

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Wendy Napper	:	
	:	
v.	:	C-2017-2620609
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

This Initial Decision grants Philadelphia Gas Works’ Motion to Dismiss the formal Complaint (Complaint) of Wendy Napper with prejudice because she failed to appear and prosecute the case.

HISTORY OF THE PROCEEDING

On August 21, 2017, Wendy Napper (Ms. Napper or Complainant) filed a Complaint against Philadelphia Gas Works (Respondent or PGW) with the Pennsylvania Public Utility Commission (Commission) alleging that the utility is threatening to shut off her gas service. As relief, Ms. Napper requested that the Commission assist her in keeping her gas service on.

On September 11, 2017, Respondent filed an Answer denying the material allegations of the Complaint.

A Hearing Notice dated October 16, 2017, notified the parties that an initial hearing was scheduled in this matter for Thursday, November 30, 2017, at 9:30 a.m.

A Prehearing Order was issued on October 30, 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.

The hearing convened as scheduled on November 30, 2017. Laureto Farinas, Esq., appeared representing PGW. Neither Complainant nor counsel for the Complainant appeared at the hearing. The hearing convened at approximately 10:48 a.m. after I confirmed that the Complainant had not called, or otherwise shown good cause not to appear at the scheduled hearing.

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 closed on December 29, 2017, upon receipt of my copy of the hearing transcript.

FINDINGS OF FACT

1. The Complainant is Wendy Napper, whose mailing address is 5706 Vandike Street, Philadelphia, PA 19135.
2. The Respondent is Philadelphia Gas Works.
3. On August 21, 2017, Ms. Napper filed a formal Complaint against PGW alleging that the utility is threatening to shut off her gas service.
4. As relief, Ms. Napper requested that the Commission assist her in keeping her gas service on.
5. On September 11, 2017, the Respondent filed an Answer denying the material allegations of the Complaint.

6. A Hearing Notice dated October 16, 2017, notified the parties that an initial hearing was scheduled in this matter for Thursday, November 30, 2017, at 9:30 a.m.

7. A Prehearing Order was issued on October 30, 2017, advising the parties of the proper procedure to obtain a continuance to reschedule the hearing date.

8. None of the documents mailed to Complainant at the address provided in her 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 this formal Complaint, Ms. Napper alleged that the utility is threatening to shut off her gas service. As relief, Ms. Napper requested that the Commission assist her in keeping her gas service on. 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).

A Hearing Notice and a Prehearing Order were mailed to Ms. Napper at the address listed on her formal Complaint. Neither document was 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 her behalf. To date, there is no further information about the Complainant regarding this hearing. Her 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. Ms. Napper'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. As the Complainant, Wendy Napper had the burden of proof and failed to carry that burden. 66 Pa.C.S.A. § 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. Ms. Napper has failed to meet her burden of proving that she is entitled to the relief she is seeking from the Commission.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Philadelphia Gas Works to dismiss the formal Complaint of Wendy Napper at Docket No. C-2017-2620609, is granted.

2. That the Complaint filed by Wendy Napper against Philadelphia Gas Works at Docket No. C-2017-2620609 is dismissed with prejudice for failure to prosecute.

3. That the Secretary's Bureau should mark this matter closed.

Date: March 26, 2018

/s/
Eranda Vero
Administrative Law Judge