**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Sara Krupa :

:

v. : C-2014-2453711

:

Peoples Natural Gas Company, LLC :

**INITIAL DECISION**

Before

Joel H. Cheskis

Administrative Law Judge

INTRODUCTION

This Decision grants a Motion to Dismiss for Failure to Prosecute because the Complainant failed to appear for the Hearing at the designated date and time.

HISTORY OF THE PROCEEDING

On October 20, 2014, Sara Krupa filed with the Pennsylvania Public Utility Commission (Commission) a formal Complaint against Peoples Natural Gas Company, LLC (Peoples or “the Company”), Docket Number C-2014-2453711. The Complaint was an untimely appeal of a decision of the Commission’s Bureau of Consumer Services, case number 3287719. In her Complaint, Ms. Krupa averred that Peoples is threatening to shut off her service or has already shut off her service and that she would like a payment agreement. Ms. Krupa added that her payment history was spotty because, among other things, her husband’s employment history was spotty.

On December 5, 2014, Peoples filed an Answer to the Complaint admitting or denying the various averments made by Ms. Krupa. In particular, Peoples admitted that Ms. Krupa owes Peoples $1,277.25 for natural gas service and that she has defaulted on two or more Company payment agreements. Peoples requested that Ms. Krupa be directed to pay her outstanding balance as well as a reconnection fee and security deposit to re-establish service.

On March 9, 2015, the Commission issued a Telephone Hearing Notice scheduling an Initial Telephonic Hearing for this matter for Thursday, April 30, 2015 at 10:00 a.m. Of note, the Hearing Notice stated, among other things, that: “Attention: You may lose this case if you do not take part in this hearing and present facts on the issues raised.” A Prehearing Order dated March 13, 2015 was issued establishing the procedural issues pertaining to the Hearing. Similar to the Hearing Notice, the Prehearing Order stated that “if a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party.” Both the Hearing Notice and the Prehearing Order were sent to Ms. Krupa at the address provided on her Complaint via first-class mail. Neither were returned to the Commission as undeliverable.

The hearing convened on April 30, 2015 as scheduled. Jennifer Petrisek, Esquire appeared on behalf of Peoples. No one appeared on behalf of the Complainant.

The record in this case consists of the hearing transcript of eight (8) pages. The record closed in this proceeding when the transcript was filed with the Commission on May 12, 2015. This Initial Decision memorializes the ruling at the conclusion of the Hearing granting Peoples’ Motion to Dismiss the Complaint for failure to prosecute.

FINDINGS OF FACT

1. The Complainant in this case is Sara Krupa.
2. The Respondent in this case is Peoples Natural Gas Company, LLC.
3. The Service Address is 113 Edgewood Circle, Industry, PA.
4. No one appeared at the Hearing on behalf of the Complainant. Tr. 4.
5. The Complainant received notice of the Hearing when the Commission sent her a Hearing Notice to the address she provided on her Complaint on March 9, 2015. Tr. 4.
6. The Complainant also received notice of the Hearing when the Commission sent her a Prehearing Order to the address she provided on her Complaint on March 13, 2015. Tr. 4.
7. Neither the Hearing Notice nor the Prehearing Order was received back by the Commission as undeliverable. Tr. 7.
8. Multiple attempts were made to reach Ms. Krupa to connect her to the Hearing at the designated time and date and each time messages were left for her on her voice mail. Tr. 5.
9. During the Hearing, counsel for Peoples indicated that she has had no contact with the Complainant regarding the Complaint despite several attempts to reach her. Tr. 5-6.
10. The start of the Hearing was delayed approximately 15 minutes to accommodate any delay for the Complainant. Tr. 1.

1. Both the Hearing Notice and the Prehearing Order issued in this matter stated that, if a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party.

DISCUSSION

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, 364 Pa. 54, 70 A.2d 854 (1950). In this proceeding, based on a reading of her Complaint, Ms. Krupa seeks a payment agreement that is more affordable to her. Ms. Krupa seeks relief from the Commission and, therefore, has the burden of proof in this proceeding.

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 accorded notice and the opportunity to be heard. Id.

No one appeared on behalf of the Complainant at the date and time set for the hearing in her case despite notice of the hearing. 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.**

1. After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will:
2. Be deemed to have waived the opportunity to participate in the conference or hearing.
3. Not be permitted to reopen the disposition of a matter accomplished at the conference or hearing.
4. 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 sent to Ms. Krupa by regular first class mail. Neither the Hearing Notice nor the Prehearing Order was returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents sent to Ms. Krupa in the ordinary course of business were received by Ms. Krupa. Berkowitz v. Mayflower Securities, Inc., 455 Pa. 531, 317 A.2d 584 (1974); Meierdierck v. Miller, 394 Pa. 484, 147 A.2d 406 (1959); Samaras v. Hartwick, 698 A.2d 71 (Pa. Super. Ct. 1997); Judge v. Celina Mutual Insurance Co., 303 Pa. Super. Ct. 221, 444 A.2d 658 (1982). Of note, both the Hearing Notice and the Prehearing Order stated that, if a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party. Counsel for Peoples also indicated that she has had no contact with Ms. Krupa regarding this matter despite several attempts to reach her to discuss the case. Tr. 5-6.

No one appeared on behalf of the Complainant at the time of the hearing. Nor did anyone ever request a postponement or continuance of the hearing. As such, Ms. Krupa had notice and an opportunity to be heard in this proceeding, but chose not to appear. Therefore, Ms. Krupa’s due process rights have been fully protected. Sentner v. Bell Telephone Company of Pennsylvania, Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa.Code § 5.245(a).

During the hearing, counsel for Peoples moved to have the Complaint dismissed with prejudice for lack of prosecution. Tr. 6. By failing to appear and present any evidence in support of his Complaint, Ms. Krupa has failed to carry her burden. Thus, the Complaint must be dismissed with prejudice. Jefferson v. UGI Utilities, Inc., Docket No. Z‑00269892 (Order entered December 26, 1995). Accordingly, the merits of the Complaint will not be addressed in this Initial Decision.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding.
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, 364 Pa. 54, 70 A.2d 854 (1950).
4. 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 accorded notice and the opportunity to be heard. Id.
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 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. Krupa’s due process rights have been fully protected. Sentner v. Bell Telephone Company of Pennsylvania, Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa. Code § 5.245(a).
7. Ms. Krupa failed to carry her burden of proof in this proceeding.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Peoples Natural Gas Company, LLC to dismiss the formal Complaint of Sara Krupa at Docket Number C-2014-2453711 for failure to prosecute is granted.
2. That the formal Complaint filed by Sara Krupa at Docket Number C-2014-2453711 is hereby dismissed with prejudice.
3. That this matter be marked closed.

Date: May 22, 2015 \_\_\_\_\_\_/s/\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Joel H. Cheskis

Administrative Law Judge