

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Shanika Johnson

v.

Philadelphia Gas Works

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:

F-2017-2624393

**INITIAL DECISION**

Before  
Christopher P. Pell  
Deputy Chief Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Complaint of Shanika Johnson against Philadelphia Gas Works because she failed to prosecute her Complaint.

**HISTORY OF THE PROCEEDING**

On September 12, 2017, Shanika Johnson (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 check-marks in boxes indicating “[t]he utility is threatening to shut off my service or has already shut off my service,” “I would like a payment agreement,” and “[i]ncorrect charges are on my bill.” Complainant alleged that PGW left gas on even though she had requested discontinuance of service. Under the “requested relief” section, the Complainant indicated that she wants approximately \$3,000 removed from her bill.

On October 4, 2017, Respondent filed an Answer admitting that it issued a termination notice for the service at 5411 Walnut Street, A, Philadelphia, PA (service address). Respondent denied that there are incorrect charges on the bill for service at the service address.

By Call-In Telephonic Hearing Notice dated November 7, 2017, a hearing was scheduled for December 15, 2017, at 10:00 a.m., and the matter was assigned to me. The Hearing Notice advised the parties of the date and time of the scheduled telephonic hearing and warned in bold and underlined type: “**At the above date and time, you must call into the hearing. If you fail to do so, your case will be dismissed. You will not be called by the Administrative Law Judge.**”

I issued a Prehearing Order on November 9, 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 participate in 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 she is entitled to the relief requested in the Complaint.

The hearing convened as scheduled on December 15, 2017. Counsel for PGW called in for the hearing with a witness and was prepared to proceed. Ms. Johnson did not call in, and had not contacted this office to indicate that she would or would not participate in the hearing.

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 Ms. Johnson’s failure to call in for the scheduled hearing as evidence that she 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 December 15, 2017.

FINDINGS OF FACT

1. The Complainant in this case is Shanika Johnson.
2. The Respondent in this case is Philadelphia Gas Works.
3. On September 12, 2017, the Complainant filed a Complaint with the Commission against the Respondent.
4. The Respondent filed an Answer on October 4, 2017.
5. By Call-In Telephonic Hearing Notice dated November 7, 2017, the Commission scheduled this matter for an initial hearing on December 15, 2017, at 10:00 a.m.
6. The Commission's Call-In Telephonic Hearing Notice was never returned to the sender.
7. The Complainant did not request a continuance of her hearing.
8. The Complainant failed to call in for the December 15, 2017 hearing.
9. The Complainant did not settle or withdraw her Complaint.

## 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 call-in telephonic hearing in this case to the Complainant on November 7, 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 November 9, 2017, which, *inter alia*, warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to call in for the telephonic 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 call in for the scheduled telephonic 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 she is entitled to her requested relief. By failing to participate and proffer any evidence to

support her Complaint, the Complainant has failed to meet her 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 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 motion of Philadelphia Gas Works to dismiss the Complaint filed at Docket No. F-2017-2624393 is granted.

2. That the Complaint of Shanika Johnson against Philadelphia Gas Works at Docket No. F-2017-2624393 is dismissed with prejudice; and

