DeRaffele in the ordinary course of business were received by Mr. DeRaffele. 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). Of note, the hearing notices and the prehearing order stated that, if a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party. Furthermore, counsel for PAWC indicated during the hearing the numerous efforts that the company took to provide Mr. DeRaffele with notice of the hearing. Tr. 6-7.

No one appeared on behalf of Mr. DeRaffele at the time of the hearing, nor did anyone ever request a postponement or continuance of the hearing. As such, Mr. DeRaffele had

notice and an opportunity to be heard in this proceeding but chose not to appear. Therefore, Mr. DeRaffele's due process rights have been fully protected. Sentner v. Bell Tel. Co. of Pa., Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa.Code § 5.245(a).

During the hearing, counsel for PAWC moved to have the complaint dismissed for lack of prosecution. Tr. 7. By failing to appear and present any evidence in support of his complaint, Mr. DeRaffele has failed to carry his burden. Thus, it is appropriate to dismiss the complaint. Jefferson v. UGI Utils., Inc., Docket No. Z-00269892 (Order entered December 26, 1995). Accordingly, the merits of the complaint will not be addressed in this Initial Decision.

Furthermore, it is noted that, by email on February 25, 2021, I was notified by staff of the Office of Administrative Law Judge (OALJ) that Mr. DeRaffele left a voice mail message on the OALJ voice mail system at 10:35 a.m. indicating that he missed the hearing at 10:00 a.m. because of internet problems he was experiencing and that he "could be reached now." I explained via email to Mr. DeRaffele at 11:06 a.m. on February 25, 2021 that counsel for PAWC, PAWC's witness, a court reporter and I stayed on the conference bridge for the hearing until 10:15 a.m., the normal amount of time that a hearing will be delayed waiting for parties to appear, and when Mr. DeRaffele did not appear, the hearing proceeded without him. ALJ Exh. No. 1. In response, Mr. DeRaffele emailed me at 11:14 a.m. *in toto* that "my office is in the middle of new 30 story building in the rear and street construction at my front door so our phone and internet went down for a short period. I sent you info regarding what I believe is fair and I will leave the decision to you based on my letter hoping for a fair and equitable outcome." Mr. DeRaffele's email was forwarded to counsel for PAWC and a printout of the email exchange was admitted into the record on March 2, 2021 as ALJ Exhibit Number 1.

Upon consideration of Mr. DeRaffele's email at 11:14 a.m. on February 25, 2021, I find the email insufficient cause to warrant scheduling a third hearing for this matter. Mr. DeRaffele has been afforded the necessary notice and opportunity to be heard on his complaint. While internet outages occur unexpectedly, Mr. DeRaffele should have been better prepared to participate in the hearing. In addition, two evidentiary hearings were scheduled for this matter, one of which included settlement discussions pursuant to the Commission's settlement judge

process. The complaint was also considered by the Commission's mediation unit for mediation. Mr. DeRaffele was given ample opportunity to pursue his complaint. This is particularly true given that the Commission's resources are limited as well to schedule multiple hearings, schedule multiple court reporters, etc. In this situation, Mr. DeRaffele was afforded the process he was due.

Furthermore, in his email on February 25, 2021, Mr. DeRaffele did not request a further hearing to be rescheduled but instead stated that "I will leave the decision to you based on my letter hoping for a fair and equitable outcome." The Commission's processes must be followed. While I recognize that Mr. DeRaffele is not an attorney, and the Commission's processes may be difficult for pro se complainants to navigate, I attempted to provide as much assistance to Mr. DeRaffele as I could within the bounds of my role as the presiding officer and PAWC's own due process rights which must be protected as well. Mr. DeRaffele's failure to properly prosecute his complaint warrants dismissal.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter 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 accorded notice and the 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. Mr. DeRaffele's due process rights have been fully protected. Sentner v. Bell Tel. Co. of Pa., Docket No. F-00161106 (Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

7. Mr. DeRaffele has failed to carry his burden of proof in this proceeding.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Pennsylvania American Water Company to dismiss the formal complaint of John DeRaffele at docket number C-2020-3022236 for failure to prosecute is granted.

2. That the formal complaint filed by John DeRaffele against Pennsylvania-American Water Company at docket number C-2020-3022236 is hereby dismissed.

3. That this matter be marked closed.

Date: April 5, 2021

_____/s/
Joel H. Cheskis
Deputy Chief Administrative Law Judge