

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joy Fennal	:	
	:	
v.	:	C-2018-2647043
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Christopher P. Pell  
Deputy Chief Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the formal Complaint of Joy Fennal against Philadelphia Gas Works because she failed to prosecute her Complaint.

**HISTORY OF THE PROCEEDING**

On February 5, 2018, Joy Fennal (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 checkmarks in the boxes indicating “[t]he utility is threatening to shut off my service or has already shut off my service” and “I would like a payment agreement.”

On March 5, 2018, Respondent filed an Answer admitting that it terminated service at 1824 Pennington Road, Philadelphia, PA (service address). Respondent further explained that it issued a 10-day shut off notice to the Complainant on July 17, 2017, and that on August 1, 2017, PGW terminated the Complainant’s gas service for non-payment. PGW indicated that the Complainant must pay \$5,321.18 in order to have her gas service restored.

By Hearing Notice dated March 13, 2018, a hearing was scheduled for May 10, 2018, at 10:00 a.m., and the matter was assigned to me. The Hearing Notice advised the parties of the location, date and time of the scheduled hearing and warned in italicized type: “*Attention: You may lose the case if you do not come to this hearing and present facts on the issues raised.*”

I issued a Prehearing Order on March 14, 2018. 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 attend 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 May 10, 2018. Complainant appeared *pro se*. Respondent appeared and was represented by Graciela Christlieb, Esq. Following a brief settlement discussion, the parties jointly requested a continuance to afford Ms. Fennal additional time to supply household income information to PGW. The request was granted.

By Hearing Notice dated May 18, 2018, a Further Hearing was scheduled for June 26, 2018, at 10:00 a.m. This Hearing Notice advised the parties of the location, date and time of the scheduled hearing and again warned in italicized type: “*Attention: You may lose the case if you do not come to this hearing and present facts on the issues raised.*”

The hearing convened as scheduled on June 26, 2018. Ms. Christlieb was present with a witness and was prepared to proceed. Ms. Fennal was not present, and had not contacted this office to indicate that she would or would not appear.

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. Fennal’s failure to appear at the location, date and time of 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 June 26, 2018.

#### FINDINGS OF FACT

1. The Complainant in this case is Joy Fennal.
2. The Respondent in this case is Philadelphia Gas Works.
3. On February 5, 2018, the Complainant filed a Complaint with the Commission against the Respondent.
4. The Respondent filed an Answer on March 5, 2018.
5. By Hearing Notice dated May 18, 2018, the Commission scheduled this matter for a further hearing on June 26, 2018, at 10:00 a.m.
6. The Commission's Hearing Notice was never returned to the sender.
7. The Complainant did not request a continuance of her hearing.
8. The Complainant failed to appear for the June 26, 2018, 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 further hearing in this case to the Complainant on May 18, 2018, 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 March 14, 2018, which, *inter alia*, warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to appear and participate in the 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 appear for the scheduled 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. C-2018-2647043 is granted;

