

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Patricia Dudley	:	
	:	
v.	:	F-2016-2575757
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision grants Philadelphia Gas Works’ Motion to Dismiss the Complaint of Patricia Dudley because the Complainant failed to appear at the scheduled hearing.

HISTORY OF THE PROCEEDING

On November 7, 2016, Patricia Dudley (Ms. Dudley or Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (Respondent or PGW) with the Pennsylvania Public Utility Commission (Commission) alleging that the utility had shut off her gas service after accusing her of theft of service. As relief, Ms. Dudley requested that PGW turn her gas service on and remove all charges connected to the unauthorized usage of gas.

The Complaint was filed as a timely appeal of the Commission’s Bureau of Consumer Services (BCS) decision, at BCS Case # 3467001.

On December 5, 2016, Respondent filed an Answer denying the material allegations of the Complaint.

A Hearing Notice dated January 9, 2017, notified the parties that an initial hearing was scheduled in this matter for Thursday, February 23, 2017, at 10:00 a.m.

A Prehearing Order was issued on January 21, 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.

Prior to convening the evidentiary hearing on February 23, 2017, I provided the parties the opportunity to engage in settlement discussions concerning the issues raised in the formal Complaint. At the end of their discussions, the parties requested a continuance of the scheduled hearing in order to allow PGW to evaluate Ms. Dudley's settlement offer. The parties' request was granted. Tr. 5.

A Hearing Notice dated March 31, 2017, notified the parties that an initial hearing was scheduled in this matter for Wednesday, May 24, 2017, at 10:00 a.m. Due to a conflict in my schedule, the May 24, 2017 hearing was rescheduled for Thursday, June 8, 2017.

A Hearing Cancellation/Rescheduled Notice dated May 2, 2017, notified the parties that an initial hearing was scheduled in this matter for Thursday, June 8, 2017.

The hearing convened as scheduled on June 8, 2017. Patricia Dudley appeared pro se via telephone. Laureto Farinas, Esq., appeared representing PGW. Early into Ms. Dudley's testimony it became obvious that she was experiencing breathing difficulties and was unable to present her case in full. I adjourned the hearing explaining to the parties that a further hearing would be scheduled at a later date in order to give Ms. Dudley an opportunity to recover.

A Hearing Notice dated December 4, 2017, notified the parties that a further telephonic hearing was scheduled in this matter for Friday, February 2, 2018, at 10:00 a.m.

All of the Hearing Notices, including the December 4, 2017, Hearing Notice were sent to the address that the Complainant listed in her Complaint.

The United States Postal Service returned the December 4, 2017 Hearing Notice to the Commission with the notation "Return to Sender. Patricia Dudley 4250 M Street, Philadelphia PA 19124-4911."

On January 16, 2018, the Commission resent the Hearing Notice to the 4250 M Street, Philadelphia PA 19124-4911 address found on the return label.

On January 16, 2018, I issued Prehearing Order # 2 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 United States Postal Service returned the Prehearing Order # 2 to the sender as undeliverable with the notation "Return to Sender. Not deliverable as addressed. Unable to forward."

On January 25, 2018, I attempted to contact the Complainant in order to confirm the correct address where the Prehearing Order # 2 could be served. My call to Ms. Dudley was answered by a young lady who identified herself as Ms. Dudley's niece and who informed me that Ms. Dudley had passed away. After giving her my condolences, I instructed Ms. Dudley's relative to send me any form of documentation that the family had available evidencing Ms. Dudley's passing away. She assured me that she would put the documentation in the mail as soon as possible. As of the day of this Initial Decision, no such documentation has been received by the Commission.

The hearing convened as scheduled on February 2, 2018. Laureto Farinas, Esq. appeared representing PGW. Neither Complainant nor a counsel for the Complainant appeared at the hearing. I attempted to contact the Complainant at the telephone number listed in her formal Complaint form. I reached a voice message which informed me that the subscriber I dialed was no longer available. Counsel for PGW moved to dismiss the Complaint with prejudice for lack of prosecution.

The record was closed upon receipt of the transcript on February 9, 2018.

