

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Vertis Dillon	:	
	:	
v.	:	C-2017-2583960
	:	
UGI Penn Natural Gas, Inc.	:	

**INITIAL DECISION ON REMAND**

Before  
Katrina L. Dunderdale  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision on Remand dismisses a formal complaint because Complainant failed to be available to pursue and prosecute his case.

**HISTORY OF THE PROCEEDING**

On January 9, 2017, Vertis Dillon (Complainant or Mr. Dillon) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against UGI Penn Natural Gas, Inc. (UGI PNG or Respondent). Complainant alleged he lived at 516 N. Irving Avenue, Apt. 1, Scranton, Pennsylvania (service address or 516 N. Irving) but he complained his identity was used to “amass a \$1,500 gas bill,” while he was incarcerated. Complainant asked the Commission to order UGI PNG to erase the gas bill against his name.

On January 31, 2017, Respondent filed its Answer in which it alleged it terminated service in Complainant’s name on August 4, 2014, at 742 Gino Merli Drive, Peckville, Pennsylvania (742 Gino Merli), due to a failure to pay monthly bills in full and on a

timely basis. Respondent contended Complainant applied for new natural gas service at 516 N. Irving, but there remained unpaid charges for natural gas service provided through August 4, 2014, at 742 Gino Merli. Respondent further alleged Complainant did not provide any evidence of improper use of his identity.

By Call-In Telephone Hearing Notice dated March 21, 2017, an Initial Call-In Telephonic Hearing was scheduled in this proceeding for Friday, April 21, 2017, at 10:00 a.m., to be conducted by the presiding officer from the Commission's Pittsburgh Hearing Room. On March 24, 2017, the Administrative Law Judge (ALJ) issued a Prehearing Order reminding the parties of procedural matters.

On April 12, 2017, UGI PNG provided the ALJ with three copies of proposed Exhibits 1 through 8, and provided one set of copies to Complainant at the address he provided in his formal complaint.

On April 18, 2017, the ALJ's office received a telephone call from an individual who identified herself as a counselor at the Lackawanna County Prison. The counselor indicated Complainant would not be able to be present telephonically at the hearing on April 21, 2017, because he can neither call out nor can he be called while residing in the prison. The counselor also indicated there was no date when Complainant might be discharged because he had not been sentenced yet on the criminal charges. The counselor confirmed Complainant was able to send and receive mail.

On April 21, 2017, the ALJ attempted to convene the initial telephonic hearing at 10:04 a.m. Counsel for UGI PNG, Larry R. Crayne, Esq., was present along with one witness for UGI PNG. Attorney Crayne indicated he spoke with the counselor, who was unable to offer any suggestions for how Complainant could be present at a telephonic hearing while incarcerated at Lackawanna County Prison. Respondent made an oral motion to dismiss the formal complaint but the presiding officer ordered UGI PNG would have to file the motion in writing, with a copy mailed to Complainant, c/o the Lackawanna County Prison.

On April 21, 2017, Respondent filed a Motion to Dismiss, and served a copy of the motion on Complainant at the service address and at the Lackawanna County Prison. UGI PNG moved that the formal complaint be dismissed with prejudice for failure of Complainant to appear at the telephonic hearing. Respondent included a Notice to Plead, advising Complainant he must file a written response within twenty (20) days with the Secretary of the Commission, with copies to the presiding officer and to Respondent.

On May 1, 2017, the ALJ's office received a document entitled "Response to Motion to Dismiss" (the Response) from Complainant which was dated April 24, 2017, but was not signed. Complainant averred in the Response he was not afforded the opportunity to have his hearing via telephone from the prison and indicated he did not want to give up his rights to challenge the UGI PNG gas bills. The Response acknowledged the prison could not accommodate him for the telephone hearing but requested that another hearing be held by video-conference or by telephone conference.

On May 1, 2017, the Commission's Secretary Bureau mailed the Response to Complainant at the Lackawanna County Prison and informed him the Response was returned to him without being filed in the official Commission file because Complainant did not sign the Response. The Secretary's Bureau notified Complainant he had ten (10) days in which to return the Response with an original signature. Failure to return the Response with an original signature would result in the Commission assuming he did not file the Response. Complainant did not return the Response to the Secretary's Bureau or to the presiding officer.

On May 25, 2017, the presiding officer issued the First Interim Order which granted a continuance in order to provide Complainant with time in which to either make arrangements for a telephonic hearing while still incarcerated or to wait until Complainant was released from prison. The First Interim Order generally continued the proceedings until August 31, 2017, by which time Complainant was ordered to provide information about how he can participate in a telephonic hearing. The First Interim Order specified in Ordering Paragraph No. 3 that if Complainant did not provide that information, then a telephonic hearing would be scheduled using the same contact information provided by Complainant in the formal complaint. The First Interim Order also advised

Complainant, in Ordering Paragraph No. 4, that if Complainant failed to appear at the hearing, then the formal complaint would be dismissed for failure to appear and to prosecute his formal complaint.

