**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

James McClintock :

:

v. :C-2013-2351639

:

Columbia Gas of Pennsylvania, Inc. :

**INITIAL DECISION**

Before

Conrad A. Johnson

Administrative Law Judge

This Initial Decision dismisses, with prejudice, the Formal Complaint filed by James McClintock (Mr. McClintock or Complainant) against Columbia Gas of Pennsylvania, Inc. (Columbia Gas or Respondent) with the Pennsylvania Public Utility Commission (Commission) at Docket Number C-2013-2351639, for his obstruction of the orderly conduct of the proceeding in failing to appear at the further hearing and submit to cross-examination.

HISTORY OF THE PROCEEDING

On March 7, 2013, Complainant filed his complaint against Respondent. Mr. McClintock, in part, alleges,

The company changed the gas to my personal name instead of the company who actually owns the property under contract, under “Act 54” provisions. I contacted the company and informed them that this should have been changed to my companies name and not my personal name. I also informed them that this property does not fall under “Act 54” because the gas service in the property only services one unit of the building and that only this one unit is occupied.

Complaint ¶4.

As relief, Mr. McClintock essentially requests,

I also want the gas bill changed back to the original tenants name, which she already agreed to, along with the past due balance that was her balance to begin with. The tenant was on a low income program which when the bill was transferred to my name with my knowledge became my responsibility.

Complaint ¶5.

On March 27, 2013, Columbia Gas filed an answer to the complaint and alleged,

[T]he Premises is a multi-unit building of mixed commercial and residential use containing more than one dwelling unit. Consequently, Columbia Gas avers that Complainant was in violation of Act 54, 66 Pa. C.S., Section 1529.1 (a) of the Public Utility Code which requires complainant to provide notice that the Premises contained more than one dwelling unit and that the dwelling units were not individually metered. Further, Columbia Gas avers that foreign load was discovered on the account of a tenant on or about December 7, 2012. Therefore, under Act 54, 66 Pa. C.S., Section 1529.1 (c), Columbia Gas was required to list the account in the name of Complainant who, to the best of the knowledge and belief of Columbia Gas, is the owner or landlord of the Premises. Therefore, under applicable law, Complainant is responsible for payment of the utility services rendered to the tenant in the current amount of $1757.78.

Answer ¶4. Columbia Gas requests dismissal of the complaint.

By Hearing Notice dated April 2, 2013, the parties were informed that the proceeding was assigned to me for an Initial Telephonic Hearing on April 30, 2013 at 10:00 a.m.

A Prehearing Order was issued on April 9, 2013, advising the parties of the applicable procedural rules including the procedure to request a change in the scheduled hearing date.

The telephonic hearing convened as scheduled on April 30, 2013. Complainant

appeared *pro se*,and Respondent was represented by Larry R. Crayne, Esquire. Plant Service Specialist Robert Turner and Compliance Specialist Valerie Q. Sexton were also present as witnesses on behalf of Respondent. Mr. McClintock gave testimony on his behalf. Tr. 10-15.[[1]](#footnote-1) He did not sponsor any exhibits. While under cross-examination, Mr. McClintock claimed he had not received any of the Company’s documents including exhibits. As a result, I informed the parties that the hearing would be continued and directed Attorney Crayne to resend copies of the Company’s Answer, Interrogatories and Exhibits to Mr. McClintock by certified mail.

After informing the parties that they would receive in the mail notice of the next hearing date and time, I adjourned the telephonic hearing at 11:27 a.m. on April 30, 2013. Tr. 31. On May 1, 2013, a Hearing Notice was mailed to the parties informing them that a Further Hearing would be conducted by me on June 13, 2013, at 10:00 a.m., 2nd Floor Hearing Room, Piatt Place, 301 Fifth Avenue, Pittsburgh, Pennsylvania. The Hearing Notice was not returned by the U.S. Postal Service as undeliverable to either party.

On May 2, 2013, I received a copy of Attorney Crayne’s letter sent to Mr. McClintock at the Post Office Box address listed in his complaint. The letter read,

Enclosed is another copy of the Columbia Gas Answer, Interrogatories and Exhibits that were previously mailed to you.

