

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Haywood Shumate	:	
	:	
v.	:	F-2017-2630800
	:	
Philadelphia Gas Works	:	

**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 October 11, 2017, Haywood Shumate (Mr. Shumate or Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent) alleging PGW refused to give him information about the contract until a large balance accrued, and claiming Complainant was not responsible for the balance on the account.

On November 14, 2017, PGW filed an answer and denied refusing to give information to Complainant. PGW averred Complainant was responsible to pay the entire unpaid balance which had accrued on the account.

By Telephone Hearing Notice dated December 5, 2017, the Office of Administrative Law Judge notified the parties an initial telephonic hearing in this case was scheduled for Friday, January 19, 2018 at 10:00 a.m.

On December 8, 2017, the presiding officer issued a Prehearing Order which, *inter alia*, advised the parties continuances would only be granted if requested and only in rare situations where sufficient cause was shown to exist.

The time and date of the January 19, 2018 hearing was included in the December 5, 2017 hearing notice and in the December 8, 2017 Prehearing Order. 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 19, 2018, at 10:05 a.m., the presiding officer attempted to convene the telephonic hearing as scheduled but Complainant failed to appear for the hearing. The presiding officer suspended the hearing until 10:29 a.m. to provide Complainant with additional time in which to call the Commission's bridge conference telephone number.

At 10:29 a.m., the presiding officer reconvened the hearing with Respondent's attorney present on the telephone line in addition to one PGW employee. Complainant did not appear. Counsel for Respondent made an oral motion to dismiss with prejudice for failure to appear and prosecute. Counsel noted the proposed PGW exhibits were mailed via FedEx to Complainant on January 15, 2018 and have not been returned as undeliverable. 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 10:31 a.m. at the telephone number shown on the December 5, 2017 hearing notice and the December 8, 2017 Prehearing Order. 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 19, 2018 indicating any reason why Complainant was unavailable at the time of the telephonic hearing. On January 19, 2018, counsel for PGW was present and prepared to present its evidence along with the testimony of one witness. The hearing concluded at 10:31 a.m.

The record closed on January 19, 2018 upon the conclusion of the telephonic hearing.

### FINDINGS OF FACT

1. Complainant and ratepayer of record is Haywood Shumate, who resides at 1717 Latona Street, Philadelphia, Pennsylvania (service address).
2. Respondent in this proceeding is Philadelphia Gas Works which provides gas service at the service address.
3. The hearing notice dated December 5, 2017, and the Prehearing Order dated December 8, 2017, were sent to the address provided by Complainant in the formal complaint, and were not returned as undeliverable.
4. Complainant was not present and did not participate in the January 19, 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. Shumate did not appear at the time scheduled for the January 19, 2018 hearing, and he did not participate in the January 19, 2018 hearing. The date, time and location of the hearing were listed in the hearing notice, dated December 5, 2017, and in the Prehearing Order, dated December 8, 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 heard has been provided, it is the responsibility of the parties to appear and participate in the hearing.<sup>5</sup>

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<sup>1</sup> *Se-Ling Hosier 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).

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

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 and Prehearing Order. The hearing notice and Prehearing Order clearly indicated Complainant was to call, and provided the Commission's toll-free conference bridge number and PIN number. The hearing notice and Prehearing Order 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.

On January 19, 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 PGW by presenting evidence to support the allegations. 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 19, 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).

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.

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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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the oral motion of Philadelphia Gas Works to dismiss the formal complaint filed by Haywood Shumate against Philadelphia Gas Works at Docket No. F-2017-2630800 is granted.
2. That the formal complaint filed by Haywood Shumate against Philadelphia Gas Works at Docket No. F-2017-2630800 is dismissed with prejudice.
3. That the Secretary mark this case as closed.

Date: January 22, 2018

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/s/  
Katrina L. Dunderdale  
Administrative Law Judge