

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Chris Rothrock	:	
	:	
v.	:	C-2021-3027772
	:	
Pennsylvania Electric Company	:	

**INITIAL DECISION**

Before  
Katrina L. Dunderdale  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision grants Respondent’s oral motion to dismiss with prejudice a formal complaint because Complainant failed to appear at the initial hearing and prosecute the case. The motion to dismiss with prejudice was granted because Complainant owes over \$15,000 in unpaid electric service and has not made a payment in over two years.

**HISTORY OF THE PROCEEDING**

On August 2, 2021, Chris Rothrock (Complainant) filed a formal complaint against Pennsylvania Electric Company (Respondent or Penelec) with the Pennsylvania Public Utility Commission (Commission) alleging Respondent was threatening to shut off electric service because he couldn’t make the payments and was on disability. In addition, Complainant alleged the charges on the bill were incorrect because he did not think he consumed the level of electricity alleged by Respondent. Complainant requested the Commission order Respondent to dismiss the bill.

On August 30, 2021, Respondent filed an Answer and New Matter in response to Complainant's formal complaint, in which Respondent generally denied the bills were incorrect and averred Complainant was responsible to pay for the electric service he uses. Respondent admitted Complainant established service effective December 22, 2017, but it issued a 10-day termination notice on June 23, 2021, because Complainant had not made a payment in over two years and the account balance was greater than \$10,000. Respondent averred Complainant did not specify the months at issue or explain his allegation of incorrect charges. Penelec alleged the consumption pattern at the service address was greater from August 2020 to July 2021 than the previous year, but both years reflect higher electric consumption during the winter heating seasons.

On October 6, 2021, the Office of Administrative Law Judge issued a Telephone Hearing Notice, which scheduled a telephonic initial hearing to be conducted on November 5, 2021. On October 7, 2021, the presiding officer issued a Prehearing Order which specified procedural matters including how to request a continuance of the hearing.

The time and date of the hearing on November 5, 2021, was included in the hearing notice, dated October 6, 2021, and in the Prehearing Order, dated October 7, 2021. Both the hearing notice and the Prehearing Order 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 Prehearing Order stated in bold print on the first page "FAILURE TO APPEAR" and indicated the case might be dismissed with prejudice if Complainant failed to take part in the hearing on November 5, 2021.

The presiding officer convened the telephonic hearing as scheduled on November 5, 2021, at 10:05 a.m. Complainant failed to appear for the hearing, but counsel for Respondent was present and prepared to present Respondent's evidence along with testimony from two witnesses. Respondent's counsel indicated she attempted to contact Complainant by telephone on October 26, 2021, and was unable to leave a message. After the failed telephone contact, Counsel stated an email was sent to Complainant, asking Complainant to contact Respondent, and Complainant responded to the email on October 28, 2021, indicating he would

telephone Respondent later. Respondent has not received any contact from Complainant since October 28, 2021. Counsel averred Complainant was aware of the hearing on November 5, 2021, as evidenced by his receiving notice of the hearing, and Complainant's email did not indicate he would be unable to participate.

The presiding officer took a brief recess from 10:05 a.m. to 10:16 a.m. to ascertain if Complainant called the Commission's telephone number or the legal assistant to explain his absence from the hearing. After checking with the legal assistant during a short recess, the presiding officer reconvened the hearing at 10:16 a.m. and noted on the record that Complainant did not leave a voicemail message on the Commission's telephone line and Complainant had not joined the bridge conference call. During the hearing, Respondent's counsel noted Complainant had been provided with sufficient notice of the hearing and had indicated on October 28, 2021, that he was aware of the hearing on November 5, 2021.

Respondent made an oral motion to dismiss the complaint with prejudice due to Complainant's failure to appear, the large unpaid balance and the lack of payments on the account over the previous four years. In support of her motion, counsel for Respondent averred on the record that Complainant owed \$15,851.98, as of October 23, 2021, and that only five payments had been made on the electric service account since service was established on December 22, 2017. Counsel noted Complainant's electric service at the service address remained active as of the date of the hearing.

The presiding officer noted on the record the motion to dismiss with prejudice would be taken under advisement and the hearing concluded at 10:20 a.m. The hearing record closed on November 5, 2021, upon the conclusion of the telephonic hearing, pursuant to 52 Pa.Code § 5.431(a) and (b).

#### FINDINGS OF FACT

1. Complainant is Chris Rothrock, who resides at 298 Central Street, Rossiter, Pennsylvania 15772 (service address).

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

3. The Prehearing Order dated October 7, 2021, and the hearing notice dated October 6, 2021, were sent to the email address provided by Complainant.

