

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jennifer Potora

v.

UGI Penn Natural Gas, Inc.

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C-2016-2574107

INITIAL DECISION

Before
Mary D. Long
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 PROCEEDINGS

On November 3, 2016, Jennifer Potora (Complainant) filed a formal complaint against UGI Penn Natural Gas, Inc. (UGI-PNG or Respondent) alleging that the utility was threatening to terminate her service; that there are incorrect charges on her bill; and Respondent had her household information recorded incorrectly. As relief she requested that her meter be checked.

On November 21, 2016, Respondent filed an answer averring that the Complainant owed \$1,451.14 and had not made a payment on her account since June 20, 2016.

Respondent further represented that Complainant's gas meter would be tested "in the near future."¹

By hearing notice dated January 10, 2017, the matter was assigned to me and scheduled for a telephonic hearing on Thursday, February 16, 2017. On January 11, 2017, I issued a prehearing order setting forth instructions and procedures for the conduct of the hearing.

By email dated February 10, 2017, the Complainant requested a continuance of the hearing because she had a medical appointment in Philadelphia. Respondent had no objection to the request for a continuance which was granted by interim order dated February 13, 2017.

By hearing notice dated February 22, 2017, the hearing was rescheduled for Tuesday, March 28, 2017. By email dated March 14, 2017, the Complainant again requested a continuance because a knee procedure had to be rescheduled to March 27, 2017, due to an impending blizzard. Respondent did not object, and by interim order dated March 15, 2017, the second request for a continuance was granted.

By hearing notice dated March 21, 2017, the hearing was rescheduled for Wednesday, April 26, 2017. By email dated April 21, 2017, the Complainant again requested a continuance, stating that she had received a notice to attend jury duty on April 26, 2017. By email the Complainant was instructed to reduce her request to writing and include a copy of her jury summons.

On April 25, 2017, the Complainant faxed her written request for a continuance which did not include a copy of her jury summons. The Complainant stated that her meter was scheduled to be replaced on Saturday, April 29, 2017. She also stated that she had not received copies of Respondent's exhibits. By interim order dated April 25, 2017, I denied her request for a continuance, but converted the April 26, 2017 hearing to a prehearing conference.

¹ Answer at ¶ 4.

The prehearing conference convened as scheduled. The Complainant appeared representing herself. Respondent was represented by Larry R. Crayne, Esquire. Amy Wynn, a representative of Respondent also participated. Following a discussion of the status of the dispute, the parties agreed to continue the hearing. A new hearing was scheduled for May 24, 2017 at 10:00 a.m. Counsel for Respondent was directed to re-send his proposed exhibits by certified mail. An interim order memorializing the matters agreed upon at the prehearing conference was served on April 26, 2017. Also on April 26, 2017, a hearing notice was served, scheduling the May 24, 2017 hearing.

By fax, on May 22, 2017, the Complainant wrote a letter stating that she would not be attending the May 24, 2017 hearing. She did not provide a reason other than “I have nothing else to report”

The May 24, 2017 hearing convened as scheduled. The Complainant did not call into the hearing to participate. Respondent was represented by Larry R. Crayne, Esquire who appeared along with two witnesses, ready to proceed. Attorney Crayne reported that he had sent proposed exhibits by certified mail as instructed by the April 26, 2017 interim order. Delivery was attempted on May 18, 2017 and May 23, 2017. No signed receipt was returned. The hearing was briefly recessed to permit the Complainant additional time to call in.

The Respondent moved to dismiss the complaint for failure to appear and prosecute and the motion was granted. The record closed at the conclusion of the hearing. This decision memorializes the order at the hearing granting the Respondent’s motion to dismiss the complaint.

FINDINGS OF FACT

1. The Complainant in this case is Jennifer Patora.
2. The Respondent in this case is UGI Penn Natural Gas, Inc.

3. On November 3, 2016, the Complainant filed a complaint with the Commission against the Respondent.
4. The Respondent filed an answer on November 21, 2016.
5. By notice dated April 26, 2017, the Commission scheduled this matter for a telephonic hearing on May 24, 2017 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 not returned to the sender.
8. The Complainant failed to appear at the May 24, 2017 telephonic hearing.

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 April 26, 2017, by regular first class mail to the address stated on the complaint. To my knowledge this piece of mail was never returned to the sender, the scheduling staff for OALJ.

In addition, I issued an interim order dated April 26, 2017, which included the date and time of the hearing. This order provided that the provisions of the prehearing order dated January 11, 2017 remained in effect. The January 11, 2017 prehearing order included instructions for requesting a change in the date and time of the hearing as well as notification that

failure to take part in a hearing and present evidence may result in dismissal of the complaint. The prehearing order, as well as the other orders and hearing notices, which were mailed to the Complainant at the address shown on the complaint, were never returned. Accordingly, I must presume 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 appear for the scheduled hearing because she did not call the conference number shown on the April 26, 2017 hearing notice. 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 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 that she seeks from the Commission. 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 that she seeks from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of UGI Penn Natural Gas, Inc. to dismiss the complaint filed by Jennifer Potora at Docket C-2016-2574107 is granted.

2. That the complaint of Jennifer Potora against UGI Penn Natural Gas, Inc. at Docket C-2016-2574107 is dismissed with prejudice for failure of the Complainant to appear for the hearing and prosecute the complaint.

3. That the docket at Docket No. C-2016-2574107 is marked closed.

Date: May 25, 2017

_____/s/
Mary D. Long
Administrative Law Judge