



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

ISSUED: April 30, 2007

C-20077290

MARIA CURETON
145 EAST MEEHAN AVENUE
PHILADELPHIA PA 19119

Maria Cureton
v.
Philadelphia Gas Works

DOCUMENT
FOLDER

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Cynthia Williams Fordham. This decision is being issued and mailed to all parties on the above specified date.

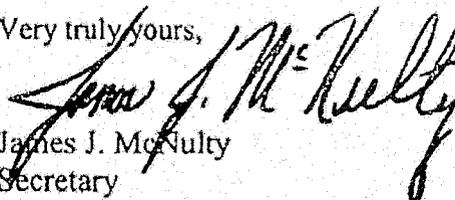
If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION 2ND FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265**, within **twenty (20) days** of the issuance date of this letter. The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within **ten (10) days** of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

If no exceptions are received within **twenty (20) days**, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

Very truly yours,


James J. McNulty
Secretary

Encls
Certified Mail
Receipt Requested
MH

LAURETO A FARINAS ESQUIRE
PHILADELPHIA GAS WORKS
800 W MONTGOMERY AVENUE
PHILADELPHIA PA 19122

BTL

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Maria Cureton

v.

Philadelphia Gas Works

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:
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C-20077290

INITIAL DECISION

Before
Cynthia Williams Fordham
Administrative Law Judge

DOCUMENT
FOLDER

DOCKETED
APR 30 2007

HISTORY OF THE PROCEEDING

On January 18, 2007, Maria Cureton ("Cureton" or "Complainant") filed a formal complaint with the Pennsylvania Public Utility Commission ("Commission") against the Philadelphia Gas Works ("PGW" or "Respondent") alleging the following: that she converted to gas heat three years ago; that she paid her bill each month; that the Respondent sent her a notice stating that the meter needed to be repaired; that after the meter was repaired, she received a bill for \$5,000.00. The Complainant wants to know how she could owe \$5,000.00 in three years and whether the Respondent posted her payments.

On February 12, 2007, the Respondent, through its counsel, filed an Answer. The Respondent denied that there are incorrect charges on the Complainant's bill. The Respondent averred that the Complainant established gas service on May 1, 1997. The Respondent stated that her account was originally listed as a residential non-heating account with domestic usage. The Respondent lacks sufficient knowledge concerning the date the Complainant converted to gas heating. However, the Complainant's gas account is currently listed as a residential heat account with domestic usage. The Respondent averred that it sent correspondence to the Complainant since

January 2003 advising her that her automatic meter reading device ("AMR") was not reading correctly. The Respondent admitted that it rebilled the Complainant in the amount of \$4,967.64 for gas usage. The Respondent provided information to show that it sent letters, called and went to the service address numerous times between January 2004 and October 2006 before sending termination notices to the Complainant in November 2006. The Respondent stated that the meter was finally changed on December 4, 2006.

By notice dated February 23, 2007, a hearing was scheduled in this matter before Administrative Law Judge Cynthia Williams Fordham on April 3, 2007 at 1:30 p.m.

A Prehearing Order was sent to the parties on February 28, 2007. The time, date and location of the hearing were in the Prehearing Order.

A hearing was held in this matter on April 3, 2007 in the Philadelphia State Office Building before Administrative Law Judge Cynthia Williams Fordham. The hearing was scheduled for 1:30 p.m. as one of three cases assigned for that time. The Complainant, Maria Cureton, did not appear. Therefore, the hearing in this matter was started after 1:50 p.m. Laureto Farinas, Esquire, represented Philadelphia Gas Works. Ann Marie Cromley, the Respondent's witness, was present. No testimony was presented.

The record consists of a transcript. The record in this case closed on April 3, 2007.

DISCUSSION

Pursuant to section 332(a) of the Public Utility Code, 66 Pa. C.S. §332(a), the burden of proof is on the proponent of a rule or order. In this proceeding, the Complainant is the proponent of a rule or order. Therefore, the Complainant bears the burden of proving by a preponderance of the evidence that the Respondent has violated the Public Utility Code or a regulation or order of the Commission. Se-Ling Hosiery v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950). The Complainant must show that the utility is responsible or accountable for the problem

described in the complaint. Feinstein v. Philadelphia Suburban Water Company, 50 Pa. P.U.C. 300 (1976).

Administrative agencies, like the Public Utility Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. Schneider v. Pa. PUC, 479 A.2d 10 (1984).

