

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Melissa Parker	:	
	:	
v.	:	F-2017-2623491
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Darlene Davis Heep  
Administrative Law Judge

**INTRODUCTION**

This decision dismisses the Complaint for failure to prosecute because Complainant did not appear for the hearing.

**HISTORY OF THE PROCEEDING**

On September 8, 2017, Melissa Parker (Ms. Parker or Complainant) filed a formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent). In the Complaint, Ms. Parker is seeking a refund of a reconnection charge and down payment. This is a timely appeal of the Bureau of Consumer Services' decision at Case Number 3538960.

On September 28, 2017, PGW filed an Answer denying all material allegations and asserting that the charges were required after the Complainant's service was terminated in May of 2017, after a ten-day notice was sent to the Complainant.

On October 25, 2017, a Hearing Notice was issued setting an Initial Hearing for December 19, 2017, at 10:00 a.m.

A Prehearing Order issued on October 27, 2017, reminded the parties of the hearing date and time. The Prehearing Order also informed the Complainant that the matter could be dismissed if she did not appear, that any requests for a continuance must be submitted in writing five days in advance and that a change of the hearing date would be granted only where good cause exists. The Prehearing order also advised the Complainant to arrive in the hearing room at 9:45 a.m.

The hearing commenced as scheduled on December 19, 2017. Counsel for PGW, Laureto Farinas, Esquire, appeared at the hearing with witnesses and was prepared to proceed. Complainant was not present. The hearing was delayed ten minutes to allow the Complainant time to appear. The Complainant did not appear. At 10:15, counsel for PGW moved that the matter be dismissed for failure to prosecute.

The record closed on January 2, 2018, upon receipt of the transcript. This decision grants the Respondent's Motion to Dismiss the Complaint.

#### FINDINGS OF FACT

1. The Complainant in this case is Melissa Parker.
2. Philadelphia Gas Works is the Respondent.
3. On September 8, 2017, the Complainant filed this action.
4. The Respondent filed an Answer on September 28, 2017.
5. By Notice dated October 25, 2017, the Commission scheduled an initial hearing for December 19, 2017, at 10:00 a.m.

6. The Commission sent the Notice of the hearing to Ms. Parker by regular first-class mail to the address stated on the Complaint.

7. On October 27, 2017, a Prehearing Order was mailed to the Complainant, which reminded her of the hearing date, time and location and stated as follows:

**THIS CASE WILL BE DISMISSED IF THE CUSTOMER FAILS TO PARTICIPATE IN THE HEARING AND PRESENT EVIDENCE IN SUPPORT OF THE COMPLAINT.**

and

A request for a change of the scheduled hearing date must state the agreement or opposition of other parties and must be submitted in writing no later than five (5) business days prior to the hearing. 52 Pa.Code § 1.15(b). Requests for changes of hearing dates must be sent to me and all parties of record.

...

Changes are granted only in rare situations where good cause exists.

8. All hearing notices and prehearing orders were sent by first-class mail.

9. None of the documents mailed to Complainant was returned as undeliverable.

10. The Complainant failed to appear for the December 19, 2017 hearing.

11. Complainant did not contact the Commission to request a continuance or to state that she could not attend the hearing.

12. Complainant has not contacted the Commission since the December 19, 2017, hearing date.

## 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.

Complainant received all notices by first-class mail and none of those notices was returned as undeliverable. Therefore, the due process requirement of notice was met.

Ms. Parker did not appear for the scheduled hearing and has not contacted the Commission since. Under these circumstances, the Complainant has had ample opportunity to appear and be heard in this proceeding. 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 they are entitled to relief. By failing to appear and proffer any evidence to support her Complaint, the Complainant has failed to meet this burden. Therefore, 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 by Melissa Parker at Docket No. F-2017-2623491 is granted.

2. That the Complaint of Melissa Parker against Philadelphia Gas Works at Docket No. F-2017-2623491 is dismissed with prejudice for failure of the Complainant to appear for the hearing and prosecute the Complaint.

3. That the docket at Docket No. F-2017-2623491 is marked closed.

Date: March 5, 2018

\_\_\_\_\_/s/  
Darlene Davis Heep  
Administrative Law Judge