

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Antwine Stewart	:	
	:	
v.	:	F-2017-2582516
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Angela T. Jones
Administrative Law Judge

INTRODUCTION

The undersigned through this decision dismisses the formal complaint (Complaint) filed in this matter for failure of the Complainant to appear at the hearing and prosecute the Complaint.

HISTORY OF THE PROCEEDING

On December 22, 2016, Complainant, Antwine Stewart, filed a Complaint with the Pennsylvania Public Utility Commission (Commission or PUC) against Philadelphia Gas Works (PGW or Company or Respondent). The Complainant disputed the charges for gas service at 2340 S. Hemberger Street, Philadelphia, Pennsylvania (service address).

The Complaint was served electronically (eService) by the Commission's Secretary on January 3, 2017, according to the audit history of the docket. The eService is pursuant to the Waiver of Section 702 program, under which the Respondent waives the service requirements in 66 Pa.C.S. § 702.

On January 23, 2017, Graciela Christlieb, Esquire, counsel for the Respondent, filed an Answer to the Complaint. The Answer denied that the charges for gas service rendered by the Respondent were improper.

Specifically, the Respondent admitted that the Complainant contacted the Company on January 19, 2016, to dispute his bill. On February 6, 2016, the Respondent contacted the Complainant to schedule a meter and piping test. On February 8, 2016, the Respondent concluded that the bill was correct as rendered and informed the Complainant by mail. On March 31, 2016, the Complainant contacted PGW stating he did not agree with the Company's conclusion.

The Complainant filed an informal complaint with the Commission's Bureau of Consumer Services (BCS) at Case No. 3451528, which disputed the charges for gas service from November 9, 2015, to January 12, 2016. The BCS dismissed the informal complaint on November 11, 2016, because it found that the bills were correct as rendered. This Complaint is a timely appeal of the BCS decision.

A Hearing Notice dated March 10, 2017, notified the parties that an initial in-person hearing was scheduled for Monday, April 3, 2017, at 10:00 a.m. This Notice indicated that the case was assigned to the undersigned Administrative Law Judge (ALJ) as the presiding officer.

A Prehearing Order dated March 7, 2017, provided procedural rules and guidelines for the proceeding and emphasized the following:¹

- (1) a request to change the scheduled hearing should be sent at least five days prior to the hearing date;
- (2) the request for a hearing change is to be in writing and sent to all parties of record; and
- (3) a caution that Complainant may lose the case if he does not take part in the hearing and present evidence on the issues raised.

¹ The Prehearing Order had a typographic error on the date with the incorrect year as 2016. The year should have been 2017.

The evidentiary hearing convened as scheduled. Ms. Christlieb appeared accompanied by one potential witness representing the Respondent. The Complainant was not in attendance. The undersigned recessed to allow time for the Complainant to appear or to communicate a reasonable explanation as to why he could not be present at the scheduled hearing. The undersigned reconvened at approximately 10:25 a.m. and the Complainant remained absent from the evidentiary hearing without communicating why he failed to appear.

Counsel for the Respondent moved to dismiss the Complaint with prejudice for lack of prosecution. The undersigned stated that the Respondent's motion would be considered and ruled upon in writing and adjourned. The record closed on April 3, 2017, when the evidentiary hearing adjourned.

This matter is ripe for decision.

FINDINGS OF FACT

1. The Complainant is Antwine Stewart, who is disputing the charges for gas service at 2340 S. Hemberger Street, Philadelphia Pennsylvania (service address).
2. The Respondent is Philadelphia Gas Works, a jurisdictional public utility that provides gas distribution service in the Commonwealth of Pennsylvania.
3. On December 22, 2016, Complainant filed a Complaint with the Commission against the Respondent.
4. The Respondent filed its Answer on January 23, 2017, denying any incorrect charges for gas service.
5. A Hearing Notice dated March 10, 2017, was sent by regular first-class mail to the Complainant and scheduled an evidentiary hearing for Monday, April 3, 2017, at 10 a.m.

6. A Prehearing Order, dated March 7, 2017, advised the Complainant of the proper procedure to obtain a continuance to reschedule the hearing date.

7. None of the documents mailed to Complainant was returned to the Commission by the United States post office as undeliverable.

8. Neither Complainant nor any counsel representing Complainant timely appeared at the scheduled hearing on April 3, 2017.

9. Complainant did not settle or withdraw the Complaint.

DISCUSSION

In this Complaint, the Complainant disputed charges he received for gas service at the service address as incorrect and inaccurate. The issue in this proceeding is determined by whether the Complainant sustained his burden of proof. By failing to participate in the hearing, the Complainant was unable to meet this burden.

The party seeking affirmative relief from the Commission bears the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the Complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976). This responsibility or accountability to the named utility must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlt. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992). A preponderance of the evidence is that which is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

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. Pub. Util.*

Comm'n, 479 A.2d 10 (Pa.Cmwlt. 1984). Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlt. 1994).