I am also sending a copy to the address on your letterhead shown on Exhibit 5: 600 Clay Avenue, Suite 102, Jeannette, Pa 15644.[[2]](#footnote-2)

On June 13, 2013, at 10:00 a.m., I convened the further hearing in this matter. Attorney Crayne was present together with his witnesses, Robert Turner, and Compliance Specialist Valerie Q. Sexton, who was available by telephone. June Tr. 5. Mr. McClintock was not present. The hearing briefly recessed to provide additional time for him to arrive and participate in the hearing. When the hearing reconvened at 10:32 a.m., Mr. McClintock had not appeared; the hearing proceeded in his absence. As a result, counsel for Respondent moved for dismissal of the complaint for lack of prosecution. June Tr. 8. Counsel also argued, “I think in view of Mr. McClintock’s failure to appear, I don’t think he’s carried his burden of proof, so I don’t see any point putting testimony in, Your Honor.” June Tr. 10. The motion was taken under advisement and the further hearing was adjourned.

The record consists of the parties’ filings, hearing notices and two transcripts totaling 41 pages. The record was closed by Interim Order dated June 24, 2013. This case is procedurally ready for ruling.

FINDINGS OF FACT

1. Complainant is James McClintock, who has mailing addresses at 600 Clay Avenue, Jeannette, Pennsylvania 15644 (Tr. 4) and U.S. Post Office Box 325, Manor, Pennsylvania 15665. Complaint ¶1.

2. Respondent Columbia Gas of Pennsylvania, Inc. is a jurisdictional public utility providing gas service to Pennsylvania customers.

3. On March 7, 2013, Complainant McClintock filed a complaint against Respondent Columbia Gas alleging he was not responsible for the gas bill at 606 Division Street, Jeannette, Pennsylvania 15644. Complaint ¶4.

4. On March 27, 2013, Respondent Columbia Gas filed an answer denying the material allegations of the complaint. Answer ¶4.

5. On April 30, 2013, an initial telephonic hearing was held during which Complainant McClintock gave testimony on his complaint. Tr. 10-15.

6. During Respondent’s cross-examination, Mr. McClintock was evasive in answering questions. Tr. 15-18.

7. During the hearing Mr. McClintock was disruptive. Tr. 24-30.

8. The April 30, 2013 telephonic hearing was continued to June 13, 2013 to be conducted as an in-person hearing.

9. Notice of the time and place of the June 13, 2013 hearing was mailed to Mr. McClintock at the address listed in his complaint. The Notice was not returned by the U.S. Postal Service as undeliverable.

10. When the June 13, 2013 hearing convened Respondent’s counsel and witness, Robert Turner, were present in the hearing room.

11. Complainant McClintock did not appear for the June 13, 2013 hearing, request a continuance, nor contact the presiding administrative law judge to explain his non-appearance.

12. Complainant McClintock’s conduct during the April 30, 2013 initial telephonic hearing and his failure to appear at the June 13, 2013 hearing denied Respondent Columbia Gas an opportunity for meaningful cross-examination.

DISCUSSION

Pursuant to Section 332(a) of the Public Utility Code (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. McClintock had the burden of proving the allegations he raised in his complaint. To satisfy his burden and receive relief, Mr. McClintock was required to show that Respondent Columbia was responsible or accountable for the problem described in the complaint. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa. PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. PUC 300 (1976). However, when a party’s

actions are disruptive or obstructive to the proceeding, the Commission or the presiding officer,

after providing due notice,[[3]](#footnote-3) may sanction the party by taking appropriate actions, including dismissal of the complaint. See 52 Pa. Code §5.245.

Mr. McClintock testified that he managed the building at 606 Division Street, Jeannette, Pennsylvania (the service location) in 2011. Tr. 11. In November 2012 he received a gas bill in his name for the service location. Tr. 10. He testified, “It’s not my property. I don’t manage it. I don’t collect rent. Nothing.” Tr. 13. “They have nothing, whatsoever, tying me to this building, other than the fact that, I was maintenance, from approximately, February of 2011, to June of 2011.” Tr. 14.

After completion of Mr. McClintock’s testimony, Attorney Crayne cross-examined him on the ownership and management of the building at the service location. Tr. 15. Mr. McClintock’s responses were evasive. Tr. 15-18. He was questioned, “Mr. McClintock, what is Professional Investing?” He answered, “A name as far as I know.” Tr. 17.

When Attorney Crayne asked him if he had received Columbia Gas’s Answer to the Complaint, Interrogatories and Exhibits, Mr. McClintock replied he had not received the documents. Tr. 18-19. Attorney Crayne represented that the documents were mailed to the Complainant by first-class U.S. mail. Tr. 19.

