

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Allen E. Windrim, III	:	
	:	
v.	:	F-2017-2606297
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
F. Joseph Brady  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Complaint of Allen E. Windrim, III for failure to prosecute because he failed to appear for the hearing.

**HISTORY OF THE PROCEEDING**

On May 17, 2017, Allen Windrim, III (Mr. Windrim or Complainant) filed a formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW). In the Complaint, Mr. Windrim alleged that PGW dug up the gas valve in the street, removed his meter, and charged him fees for these actions. As relief, Mr. Windrim requests the alleged fees be removed from his account.

On June 15, 2017, PGW filed an Answer to the Complaint. PGW averred that the Complainant established service at 2244 S. 9<sup>th</sup> Street (Service Address) on April 14, 2005. PGW also averred that the Complainant contacted them on November 7, 2012 to request his account be closed due to the property being converted to electric. PGW further averred that they abandoned

the gas service on October 14, 2013 and the piping and meter were removed on or around September 26, 2016, per the Complainant's request. PGW states a reconnection fee and dig fee will be billed to the Complainant's account if service is restored. PGW requested the Complaint be dismissed.

On June 20, 2017, a Hearing Notice was issued notifying the parties that an initial hearing was scheduled in this matter for August 10, 2017.

A Prehearing Order was issued on June 21, 2017, advising the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to the proceeding, and directing the submission of documents prior to the hearing.

On August 9, 2017, an Order was issued granting the Complainant's Motion for a Continuance.

On August 9, 2017, a Hearing Cancellation/Reschedule Notice was issued notifying the parties that the hearing was rescheduled for Tuesday, November 14, 2017 at 10:00 am.

On August 11, 2017, a Hearing Type Change Notice was issued notifying the parties that the November 14, 2017 in-person hearing was changed to a call-in telephonic hearing on the same date and time.

It should be noted, all hearing notices, as well as the Prehearing Order, warned: "*Attention: You may lose this case if you do not take part in this hearing and present facts on the issues raised.*" The Hearing Notices and the Prehearing Order were sent to the Complainant at the address provided in his Complaint via first-class mail. None were returned to the Commission as undeliverable.

The hearing convened as scheduled on November 14, 2017. Laureto Farinas, Esquire appeared on behalf of Philadelphia Gas Works and was prepared to proceed. The

Complainant did not call the conference call number. After the Complainant was given an additional fifteen minutes to call in, the hearing proceeded in his absence.

Counsel for PGW moved to dismiss the Complaint with prejudice for lack of prosecution. That Motion is granted pursuant to the ordering paragraphs below.

The record was closed on November 22, 2017, upon receipt of the transcript.

### FINDINGS OF FACT

1. The Complainant is Allen Windrim, III, whose mailing address is 2244 South 9<sup>th</sup> Street, Philadelphia, PA 19148.
2. The Respondent is Philadelphia Gas Works.
3. On May 17, 2017, Mr. Windrim filed a formal Complaint against PGW with the PUC.
4. On June 15, 2017, PGW filed an Answer to the Complaint.
5. On August 9, 2017, a Hearing Cancellation/Reschedule Notice was issued notifying the parties that the hearing was rescheduled for Tuesday, November 14, 2017 at 10:00 am.
6. On August 11, 2017, a Hearing Type Change Notice was issued notifying the parties that the November 14, 2017 in-person hearing was changed to a call-in telephonic hearing on the same date and time.
7. The Hearing Type Change Notice provided the parties with the telephone number and pin code to call in to the telephonic hearing.

8. None of the documents mailed to Complainant at the address provided on his Complaint were returned to the Commission by the United States Postal Service as undeliverable.

9. The Complainant failed to appear at the scheduled hearing.

10. The Complainant did not settle or withdraw this Complaint prior to the scheduled hearing date or obtain a continuance.

### DISCUSSION

In his formal Complaint, Mr. Windrim alleged that PGW dug up the gas valve in the street, removed his meter, and charged him fees for these actions. As relief, Mr. Windrim requests the alleged fees be removed from his account. As the party seeking affirmative relief from the Commission, the burden of proof rests on the Complainant. 66 Pa.C.S.A. § 332(a).

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).

In this case, several Hearing Notices and two Orders were mailed to the Complainant at the address listed on his formal Complaint form. None of these documents were returned to the Commission as undeliverable by the post office. Therefore, the Complainant was deemed to have received these documents and had sufficient notice of the day, date and time of the scheduled hearing. Neither the Complainant nor a representative licensed to practice law in this Commonwealth appeared at the hearing on his behalf. To date, there is no further information about the Complainant regarding this hearing. His failure to appear is unexcused.

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. *Craig Sentner v. Bell Telephone Co. of Pennsylvania*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993). The Complainant waived the opportunity to participate in the hearing by failing to appear. Mr. Windrim's Complaint will be dismissed with prejudice. 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.A. § 701.
2. The Complainant has the burden of proof in this matter pursuant to 66 Pa.C.S. § 332(a).
3. 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).
4. By failing to appear and be heard on this Complaint, Complainant waived the opportunity to participate in the hearing. 52 Pa.Code § 5.245(a); *Martin W. Jefferson v. UGI Utilities, Inc.*, 1995 Pa. PUC LEXIS 159.
5. The Complainant failed to sustain his burden of proof.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Philadelphia Gas Works to dismiss the formal Complaint of Allen Windrim, III at Docket No. F-2017-2606297 is granted;
2. That the Complaint of Allen Windrim, III against Philadelphia Gas Works at Docket No. F-2017-2606297 is dismissed with prejudice; and
3. That the record at Docket No. F-2017-2606297 be marked closed.

Date: January 10, 2018

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F. Joseph Brady  
Administrative Law Judge