

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Erin Jenkins	:	
	:	
v.	:	F-2017-2603196
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On May 1, 2017, Erin Jenkins (Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed checkmarks in the boxes indicating “I would like a payment agreement” and “[i]ncorrect charges are on my bill.” Under the relief section, the Complainant indicated that the charges are incorrect on a bill from a previous address because he “was in another state for residence by Jan. 2013.”

On May 30, 2017, Respondent filed an Answer denying that there are incorrect charges on the bill for service for 631 N. 67th Street (service address). Respondent indicated that the Complainant had service at this address from June 13, 2008, until April 4, 2013. Respondent further

indicated: that on April 17, 2013, it generated a closing bill in the amount of \$949.41 which went into write off status on August 9, 2013; that on March 13, 2017, the Complainant contacted PGW to have service turned on at 7400 Fayette Street, 1f; that at that time, PGW made the Complainant aware of the write off balance; and that the Complainant denied responsibility for this balance because he was out of the property as of 2011. Respondent maintained that, until proven otherwise, the Complainant is responsible for the \$949.41 balance.

By Hearing Notice dated June 13, 2017, a hearing was scheduled for July 26, 2017 at 10:00 a.m., and the matter was assigned to me. 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.*”

I issued a Prehearing Order on June 14, 2017. The Prehearing Order directed the parties to comply with various procedural requirements and directed that a request to change the scheduled hearing should be sent to me 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.

The hearing convened as scheduled on July 26, 2017. Counsel for PGW was present with a witness and was prepared to proceed. Mr. Jenkins 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. Jenkins’ 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 July 26, 2017.

FINDINGS OF FACT

1. The Complainant in this case is Erin Jenkins.
2. The Respondent in this case is Philadelphia Gas Works.
3. On May 1, 2017, the Complainant filed a Complaint with the Commission against the Respondent.
4. The Respondent filed an Answer on May 30, 2017.
5. By notice dated June 13, 2017, the Commission scheduled this matter for an initial hearing on July 26, 2017 at 10:00 a.m.
6. The Commission sent notice of the 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 never returned to the sender
8. The Complainant failed to appear at the July 26, 2017 hearing.
9. 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 hearing in this case to the Complainant on June 13, 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, I issued a prehearing order dated June 14, 2017, 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. 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, 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 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-2017-2603196 is granted;

2. That the Complaint of Erin Jenkins against Philadelphia Gas Works at Docket No. F-2017-2603196 is dismissed with prejudice; and

3. That the Secretary mark this docket closed.

Date: September 5, 2017

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