

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Donald Saxman	:	
	:	
v.	:	C-2016-2554184
	:	
Peoples Natural Gas Company LLC	:	

**INITIAL DECISION**

Before  
Tiffany L. Tran  
Special Agent

**INTRODUCTION**

This decision dismisses the Complaint filed in this matter for failure of the complainant to appear for the hearing and prosecute the complaint.

**HISTORY OF THE PROCEEDING**

On July 1, 2016, Donald Saxman (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against Peoples Natural Gas Company, LLC (Respondent). The Complainant checked the boxes on the formal complaint form indicating that the Respondent had threatened to shut off service or had already shut off service, and that he wanted a payment arrangement.

The Respondent filed an answer on July 25, 2016. In its answer, the Respondent states that the Complainant presently owes the Respondent \$2,378.35, and refers to a previous formal complaint filed by the Complainant on November 10, 2016 at Docket No. C-2015-2512901 (prior complaint), in which the Complainant requested a payment arrangement as relief. Respondent alleges that the prior complaint was settled with the granting of a payment

arrangement, and has attached a copy of the corresponding certificate of satisfaction to its answer. The Respondent states that it is unwilling to give the Complainant another payment arrangement. The respondent requests that the Complainant be directed to pay in full the outstanding plan amount and to pay the remaining plan payments in full and in a timely manner.

By notice dated August 24, 2016, the Commission scheduled this matter for an initial telephonic hearing on September 30, 2016, at 10:00 a.m. and assigned the case to me. I issued a prehearing order dated August 25, 2016, addressing, inter alia, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements, and cautioning the Complainant that he might lose his case if he failed to appear.

I attempted to contact the Complainant using the telephone number provided on the formal complaint form on September 30, 2016, at 10:00 a.m. When I attempted to contact the Complainant via the telephone number provided on the Formal Complaint form, I received an automatic message identifying the number as belonging to “the Saxmans” and an indication that the voice mail box was full. I informed Respondent’s counsel that I would try to contact the Complainant again in ten minutes. I checked with the support staff of the Office of Administrative Law Judge (OALJ) to see if the Complainant had contacted the office, and likewise checked my email and telephone messages. There were no messages from the Complainant. When I called the Complainant a second time at 10:10 a.m. the automatic response again indicated that the number belonged to the Complainant, and that the voice mailbox was full.

Upon commencement of the hearing at approximately 10:10 a.m., Jennifer L. Petrisek, Esquire, counsel for the Respondent, moved to dismiss the complaint for failure to appear and prosecute.<sup>1</sup> I advised the Respondent that I would take its motion under advisement.

The record closed on September 30, 2016, at the conclusion of the hearing. This decision grants the Respondent's motion to dismiss the complaint.

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<sup>1</sup> A tape recording was made, no court reporter being present.

## FINDINGS OF FACT

1. The Complainant in this case is Donald Saxman.
2. The Respondent in this case is Peoples Natural Gas Company LLC.
3. On July 1, 2016, the Complainant filed a complaint with the Commission against the Respondent.
4. The Respondent filed an answer on July 25, 2016.
5. By notice dated August 24, 2016, the Commission scheduled this matter for an initial telephonic hearing on September 30, 2016 at 10:00 a.m.
6. The Commission sent notice of the telephonic hearing in this case to the Complainant by regular first-class mail to the address stated on the complaint.
7. The Commission's hearing notice was never returned to the sender.
8. The Complainant failed to appear at the September 30, 2016 telephonic hearing.
9. The Complainant did not settle, withdraw or request a continuance of the matter.

## 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). This due process requirement is satisfied, however, when the administrative agency provides the parties notice and the opportunity to be heard.

The Commission sent notice of the telephonic hearing in this case to the Complainant on August 24, 2016, by regular first-class mail to the address stated on the complaint. To my knowledge this piece of mail was never returned to the sender, the scheduling staff for OALJ in Harrisburg.

In addition, I issued a prehearing order dated August 25, 2016, which, inter alia, directed the parties to notify me if the telephone numbers where he could be reached at the time of the hearing changed. The prehearing order, which was mailed to the Complainant at the address shown on the complaint, was never returned. Accordingly, I must presume that this mail, which was sent in the ordinary course of business, was received by the Complainant. Berkowitz v. Mayflower Securities, Inc., 317 A.2d 584 (Pa. 1974); Meierdierck v. Miller, 147 A.2d 406 (Pa. 1959); Samaras v. Hartwick, 698 A.2d 71 (Pa.Super. 1997); Judge v. Celina Mutual Insurance Co., 444 A.2d 658 (Pa.Super. 1982).

The Complainant did not appear for the scheduled hearing on September 30, 2016. I twice called the number provided on the formal complaint form. Both attempts resulted in no response, and I was unable to leave a voice message due to the voice mailbox being full. Under these circumstances, it appears the Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. Therefore, the due process rights of the Complainant have been fully protected. Sentner v. Bell Telephone Co. of Pa. Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

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. As the party bringing this complaint, the Complainant bears the burden of proving by a preponderance of the evidence that they are entitled to relief. By failing to appear and proffer any evidence to support his complaint, the Complainant has failed to meet this burden. Under these circumstances, the complaint should be dismissed with prejudice. Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); El-Ayazra v. West Penn Power Company, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa.Code § 5.245.

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. The due process rights of the Complainant have been fully protected in this proceeding. Sentner v. Bell Telephone Co. of Pa., Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

3. By failing to appear for the hearing and proffer any evidence to support the complaint, the Complainant had failed to meet his burden of proving that he is entitled to the relief that he seeks from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Peoples Natural Gas Company LLC to dismiss the complaint filed by Donald Saxman at Docket No. C-2016-2554184 is granted.

2. That the complaint of Donald Saxman against Peoples Natural Gas Company LLC at Docket No. C-2016-2554184 is dismissed with prejudice for failure of the complainant to appear for the hearing and prosecute the complaint.

3. That the docket at Docket No. C-2016-2554184 is marked closed.

Date: December 15, 2016

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/s/  
Tiffany L. Tran  
Special Agent