

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Destiny Chambers	:	
	:	
v.	:	F-2016-2570187
	:	
Philadelphia Gas Works	:	

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 October 6, 2016, Destiny Chambers (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW). The complaint alleges that the Complainant's service has been terminated for non-payment. Complainant alleges financial hardship and that residents in the premises have asthma and diabetes. She also alleges that the Respondent states it cannot offer her a payment arrangement or any medical certifications on the account, and that service will only be reconnected upon payment of the full amount requested. The Complainant states that she is unable to pay the amount being requested by PGW to reconnect service. As relief, she requests a payment arrangement. This is a timely appeal of a Bureau of Consumer Services (BCS) decision at Case No. 3469962.

The Respondent filed an answer on October 28, 2016. The answer admits that PGW terminated service at 1632 S. Lindenwood Street, 2nd, Philadelphia, Pennsylvania (Service Address) on June 22, 2016, for nonpayment. The Respondent avers that the Complainant established service at the service address on July 18, 2014, for residential and other domestic gas usage. Attached to the answer is a copy of a BCS decision at Case No. 3469962 dated August 30, 2016. The Respondent requests that the Commission dismiss the complaint.

By notice dated November 2, 2016, the Commission scheduled this matter for an initial telephonic hearing on December 6, 2016, at 10:00 a.m. and assigned the case to me. I issued a prehearing order dated November 16, 2016, addressing, inter alia, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements, and cautioning the Complainant that she might lose her case if she failed to appear.

I attempted to contact the Complainant using the telephone number provided on the formal complaint form on December 6, 2016, at 10:00 a.m. The call immediately went to voice mail, with an automatic message identifying the number as belonging to "Destiny." I was unable to leave a voice message because the voice mailbox was full and was not accepting any further messages.

I then verified with the support staff for the Office of Administrative Law Judge (OALJ) in Harrisburg that the Complainant had not contacted that office to indicate that the Complainant would be unable to participate in the telephonic hearing. I also verified that my voice mail and email had no messages from the Complainant stating that she would be unable to participate in the hearing.

After verifying that the Complainant had not contacted OALJ in Harrisburg, I made a second attempt to contact the Complainant using the telephone number provided on the formal complaint form at 10:10 a.m. Again, my call went directly to voice mail and I was unable to leave a message for the Complainant.

Upon commencement of the hearing at approximately 10:15 a.m., Graciela Christlieb, Esquire, counsel for the Respondent, moved to dismiss the complaint for failure to appear and prosecute.¹ I advised the Respondent that I would take its motion under advisement.

The record closed on December 6, 2016, at the conclusion of the hearing. This decision grants the Respondent's motion to dismiss the complaint.

FINDINGS OF FACT

1. The Complainant in this case is Destiny Chambers.
2. The Respondent in this case is Philadelphia Gas Works.
3. On October 6, 2016, the Complainant filed a complaint with the Commission against the Respondent.
4. The Respondent filed an answer on October 28, 2016.
5. By notice dated November 2, 2016, the Commission scheduled this matter for an initial telephonic hearing on December 6, 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 December 6, 2016 telephonic hearing.

¹ A tape recording was made, no court reporter being present.

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 November 2, 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 November 16, 2016, which, inter alia, directed the parties to notify me if the telephone numbers where they 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. I twice attempted to contact the Complainant at the telephone number provided on the complaint form and both times the Complainant's answering machine indicated that the Complainant was unavailable and that the voice mailbox was full and not able to accept any further messages. 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 she is entitled to relief. By failing to appear and proffer any evidence to support their 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 her burden of proving that she is entitled to the relief that she seeks from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Philadelphia Gas Works to dismiss the complaint filed by Destiny Chambers at Docket No. F-2016-2570187 is granted.

2. That the complaint of Destiny Chambers against Philadelphia Gas Works at Docket No. F-2016-2570187 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. F-2016-2570187 is marked closed.

Date: December 6, 2016

_____/s/_____
Tiffany L. Tran
Special Agent