

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rannie M. Henley, Sr.	:	
	:	
v.	:	F-2016-2569016
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Benjamin J. Myers
Administrative Law Judge

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 September 7, 2016, Rannie M. Henley, Sr. (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent). The complaint alleged that the gas utility to the Complainant's home had been shut off since August 17, 2016. The Complainant requested that the Commission act to have the utility turned back on and to provide the Complainant with a payment agreement.

The Respondent filed an answer on October 20, 2016. The answer admitted that the Complainant's gas utility had been shut off for failing to pay a past due balance. The answer further indicated that while the Complainant had raised health issues with the Respondent, the Complainant had already exhausted three medical certifications. In addition, the Respondent averred that the Complainant was not financially eligible for the Customer Responsibility Program (CRP) but the Bureau of Consumer Services had already issued a decision in case #3468961 agreeing with the Respondent that the Complainant would be required to pay the outstanding balance on his account before service would be restored. As such, the Respondent was asking the Commission to find against the Complainant and dismiss the complaint.

By notice dated November 22, 2016 the Commission scheduled this matter for an initial telephonic hearing on December 21, 2016 at 10:00 a.m. and assigned the case to the undersigned. A prehearing order was issued on November 23, 2016, addressing, inter alia, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

A telephonic hearing was conducted on December 21, 2016 at 10:00 a.m. The Complainant failed to appear for that hearing. Despite three attempts to contact the Complainant by telephone, Complainant did not answer the telephone number of record for him shown on the November 22, 2016 hearing notice at 10:00 a.m. or the telephone number appearing on the September 7, 2016 complaint which was filed by the Complainant.

It was 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. No voice mail or email messages from the Complainant stating that he would be unable to participate in the hearing were ever received. After verifying that the Complainant had not contacted OALJ in Harrisburg, the hearing commenced at approximately 10:10 a.m.

Upon commencement of the hearing, Laurento Farinas, Esquire, counsel for the Respondent, moved to dismiss the complaint for failure to appear and prosecute. N.T. 7. The Respondent was advised that its motion would be taken under advisement. N.T. 9.

The record closed on December 23, 2016, the date the transcript was filed with the Secretary's Bureau. This decision grants the Respondent's motion to dismiss the complaint.

FINDINGS OF FACT

1. The Complainant in this case is Rannie M. Henley, Sr.
2. The Respondent in this case is Philadelphia Gas Works.
3. On September 7, 2016, the Complainant filed a complaint with the Commission against the Respondent.
4. The Respondent filed an answer on October 20, 2016.
5. By notice dated November 22, 2016, the Commission scheduled this matter for an initial telephonic hearing on December 21, 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. A prehearing order was issued on November 23, 2016 providing additional information to the parties regarding the hearing.

9. The prehearing order was not returned to the Commission as being undeliverable by the postal authorities.
10. The Complainant failed to appear at the December 21, 2016 telephonic hearing.
11. 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 22, 2016, by regular first-class mail to the address stated on the complaint. This piece of mail was never returned to the sender, the scheduling staff for OALJ in Harrisburg.

In addition, a prehearing order was issued on November 23, 2016 which, inter alia, directed the parties to notify OALJ if the telephone numbers where they could be reached at the time of the hearing had changed. The prehearing order, which was mailed to the Complainant at the address shown on the complaint, was never returned. Accordingly, it must be presumed 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 answer the telephone number of record for him shown on the November 22, 2016 hearing notice at 10:00 a.m. or the September 7, 2016 complaint which had been filed by the Complainant. 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 he is 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 has failed to meet his burden of proving that he is entitled to the relief that she seeks from the Commission. 66 Pa.C.S. § 332(a).

