

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Francine Kennedy Thomas	:	
	:	
v.	:	C-2016-2566493
	:	
Philadelphia Gas Works	:	

**ORDER DENYING PETITION TO REOPEN THE RECORD
FOR RECEIPT OF ADDITIONAL EVIDENCE**

This Order is issued pursuant to the authority granted to presiding officers to regulate the course of proceedings (52 Pa. Code § 5.483) and the procedure for resolving a petition to reopen the proceeding for the purpose of taking additional evidence (52 Pa. Code § 5.571).

HISTORY

On September 9, 2016, Francine Kennedy-Thomas¹ (Complainant) filed a formal Complaint against Philadelphia Gas Works (PGW) seeking reinstatement of service and a payment arrangement (PAR). The Complaint was a timely appeal from a determination by the Commission's Bureau of Consumer Services (BCS) at Case No. 3454049.

PGW filed an Answer on October 5, 2016, in which it denied any violation of the Public Utility Code (Code) or of the regulations of the Commission, and specifically denied that Complainant is entitled to reconnection absent payment of the outstanding balance on her account, and denied that Complainant is entitled to a new PAR.

¹ Although the case-caption includes no hyphenation of the Complainant's last name, she used a hyphen in her formal Complaint and correspondence. As this is clearly Complainant's preference, it will be used, here.

On October 27, 2016, a hearing notice issued setting December 13, 2016, as the date for a telephonic hearing in this case. That hearing notice was sent to the parties at their addresses of record and was not returned by the United States Postal Service.

A standard form prehearing Order was issued on October 31, 2016. That Order clearly set forth the potential consequences of failure to appear at hearing.

On December 8, 2016, PGW filed a Certificate of Satisfaction stating that the Complaint had been resolved by the parties and asking that the docket be closed after expiration of the ten day objection period afforded the Complainant.

On December 19, 2016, the Secretary of the Commission received a letter from the Complainant dated December 13, 2016, in which she stated that she disagreed with the settlement and requested a re-listed hearing.

On January 24, 2017, a hearing notice issued setting March 3, 2017, as the date for a telephonic hearing in this case. That hearing notice was sent to the parties at their addresses of record and was not returned by the United States Postal Service.

The hearing convened as scheduled on Friday, March 3, 2017. Complainant answered my call, and I asked her to stay on the line while I conferenced in Laureto Farinas, Esquire, counsel for PGW. When I returned to Complainant with attorney Farinas on the line, the Complainant was not there. I subsequently tried to bring Complainant back into the call, but I reached several intercept messages and ultimately Voicemail. I left a message for Complainant stating that if she did not rejoin the call and participate in the hearing she faced the possibility of a default judgment for non-prosecution as is set forth in the prehearing Order. I next tried the number that Complainant had listed as her cell phone, was once again routed to Voicemail, and again left the same message. Counsel for PGW then moved for dismissal on the basis of failure to prosecute the Complaint, which Motion I took under advisement.

On Monday, March 6, 2017, a gentleman identifying himself as Complainant's husband called and asked that the hearing be rescheduled as "the phone went out," on the day of the hearing. I told the individual that the hearing having adjourned with the Motion for Dismissal by PGW on March 3, 2017, his wife would have to send a letter/Petition for an additional hearing to the Secretary, copied to counsel for PGW and myself but cautioned that if that was not done by the date of the receipt of the transcript, the record would close.

On March 23, 2017, an eight page transcript was filed by the court reporter with the Secretary. The record closed on that date.

On April 4, 2017, I received an Answer dated March 28, 2017, to the Letter/Petition from counsel for PGW. I had not been served with or copied on the Letter/Petition. At my request, counsel for PGW sent me a copy of the Letter/Petition for a rescheduled hearing (dated March 23, 2017). Ultimately, the Letter/Petition was logged in by the Secretary with a date of March 27, 2016. The letter/Petition was not e-filed, therefore by any measure the Letter/Petition was filed after the close of the record.²

DISCUSSION

The Commission's applicable procedural regulation states, in pertinent part:

§ 5.571. Reopening prior to a final decision.

- (a) At any time after the record is closed but before a final decision is issued, a party may file a petition to reopen the proceeding for the purpose of taking additional evidence.
- (b) A petition to reopen must set forth clearly the facts claimed to constitute grounds requiring reopening of the proceeding, including material changes of fact or of law alleged to have occurred since the conclusion of the hearing.

² Given the fact that the record has closed, and pursuant to the Commission's procedural regulation at 52 Pa. Code § 1.2 (Liberal construction), I am treating the Petition for a Rescheduled Hearing as a Petition to Reopen the Record.

- (c) Within 10 days following the service of the petition, another party may file an answer thereto.
- (d) The record may be reopened upon notification to the parties in a proceeding for the reception of further evidence if there is reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of the proceeding.

52 Pa. Code § 5.571(a)-(d)

In support of her request, Complainant avers only that her land line residential service “went down,” on the day of the hearing and that she did not notice this, “. . . until after the allotted time for the hearing was scheduled to begin.” Complainant then claims that she immediately contacted the OALJ to report this.

In its Answer, PGW objects to the request for reopening. PGW states that I had made contact with Complainant on March 3, 2016. This is true. Even taking the view most favorable to the Complainant, she must have noticed that something was wrong within minutes of my initial call. Complainant says nothing about the Voicemail messages I left on both her landline telephone and her cell phone. PGW states that Complainant called PGW on March 3, 2017, but neither Complainant nor her husband called OALJ until March 7, 2017.

Despite having been alerted by myself on March 7, 2017, that time was of the essence in filing any Petition for a Rescheduled Hearing, Complainant did not file a Petition until March 27, 2017, four days after the close of the record. By the standards for reopening the record set forth at 52 Pa. Code § 5.571(d), Complainant has not provided any reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of this proceeding.

Finally, this Order is not an Initial Decision in this case. An Initial Decision addressing the Motion to Dismiss made by PGW will be prepared and then served on the parties by the Secretary of the Commission.

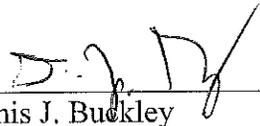
ORDER

THEREFORE,

IT IS ORDERED:

1. That the Letter/Motion to Reopen the Record of this Proceeding for the Receipt of Additional Evidence filed by Francine Kennedy-Thomas on March 27, 2017, at this docket is denied.

Dated: April 13, 2017



Dennis J. Buckley
Administrative Law Judge

C-2016-2566493 - FRANCINE KENNEDY THOMAS v. PHILADELPHIA GAS WORKS

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