The Complainant did not participate in the April 3, 2007 hearing. The Complainant failed to call to request a continuance or indicate that she would not be able to attend the hearing. The hearing date and time were on the hearing notice, dated February 23, 2007, and the Prehearing Order, dated February 28, 2007. The fact that these documents were mailed to the Complainant creates a rebuttable presumption that the Complainant received the documents. Berkowitz v. Mayflower Securities, 455 Pa. 531, 317 A. 2d 584 (1974). The U.S. Postal Service did not return these documents to the Commission or to the Respondent. Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review, 645 A.2d 944 (Pa. Commonwealth Ct. 1994). Once notice of a hearing and the opportunity to be heard has been provided, it is the responsibility of the parties to appear and participate in the hearing. Sentner v. Bell Telephone Co. of Pennsylvania, Docket No. F-00161106 (Order entered October 25, 1993).

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

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. ...

Since the Complainant did not participate in the hearing, the hearing was held in accordance with 66 Pa. C. S. §332(f) and 52 Pa. Code §5.245 and the record was closed.

The Respondent's counsel moved to dismiss the complaint. The motion was granted.

Since the Complainant did not participate in the hearing, the complaint in this matter will be dismissed in its entirety with prejudice. See Martin Jefferson v. UGI Utilities, Inc., Z-00269892 (Order entered December 26, 1995).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter in this proceeding. 66 Pa. C.S. §701.
2. That the Complainant has the burden of proof in this matter pursuant to 66 Pa. C.S. §332(a).
3. That the Complainant, by failing to be represented at the scheduled hearing, waived the opportunity to participate in the hearing. 66 Pa. C.S. §332(a).
4. Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. Berkowitz v. Mayflower Securities, 455 Pa. 531, 317 A.2d 584 (1974); Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review, 645 A.2d 944 (Pa. Commonwealth Ct. 1994).
5. Once notice of a hearing and the opportunity to be heard has been provided, it is the responsibility of the parties to appear and participate in the hearing. Sentner v. Bell Telephone Co. of Pennsylvania, F-00161106 (Order entered October 25, 1993).

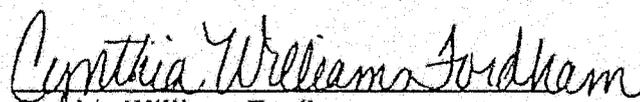
ORDER

THEREFORE,

IT IS ORDERED.

1. That the complaint filed by Maria Cureton against Philadelphia Gas Works at Docket C-20077290 is dismissed in its entirety with prejudice.
2. That the record in this case is marked closed.

Date: April 13, 2007


Cynthia Williams Fordham
Administrative Law Judge

Act 294

2007 MAY 16 10:10:36
SECRET

Case Identification:

C-20077290; Maria Cureton v.
Philadelphia Gas Works

Initial Decision By:

ALJ Cynthia Williams Fordham

Deadline for Return to OSA:

May 14, 2007

This decision has not been reviewed by OSA.

DOCUMENT

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RECEIVED
2007 MAY 15 AM 9:15
OFFICE OF SPECIAL
ASSISTANTS

I want full Commission review of this decision.

Commissioner

Date

X I do not want full Commission review of this decision.

Wendell J. Spillane

Commissioner

5/15/07

Date

DOCKETED
MAY 16 2007

DA

Act 294

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C-20077290; Maria Cureton v.
Philadelphia Gas Works

Initial Decision By:

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Deadline for Return to OSA:

May 14, 2007

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RECEIVED
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OFFICE OF SPECIAL
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Commissioner . Date

I ~~do not~~ want full Commission review of this decision.

James H Cawley _____
Commissioner Date
5/15/07

Act 294

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OFFICE OF SPECIAL
ASSISTANTS

2007 MAY 14 PM 12:20

RECEIVED

I want full Commission review of this decision.

Commissioner

Date

I do not want full Commission review of this decision.

Kim Fitzgerald

Commissioner

5/14/07

Date

Act 294

Case Identification:

C-20077290; Maria Cureton v.
Philadelphia Gas Works

Initial Decision By:

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Deadline for Return to OSA:

May 14, 2007

This decision has not been reviewed by OSA.

* * * * *

RECORDED
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OFFICE OF SPECIAL
ASSISTANTS

I want full Commission review of this decision.

Commissioner

Date

I do not want full Commission review of this decision.

Thomas J. Fitzpatrick

5/2/07

Commissioner

Date

DATE: May 30, 2007

SUBJECT: C-20077290

TO: Office of Administrative Law Judge
Susan Hoffner

FROM: James J. McNulty
Secretary
nvl

DOCUMENT
FOLDER

DOCKETED
MAY 30 2007

MARIA CURETON
V.
PHILADELPHIA GAS WORKS

The Initial Decision has been served upon all parties of interest.

Neither exceptions nor requests for review from the Commissioners have been received by the Commission. This matter is referred to your office for whatever action you deem necessary.

cc: Office of Special Assistants

P.S. Please note that exceptions or reply exceptions may come in timely with certificates of mailings. A second memo will not be released for these exceptions.

BA