

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Florence Ackridge

v.

Philadelphia Gas Works

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F-2017-2613068

INITIAL DECISION

Before
Conrad A. Johnson
Administrative Law Judge

This decision dismisses the Complaint filed in this matter for failure of Complainant to appear for the hearing and prosecute the Complaint.

HISTORY OF THE PROCEEDING

On July 3, 2017, Florence Ackridge (Complainant) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent). Complainant checked the boxes on the Formal Complaint form stating 1) the utility is threatening service termination or has already terminated service, and 2) incorrect charges are on my bill.

On July 27, 2017, Respondent filed an Answer admitting that the Company did terminate Complainant's electric service for an unpaid balance and denying that there are incorrect charges on Complainant's bill.

By notice dated August 8, 2017, the Commission scheduled this matter for a call-in telephonic hearing on September 11, 2017 at 10:00 a.m. and assigned the case to me.

I issued a Prehearing Order dated August 9, 2017, addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

By correspondence dated August 23, 2017 and received August 28, 2017, Ms. Ackridge requested a hearing continuance to obtain legal representation. Respondent did not object. By Interim Order dated September 7, 2017, Complainant's request for a hearing continuance was granted.

By Cancellation/Reschedule Hearing Notice dated September 12, 2017, the Commission informed Complainant and Respondent that a Call-In Telephonic Hearing was scheduled before me on Tuesday, November 7, 2017, at 10:00 a.m.

I convened the telephonic hearing on November 7, 2017 at 10:10 a.m. Respondent was represented by Graciela Christlieb, Esquire. Respondent's witness, Senior Account Review Officer Tiffany Jones was also present for the hearing. Ms. Ackridge appeared, self-represented, and requested an additional hearing continuance to secure legal representation. Respondent objected to the request for continuance. The request for a hearing continuance was granted and a further hearing date and time was agreed to by all parties for December 20, 2017 at 1:00 p.m. The hearing adjourned at 10:48 a.m.

By Hearing Notice dated November 8, 2017, the Commission informed Complainant and Respondent that a Further Call-In Telephonic Hearing was scheduled before me on Wednesday, December 20, 2017, at 1:00 p.m.

I reconvened the telephonic hearing on December 20, 2017 at 1:00 p.m. Respondent was again represented by Attorney Christlieb who was accompanied by witness Senior Account Review Officer Jessica Glace was also present for the hearing. Complainant failed to appear for the hearing. Complainant did not call the conference number shown on the November 8, 2017 hearing notice at 1:00 p.m.

I recessed the hearing at 1:05 p.m. to permit additional time for Complainant to appear or to contact the Office of Administrative Law Judge (OALJ) in order to explain her absence. The telephonic proceeding remained open with counsel for Respondent and the court reporter in the telephonic hearing. I then left the hearing room to verify with the support staff for the OALJ in Pittsburgh that Complainant had not contacted the office to indicate that Complainant would be unable to participate in the telephonic hearing. My voice mail and email had no messages from Complainant stating that she would be unable to participate in the hearing.

After verifying that Complainant had not contacted the OALJ in Pittsburgh, I returned to the hearing room and reconvened the hearing at approximately 1:24 p.m. Complainant had not called into the telephonic hearing. Accordingly, the hearing proceeded in Complainant's absence. No testimony or evidence was offered by Respondent. Counsel for Respondent moved for dismissal of the Complaint for lack of prosecution. I informed counsel that the motion would be taken under advisement and an initial decision would be issued. The record was closed, and the hearing was adjourned at 1:28 p.m. on December 20, 2017.

FINDINGS OF FACT

1. Complainant in this case is Florence Ackridge.
2. Respondent in this case is Philadelphia Gas Works.
3. On July 3, 2017, Complainant filed a Complaint with the Commission against Respondent.
4. By notice dated November 8, 2017 the Commission scheduled this matter for an initial telephonic hearing on December 20, 2017, at 1:00 p.m.
5. The Commission sent notice of the telephonic hearing in this case to Complainant by regular first class mail to the address stated on the Complaint.

6. The Commission's hearing notice was never returned to the sender.

7. During the November 7, 2017 hearing, Complainant was aware and agreed to the date and time of the further hearing which was to take place on December 20, 2017 at 1:00 p.m. Tr. 29.

8. Complainant failed to appear at the December 20, 2017 telephonic hearing.

9. 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 telephonic hearing in this case to Complainant on November 8, 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 OALJ.

Earlier I had issued a Prehearing Order dated August 9, 2017, which, *inter alia*, provided the toll-free bridge number and the PIN in order for the parties to participate in the telephonic hearing. The Prehearing Order directed the parties to call into the hearing on the scheduled day and time. The Prehearing Order, which was mailed to 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 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).

During the November 7, 2018 hearing, Complainant requested a second continuance to obtain legal representation which was granted during the hearing. Ms. Ackridge was aware of the December 20, 2017 at 1:00 p.m. date and time of the further hearing since it was set and agreed to by all parties during the November 7, 2017 hearing.

Complainant did not appear for the hearing scheduled and convened on December 20, 2017, which was the date shown on the November 8, 2017 hearing notice. Under these circumstances, 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 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, Complainant bears the burden of proving by a preponderance of the evidence that she is entitled to relief. By failing to appear and proffer any evidence to support her Complaint, Complainant has failed to meet this burden. Under these circumstances, the Complaint may 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 parties and subject matter of this proceeding. 66 Pa.C.S. § 701.

2. The due process rights of 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, 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 Complaint of Florence Ackridge against Philadelphia Gas Works at Docket No. F-2017-2613068 is dismissed for failure of Complainant to appear for the hearing and prosecute the Complaint.

2. That the Secretary's Bureau shall mark Docket No. F-2017-2613068 closed.

Date: January 8, 2018

_____/s/
Conrad A. Johnson
Administrative Law Judge