

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|------------------------|---|----------------|
| Arnold Wynn | : | |
| | : | |
| v. | : | C-2017-2609590 |
| | : | |
| 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 for the hearing and prosecute the Complaint.

HISTORY OF THE PROCEEDING

On June 9, 2017, Complainant, Arnold Wynn, 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 the Company is threatening to terminate gas service at 7126 N. Broad Street, Philadelphia, Pennsylvania (service address). The Complainant indicated that he desires a reasonable payment arrangement.

The Complaint was served electronically (eService) by the Commission's Secretary on June 15, 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. The Complaint is a timely appeal of the informal complaint filed with the Commission's Bureau of Consumer Services (BCS) at Case No. 3508696.

On July 5, 2017, Laureto Farinas, Esquire, counsel for the Respondent, filed an Answer to the Complaint. The Answer admitted that the Respondent issued a termination notice for gas service at the service address. The Answer also admitted that the Complainant sought a payment arrangement. The Answer provided some history of the Complainant with the Commission's informal complaint process with BCS.

Specifically, the Respondent noted in its Answer that the Complainant contacted the Respondent for a payment arrangement and was informed of an initial amount to put down for the payment arrangement to begin. On June 12, 2017, the Respondent stated it received a payment which was enough to begin the payment arrangement. The Respondent stated it reinstated the payment arrangement, which had the following terms: (1) \$247.00 per month for budget billing; (2) plus \$139.00 per month toward arrears; (3) for a total amount of \$386.00 per month; and (4) over 28 months.

The BCS Case No. 3508698 dismissed the informal complaint by letter dated May 31, 2017. The BCS concluded that the Complainant had a previous Commission-issued payment arrangement upon which the Complainant had defaulted. Under these circumstances the Commission is prohibited by statute from issuing another payment arrangement. 66 Pa.C.S. §1405(d).¹

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

¹ 66 Pa.C.S. § 1405(d) states, in relevant part, "Absent a change in income, the commission shall not establish or order a public utility to establish a second subsequent payment arrangement if a customer has defaulted on a payment arrangement established by a commission order or decision..."

A Hearing Notice dated July 12, 2017, notified the parties that an initial in-person hearing was scheduled for Tuesday, September 5, 2017, at 9:30 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 July 12, 2017, provided procedural rules and guidelines for the proceeding and emphasized the following:

- (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 Prehearing Order also stated that the Complainant received a payment arrangement from the Respondent on June 12, 2017. The Prehearing Order directed the parties to file a certificate of satisfaction if the executed payment arrangement resolved the Complaint.

The evidentiary hearing convened as scheduled. Attorney Farinas appeared representing the Respondent and accompanied by one potential witness. 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 12:10 p.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 September 5, 2017, when the evidentiary hearing adjourned.

This matter is ripe for decision.

FINDINGS OF FACT

1. The Complainant is Arnold Wynn, who is requesting a payment arrangement for gas service at 7126 Broad 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 June 9, 2017, the Complainant filed a Complaint with the Commission against the Respondent.
4. The Respondent filed its Answer on July 5, 2017, which admitted to the payment arrangement request and stated it reinstated a payment arrangement with the Complainant.
5. A Hearing Notice dated July 12, 2017, was sent by regular first-class mail to the Complainant and scheduled an evidentiary hearing for Tuesday, September 5, 2017, at 9:30 a.m.
6. A Prehearing Order, dated July 12, 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 September 5, 2017.
9. Complainant did not acknowledge he settled or withdrew the Complaint.

DISCUSSION

In this Complaint, the Complainant requested a payment arrangement for 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 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 July 12, 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 July 12, 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 specifically stated that the Respondent's Answer alleged that the Complainant received a payment arrangement on June 12, 2017. The Prehearing Order directed the parties to execute a certificate of satisfaction if the Complaint was satisfied. 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 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 September 5, 2017, hearing. Moreover, no certificate of satisfaction was filed at this docket.

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 July 12, 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.Cmwlth. 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, Arnold Wynn, failed to sustain his burden of proof.
66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion by Laureto Farinas, Esquire on behalf of Philadelphia Gas Works to dismiss the formal complaint of Arnold Wynn at Docket No. C-2017-2609590 for lack of prosecution is granted.

2. That the formal complaint filed by Arnold Wynn against Philadelphia Gas Works at Docket No. C-2017-2609590 is dismissed in its entirety with prejudice.

3. That the Docket No. C-2017-2609590 is to be marked closed.

Dated: September 7, 2017

/s/
Angela T. Jones
Administrative Law Judge