Attorney Crayne further represented that Columbia Gas’s Exhibit 5 is a letter written by Mr. McClintock to tenants at the service address that states,

“I am writing you this letter to inform you of the legal standing of the property. This property was purchased from Theresa Blazowich on 25 ---” “on the 25th day of February, 2011, by Professional Investing, a company I, James McClintock run.”

Tr. 19-20. Attorney Crayne argued, “Your Honor, the problem with this Case is, Mr. McClintock has never been straightforward about the ownership of this property. I’m trying to establish ownership.” Tr. 20. Mr. McClintock retorted he could not confirm or deny the letter since he could not see a copy of it nor did he receive it as an exhibit. Tr. 23.

In order to afford both parties due process, I informed them that the hearing would be continued and rescheduled as an in-person hearing for Pittsburgh area participants. Ms. Sexton, who was located in Reading, could testify by telephone. I directed Attorney Crayne to resend the Company’s Answer, Interrogatories and Exhibits to Mr. McClintock by certified mail. Tr. 22-23.

In response to the hearing continuance, Mr. McClintock snapped,

So, once again, I’m the one being punished. …. Actually, we can just squash this hearing, because I’m done ….

…

So, I’ve wasted five months of my time doing this now. Columbia Gas has done nothing. They haven’t even checked public record. Because, all of this information would have been done. This hearing wouldn’t even be happening, if they could find the building owner, Theresa Blaxowich, who is basically, a gypsy, and disappears everywhere. ….

So, instead of me wasting my time and my money doing this, I’m going to go obtain representation, and I’m just going to go to a local court, and I’m going to pursue a civil case against Columbia Gas, for a minimum of $25,000.

Tr. 24-25.

I assured Mr. McClintock his rights were being protected by continuing the hearing and directing Attorney Crayne to send another set of Columbia Gas’s documents to him. Tr. 24, 28. However, it was his decision whether or not to participate in the next hearing. Tr. 27.

Before the hearing adjourned Mr. McClintock vehemently argued,

Well, I’m giving notice now, legal or not, I’m going down to the building, and I’m shutting the gas service off. Because, according to --- Columbia Gas this is in my name. According to the rules, under landlord --- or, under tenant utilities, as of the 30th of April, the utilities are allowed to be shut off. So, if you assholes are still billing me for a building that I don’t own or have any control over, you didn’t even get my information off of me nor contact me. You guys just took my information from another account and flipped this --- switched this over, without even giving notice.

So, if this is still on in my name down there, which you’re claiming, I’m going to town and shutting it off.

Tr. 30.

In the instant case, Mr. McClintock was afforded administrative due process because he was given timely notice of the further hearing and the opportunity to be heard on June 13, 2013. *Schneider v. PA PUC*, 479 A.2d 10 (Pa. Cmwlth. Ct. 1984). However, Mr. McClintock elected not to attend and participate in the further hearing. Additionally, Mr. McClintock’s conduct was disruptive during the initial telephonic hearing held on April 30, 2013. He completed his testimony or case-in-chief at the first hearing. But he failed to return later for the in-person hearing, thereby denying Respondent Columbia Gas the opportunity for meaningful cross-examination.

Under the above described circumstances, Section 332(f) of the Code, 66 Pa. C.S. §332(f), provides as follows:

**(f)  Actions of parties and counsel.**—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, or to recall for further examination of witnesses who were excused, unless the presiding officer shall determine that failure to be represented was unavoidable and that the interests of the other parties and the public would not be prejudiced by permitting such reopening or further examination. If the actions of a party or counsel in a proceeding shall be determined by the commission, after due notice and opportunity for hearing, to be obstructive to the orderly conduct of the proceeding and inimical to the public interest, the commission may reject or dismiss any rule or order in any manner proposed by the offending party or counsel, and, with respect to counsel, may bar further participation by him in any proceedings before the commission.

Also the Commission Rules of Administrative Practice and Procedure, Section 5.245, in pertinent part provides,

**§ 5.245.  Failure to appear, proceed or maintain order in proceedings.**

1. 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.

