

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Andres Gaitan	:	
	:	
v.	:	F-2016-2538007
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Christopher P. Pell
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complaint of Andres Gaitan against Philadelphia Gas Works because he failed to prosecute his Complaint.

HISTORY OF THE PROCEEDING

On March 26, 2016, Andres Gaitan (Gaitan or Complainant) filed a formal complaint against the Philadelphia Gas Works (PGW or Respondent) alleging that the PGW is threatening to shut off his service, that there are incorrect charges on his bill and that he would like an affordable payment agreement.

On April 25, 2016, the Respondent filed an answer. The Respondent admitted that it issued a shut off notice to the Complainant. The Respondent also admitted that the Complainant wants a payment agreement. The Respondent denied that there are incorrect charges on the Complainant's bills. The Respondent stated that the Complainant submitted medical certificates on July 30, 2009, May 9, 2011, and July 5, 2012.

By Hearing Notice dated May 25, 2016, a hearing was scheduled for July 8, 2016, at 10:00 a.m., and the matter was assigned to Administrative Law Judge (ALJ) Cynthia Williams Fordham. The Hearing Notice advised the parties of the location, date and time of the scheduled hearing and warned in italicized type: “*Attention: You may lose the case if you do not come to this hearing and present facts on the issues raised.*”

ALJ Fordham issued a Prehearing Order on June 7, 2016. The Prehearing Order directed the parties to comply with various procedural requirements and directed that a request to change the scheduled hearing should be submitted at least five days prior to the hearing date, be in writing and state the agreement or opposition of the other party. It warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing. It also explained that the complainant bears the burden of proof to establish that the respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that he is entitled to the relief requested in the Complaint.

On June 10, 2016, ALJ Fordham received a continuance request from the Complainant. The Complainant requested a 45-90 day postponement of the hearing for personal reasons. ALJ Fordham forwarded the request to Respondent’s attorney on June 14, 2016, who advised that she did not object to the continuance.

By Prehearing Order #2 issued on June 14, 2016, ALJ Fordham granted the Complainant’s request for continuance. ALJ Fordham also directed the Complainant to provide a status report on or before September 12, 2016 regarding when he is available for a rescheduled hearing.

The Complainant did not provide a status report as directed by ALJ Fordham.

By Hearing Cancellation/Reschedule Notice dated October 31, 2016, the hearing was rescheduled for Wednesday, December 7, 2016, at 10:00 a.m.

On November 15, 2016, ALJ Fordham issued Prehearing Order #3 which reminded the parties of the rules and regulations set out in her first Prehearing Order.

On December 1, 2016, ALJ Fordham received a faxed continuance request from the Complainant. The Complainant indicated that he had to leave the state for several months due to a family emergency.

By Prehearing Order #4 dated December 1, 2016, ALJ Fordham granted the Complainant's request for continuance. ALJ Fordham also directed the Complainant to provide a status report on or before February 12, 2017, regarding when he is available for a rescheduled hearing.

The Complainant did not provide a status report as directed by ALJ Fordham.

By Hearing Cancellation/Reschedule Notice dated February 28, 2017, the hearing was rescheduled for Friday, May 26, 2017, at 10:00 a.m. and the matter was reassigned to me.

The hearing convened as scheduled on May 26, 2017. Counsel for PGW was present with a witness and was prepared to proceed. Mr. Gaitan was not present, and had not contacted this office to indicate that he would or would not appear.

Because a customer who files a complaint before the Commission has an affirmative duty to make himself or herself available to participate in hearings on the complaint, I deemed Mr. Gaitan's failure to appear at the location, date and time of the scheduled hearing as evidence that he did not wish to participate in the hearing.

No witnesses were presented and no exhibits were introduced into the record. Respondent's counsel moved that the Complaint be dismissed with prejudice for lack of prosecution pursuant to 52 Pa. Code § 5.245. In accordance with Commission policy, I am granting the Motion.

The record was closed at the end of the hearing on May 26, 2017.

FINDINGS OF FACT

1. The Complainant in this case is Andres Gaitan.
2. The Respondent in this case is Philadelphia Gas Works.
3. On March 26, 2016, the Complainant filed a Complaint with the Commission against the Respondent.
4. The Respondent filed an Answer on April 25, 2016.
5. By Hearing Notice dated May 25, 2016, a hearing was scheduled for July 8, 2016, at 10:00 a.m., and the matter was assigned to Administrative Law Judge (ALJ) Cynthia Williams Fordham.
6. By Order dated June 14, 2016, ALJ Fordham granted the Complainant's request for continuance.
7. By Hearing Cancellation/Reschedule Notice dated October 31, 2016, the hearing was rescheduled for Wednesday, December 7, 2016, at 10:00 a.m.
8. By Order dated December 1, 2016, ALJ Fordham granted the Complainant's request for a second continuance.
9. By Hearing Cancellation/Reschedule Notice dated February 28, 2017, the hearing was rescheduled for Friday, May 26, 2017, at 10:00 a.m.
10. The Commission sent notice of the May 26, 2017, hearing in this case to the Complainant by regular first-class mail to the address stated on the Complaint.
11. The Commission's Hearing Notice was never returned to the sender.

12. The Complainant failed to appear at the May 26, 2017, hearing.

13. The Complainant did not settle, withdraw or request a continuance of the matter.

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 May 26, 2017, hearing in this case to the Complainant on February 28, 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 the Office of Administrative Law Judge (OALJ) in Harrisburg.

In addition, ALJ Fordham issued a prehearing order dated June 7, 2016, which, *inter alia*, warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing. The prehearing order, which was mailed to the Complainant at the address shown on the Complaint, was never returned. Moreover, the Complainant's two previous continuance requests demonstrate that he received this order and was aware of the procedure for requesting continuances. 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. Under the circumstances, 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 he is entitled to his requested relief. By failing to appear and proffer any evidence to support his Complaint, the Complainant has failed to meet his burden. 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 his burden of proving that he is entitled to the relief that he seeks from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Philadelphia Gas Works to dismiss the Complaint filed at Docket No. F-2016-2538007 is granted;
2. That the Complaint of Andres Gaitan against Philadelphia Gas Works at Docket No. F-2016-2538007 is dismissed with prejudice; and
3. That the Secretary mark this docket closed.

Date: June 29, 2017

_____/s/_____
Christopher P. Pell
Deputy Chief Administrative Law Judge