Complainant did not contact the presiding officer or the Commission after May 25, 2017 by mail, by telephone or by electronic mail. The First Interim Order dated May 25, 2017 was not returned to the Commission or the presiding officer as undeliverable.

As a result, on October 31, 2017, the Office of Administrative Law Judge issued a Call-In Telephone Hearing Notice, which scheduled a Further Call-In Telephonic Hearing for Thursday, January 18, 2018, at 10:00 a.m., to be conducted by the presiding officer from the Commission's Pittsburgh Hearing Room. The hearing notice dated October 31, 2017 was not returned to the Commission or the presiding officer as undeliverable.

The time and date of the January 18, 2018 hearing was included in the October 31, 2017 hearing notice. The hearing notice specified how to call into the hearing on the scheduled day and at the scheduled time. The hearing notice stated in bold, underlined print that the case would be dismissed if Complainant failed to call into the hearing.

On January 18, 2018, at 10:02 a.m., the presiding officer attempted to convene the telephonic hearing as scheduled but Complainant failed to appear for the hearing.

The presiding officer ascertained from Respondent that UGI PNG attempted on multiple occasions to speak with Complainant prior to the hearing on January 18, 2018, but had not been able to speak with him. In addition, Respondent noted that Complainant had not contacted Respondent to re-assert his request for utility service at the service address. Respondent also noted that the service address has not had natural gas service since 2012.

Counsel for Respondent made an oral motion to dismiss with prejudice for failure to appear and prosecute. Respondent had one witness present and ready to testify. The presiding officer indicated on the hearing record that she would take the motion under advisement and give Complainant until the end of the business day in which to call and explain why he was not present at the hearing.

The presiding officer kept the telephone line open until 10:12 a.m. at the conference number shown on the October 31, 2017 hearing notice. Complainant continued to be absent from the telephonic hearing. The presiding officer did not receive any telephone call, correspondence, electronic message or voicemail message prior to the close of business on January 18, 2018, indicating any reason why Complainant was unavailable at the time of the telephonic hearing. The hearing concluded at 10:12 a.m.

The record closed on January 18, 2018 upon the conclusion of the telephonic hearing. Thereafter, the presiding officer issued the Initial Decision on January 25, 2018 which dismissed the formal complaint with prejudice for failure to appear and prosecute his case.

On May 22, 2018, the Commission entered its Opinion and Order which reversed the Initial Decision and remanded the proceeding to the Office of Administrative Law Judge (OALJ) for such further proceedings as were necessary and consistent with the Opinion and Order. Specifically, the Opinion and Order directed OALJ to “make a reasonable attempt to locate Mr. Dillon. If the OALJ is successful, then the OALJ is directed to work with the Complainant’s counselor to schedule a telephonic hearing. These efforts should be memorialized and the memorandum placed in the record of this matter. If the OALJ’s efforts fail to locate Mr. Dillon, then the presiding ALJ can author an Initial Decision Upon Remand which dismisses the case.”<sup>1</sup>

On May 22, 2018, a member of the presiding officer’s staff contacted the Lackawanna County Prison to ascertain if Mr. Dillon remained within the county prison system.

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<sup>1</sup> Opinion and Order, entered May 22, 2018, in *Dillon v. UGI Penn Natural Gas, Inc.*, at Docket No. C-2017-2583960, at p. 9.

The Lackawanna County Prison staff indicated Mr. Dillon was released in August 2017 and was currently on probation with the Lackawanna County Adult Probation Office. The prison staff and probation office did not provide any contact information about Mr. Dillon or his Probation Officer, citing verification and safety concerns.

On May 24, 2018, the presiding officer inquired of UGI PNG via electronic mail and asked UGI PNG to verify: (1) if Complainant was a current customer anywhere within UGI PNG's service territory; (2) if natural gas service was active or inactive at the service address; and (3) the last known mailing address and/or contact information for Complainant.

On May 24, 2018, UGI PNG advised the presiding officer via electronic mail of the following: Complainant was not a current customer of UGI PNG; the natural gas service was inactive at the service address; and the last known address for Complainant was 742 Gino Merli Drive, Peckville, Pennsylvania 18452 (742 Gino Merli Drive).

