

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Sterling Capers

v.

Philadelphia Gas Works

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:

F-2017-2584940

**INITIAL DECISION**

Before  
Darlene Davis Heep  
Administrative Law Judge

**INTRODUCTION**

This decision dismisses the Complaint for failure to prosecute because Complainant did not appear for the hearing.

**HISTORY OF THE PROCEEDING**

On January 07, 2017, Sterling Capers (Complainant) filed a formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW). In the Complaint, Mr. Capers sought a payment arrangement, checked a box on the Complaint Form stating that the utility is threatening to shut off his service or had already shut off his service, and stated that he wanted to be able to keep a payment arrangement that required him to pay \$123.23 per month.

On February 14, 2017, PGW filed an Answer denying all material allegations. PGW averred that Complainant's service was terminated in August of 2016 for an unpaid balance of \$5,001.73, including \$479.48 from a previous address.

On March 16, 2017, a Hearing Notice was issued setting an Initial Hearing for April 25, 2017, at 10:00 a.m.

On April 7, 2017, a Hearing Notice was issued rescheduling the hearing for May 10, 2017, at 10:00 a.m.

A Pre-hearing Order issued on April 11, 2017, informed the Complainant that the matter could be dismissed if he did not appear, that any requests for continuance must be submitted in writing five days in advance and that a change of the hearing date would be granted only where good cause exists.

Shortly before the hearing began, Mr. Capers called the Office of Administrative Law Judge and stated that he was at a medical facility. He was informed that he could be called and that the matter could proceed by telephone, to which he agreed. PGW did not object to hearing the matter by telephone.

The hearing began as scheduled at 10:00 a.m. on May 11, 2017; Mr. Capers was contacted by telephone. A recess was taken to allow a settlement discussion. The hearing resumed and both parties informed the undersigned that they were attempting to resolve the matter, requested that the matter be continued, and stated that the Complainant was going to provide additional information and documentation to PGW in an effort to reach a resolution.

Mr. Capers requested that the further hearing be set for a Tuesday or Thursday and that he could appear on either day in person. A Hearing Notice mailed on May 25, 2017, set the Further Hearing for 10:00 a.m. on Thursday, June 15, 2017.

The hearing began as scheduled at 10:00 a.m. on June 15, 2017. Attorney Farinas was present with a witness and prepared for the hearing. Mr. Capers was not present. A recess was taken in order to allow the Complainant time to appear. The hearing resumed at 10:21 a.m. and Mr. Capers was not present. PGW moved that the matter be dismissed with prejudice for lack of prosecution.

The matter was taken under advisement. The record closed on June 26, 2017, upon receipt of the transcript.

### FINDINGS OF FACT

1. The Complainant in this case is Sterling Capers.
2. Philadelphia Gas Works is the Respondent.
3. On January 17, 2017, the Complainant filed this action.
4. The Respondent filed an Answer on February 14, 2017.
5. The Commission sent the Notice of the hearing to Mr. Sterling by regular first-class mail to the address stated on the Complaint.
6. On April 10, 2017, a Prehearing Order was mailed to the Complainant and informed him of the date, time and location of the hearing and also that the matter would be dismissed if he did not participate and present evidence.
7. On the morning of the hearing, May 11, 2017, Mr. Capers called to state that he could not appear because he was at a medical facility.
8. Mr. Capers and PGW opted to have the hearing telephonically that day and near the start of the hearing requested a recess to allow settlement discussions.
9. Upon the hearing resuming, both parties requested that the matter be continued in order to allow Mr. Capers to provide PGW with information and documentation to facilitate a settlement.

10. By Notice dated May 25, 2017, the Commission rescheduled the matter for an in-person Hearing on June 15, 2017, at 10:00 a.m.

11. The Complainant failed to appear for the June 15, 2017, hearing.

12. All hearing notices and prehearing orders were sent by first-class mail.

13. None of the documents mailed to Complainant were returned as undeliverable.

14. Complainant did not contact the Commission to request a continuance or to state that he could not attend the hearing on June 15, 2017.

15. Complainant has not contacted the Commission since the June 15, 2017, hearing date.

### 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, when the administrative agency provides the parties notice and the opportunity to be heard.

Complainant failed to appear for the scheduled hearing. Complainant received all notices by first-class mail and none of those notices was returned as undeliverable. Therefore, the due process requirement of notice was met.

The Initial Hearing was converted from in-person to telephonic when Mr. Capers called the morning of the hearing and stated that he could not attend. A further hearing was scheduled to allow the Complainant time to provide documentation and information to PGW to

possibly resolve the matter. Mr. Capers did not attend the further hearing or contact the Commission to state that he could not attend.

Mr. Capers did not request a continuance and has not contacted the Commission since the rescheduled hearing date. Under these circumstances, the Complainant has had ample opportunity to appear and be heard in this proceeding, but did not 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 they are entitled to relief. By failing to appear and proffer any evidence to support his Complaint, the Complainant has failed to meet this burden. Therefore, 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).

