

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Alison Sullivan	:	
	:	
v.	:	C-2021-3029862
	:	
Pennsylvania-American Water Company	:	

INITIAL DECISION

Before
Dennis J. Buckley
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses with prejudice the formal Complaint brought by Alison Sullivan (Complainant) against Pennsylvania-American Water company (PAWC or Company) alleging that PAWC failed to provide reasonable service. Complainant failed to appear for the hearing in this matter despite prior notice. Consequently, PAWC moved for dismissal of the Complaint. That Motion is granted, and the Complaint is dismissed.

HISTORY OF THE PROCEEDING

On December 7, 2021, Complainant filed a formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PAWC alleging that PAWC had provided unreasonable service in querying the possibility of a leak on her property and in sending Complainant termination notices. Complainant attached copies of bills to her Complaint and referred to Chapter 14 of the Public Utility Code (Code). Complainant requested that the Commission order PAWC to verify the existence of a leak, cease sending Complainant

termination notices, and find PAWC's communications with Complainant unlawful under the provisions of the Responsible Utility Customer Protection Act.

On December 27, 2021, PAWC filed an Answer to the Complaint. In that Answer, PAWC stated that it had discovered a leak in Complainant's service line on November 2, 2021, and had provided Complainant notice of the same. PAWC stated in its Answer that it would provide Complainant further documentation of the leak. PAWC denied the allegations of unreasonable service and any violation of the Code or the regulations of the Commission. PAWC asked that the Complaint be submitted to the Commission's Mediation Unit or dismissed.

On December 28, 2021, Chief Administrative Law Judge Charles E. Rainey, Jr. issued an Interim Order referring the Complaint to the Commission's Mediation Unit. The matter was not resolved by mediation.

On April 6, 2022, the Commission served the parties a telephonic hearing notice by which it scheduled an initial telephonic hearing for May 18, 2022, at 10:00 a.m., and assigned me as the Presiding Officer. The toll-free call-in number and PIN Code for the hearing were provided in the Notice as well as the statement that: "You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised. Your case may be dismissed "with prejudice" which means that you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint."

On April 29, 2022, I issued a prehearing Order in which I set forth certain procedural requirements pertaining to the hearing. The prehearing Order also provided the date and time of the hearing. The prehearing Order stated, "You may lose this case if you do not take part in this hearing and present evidence on the issues raised."

Both the hearing notice and the prehearing Order were eServed to Ms. Sullivan at the email address she provided to the Commission for service of documents.

On May 18, 2022, the telephonic evidentiary hearing in this case convened pursuant to Notice. Michael A. Gruin, Esquire, appeared on behalf of PAWC. Complainant did not appear. Accordingly, the hearing proceeded in her absence. Neither I nor the Commission had received any contacts from the Complainant prior to the hearing about her availability nor did Complainant call in for the hearing. Attorney Gruin recounted his many attempts to contact Complainant to discuss this matter, but Complainant never responded to his messages. Tr. at 5-6. He moved that the Complaint be dismissed as Complainant had failed to appear to prosecute her Complaint. Complainant has never explained her absence from the hearing through any communication to the Office of Administrative Law Judge (OALJ).

The hearing concluded and a transcript of seven pages was filed on June 17, 2022. The record closed on that date. This Initial Decision grants PAWC's Motion to Dismiss the Complaint for failure of the Complainant to appear and prosecute her case.

FINDINGS OF FACT

1. The Complainant in this proceeding is Alison Sullivan.
2. The Respondent in this proceeding is Pennsylvania-American Water Company, a Commission jurisdictional water company.
3. On December 7, 2021, the Complainant filed a formal Complaint against PAWC alleging unreasonable service and a billing dispute.
4. On December 27, 2022, PAWC filed an Answer in which it denied the allegations in the Complaint.
5. On April 6, 2022, a telephonic hearing notice was served to the parties which scheduled an initial telephonic hearing for May 18, 2022, at 10:00 a.m.
6. On April 29, 2022, a prehearing Order was served to the parties which set forth certain procedural requirements associated with the initial hearing.

7. Both the prehearing Order and the hearing notice warned the parties that they may lose the case if they did not take part in the hearing and present evidence on the issues raised.

8. The hearing notice and the prehearing Order were eServed to Ms. Sullivan at the email address she provided to the Commission for service of documents..

9. The hearing notice and prehearing Order eServed to Complainant were not returned to the Commission as undeliverable.

10. The Complainant failed to appear at the scheduled date and time for the hearing.

11. The Complainant did not withdraw or settle her Complaint against PAWC, nor did she request a continuance of the hearing.

DISCUSSION

In her Complaint, Ms. Sullivan alleged that PAWC had provided unreasonable service in querying the possibility of a leak on her property and in sending Complainant a termination notice. Complainant attached copies of bills to her Complaint and referred to Chapter 14 of the Code. Complainant requested that the Commission order PAWC to verify the existence of a leak, cease sending Complainant termination notices, and find that PAWC's communications with Complainant unlawful under the provisions of the Responsible Utility Customer Protection Act.

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). "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*, 70 A.2d 854 (Pa. 1950). As the party seeking relief from the Commission, Ms. Sullivan bears the burden of proof in this case.

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 provided with notice and an opportunity to be heard. *Id.*

No one appeared on behalf of Ms. Sullivan on the date and at the time set for the hearing in her case, despite notice of the hearing having been eServed to her at the email address provided by her. I also note Attorney Gruin's attempts to contact Complainant and that his messages were never responded to.

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 hearing notice and the prehearing Order were eServed on Ms. Sullivan. Neither the hearing notice nor the prehearing Order were returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents sent to the Complainant in the ordinary course of business were received by her. *Morella v. PECO Energy Company*, Docket No. C-2016-2553416 (Opinion and Order entered Nov. 16, 2016); *Zirkel v. Philadelphia Gas Works*, Docket No. C-2016-2561176 (Opinion and Order entered Jan. 27, 2017). As noted

above, both the hearing notice and the prehearing Order stated that the parties may lose the case if they fail to appear and present evidence on the issues raised.

No request for a postponement or continuance of the hearing was received by my office. Ms. Sullivan had notice of the hearing and an opportunity to be heard in this proceeding, but chose not to appear. Therefore, the Complainant's due process rights have been fully protected. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993); *see also*, 52 Pa. Code § 5.245(a).

During the hearing, Counsel for PAWC moved for dismissal of the Complaint for lack of prosecution. By failing to appear and present any evidence in support of her Complaint, Ms. Sullivan failed to carry her burden. Having failed to appear at hearing or to request a continuance, Complainant failed to prosecute her Complaint. A Complainant's unexcused or unexplained failure to appear resulted in the inefficient use of Commission resources and the incursion of costs ultimately borne by the utility's ratepayers. Thus, the Complaint will be dismissed with prejudice. *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of 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*, 70 A.2d 854 (Pa. 1950).

4. Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. This due process requirement is satisfied when

the parties are provided with notice and an opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

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. Ms. Sullivan's due process rights have been fully protected. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993); *see also*, 52 Pa. Code § 5.245(a).

7. Ms. Sullivan failed to carry her burden of proof in this proceeding. 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 of Alison Sullivan at Docket No. C-2021-3029862 for failure to prosecute is granted.

2. That the formal Complaint filed by Alison Sullivan v. Pennsylvania-American Water Company at Docket No. C-2021-3029862 is dismissed with prejudice.

3. That this matter be marked closed.

Date: July 6, 2022

_____/s/
Dennis J. Buckley
Administrative Law Judge