

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Marta Abrantes	:	
	:	
v.	:	F-2017-2613845
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Christopher P. Pell  
Deputy Chief Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Complaint of Marta Abrantes against Philadelphia Gas Works because she failed to prosecute her Complaint.

**HISTORY OF THE PROCEEDING**

On June 30, 2017, Marta Abrantes (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 a checkmark in the box indicating that there are incorrect charges on her bill. Under the “requested relief” section of the Complaint, the Complainant alleged that her gas bills increased as a result of a gas leak that she reported to PGW on December 1, 2016. Complainant further alleged that PGW investigated her concerns and declared her home safe, only to come to her home in February 2017 in response to her high bill concerns, at which time PGW determined she did have a leak. Complainant requested that PGW adjust her bills to account for the leak that should have been fixed in December 2016.

On August 1, 2017, Respondent filed an Answer denying that there are incorrect charges on the bill for service at 6831 Sylvester Street, Philadelphia, PA (service address). PGW maintained that a PGW technician went to the service address on December 1, 2016 in response to a call from the Complainant regarding a gas leak, that the technician found a leak on her fuel line, and that the technician made the necessary repairs. PGW further maintained that the meter at the service address is equipped with an Electronic Reading Transmitting (ERT) device, and that the disputed bill reflects the actual usage recorded on the meter.

By Hearing Notice dated August 10, 2017, a hearing was scheduled for October 6, 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 August 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 she is entitled to the relief requested in the Complaint.

Prior to the hearing on October 6, 2017, my legal assistant informed me that the Complainant left a voicemail message at 10:44 p.m. on October 5, 2017 indicating that she would not be attending the hearing because she had to work. The Complainant did not explain why she hadn't contacted my office earlier to explain that she had a scheduling conflict, did not explain why she hadn't contacted my office during office hours, nor did the Complainant request a postponement of the scheduled hearing. I instructed my legal assistant to contact the Complainant and advise her that the hearing would proceed as scheduled and that her Complaint would be dismissed if she failed to appear for the scheduled hearing. The Complainant did not answer so my legal assistant left her a voicemail message. To date, the Complainant has not returned the call.

The hearing convened as scheduled on October 6, 2017. Counsel for PGW was present with two witnesses and was prepared to proceed. Ms. Abrantes was not present.

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 Ms. Abrantes' failure to appear at the location, date and time of the scheduled hearing as evidence that she 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 on October 31, 2017 when I received a copy of the transcript.

#### FINDINGS OF FACT

1. The Complainant in this case is Marta Abrantes.
2. The Respondent in this case is Philadelphia Gas Works.
3. On June 30, 2017, the Complainant filed a Complaint with the Commission against the Respondent.
4. The Respondent filed an Answer on August 1, 2017.
5. By notice dated August 10, 2017, the Commission scheduled this matter for an initial hearing on October 6, 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. At 10:44 p.m. on October 5, 2017, the Complainant left a voicemail message at the Philadelphia Office of Administrative Law Judge advising that she would not be attending the October 6, 2017.

9. The Complainant did not request a continuance of her hearing.

10. The Complainant failed to appear at the October 6, 2017 hearing.

11. The Complainant did not settle or withdraw her Complaint.

### 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 August 10, 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 August 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 waited until 10:44 p.m. on October 5, 2017 to call my office to leave a message indicating that she would not attend the hearing because her work schedule conflicted with the hearing time. The Complainant did not explain why she waited until the night before the hearing to advise that she had a scheduling conflict, or why she did not call my office during office hours. Moreover, the Complainant did not request a postponement of the scheduled hearing. My legal assistant attempted unsuccessfully to call the Complainant to inform her that the hearing would proceed as scheduled. The Complainant did not appear for the scheduled hearing and to date has not called the Philadelphia OALJ again. 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 she is entitled to her requested relief. By failing to appear and proffer any evidence to support her Complaint, the Complainant has failed to meet her 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 her burden of proving that she is entitled to the relief that she 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-2017-2613845 is granted;

2. That the Complaint of Marta Abrantes against Philadelphia Gas Works at Docket No. F-2017-2613845 is dismissed with prejudice; and

3. That the Secretary mark this docket closed.

Date: December 4, 2017

\_\_\_\_\_/s/  
Christopher P. Pell  
Deputy Chief Administrative Law Judge