

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jorge Santiago	:	
	:	
v.	:	C-2021-3029690
	:	
Pennsylvania-American Water Company	:	

**INITIAL DECISION**

Before  
Steven K. Haas  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the formal complaint of Jorge Santiago against Pennsylvania-American Water Company because the Complainant failed to appear for the hearing and prosecute his complaint despite being given notice and an opportunity to be heard.

**HISTORY OF THE PROCEEDING**

On November 12, 2021, the Complainant, Jorge Santiago, filed a formal complaint against Pennsylvania-American Water Company (PAWC) with the Pennsylvania Public Utility Commission (Commission). In the complaint, Mr. Santiago alleges that PAWC posted an incorrect shut-off notice on his property as a scare tactic. The notice indicated that service would be shut off due to non-payment. He requests, by way of relief, that the Commission impose a fine against PAWC.

On December 20, 2021, PAWC filed an answer to the complaint. In its answer, PAWC admitted that the notice posted on Mr. Santiago's property was incorrect. PAWC avers

that the notice should have indicated that service was being terminated because Mr. Santiago was receiving service without ever having established an account with PAWC. PAWC averred that it has the right to terminate service due to unauthorized usage.

By Initial Call-In Telephonic Hearing Notice dated January 26, 2022, a telephonic hearing was scheduled for March 1, 2022, at 10:00 a.m., and the matter was assigned to me. The hearing notice instructed the parties that they could lose their case if they failed to participate in the hearing and present facts on the issues raised. The hearing notice was sent to Mr. Santiago to the email address provided by him on his complaint form.

The hearing began on March 1, 2022, at 10:00 a.m., as scheduled. Counsel for PAWC called in with two witnesses available to testify. The Complainant failed to call in to the hearing. The Complainant was given an additional ten minutes to call and participate in the hearing but failed to do so.

No witnesses were presented, and no exhibits were introduced into the record. Counsel for PAWC moved that the complaint be dismissed for lack of prosecution pursuant to 52 Pa. Code § 5.245. I closed the record on March 3, 2022. In accordance with Commission policy, I am granting the Motion.

#### FINDINGS OF FACT

1. The Complainant is Jorge Santiago.
2. The Respondent is Pennsylvania-American Water Company.
3. On November 12, 2021, the Complainant filed a formal complaint with the Commission against the Respondent.
4. On December 20, 2021, the Respondent filed an answer to the complaint.

5. By Initial Call-In Telephonic Hearing Notice dated January 26, 2022, a telephonic hearing was scheduled for March 1, 2022, at 10:00 a.m.

6. The Hearing Notice was e-mailed to the Complainant at the address provided by him on his complaint and e-served on the Respondent and included the date and time of the hearing and a toll-free dial-in telephone number.

7. The Hearing Notice was not returned to the Commission as undeliverable to the Complainant.

8. The Hearing Notice advised the parties that they may lose their case if they failed to appear at the hearing.

9. The telephonic hearing began on March 1, 2022, at 10:00 a.m., as scheduled.

10. The Complainant did not call in to the March 1, 2022, hearing.

11. Counsel for PAWC was present at the March 1, 2022, hearing and moved that the matter be dismissed for failure to prosecute, and the motion was taken under advisement.

12. Neither the Complainant nor a representative for the Complainant has contacted the Commission to explain his absence from the hearing.

### 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). The essential elements of due process in an administrative proceeding are notice and an opportunity to be heard. *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (Pa. Cmwlth. 2016). Notice electronically served to a party with no notification that service failed is

presumed received. *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Final Order entered December 19, 2019); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered April 7, 2017) (*Zirkel*); and *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered January 31, 2017) (*Morella*).

The Hearing Notice was served on the Complainant at the e-mail address provided by him to the Commission. The notice included the call-in telephone number and instructions for connecting to the hearing. The notice also informed both parties that they may lose their case if they did not connect to the hearing at the scheduled time. The Hearing Notice was not returned to the Commission as undeliverable. It is therefore deemed that the Complainant had notice of the date and time of the scheduled hearing. *Zirkel, Morella*.

As the Commission noted in *Strydio v. PPL Elec. Utils. Corp.*, Docket No. C-2017-263304, p. 6 (Opinion and Order entered July 18, 2018), "[o]nce notice of a hearing and the opportunity to be heard have been provided by the Commission, it is the responsibility of the parties to appear and participate in the hearing." (*citing, Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Order entered January 24, 2002)); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Order entered October 25, 1993). The Complainant was notified of the scheduled telephonic hearing and did not appear. Additionally, the Hearing Notice advised the Complainant that the case could be dismissed if the Complainant did not call in and participate in the hearing.

To date, the Complainant has not contacted the Commission nor the undersigned regarding the hearing. Thus, the Complainant has waived the opportunity to participate in the hearing by failing to appear. 52 Pa. Code § 5.245(a); *Jefferson v. UGI Utils., Inc.*, 1995 Pa. PUC LEXIS 159 (Opinion and Order entered December 26, 1995).

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. The Complainant was advised in the Hearing Notice that he could lose the case for failure to participate in the hearing or present facts on the issues raised. By failing to appear and proffer any evidence to support the

Complaint, the Complainant has failed to meet this burden. *Id.* Consequently, the Complaint will 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. Therefore, the Motion of PAWC to dismiss the matter for failure to prosecute will be granted.

### CONCLUSIONS OF LAW

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

2. The Complainant received notice of the hearing. *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Final Order entered December 19, 2019); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered April 7, 2017); and *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered January 31, 2017).

3. The due process rights of the Complainant have been fully protected in this proceeding. *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (Pa. Cmwlth. 2016); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa. Code § 5.245(a).

4. As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).

5. The Complainant did not appear and participate in the hearing, did not present any evidence, and, therefore, has failed to meet the burden of proving that the Complainant is eligible for the relief sought from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Pennsylvania-American Water Company to dismiss the formal complaint filed by Jorge Santiago against Pennsylvania-American Water Company at Docket Number C-2021-3029690, is granted.
2. That the formal complaint of Jorge Santiago against Pennsylvania-American Water Company at Docket Number C-2021-3029690, is dismissed with prejudice.
3. That Docket Number C-2021-3029690 be marked closed.

Date: March 14, 2022

/s/  
\_\_\_\_\_  
Steven K. Haas  
Administrative Law Judge