The Commission sent a Hearing Notice dated March 10, 2017, to the Complainant by regular first class mail to the address listed on the Complaint. This document was never returned to the sender, the scheduling staff of the Office of Administrative Law Judge (OALJ) in Harrisburg.

The undersigned issued a Prehearing Order dated March 7, 2017, which *inter alia*, instructed the parties that any request to change the scheduled hearing date should state the agreement or opposition of the other party and be submitted in writing no later than five days prior to the hearing. The Prehearing Order, which was mailed to the Complainant at the address shown in the Complaint, was never returned by the U.S. post office as undeliverable. Accordingly, it is presumed that this mailing, which was done through the ordinary course of business, was received by the Complainant. *Berkowitz v. Mayflower Securities, Inc.*, 317 A.2d 584 (Pa. 1974); *Meirerdierck 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 is deemed to have received all of these documents and had sufficient notice of the day, date and time of the scheduled hearing. The Complainant was notified of the scheduled hearing date and time, as well as how to contact the OALJ for the hearing. The Complainant made no attempt whatsoever to notify the presiding officer that he did not plan to participate in the scheduled April 3, 2017 hearing.

Under these circumstances, the Complainant had ample opportunity to appear and be heard in this proceeding, but chose not to do so. Once notice of a hearing and the opportunity to be heard has been provided to the parties, it is the responsibility of both parties to appear and participate in the hearing. The due process rights of the Complainant have been fully protected.

Sentner v. Bell Tel. Co. of Pa., Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

Section 332(a) of the Public Utility Code (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 choosing not to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden.

The failure of the Complainant to appear at this scheduled hearing is unexcused. By his failure to attend the hearing and present evidence on the issue raised, the Complainant failed to sustain his burden of proof.

As the Commission stated in *Mumma v. PPL Electric Utilities Corp.*, Docket No. C-00014869 (Opinion and Order entered January 24, 2002), “It is well-established law that once timely notice of a hearing and the opportunity to be heard have been provided, it is the responsibility of the parties to be present and participate in the hearing.” See, *Schneider v. Pa. Pub. Util. Comm’n*, 479 A.2d 10 (Pa.Cmwlth. 1984); *Plummer v. Columbia Gas of Pa., Inc.*, Docket No. Z-00847836 (Opinion and Order entered September 27, 2001). The Pennsylvania Commonwealth Court has made it clear that in administrative hearings, “a party’s own negligence is not sufficient good cause as a matter of law for failing to appear at a ... hearing.” *Eat “N Park Hospitality Group, Inc. v. Unemployment Compensation Board of Review*, 970 A.2d 492, 494 (Pa.Cmwlth. 2008).

Due to the waste of the Commission’s and Respondent’s time, money and energy occasioned by the Complainant’s failure to appear at a hearing of which he had notice, this Complaint will be dismissed with prejudice in accordance with well-established Commission precedent. *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); *Evans v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00957229 (Opinion and Order entered July 12, 1996); *King v. PECO Energy Co.*, Docket No. C-00967919 (Opinion and Order entered January 16, 1997); *Kenny v. PPL Electric Utilities Corp.*, Docket

No. C-20042399 (Final Order entered October 13, 2004); *Jones v. The Peoples Natural Gas Co. d/b/a Dominion Peoples*, Docket No. C-20054885 (Opinion and Order entered February 14, 2006); *El-Ayazra v. West Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016).

The Complainant waived the opportunity to participate in the hearing by failing to appear. This case will be dismissed. 52 Pa.Code § 5.245(a); *Martin W. Jefferson v. UGI Utilities, Inc.*, 1995 Pa. PUC LEXIS 159.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. Notice properly 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, Inc.*, 317 A.2d 584 (Pa. 1974); *Meirerdierck 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).
3. By Hearing Notice dated March 10, 2017, the Complainant had notice of the date, location and time of the scheduled hearing. 52 Pa.Code § 5.201(a).
4. 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).
5. As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).

6. The due process rights of the Complainant have been fully protected because the Complainant was afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlt. 1984).

7. A formal Complaint may be dismissed if, after notice and an opportunity to be heard, a Complainant fails to appear and prosecute the Complaint. *Mumma v. PPL Electric Utilities Corp.*, Docket No. C-00014869 (Opinion and Order entered January 24, 2002).

8. The Complainant, Antwine Stewart, failed to sustain his burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion by Graciela Christlieb, Esquire on behalf of Philadelphia Gas Works to dismiss the formal Complaint of Antwine Stewart at Docket No. F-2017-2582516 for lack of prosecution is granted.

2. That the formal Complaint filed by Antwine Stewart against Philadelphia Gas Works at Docket No. F-2017-2582516 is dismissed in its entirety with prejudice.

3. That the Docket No. F-2017-2582516 is to be marked closed.

Dated: April 21, 2017

/s/
Angela T. Jones
Administrative Law Judge