…

(c)  If the Commission or the presiding officer finds, after notice and opportunity for hearing, that the actions of a party, including an intervenor, in a proceeding obstruct the orderly conduct of the proceeding and are inimical to the public interest, the Commission or the presiding officer may take appropriate action, including dismissal of the complaint, application, or petition, if the action is that of complainant, applicant, or petitioner.

When Mr. McClintock failed to appear for the further hearing, Respondent elected not to present any evidence and moved for dismissal for lack of prosecution. June Tr. 8. Thus Mr. McClintock’s testimony which was not rebutted, if found credible, would establish a prima facie case entitling him to the relief requested in his complaint. However, Mr. McClintock’s testimony must be rejected for the following reasons.

Rule 403 of the Pennsylvania Rules of Evidence, Pa.R.E., Rule 403, 42 Pa.C.S.A., provides that relevant evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice. In failing to return for the further hearing and submit to cross-examination, Mr. McClintock essentially denied Columbia Gas the fundamental due process right of confrontation. *Baysmore v. Brownstein,* 771 A. 2d 97 (2001); *Moore v. Children’s Hospital of Philadelphia,* 16 Phila. 544 (1987).

Additionally, Mr. McClintock’s conduct during the first hearing disregarded the hearing process. He evaded cross-examination (Tr. 17), vehemently stated he was being punished with a continuance and the hearing was a waste of time (Tr. 24-25), threatened to personally turn off the tenants’ gas (Tr. 30), inappropriately addressed Respondent (Tr. 30), and failed to appear after being given notice and an opportunity to be heard at the further hearing. Mr. McClintock’s actions obstructed the orderly conduct of this proceeding and were adverse to the public interest.

Accordingly, Respondent’s motion to dismiss for lack of prosecution will be treated as a motion to dismiss pursuant to Section 332(f) of the Code and Section 5.254 of the Commission’s rules. For the reasons stated above, the motion will be granted and the complaint will be dismissed with prejudice. See *Martin Jefferson v. UGI Utilities, Inc.*, Docket No. Z‑00269892 (Order entered December 26, 1995).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter in

this proceeding. 66 Pa. C.S. §701.

2. The complainant as the proponent of a rule or order has the burden of proof. 66 Pa. C.S. §332(a).

3. Rule 403 of the Pennsylvania Rules of Evidence, Pa.R.E., Rule 403, 42 Pa.C.S.A., provides that relevant evidence may be excluded if its probative value is outweighed by the danger of unfair prejudice.

4. If the Commission or the presiding officer finds, after notice and opportunity for hearing, that the actions of a complainant, in a proceeding obstruct the orderly conduct of the proceeding and are inimical to the public interest, the Commission or the presiding officer may take appropriate action, including dismissal of the complaint. 52 Pa. Code §5.245.

5. When a complainant fails to appear for a scheduled hearing, the complaint is to be dismissed with prejudice. *Martin* *Jefferson v. UGI Utilities, Inc.*, Docket No. Z‑00269892 (Order entered December 26, 1995).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Respondent Columbia Gas of Pennsylvania, Inc., for dismissal of the Formal Complaint filed against it by James McClintock at Docket No. C‑2013-2351639 is granted.

2. That the Formal Complaint of James McClintock v. Columbia Gas of Pennsylvania, Inc., at Docket No. C-2013-2351639 is dismissed, with prejudice, for his obstruction of the orderly conduct of the proceeding and failure to appear at the further hearing.

3. That the Commission’s Secretary’s Bureau shall mark Docket No. C‑2013-2351639 closed.

Date: June 25, 2013 /s/

Conrad A. Johnson

Administrative Law Judge

1. April 30, 2013 Hearing Transcript (Tr.). [↑](#footnote-ref-1)
2. At the further hearing, Attorney Crayne represented that the mailing sent to the Post Office Box was returned “Unclaimed and Unable to Forward,” the other mailing was returned “Not Deliverable as Addressed and Unable to Forward.” June 13, 2013 Transcript (June Tr.) 8. [↑](#footnote-ref-2)
3. There is a presumption in the law that Mr. McClintock received the further hearing notice because it was mailed in the ordinary course of business and not returned by the U.S. Postal Service to the Commission. *Berkowitz v. Mayflower Securities, Inc.*, 317 A.2d 584 (Pa. 1974); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Judge v. Celina Mutual Ins. Co.*, 449 A.2d 658 (Pa. Super. Ct. 1982); and *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. Ct. 1997). [↑](#footnote-ref-3)