

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Vertis Dillon	:	
	:	
v.	:	C-2017-2583960
	:	
UGI Penn Natural Gas, Inc.	:	

**INITIAL DECISION**

Before  
Katrina L. Dunderdale  
Administrative Law Judge

**INTRODUCTION**

The undersigned grants Respondent’s oral Motion to Dismiss a formal complaint with prejudice because Complainant failed to appear and prosecute the case.

**HISTORY OF THE PROCEEDING**

On January 9, 2017, Vertis Dillon (Complainant or Mr. Dillon) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against UGI Penn Natural Gas, Inc. (UGI PNG or Respondent). Complainant alleged he lived at 516 N. Irving Avenue, Apt. 1, Scranton, Pennsylvania (service address or 516 N. Irving) but he complained his identity was used to “amass a \$1,500 gas bill,” while he was incarcerated. Complainant asked the Commission to order UGI PNG to erase the gas bill against his name.

On January 31, 2017, Respondent filed its Answer in which it alleged it terminated service in Complainant’s name on August 4, 2014 at 742 Gino Merli Drive, Peckville, Pennsylvania (742 Gino Merli) due to a failure to pay monthly bills in full and on a

timely basis. Respondent contended Complainant applied for new natural gas service at 516 N. Irving but there remained unpaid charges for natural gas service provided through August 4, 2014 at 742 Gino Merli. Respondent further alleged Complainant did not provide any evidence of improper use of his identity.

By Call-In Telephone Hearing Notice dated March 21, 2017, an Initial Call-In Telephonic Hearing was scheduled in this proceeding for Friday, April 21, 2017, at 10:00 a.m., to be conducted by the presiding officer from the Commission's Pittsburgh Hearing Room. On March 24, 2017, the Administrative Law Judge (ALJ) issued a Prehearing Order reminding the parties of procedural matters including how to request a continuance.

On April 12, 2017, UGI PNG provided the ALJ with three copies of proposed Exhibits 1 through 8, and provided one set of copies to Complainant at the address he provided in his formal complaint.

On April 18, 2017, the ALJ's office received a telephone call from an individual who identified herself as a counselor at the Lackawanna County Prison. The counselor indicated Complainant would not be able to be present telephonically at the hearing on April 21, 2017 because he can neither call out nor can he be called while residing in the prison. The counselor also indicated there was no date when Complainant might be discharged because he had not been sentenced yet on the criminal charges. The counselor confirmed Complainant was able to send and receive mail.

On April 21, 2017, the ALJ attempted to convene the initial telephonic hearing at 10:04 a.m. Counsel for UGI PNG, Larry R. Crayne, Esq., was present along with one witness for UGI PNG. Attorney Crayne indicated he spoke with the counselor, who was unable to offer any suggestions for how Complainant could be present at a telephonic hearing while incarcerated at Lackawanna County Prison. Respondent made an oral motion to dismiss the formal complaint but the presiding officer ordered UGI PNG would have to file the motion in writing, with a copy mailed to Complainant, c/o the Lackawanna County Prison.

On April 21, 2017, Respondent filed a Motion to Dismiss, and served a copy of the motion on Complainant at the service address and at the Lackawanna County Prison. UGI PNG moved that the formal complaint be dismissed with prejudice for failure of Complainant to appear at the telephonic hearing. Respondent included a Notice to Plead, advising Complainant he must file a written response within twenty (20) days with the Secretary of the Commission, with copies to the presiding officer and to Respondent.

On May 1, 2017, the ALJ's office received a document entitled "Response to Motion to Dismiss" (the Response) from Complainant which was dated April 24, 2017 but was not signed. Complainant averred in the Response he was not afforded the opportunity to have his hearing via telephone from the prison and indicated he did not want to give up his rights to challenge the UGI PNG gas bills. The Response acknowledged the prison could not accommodate him for the telephone hearing but requested that another hearing be held by video-conference or by telephone conference.

On May 1, 2017, the Commission's Secretary Bureau mailed the Response to Complainant at the Lackawanna County Prison and informed him the Response was returned to him without being filed in the official Commission file because Complainant did not sign the Response. The Secretary's Bureau notified Complainant he had ten (10) days in which to return the Response with an original signature. Failure to return the Response with an original signature would result in the Commission assuming he did not file the Response. Complainant did not return the Response to the Secretary's Bureau or to the presiding officer.