FINDINGS OF FACT

1. The Complainant is Patricia Dudley.
2. The Respondent is Philadelphia Gas Works.
3. On November 7, 2016, Ms. Dudley filed a formal Complaint against PGW alleging that the utility had shut off her gas service after accusing her of theft of service.
4. As relief, Ms. Dudley requested that PGW turn her gas service on and remove all charges connected to the unauthorized usage of gas.
5. On December 5, 2016, Respondent filed an Answer denying the material allegations of the Complaint.
6. A Hearing Notice dated December 4, 2017, notified the parties that a further telephonic hearing was scheduled for Friday, February 2, 2018, at 10:00 a.m.
7. All Hearing Notices, including the December 4, 2017 Hearing Notice were sent to the address that the Complainant listed on her Complaint.

8. The United States Postal Service returned the December 4, 2017 Hearing Notice to the Commission with the notation “Return to Sender. Patricia Dudley 4250 M Street, Philadelphia PA 19124-4911.”

9. On January 16, 2018, the Commission resent the Hearing Notice to the 4250 M Street, Philadelphia PA 19124-4911 address.

10. On January 25, 2018, a call to Ms. Dudley was answered by a young lady who identified herself as Ms. Dudley’s niece and who indicated that Ms. Dudley had passed away.

11. The Complainant failed to appear at the scheduled hearing.

12. The Complainant did not settle or withdraw this Complaint prior to the scheduled hearing date or obtain a continuance.

DISCUSSION

In her formal Complaint, Ms. Dudley alleged that PGW had shut off her gas service after accusing her of theft of service. As relief, Ms. Dudley requested that PGW turn her gas service on and remove all charges connected to the unauthorized usage of gas. 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.Cmwlt. 1984). 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. *Sentner v. Bell Telephone Co. of Pennsylvania*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993), 52 Pa. Code § 1.24(a). Furthermore,

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

A Hearing Notice dated December 4, 2017 was mailed to Ms. Dudley at the address listed on her formal Complaint form, which notified the parties that a further telephonic hearing was scheduled in this matter for Friday, February 2, 2018, at 10:00 a.m. The United States Postal Service returned the December 4, 2017 Hearing Notice to the Commission with the notation "Return to Sender. Patricia Dudley 4250 M Street, Philadelphia PA 19124-4911."

On January 16, 2018, the Commission resent the Hearing Notice to the 4250 M Street, Philadelphia PA 19124-4911 address found on the return label. The document mailed to Ms. Dudley on January 16, 2018, was not 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.

Unfortunately, this case is not simply a "failure to prosecute." Several days before the in-person hearing, I was informed by a relative of Ms. Dudley that the Complainant was deceased. However, to date no death certificate was located or submitted for the Complainant. There was no indication from Ms. Dudley's estate that they wished to prosecute her present Complaint against PGW. Moreover, when I attempted to contact the Complainant at the telephone number listed in her formal Complaint form, I reached a voice message which informed me that the subscriber I dialed was no longer available.

To date, there is no further information about the Complainant regarding this hearing.

After considering the totality of the evidence and the circumstances in this case, I find that the Complainant waived the opportunity to participate in the hearing by failing to appear. Ms. Dudley's Complaint will be dismissed with prejudice. 52 Pa.Code § 5.245(a); *Jefferson v. UGI Utilities, Inc.*, 1995 Pa. PUC LEXIS 159.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter in this proceeding. 66 Pa. C.S. § 701.

2. The Complainant, Patricia Dudley, had the burden of proof in this case but was unable to go forward or to carry that burden. 66 Pa. C.S. § 332(a).

3. 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); *Jefferson v. UGI Utilities, Inc.*, 1995 Pa. PUC LEXIS 159.

4. Ms. Dudley 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 Patricia Dudley at Docket No. F-2016-2575757 is granted.

2. That the Complaint filed by Patricia Dudley against Philadelphia Gas Works at Docket No. F-2016-2575757 is dismissed with prejudice for failure to prosecute.

3. That the record at Docket No. F-2016-2575757 is marked closed.

Date: April 17, 2018

/s/
Eranda Vero
Administrative Law Judge