

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Rachelle Johnson-Adams	:	
	:	
v.	:	F-2016-2571661
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Andrew M. Calvelli
Administrative Law Judge

INTRODUCTION

This Decision grants a Motion to Dismiss for Failure to Prosecute because the Complainant failed to appear for the hearing at the designated date and time despite being given notice of the hearing.

HISTORY OF THE PROCEEDING

On October 3, 2016, Rachelle Johnson-Adams filed a formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW), at Docket Number F-2016-2571661. The Complaint was a timely appeal of a decision of the Commission's Bureau of Consumer Services in Case Number 3444889. In her Complaint, Ms. Johnson-Adams averred that she would like a payment agreement and there were incorrect charges on her PGW bill.

The formal Complaint was served on PGW electronically by the Commission's Secretary on October 17, 2016.¹

On November 9, 2016, PGW filed an Answer in response to Ms. Johnson-Adams' Complaint. In its Answer, PGW admitted or denied the various averments made in the Complaint. Specifically, PGW denied that there were incorrect charges on Ms. Johnson-Adams' bill. PGW also denied that Ms. Johnson-Adams was entitled to a payment arrangement, because the billed amounts were for unauthorized usage at the service address. PGW then requested that Ms. Johnson-Adams' Complaint be dismissed.

On November 30, 2016, a Hearing Notice was issued establishing an Initial In Person Hearing for Wednesday, January 25, 2017 at 10:00 a.m. and assigning Administrative Law Judge Cynthia W. Fordham as the Presiding Officer. A Prehearing Order was issued on December 13, 2017 setting forth various procedural rules that would govern the hearing.

The Hearing Notice indicated to the parties that: "You may lose this case if you do not come to this hearing and present facts on the issues raised." Similarly, the Prehearing Order stated: "This case will be dismissed if the customer fails to participate in the hearing and present evidence in support of the complaint." Both the Hearing Notice and the Prehearing Order were sent via first-class mail to Ms. Johnson-Adams at the address provided on her Complaint. The postal authorities did not return either of those documents to the Commission as being undeliverable to Ms. Johnson-Adams.

The hearing convened on January 25, 2017 as scheduled. Graciela Christlieb, Esquire appeared on behalf of PGW. No one appeared on behalf of Ms. Johnson-Adams. During the hearing, counsel for PGW made a Motion to Dismiss the Complaint based on the failure of Ms. Johnson-Adams to appear at the hearing.

¹ PGW has signed a waiver of the Section 702 requirements for service of formal complaints, 66 Pa.C.S. § 702, and has agreed to electronic service instead under the Commission's Waiver of 702 program. Service is listed in the Audit History of the Commission's docketing system for this case as having been effected on October 17, 2016.

The record in this case consists of the hearing transcript of 8 pages. The record closed in this proceeding when the transcript was filed with the Commission on February 16, 2017. Judge Fordham subsequently retired, and the matter was reassigned to me as the Presiding Officer for the purpose of reviewing the evidence and issuing a Decision in this proceeding. The matter was reassigned to my office effective February 27, 2017.

The record is closed and I am in receipt of the file materials (including the Hearing Transcript) in this matter. For the reasons mentioned below, the Motion to Dismiss Complaint will be granted and the Complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant in this case is Rachelle Johnson-Adams.
2. The Respondent in this case is Philadelphia Gas Works.
3. No one appeared at the hearing scheduled for Wednesday, January 25, 2017 at 10:00 a.m. on behalf of Ms. Johnson-Adams. Tr. 4.
4. The Presiding Officer waited 15 minutes to see if Ms. Johnson-Adams would appear for the hearing. Tr. 4.
5. At 10:15 a.m. on January 25, 2017, Ms. Johnson-Adams still had not appeared for the hearing. Tr. 4.
6. On November 30, 2016, Ms. Johnson-Adams received notice of the hearing when the Commission mailed a Hearing Notice to the address she provided on her Complaint. Tr. 5.
7. On December 13, 2016, Ms. Johnson-Adams also received notice of the hearing when the Commission mailed a Prehearing Order to the address she provided on her Complaint. Tr. 5.

8. Neither the Hearing Notice nor the Prehearing Order was returned to the Commission by the postal authorities as being undeliverable to Ms. Johnson-Adams as addressed. Tr. 5.