On May 25, 2017, the presiding officer issued the First Interim Order which granted a continuance in order to provide Complainant with time in which to either make arrangements for a telephonic hearing while still incarcerated or to wait until Complainant was released from prison. The First Interim Order generally continued the proceedings until August 31, 2017 by which time Complainant was ordered to provide information about how he can participate in a telephonic hearing. The First Interim Order specified in Ordering Paragraph No. 3 that if Complainant did not provide that information, then a telephonic hearing would be scheduled using the same contact information provided by Complainant in the formal complaint. The First Interim Order also advised

Complainant, in Ordering Paragraph No. 4, that if Complainant failed to appear at the hearing, then the formal complaint would be dismissed for failure to appear and to prosecute his formal complaint.

Complainant did not contact the presiding officer or the Commission after May 25, 2017 by mail, by telephone or by electronic mail. The First Interim Order dated May 25, 2017 was not returned to the Commission or the presiding officer as undeliverable.

Accordingly, the Office of Administrative Law Judge issued a Call-In Telephone Hearing Notice on October 31, 2017, which scheduled a Further Call-In Telephonic Hearing for Thursday, January 18, 2018, at 10:00 a.m., to be conducted by the presiding officer from the Commission's Pittsburgh Hearing Room. The hearing notice dated October 31, 2017 was not returned to the Commission or the presiding officer as undeliverable.

The time and date of the January 18, 2018 hearing was included in the October 31, 2017 hearing notice. The hearing notice specified how to call into the hearing on the scheduled day and at the scheduled time. The hearing notice stated in bold, underlined print that the case would be dismissed if Complainant failed to call into the hearing.

On January 18, 2018, at 10:02 a.m., the presiding officer attempted to convene the telephonic hearing as scheduled but Complainant failed to appear for the hearing. The presiding officer ascertained from Respondent that it attempted on multiple occasions to speak with Complainant prior to the hearing on January 18, 2018 but had not been able to speak with him. In addition, Respondent noted that Complainant had not contacted Respondent to re-assert his request for utility service at the service address. Respondent also noted that the service address has not had natural gas service since 2012.

Counsel for Respondent made an oral motion to dismiss with prejudice for failure to appear and prosecute. Respondent had one witness present and ready to testify. The presiding officer indicated on the hearing record that she would take the motion under advisement and give

Complainant until the end of the business day in which to call and explain why he was not present at the hearing.

The presiding officer kept the telephone line open until 10:10 a.m. at the telephone number shown on the October 31, 2017 hearing notice. Complainant continued to be absent from the telephonic hearing.

The presiding officer did not receive any telephone call, correspondence, electronic message or voicemail message prior to the close of business on January 18, 2018 indicating any reason why Complainant was unavailable at the time of the telephonic hearing. On January 18, 2018, counsel for UGI PNG was present and prepared to present its evidence along with the testimony of one witness. The hearing concluded at 10:10 a.m.

The record closed on January 18, 2018 upon the conclusion of the telephonic hearing.

#### FINDINGS OF FACT

1. Complainant is Vertis Dillon, whose mailing address is 516 North Irving Avenue, Apartment 1, Scranton, Pennsylvania (service address).
2. Respondent in this proceeding is UGI Penn Natural Gas, Inc., which is the natural gas distribution company for the territory in which the service address is located.
3. The hearing notice dated October 31, 2017 was sent to the address provided by Complainant in the formal complaint, and was not returned as undeliverable.
4. Complainant was not present and did not participate in the January 18, 2018 hearing.

5. Respondent was ready to proceed with its witness at the date and time scheduled for the hearing.

### DISCUSSION

Pursuant to Section 332(a) of the Public Utility Code, 66 Pa.C.S.A. § 332(a), the burden of proof is on the proponent of a rule or order. In this proceeding, Complainant is the proponent of a rule or order. Therefore, Complainant bears the burden of proving by a preponderance of the evidence that Respondent violated the Public Utility Code or a regulation or order of the Commission.<sup>1</sup> Complainant must show the utility is responsible or accountable for the problem described in the complaint.<sup>2</sup>

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.<sup>3</sup>

Mr. Dillon did not appear at the time scheduled for the January 18, 2018 hearing, and he did not participate in the January 18, 2018 hearing. The date, time and location of the hearing were listed in the hearing notice, dated November 28, 2017, and in the Prehearing Order, dated November 30, 2017.