On May 24, 2018, the presiding officer sent a letter to Complainant which was mailed to the service address and to 742 Gino Merli Drive. In the letter, the presiding officer outlined in brief the procedural history and advised Complainant about the Commission's May 22, 2018 Opinion and Order. The presiding officer explained a hearing could be conducted by telephone or in person in Scranton, Pennsylvania if Complainant wished to pursue his formal complaint against UGI PNG. Mr. Dillon was asked to respond on or before June 22, 2018, and indicate if Complainant preferred to pursue his formal complaint or not pursue his formal complaint. A form was provided on which Mr. Dillon could indicate his preference, and a self-addressed stamped envelope was enclosed with the May 24, 2018 letter.

The May 24, 2018 letters mailed to the service address and to 742 Gino Merli Drive were not returned as undeliverable.

On July 3, 2018, the presiding officer mailed a letter to the Lackawanna County Adult Probation Office and requested information on how to contact Mr. Dillon. The July 3, 2018 letter included a copy of the May 24, 2018 letter which was mailed to the service address

and to 742 Gino Merli Drive. No response was received from the Lackawanna County Adult Probation Office.

### FINDINGS OF FACT

1. Complainant is Vertis Dillon, whose last known mailing address is 742 Gino Merli Drive, Peckville, Pennsylvania (742 Gino Merli Drive).

2. On January 9, 2017, Vertis Dillon resided at 516 North Irving Avenue, Apartment 1, Scranton, Pennsylvania (service address).

3. The hearing notice dated October 31, 2017 was sent to the address provided by Complainant in the formal complaint and was not returned as undeliverable.

4. Complainant was not present and did not participate in the January 18, 2018 hearing.

5. The letter dated May 24, 2018 was sent to the service address provided by Complainant in the formal complaint (516 North Irving Avenue, Apartment 1, Scranton, Pennsylvania) and was not returned as undeliverable.

6. The May 24, 2018 letter repeated the history of the proceeding in brief and asked Complainant to respond by June 22, 2018 if he wanted a hearing on his formal complaint.

7. The letter dated May 24, 2018 was sent to the last known address for Complainant (742 Gino Merli Drive, Peckville, Pennsylvania) and was not returned as undeliverable.

8. Complainant did not respond to the letter dated May 24, 2018.

9. Complainant has not responded to any mailing from the Commission since May 1, 2017, when the Commission received a document entitled “Response to Motion to Dismiss” dated April 24, 2017, which purportedly was mailed by Complainant, but which document was not signed.

### DISCUSSION

In this remanded matter, the Commission directed the Office of Administrative Law Judge (OALJ) and the presiding officer to make a reasonable attempt to locate Mr. Dillon. If the OALJ successfully located Mr. Dillon, then the OALJ was directed to work with prison staff to schedule a telephonic hearing at which Mr. Dillon could appear. However, if the OALJ was unable to locate Mr. Dillon, then the presiding officer was to author an Initial Decision Upon Remand to dismiss the proceeding.

On remand, the presiding officer or the presiding officer’s staff made inquiries with UGI PNG, the Lackawanna County Prison, the Lackawanna County Adult Probation Office and initiated a search within Pennsylvania’s Unified Judicial System website in an attempt to locate Mr. Dillon.

From those sources, the presiding officer determined Mr. Dillon: was arrested and incarcerated in Lackawanna County Prison on January 10, 2017; was sentenced on August 9, 2017; was released from Lackawanna County Prison in August 2017; and remained answerable to the Lackawanna County Adult Probation Office as of May 2018.

#### Complainant Received the Commission’s Mailings

The Presiding Officer sent a letter to Complainant on May 24, 2018, asking Mr. Dillon to respond if he wished to have a hearing, and providing him with the procedure to do follow. The letter dated May 24, 2018 was mailed to Complainant’s last known address and to the service address. Neither envelope was returned by the post office. Accordingly, Mr. Dillon is presumed to have received the May 24, 2018 letter. *Berkowitz v. Mayflower Securities*, 455

Pa. 531, 317 A.2d 584 (1974); *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 1994). The presiding officer determined Mr. Dillon received the May 24, 2018 letter at both the service address and the last known address (742 Gino Merli Drive) because these envelopes were not returned to the OALJ as undeliverable.

In total, the Commission mailed at least seven documents (consisting of letters, notices, orders and correspondence) to Complainant and none of those documents were returned to Commission as undeliverable. The documents the Commission sent include, but are not limited to, the following items: hearing notice dated March 21, 2017; Prehearing Order dated March 24, 2017; Secretary's Bureau letter dated May 1, 2017; First Interim Order dated May 25, 2017; hearing notice dated October 31, 2017; Initial Decision issued January 25, 2018; and letter dated May 24, 2018. In addition, the Commission's Opinion and Order dated May 22, 2018, was mailed to Complainant and has not been returned as undeliverable.

