

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Raymond Martin, Sr.	:	
	:	
v.	:	C-2022-3033965
	:	
Aqua Pennsylvania Wastewater, Inc.	:	

INITIAL DECISION

Before
Conrad A. Johnson
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On July 15, 2022, Complainant Raymond Martin, Sr. (Complainant or Mr. Martin) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Aqua Pennsylvania Wastewater, Inc. (Aqua or Respondent). Complainant alleged Respondent was overcharging him for his wastewater service. Complaint ¶ 4. For relief, Complainant requested the Commission to order Respondent to 1) lower his bill; 2) install a wastewater meter at his house; 2) charge for actual wastewater usage and justify the bill. Complainant ¶ 4.

Aqua filed an Answer and New Matter on August 11, 2022. Aqua denied overcharging Complainant. Aqua averred in part that Complainant was billed a flat rate as an unmetered customer. Aqua further averred that in its most recent rate proceeding, the Commission approved the flat rate charged to Complainant, as set forth in its tariff attached to the Answer as Exhibit 1. Answer ¶ 4. In New Matter, Aqua alleged, “Consistent with its 2022 Commission-approved Tariff, the Complainant is billed a monthly flat fee of \$133.35 under Rate Zone 4 for wastewater service.” New Matter ¶ 11.

On August 19, 2022, Complainant filed a reply to Respondent’s New Matter. Complainant averred in part that 1) he never received a notice of a rate increase; 2) he lives alone; 3) Aqua refuses to use his well water meter; 4) he is willing to pay for the installation of a meter for his wastewater but Aqua refuses; and 5) he wishes to be billed in accordance with his actual wastewater usage.

This matter was referred to the Office of Administrative Law Judge’s Mediation Unit for resolution. However, settlement was not achieved through mediation.

By Call-In Telephone Hearing Notice dated November 23, 2022, the Parties were informed that a call-in telephonic hearing on the Complaint would be convened by me on January 19, 2023, at 10:00 a.m. The Hearing Notice provided the Parties with the Toll-Free Bridge Number and the PIN to dial on the morning of the hearing to participate in the telephonic hearing. The Hearing Notice further stated as follows:

FAILURE TO APPEAR: 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.

CONTINUANCES. You may request a continuance of the hearing if you have a good reason. All continuances will be granted only for good cause. To request a continuance, you must submit a written request (a “motion”) at least five (5) days before

the hearing. Your motion should include: 1) The case name, number, and hearing date; 2) The reason for the request; and 3) Whether the other party agrees (or if you do not know).

(Emphasis in original).

On November 23, 2022, I issued a Prehearing Order reminding the Parties to call-in, on the date and at the time of the hearing scheduled for January 19, 2023, at 10:00 a.m., the Toll-Free Bridge Number and enter the PIN to participate in the telephonic hearing. The Prehearing Order again stated the **FAILURE TO APPEAR** warning. Additionally, the Prehearing Order informed the Parties about the applicable procedural rules, and again included the procedure to follow for hearing **CONTINUANCES**.

The Hearing Notice and Prehearing Order informing the Parties of the manner, date and time of the hearing, were emailed to Complainant and eServed to Respondent in the ordinary course of the Commission's business to the email addresses provided by them, respectively, to the Commission. The Commission did not receive a return electronic message that delivery of the Hearing Notice or the Prehearing Order to Mr. Martin's email address had failed.

On January 19, 2023, by 10:00 a.m., counsel for Aqua, Mary McFall Hopper, Esquire, together with her witness, Manager of Rates, Erin Feeney, had dialed-in to participate in the telephonic hearing. The court reporter was also present. However, Mr. Martin was not present when the hearing convened at 10:03 a.m.

I briefly recessed the hearing until 10:25 a.m., to permit additional time for Mr. Martin to appear or to contact the Office of Administrative Law Judge (OALJ) to explain his absence. The telephonic proceeding remained open with counsel for Aqua and the court reporter in the telephonic hearing, and I waited for Mr. Martin to join the hearing. When the hearing reconvened, Mr. Martin had not dialed-in to the hearing nor contacted the OALJ to explain his absence.