Both the hearing notice and Prehearing Order were mailed to Complainant at the address provided in the formal complaint. This mailing created a rebuttable presumption Complainant received the hearing notice.<sup>4</sup> Once notice of a hearing and the opportunity to be

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<sup>1</sup> *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

<sup>2</sup> *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976).

<sup>3</sup> *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlth. 1984).

<sup>4</sup> *Berkowitz v. Mayflower Securities*, 455 Pa. 531, 317 A.2d 584 (1974).

heard has been provided, it is the responsibility of the parties to appear and participate in the hearing.<sup>5</sup>

Section 332(f) of the Public Utility Code, 66 Pa.C.S.A. § 332(f), provides in pertinent part:

Any party who shall fail to be represented at a scheduled conference or hearing after being duly notified thereof, shall be deemed to have waived the opportunity to participate in such conference or hearing, and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat....

Since Complainant did not appear or participate in the hearing, despite receiving notice of the date and time of the hearing, the hearing was held in accordance with 66 Pa.C.S.A. § 332(f) and 52 Pa.Code § 5.245. Respondent's attorney moved to dismiss the complaint with prejudice for failure to prosecute. Respondent's motion was taken under advisement.

The hearing record closed, pursuant to 52 Pa.Code § 5.431(a) and (b) which provides:

- (a) The record will be closed at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission.
- (b) After the record is closed, additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion.

In this proceeding, Complainant did not call into the hearing as specified in the hearing notice. The hearing notice clearly indicated Complainant was to call, and provided the Commission's toll-free conference bridge number and PIN number. The hearing notice clearly provided an address and telephone number where Complainant could reach the presiding officer if a request and/or additional information was needed by Complainant prior to the hearing.

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<sup>5</sup> *Sentner v. Bell Telephone Co. of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993).

On January 18, 2018, Complainant did not request a continuance and Complainant did not call into the hearing, as directed in the hearing notice and in the Prehearing Order. Complainant failed to take advantage of the opportunity provided in which to appear and prosecute the formal complaint against UGI PNG by presenting evidence to support the allegations. In addition, Complainant did not respond to the May 25, 2017 Interim Order or inform the presiding officer how he wished to participate in this proceeding. Lastly, Complainant has not renewed his request for UGI PNG to provide utility service at the service address. As a result, Complainant failed to sustain the burden of proof.

Accordingly, Respondent's oral motion to dismiss the formal complaint will be granted, and the formal complaint in this matter will be dismissed with prejudice in the Ordering Paragraphs below.<sup>6</sup>

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter in this proceeding. 66 Pa.C.S.A. § 701.
2. Complainant has the burden of proof in this matter pursuant to 66 Pa.C.S.A. § 332(a).
3. The hearing record closed at the conclusion of the hearing on January 18, 2018. 52 Pa.Code § 5.431(a).
4. Complainant, by failing to appear at the scheduled hearing, waived the opportunity to participate in the hearing. 66 Pa.C.S.A. § 332(f).

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<sup>6</sup> *Volgstadt v. Metropolitan Edison Company*, Docket No. F-02266429 (Order entered September 12, 2008) and *Martin Jefferson v. Met Ed Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995); *El-Ayazra v. West Penn Power Company*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016).

5. Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *Berkowitz v. Mayflower Securities*, 455 Pa. 531, 317 A.2d 584 (1974); *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 1994).

6. 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. *Sentner v. Bell Telephone Co. of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993).

7. Complainant failed to sustain the burden of proof.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the oral motion of UGI Penn Natural Gas, Inc., to dismiss the formal complaint filed by Vertis Dillon against UGI Penn Natural Gas, Inc., at Docket No. C-2017-2583960 is granted.

2. That the formal complaint filed by Vertis Dillon against UGI Penn Natural Gas, Inc., at Docket No. C-2017-2583960 is dismissed with prejudice.

3. That the Secretary mark this case as closed.

Date: January 19, 2018

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/s/  
Katrina L. Dunderdale  
Administrative Law Judge