9. Both the Hearing Notice and the Prehearing Order stated the date, time and location of the hearing, as well as the fact that the Complaint could be dismissed if the Complainant failed to appear for the hearing. Tr. 5.

10. During the hearing, counsel for Philadelphia Gas Works made a Motion to Dismiss the Complaint with prejudice, due to Ms. Johnson-Adams's failure to appear and prosecute her case. Tr. 6.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950). In this proceeding, based on a reading of her complaint, Ms. Johnson-Adams seeks a payment arrangement for her utility bill and asserts that there are incorrect charges on her bill. Ms. Johnson-Adams, therefore, has the burden of proof in this proceeding.

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 when the parties are accorded notice and the opportunity to be heard. Id.

No one appeared on behalf of Ms. Johnson-Adams at the date and time set for the hearing in his case despite notice of the hearing. Commission regulations address circumstances when a party fails to appear in a proceeding. Section 5.245 provides:

§ 5.245. Failure to appear, proceed or maintain order in proceedings.

(a) After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will:

- (1) Be deemed to have waived the opportunity to participate in the conference or hearing.
- (2) Not be permitted to reopen the disposition of a matter accomplished at the conference or hearing.
- (3) Not be permitted to recall witnesses who were excused for further examination.

52 Pa.Code § 5.245(a).

The Hearing Notice and the Prehearing Order were sent to Ms. Johnson-Adams by regular first class mail. Neither the Hearing Notice nor the Prehearing Order was returned to the Commission by the postal authorities as being undeliverable. Accordingly, it must be presumed that these documents sent to Ms. Johnson-Adams in the ordinary course of business were received by Ms. Johnson-Adams. Berkowitz v. Mayflower Securities, Inc., 455 Pa. 531, 317 A.2d 584 (1974); Meierdierck v. Miller, 394 Pa. 484, 147 A.2d 406 (1959); Samaras v. Hartwick, 698 A.2d 71 (Pa. Super. 1997); Judge v. Celina Mutual Insurance Co., 303 Pa. Super. Ct. 221, 444 A.2d 658 (1982). Of note, both the Hearing Notice and the Prehearing Order stated that, if a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party.

No one appeared on behalf of Ms. Johnson-Adams at the time of the hearing. Nor did anyone ever request a postponement or continuance of the hearing. As such, Ms. Johnson-Adams had notice and an opportunity to be heard in this proceeding, but chose not to appear. Therefore, Ms. Johnson-Adams's due process rights have been fully protected. Sentner v. Bell Telephone Company of Pennsylvania, Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa.Code § 5.245(a).

During the hearing, counsel for PGW moved to have the Complaint dismissed with prejudice for lack of prosecution. By failing to appear and present any evidence in support of her Complaint, Ms. Johnson-Adams has failed to carry her burden of proof. Thus, it is appropriate to dismiss the Complaint with prejudice. Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Order entered December 26, 1995). Accordingly, the merits of the Complaint will not be addressed in this Initial Decision.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.

2. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950).

4. 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 when the parties are accorded notice and the opportunity to be heard. Id.

5. After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will: 1) be deemed to have waived the opportunity to participate in the conference or hearing; 2) not be permitted to reopen the disposition of a matter accomplished at the conference or hearing; and 3) not be permitted to recall witnesses who were excused for further examination. 52 Pa.Code § 5.245(a).

6. Ms. Johnson-Adams's due process rights have been fully protected. Sentner v. Bell Telephone Company of Pennsylvania, Docket No. F-00161106 (Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

7. Ms. Johnson-Adams has failed to carry her burden of proof in this proceeding because she failed to appear at the hearing in order to present her case to the Commission.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Philadelphia Gas Works to dismiss the formal Complaint of Rachelle Johnson-Adams at Docket Number F-2016-2571661 for failure to prosecute is granted.
2. That the formal Complaint filed by Rachelle Johnson-Adams against Philadelphia Gas Works at Docket Number F-2016-2571661 is hereby dismissed with prejudice.
3. That this matter shall be marked closed by the Secretary's Bureau.

Date: March 29, 2017

_____/s/
Andrew M. Calvelli
Administrative Law Judge