

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Stanley Jennings	:	
	:	
v.	:	C-2017-2608025
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Christopher P. Pell  
Deputy Chief Administrative Law Judge

**INTRODUCTION**

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

**HISTORY OF THE PROCEEDING**

On June 5, 2017, Stanley Jennings (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 “[t]he utility is threatening to shut off my service or has already shut off my service.” Complainant wrote in that his gas service is off and that PGW is trying to force him to pay a bill that does not belong to him. As relief, the Complainant requested that he not be required to pay a bill totaling more than \$9,000.

On July 5, 2017, Respondent filed an Answer admitting that it issued a termination notice for the service at 133 South 61<sup>st</sup> Street (service address).

By Hearing Notice dated July 12, 2017, a hearing was scheduled for September 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 July 13, 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 September 6, 2017. Complainant appeared *pro se*. Laureto Farinas, Esq., counsel for PGW, also appeared with a witness. Following a pre-hearing discussion between the parties, the hearing was continued to allow the parties additional time to try to resolve the Complainant’s issues.

By Hearing Cancellation/Reschedule Notice dated September 27, 2017, the hearing was rescheduled for November 17, 2017 at 10:00 a.m.

The hearing reconvened as scheduled on November 17, 2017. Counsel for PGW was present with a witness and was prepared to proceed. Mr. Jennings 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. Jennings’ 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 November 17, 2017.

### FINDINGS OF FACT

1. The Complainant in this case is Stanley Jennings.
2. The Respondent in this case is Philadelphia Gas Works.
3. On June 5, 2017, the Complainant filed a Complaint with the Commission against the Respondent.
4. The Respondent filed an Answer on July 5, 2017.
5. By notice dated July 12, 2017, the Commission scheduled this matter for an initial hearing on September 6, 2017 at 10:00 a.m.
6. The hearing convened as scheduled on September 6, 2017.
7. The September 6, 2017 hearing was continued to allow the parties additional time to try to resolve the Complainant's issues.
8. By Hearing Cancellation/Reschedule Notice dated September 27, 2017, the hearing was rescheduled for November 17, 2017 at 10:00 a.m.
9. The Commission sent notice of the November 17, 2017 hearing in this case to the Complainant by regular first-class mail to the address stated on the Complaint.

10. The Commission's Hearing Notice was never returned to the sender.
11. The Complainant failed to appear at the November 17, 2017 hearing.
12. 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.Cmwlt. 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 rescheduled hearing in this case to the Complainant on September 27, 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 July 13, 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 rescheduled 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. C-2017-2608025 is granted;
2. That the Complaint of Stanley Jennings against Philadelphia Gas Works at Docket No. C-2017-2608025 is dismissed with prejudice; and
3. That the Secretary mark this docket closed.

Date: December 6, 2017

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