

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Thomas Williams

v.

Philadelphia Gas Works

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C-2015-2511985

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 for the hearing and prosecute the Complaint.

HISTORY OF THE PROCEEDING

On October 30, 2015, Complainant, Thomas Williams, filed a Complaint with the Pennsylvania Public Utility Commission (Commission or PUC) against Philadelphia Gas Works (PGW or Company or Respondent). The Complainant indicated that he would like a payment arrangement for gas service at 5327 N. Carlisle Street, Philadelphia, Pennsylvania (service address). The Complainant indicated that there were incorrect charges billed and possible reliability, quality or safety problems with the gas service. The Complainant also stated that his wife was ill and in need of gas service for heat, hot water and cooked food.

The Complaint was served electronically (eService) by the Commission's Secretary on November 6, 2015, 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 November 25, 2015, Graciela Christlieb, Esquire, counsel for the Respondent, filed an Answer to the Complaint. The Answer admitted that the Complainant sought a payment arrangement but denied that rest of the allegations.

Specifically, the Respondent noted in its Answer that the Complainant filed two informal complaints with the PUC's Bureau of Consumer Services (BCS), on September 2, 2011, at BCS Case No. 2882184 and on May 27, 2014, at BCS Case No. 3243617. The informal complaint at Case No. 2882184 was dismissed due to customer assistance program arrears as part of the Complainant's outstanding balance. A Commission-issued payment arrangement is prohibited by section 1405(c) of the Public Utility Code when CAP arrears exist. 52 Pa.Code § 1405(c). The informal complaint at Case No. 3243617 resulted in a Commission-issued payment arrangement, which was broken by the Complainant on October 7, 2014.

The Respondent averred in the Answer that it terminated the Complainant's gas service for non-payment on April 8, 2015. The Complainant filed an informal complaint at BCS Case No. 3333006 on April 10, 2015, which was dismissed. The Complainant filed another informal complaint at BCS Case No. 3394635 on October 20, 2015. The informal complaint at BCS Case No. 3394635 was dismissed as a duplicate of BCS Case No. 3333006.

The Respondent requested that the Commission find against the Complainant and dismiss the Complaint.

A Hearing Notice dated March 30, 2017, notified the parties that an initial in-person hearing was scheduled for Monday, May 8, 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 April 4, 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.

The evidentiary hearing convened as scheduled. Attorney Christlieb appeared representing the Respondent and accompanied by one potential witness. 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 10:22 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 May 8, 2017, when the evidentiary hearing adjourned.

This matter is ripe for decision.

FINDINGS OF FACT

1. The Complainant is Thomas Williams, who is requesting a payment arrangement for gas service at 5327 N. Carlisle Street, Philadelphia Pennsylvania.

2. The Respondent is Philadelphia Gas Works, a jurisdictional public utility that provides gas distribution service in the Commonwealth of Pennsylvania.

¹ A corrected Prehearing Order was issued on April 10, 2017, to correct a typographical error in the docket number.

3. On October 30, 2015, the Complainant filed a Complaint with the Commission against the Respondent.

4. The Respondent filed its Answer on November 25, 2015, which admitted to the payment arrangement request but denied the remaining allegations in the Complaint.

5. A Hearing Notice dated March 30, 2017, was sent by regular first-class mail to the Complainant and scheduled an evidentiary hearing for Monday, May 8, 2017, at 10 a.m.

6. A Prehearing Order, dated April 4, 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 May 8, 2017.

9. Complainant did not settle or withdraw the Complaint.

DISCUSSION

In this Complaint, the Complainant requested a payment arrangement to resume gas service at the service address. 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.Cmwlth. 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.Cmwlth. 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.Cmwlth. 1994).

The Commission sent a Hearing Notice dated March 30, 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 April 4, 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 May 8, 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 30, 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). As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).

5. 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).

6. 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).

7. The Complainant, Thomas Williams, 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 Thomas Williams at Docket No. C-2015-2511985 for lack of prosecution is granted.

2. That the formal complaint filed by Thomas Williams against Philadelphia Gas Works at Docket No. C-2015-2511985 is dismissed in its entirety with prejudice.

3. That the Docket No. C-2015-2511985 is to be marked closed.

Dated: May 22, 2017

_____/s/
Angela T. Jones
Administrative Law Judge