Accordingly, the hearing proceeded in Mr. Martin's absence. As a result, counsel for Aqua moved for dismissal of the Complaint with prejudice for lack of prosecution. I informed counsel that the motion would be taken under advisement and an Initial Decision would be issued. The record was closed, and the hearing adjourned at 10:31 a.m. on January 19, 2023.

FINDINGS OF FACT

1. Complainant in this proceeding is Raymond Martin, Sr.
2. Respondent Aqua Pennsylvania Wastewater, Inc., is a jurisdictional public utility providing wastewater service to Pennsylvania customers including Complainant.
3. On July 15, 2022, Mr. Martin filed a Formal Complaint against Respondent with the Commission.
4. On August 8, 2022, Aqua filed an Answer and New Matter to the Complaint.
5. On August 19, 2022, Complainant filed a reply to Respondent's New Matter.
6. By Call-In Telephone Hearing Notice dated November 23, 2022, the Parties were informed that a call-in telephonic hearing in this proceeding would convene on January 19, 2023, at 10:00 a.m.
7. The Hearing Notice provided the Parties with the Toll-Free Bridge Number and the PIN to dial on the morning of the hearing to participate in the telephonic hearing.

8. The Hearing Notice informed the Parties that failure to participate in the hearing may result in dismissal of their case.

9. The Hearing Notice, in the ordinary course of the Commission's business, was emailed to Mr. Martin at the email address provided by him to the Commission.

10. There is no indication in the record that there was an electronic failure in the delivery of the Hearing Notice to Mr. Martin.

11. Respondent's counsel and witness were present on January 19, 2023, when the telephonic hearing convened at 10:03 a.m.

12. By approximately 10:25 a.m. on January 19, 2023, Mr. Martin had not appeared for the telephonic hearing.

13. There is nothing in the record to indicate that Mr. Martin's failure to appear for the telephonic hearing was unavoidable.

14. When Mr. Martin did not appear for the telephonic hearing, Respondent's counsel moved for dismissal of the Complaint with prejudice for lack of prosecution.

DISCUSSION

Due Process

The Commission satisfies the requirement of affording a complainant with administrative due process, by providing timely notice of the hearing on the complaint and the opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

On November 23, 2022, the Call-In Telephone Hearing Notice was electronically served upon Complainant at the email address he provided to the Commission. The Commission

did not receive a return electronic message that delivery of the Hearing Notice to Mr. Martin's email address had failed. Accordingly, there is a presumption that Mr. Martin received electronic notice of the hearing and elected not to participate in the hearing. *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered Dec. 19, 2019); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Nov. 16, 2016); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Jan. 27, 2017). Therefore, 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); 52 Pa. Code § 5.245(a).

Burden of Proof and Grounds for Dismissal of the Complaint

Pursuant to Section 332(a) of the Code, 66 Pa.C.S. § 332(a), the burden of proof is on the proponent of a rule or order. In this proceeding, Complainant is the proponent of a rule or order. Therefore, Mr. Martin had the burden of proving he was entitled to the relief requested in his Complaint. Aqua was present for the hearing through its attorney and witness. However, Mr. Martin was not present for the hearing.

Section 332(f) of the Code, 66 Pa.C.S. § 332(f), provides in pertinent part:

[a]ny 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[.]

Since Mr. Martin failed to appear and participate by telephone in the scheduled hearing, his Complaint may be dismissed with prejudice. *See Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022); *El-Ayazra v. W. Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); 52 Pa. Code § 5.245. There are no facts in the record to indicate that Mr. Martin's failure to appear for the telephonic hearing was unavoidable. Accordingly, in the ordering paragraphs

below the Complaint will be dismissed with prejudice. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the Parties and subject matter of this proceeding. 66 Pa.C.S. § 701.
2. Complainant as the proponent of a rule or order has the burden of proof. 66 Pa.C.S. § 332(a).
3. 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 (Order entered Dec. 19, 2019); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Apr. 7, 2017); and *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017).
4. Complainant's due process rights have been fully protected. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).
5. By failing to participate in the hearing and proffer any evidence to support the complaint, Complainant has failed to meet the burden of proof. 66 Pa.C.S. § 332(a).
6. When a complainant fails to appear for a scheduled conference or hearing and there no facts in the record to indicate that complainant's failure to appear for the hearing was unavoidable, the complaint shall be dismissed with prejudice. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); 52 Pa. Code § 5.245.