### Burden of Proof

As the party seeking intervention from the Commission, Complainant bears the burden of proving Respondent violated provisions of the Public Utility Code or the Public Utility Commission's regulations in some fashion.<sup>2</sup> To establish a sufficient case and satisfy the burden of proof, Complainant must show the public utility is responsible or accountable for the problem described in the complaint.<sup>3</sup> Such a showing must be by a preponderance of the evidence.<sup>4</sup> Complainant can meet that burden if he presents evidence more convincing, by even the smallest amount, than that evidence presented by Respondent.<sup>5</sup>

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<sup>2</sup> Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a).

<sup>3</sup> *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990), *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976).

<sup>4</sup> *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 134 Pa.Cmwlth. 218; 221-222, 578 A.2d 600; 602 (1990), *alloc. den.* in 602 A.2d 863 (1992).

<sup>5</sup> *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

## Due Process

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.<sup>6</sup>

## Discussion

Mr. Dillon did not appear at the time scheduled for the January 18, 2018 hearing, and he did not participate in the January 18, 2018 hearing. The date, time and location of the hearing were listed in the hearing notice, dated October 31, 2017. In addition, Mr. Dillon did not respond to the May 24, 2018 letter which asked him to indicate if he wished to pursue this formal complaint.

All Commission notices and orders were mailed to Complainant at the address provided in the formal complaint, except for the letter dated May 24, 2018 which was mailed to both the address provided in the formal complaint and to the last known address. These mailings created a rebuttable presumption Complainant received the items mailed, including the hearing notice for the last initial hearing on January 18, 2018 and the letter dated May 24, 2018.<sup>7</sup> Once Mr. Dillon received notice of the January 18, 2018 hearing and was given the opportunity to be heard, and once he received the letter asking if he wished to pursue his formal complaint, it became Mr. Dillon's responsibility to appear and participate in the hearing process.<sup>8</sup>

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

Any party who shall fail to be represented at a scheduled  
conference or hearing after being duly notified thereof,

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<sup>6</sup> *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlt. 1984).

<sup>7</sup> *Berkowitz v. Mayflower Securities*, 455 Pa. 531, 317 A.2d 584 (1974).

<sup>8</sup> *Sentner v. Bell Telephone Co. of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993).

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....

Since Complainant did not appear or participate in the hearing or pursue his formal complaint, despite receiving various notices, including the October 31, 2017 hearing notice which provided the date and time of the January 18, 2018 hearing, the January 18, 2018 hearing was held in accordance with 66 Pa.C.S.A. § 332(f) and 52 Pa.Code § 5.245.

At the January 18, 2018 hearing, Respondent's attorney moved to dismiss the complaint with prejudice for failure to prosecute. Respondent's motion was taken under advisement. Thereafter, the hearing record closed, pursuant to 52 Pa.Code § 5.431(a) and (b).

In this proceeding, Complainant did not call into the January 18, 2018 hearing as specified in the hearing notice. The hearing notice clearly indicated Complainant was to call, and provided the Commission's toll-free conference bridge number and PIN number. The hearing notice clearly provided an address and telephone number where Complainant could reach the presiding officer if a request and/or additional information was needed by Complainant prior to the hearing.

On January 18, 2018, Complainant did not request a continuance and Complainant did not call into the hearing, as directed in the hearing notice and in the Prehearing Order. Complainant failed to take advantage of the opportunity provided in which to appear and prosecute the formal complaint against UGI PNG by presenting evidence to support the allegations. In addition, Complainant did not respond to the May 25, 2017 Interim Order or inform the presiding officer how he wished to participate in this proceeding.

Furthermore, Complainant did not respond to the letter dated May 24, 2018, which asked him specifically if he still wished to pursue his formal complaint. As a result, Complainant failed to make himself available after repeated attempts to solicit a response or participation from Mr. Dillon. Accordingly, Respondent's oral motion to dismiss the formal complaint will be

granted, and the formal complaint in this matter will be dismissed in the Ordering Paragraphs below.<sup>9</sup>

### CONCLUSIONS OF LAW

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

2. Complainant has the burden of proof in this matter pursuant to 66 Pa.C.S.A. § 332(a).

3. The hearing record closed at the conclusion of the hearing on January 18, 2018. 52 Pa.Code § 5.431(a).

4. Complainant, by failing to appear at the scheduled hearing on January 18, 2018, waived the opportunity to participate in the hearing. 66 Pa.C.S.A. § 332(f).

5. Complainant failed to respond to mailings from the Commission asking Complainant if he intended to pursue his formal complaint. 66 Pa.C.S.A. § 332.

6. 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. *Sentner v. Bell Telephone Co. of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993).

7. Complainant failed to sustain the burden of proof.

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<sup>9</sup> *Volgstadt v. Metropolitan Edison Company*, Docket No. F-02266429 (Order entered September 12, 2008) and *Martin Jefferson v. Met Ed Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995); *El-Ayazra v. West Penn Power Company*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016).

