

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Amanda Palisoc

v.

UGI Penn Natural Gas Company

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C-2016-2566310

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 12, 2016, Amanda Palisoc (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against UGI Penn Natural Gas Company (Respondent). The complaint alleged that the gas utility to the Complainant's home was threatened to be shut off or had already been shut off. The complaint requested that the Commission place the Complainant back on a payment plan and that her gas utility be turned back on.

The Respondent filed an answer on September 28, 2016. The answer admitted that the Respondent had had her gas service terminated for non-payment on July 19, 2016. The answer further indicated that the Complainant had defaulted on two company payment

agreements and had also not complied with two separate Bureau of Consumer Services decisions in #3412684 and #3427643. The answer requested that the Commission deny the complaint.

By notice dated October 28, 2016 the Commission scheduled this matter for an initial telephonic hearing on December 2, 2016 at 10:00 a.m. and assigned the case to the undersigned. A prehearing order was issued on November 1, 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 2, 2016 at 10:00 a.m. The Complainant failed to appear for that hearing. The Complainant did not answer the telephone number of record shown for her after two attempts to contact the number at the time of hearing on December 2, 2016.

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 she 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 10:16 a.m.

Upon commencement of the hearing, Jeffery Sunday, 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. 8.

The record closed on December 16, 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 Amanda Palisoc.
2. The Respondent in this case is UGI Penn Natural Gas Company.
3. On September 12, 2016, the Complainant filed a complaint with the Commission against the Respondent.
4. The Respondent filed an answer on September 28, 2016.
5. By notice dated October 28, 2016, the Commission scheduled this matter for an initial telephonic hearing on December 2, 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 also sent to the Complainant at this same address, reminding the complainant of the scheduled time and date of the initial telephonic hearing.
9. This prehearing order was never returned to the sender.
10. The Complainant failed to appear at the December 2, 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 October 28, 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 1, 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 her shown on the October 28, 2016 hearing notice at 10:00 a.m. 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 her 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 her burden of proving that she is entitled to the relief sought from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of UGI Penn Natural Gas Company to dismiss the complaint filed by Amanda Palisoc at Docket No. C-2016-2566310 is granted.

