

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Candace Ringgold	:	
	:	
v.	:	C-2018-2642286
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Darlene Davis Heep
Administrative Law Judge

INTRODUCTION

The Complainant did not appear for the hearing and the formal Complaint (Complaint) is dismissed for failure to prosecute.

HISTORY OF THE PROCEEDING

On January 11, 2018, Candace Ringgold (Complainant) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent). In the Complaint, Ms. Ringgold stated that the utility is threatening to shut off her service and that she would like a payment arrangement.

On February 1, 2018, PGW filed an Answer denying all material allegations of fact in the Complaint. PGW also stated that the Complainant was issued a 10-day shut off notice on October 2, 2017, and that gas service at the service address was terminated on October 23, 2017.

On February 9, 2018, a Hearing Notice was issued setting an Initial Hearing as part of a Call of the Docket on April 5, 2018.

A Prehearing Order was issued on March 8, 2018, informing the Complainant of the date of the hearing and providing procedural information. The Prehearing Order also advised the Complainant that:

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

On March 30, 2018, the undersigned was informed by PGW's counsel that the matter was too involved for a Call of the Docket schedule and the matter was rescheduled. The Complainant was called by Commission staff and informed that her hearing would be rescheduled. The Complainant was again called on April 4, 2018 and advised that she would receive a hearing notice with a rescheduled date.

On June 1, 2018, a Hearing Notice was issued to the Complainant and sent by first class mail informing her that the Initial Hearing would be held on July 26, 2018, at 10:00 a.m.

The hearing convened as scheduled on July 26, 2018. Graciela Christlieb, Esquire, was present to represent PGW, along with a witness, and was prepared to proceed. The Complainant was not present when the hearing began.

A recess was taken during which efforts were made to locate the Complainant and to determine whether she had contacted the Commission. The Complainant had not contacted the Commission and could not be located.

The hearing reconvened at approximately 10:18 a.m. Complainant had not arrived and counsel for PGW moved that the matter be dismissed for failure to prosecute.

Counsel was advised that a written decision would be issued and the hearing was adjourned. The court reporter and PGW representatives departed.

At approximately 10:27 a.m., I was advised that the Complainant had arrived.

A search was conducted for PGW's attorney and witness. PGW representatives returned to the hearing and the court reporting agency called the court reporter and directed her to return to the hearing room.

As the parties were walking to the hearing room, the Complainant changed her mind and left the building. The court reporter arrived less than a minute later.

The hearing was again reconvened, at approximately 10:37 a.m. The Complainant was not present. Counsel for PGW again moved that the matter be dismissed for failure to prosecute.

The record closed on July 27, 2018 to allow the Complainant an opportunity to contact the Commission. She has not. This decision grants the Respondent's Motion to Dismiss the Complaint.

FINDINGS OF FACT

1. The Complainant is Candace Ringgold, who is a Philadelphia Gas Works customer at 1905 N. Ringgold Street, Philadelphia, PA 19121.
2. Philadelphia Gas Works is the Respondent.
3. On January 11, 2018, the Complainant filed this action.
4. The Respondent filed an Answer on February 1, 2018.

5. By Hearing Notice dated February 9, 2018, the Commission scheduled an Initial Hearing for April 5, 2018, as part of a Call of the Docket hearing.

6. A Prehearing Order was issued on March 8, 2018 informing the Complainant of the date of the hearing and providing procedural information.

7. The Prehearing Order informed the Complainant that her case would be dismissed if she failed to participate in the hearing and present evidence in support of her complaint.

8. The Prehearing Order also advised the Complainant that:

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

9. On March 30, 2018, the undersigned was informed by PGW counsel that the matter was too involved for a Call of the Docket schedule and the matter was rescheduled.

10. Commission staff twice called the Complainant and informed her that her hearing date would be changed.

11. On June 1, 2018, a Hearing Notice was issued to the Complainant and sent by first class mail informing her that the Initial Hearing would be held on July 26, 2018, at 10:00 a.m.

12. The hearing convened on July 26, 2018, and Graciela Christlieb, Esquire, was present to represent PGW, along with a witness, and was prepared to proceed.