4. The hearing notice, dated October 6, 2021, warned Complainant the formal complaint might be dismissed if Complainant failed to appear at the telephonic hearing on November 5, 2021. The hearing notice was not returned as undeliverable.

5. The Prehearing Order dated October 7, 2021, warned the formal complaint might be dismissed with prejudice if Complainant did not take part in the telephonic hearing on November 5, 2021. The Prehearing Order was not returned as undeliverable.

6. Complainant was not present, did not participate in the telephonic hearing on November 5, 2021, and did not contact the presiding officer or Commission to explain his absence.

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. Rothrock, 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.<sup>1</sup> Mr. Rothrock must show the utility is responsible or accountable for the problem described in the complaint.<sup>2</sup> Administrative agencies, like the

---

<sup>1</sup> *Se-Ling Hosier v. Margulies*, 70 A.2d 854 (Pa. 1950).

<sup>2</sup> *Feinstein v. Philadelphia Suburban Water Co.*, 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.<sup>3</sup>

Mr. Rothrock did not appear at the time scheduled for the November 5, 2021 hearing, and he did not participate in the November 5, 2021 hearing. The date, time and instructions on how to participate in the hearing were listed in the hearing notice, dated October 6, 2021, and in the Prehearing Order, dated October 7, 2021.

The Office of Administrative Law Judge served the hearing notice on Complainant using the same email address Mr. Rothrock provided to the Commission in his formal complaint.<sup>4</sup> Once notice of a hearing and the opportunity to be heard was provided, it was the responsibility of Mr. Rothrock to appear and participate in the hearing.<sup>5</sup> If Mr. Rothrock could not appear, for any reason, then it was the responsibility of Mr. Rothrock 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...

---

<sup>3</sup> *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

<sup>4</sup> *Morella v. PECO Energy Co.*, 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).

<sup>5</sup> *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-00161106 (Order entered October 25, 1993); *Mumma v. PPL Electric Utilities Corp.*, Docket No. C-00014869 (Order entered January 24, 2002).

When Mr. Rothrock 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. § 332(f) and 52 Pa.Code § 5.245. Respondent's attorney moved to dismiss the formal complaint with prejudice for Complainant's failure to appear. Respondent contended the formal complaint should be dismissed with prejudice due to Complainant's failure to make more than five payments over a four-year period and because the account balance was over \$15,000. Respondent's motion was taken under advisement.

The hearing record closed on November 5, 2021, 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. Rothrock 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. Rothrock could leave a voicemail message for the presiding officer if additional information was needed prior to the hearing or if there was an impediment to his participation. The Prehearing Order provided the telephone number for the presiding officer's legal assistant if Mr. Rothrock wished to send further communications to the attention of the presiding officer. Lastly, the Prehearing Order also specified the case might be dismissed with prejudice if Complainant did not take part in the hearing on November 5, 2021.

Mr. Rothrock 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, pursuant to 66 Pa.C.S.A. § 1410.1(3), a public utility has a duty to report to the Commission annually those residential customers who have accumulated a debt in excess of \$10,000 and to report the efforts being taken to collect those debts. Failure to make reasonable attempts to collect those debts can result in the Commission imposing civil penalties on the utility. Penelec has a responsibility - to the Commission and to its other customers who pay on their electric service accounts monthly – to pursue payment on this large outstanding balance which Penelec averred Complainant owes. Complainant did not appear to present evidence or explain how Respondent’s billing statements were incorrectly calculated or determined. Regardless of how he orders his personal expenses, Mr. Rothrock is obligated to pay for the electric service which he has used since 2017. His failure to do so has resulted in his unpaid bills being included in Penelec’s uncollectible expenses which Respondent’s remaining customers must pay, and his actions have put Penelec at risk of being subject to a civil penalty.

This formal complaint will be dismissed with prejudice in the Ordering Paragraphs below. Respondent averred at the hearing that Mr. Rothrock owes over \$15,000 for electric service which he used, has not made a payment for that electric service within the last two years. Respondent averred only receiving five payments from Complainant in the last four years. Complainant’s failure to appear to prosecute his claims on a large unpaid balance with very few payments is an abuse of the Commission’s processes. Accordingly, Respondent’s oral motion to dismiss with prejudice the formal complaint will be granted, and the formal complaint will be dismissed with prejudice in the Ordering Paragraphs below.<sup>6</sup>

### CONCLUSIONS OF LAW

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

---

<sup>6</sup> *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 Co.*, 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 November 5, 2021. 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 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 Co.*, 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).

8. A public utility has a duty to report to the Commission annually those residential customers who have accumulated a debt in excess of \$10,000 and to report the efforts being taken to collect those debts. Failure to make reasonable attempts may result in civil penalties. 66 Pa.C.S.A. § 1410.1(3).