13. The hearing began, and the Complainant was not present.

14. A recess was taken to allow the Complainant time to appear.

15. During the recess, the Administrative Law Judge checked the waiting area and talked with office staff to determine whether the Complainant had contacted the Commission.

16. The Complainant had not contacted the Commission and was not in the waiting area.

17. The hearing reconvened at approximately 10:18 a.m., in the Complainant's absence.

18. The hearing was adjourned following a Motion to Dismiss for Failure to prosecute by PGW's counsel.

19. The court reporter and PGW representatives departed once the hearing was adjourned.

20. At approximately 10:27 a.m., a Commission security guard called the Office of the Administrative Law Judge and advised that the Complainant had arrived.

21. After the Complainant arrived, a search was conducted for PGW representatives and the court reporter.

22. PGW representatives were located outside the building and returned for the hearing.

23. The court reporting service contacted the court reporter and directed her to return to the hearing room.

24. The Complainant was informed that the court reporter would return shortly, and the hearing would proceed.

25. The parties were walking to the hearing room when the Complainant stated that she did not have time and she departed.

26. The court reporter arrived less than a minute after the Complainant's departure.

27. The hearing reconvened again at approximately 10:37 a.m.

28. The Complainant was not present when the matter reconvened and counsel for PGW again moved that the matter be dismissed for failure to prosecute.

29. The Complainant did not request a continuance of the hearing.

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. As the Commission noted in *Robert Strydio v. PPL Electric Utilities Corporation*, 2018 Pa. PUC LEXIS 258, C-2017-2633043, "[o]nce notice of a hearing and the opportunity to be heard have been provided by the Commission, it is the responsibility of the parties to appear and participate in the hearing," *citing Mumma v. PPL Electric Utilities Corporation*, Docket No. C 00014869 (Order entered January 24, 2002); *Sentner v. Bell Tel. Co. of PA*, Docket No. F-00161106 (Order entered October 25, 1993).

Ms. Ringgold received notice of her hearing set for April 5, 2018. When it was determined that the matter was not appropriate for Call of the Docket, Ms. Ringgold was advised that her hearing would be rescheduled. She was also mailed a written Hearing Notice by First-class mail on June 1, 2018, advising her that the hearing would be held on July 26, 2018, at

10:00 a.m. That the Complainant received the Notice was confirmed when she appeared for the hearing at approximately 10:27 a.m.

Ms. Ringgold was twice provided the opportunity to be heard on July 26, 2018. First, because the Complainant was not present at 10:00 a.m., the hearing was not convened until 10:07 a.m. to allow the Complainant time to arrive. When she had not appeared by the time the hearing began, a recess was taken, and the Administrative Law Judge walked to the waiting area, the security desk and the office to determine whether the Complainant had attempted to contact the office or was mistakenly waiting in another area. The Complainant had not appeared and had not contacted the Commission.

After the hearing was adjourned and after the court reporter and PGW representatives had departed, Ms. Ringgold arrived, at approximately 10:27 a.m. Although she was late, to provide Complainant with an opportunity to be heard, a search was made for PGW staff and the court reporter. PGW staff were located outside the building waiting for transportation and were asked to return to the hearing area, which they did.

The court reporter had departed. The court reporting agency was contacted, which in turn contacted the court reporter and instructed her to return to the hearing room. The Complainant was advised that the court reporter had departed but would return shortly for the hearing. As the PGW representatives and the Complainant were walking to the hearing room, the Complainant stated that she did not have time for the hearing and departed. The court reporter arrived in the hearing room approximately one minute later. The hearing reconvened at approximately 10:37 a.m. The Complainant was not present.

Notwithstanding the Complainant's late arrival, after the Respondent and the court reporter had left the hearing room, every possible effort was made to provide Ms. Ringgold with an opportunity to present her case. Despite those efforts, the Complainant chose to depart and not present her case. She had an opportunity to be heard and chose to leave instead. The due process rights of the Complainant were 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). The due process rights of the Complainant have been fully protected in this proceeding.

Additionally, 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 relief. By choosing to leave the hearing and not proffer any evidence to support the 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 and the parties to this proceeding. 66 Pa.C.S. § 701.

2. The Complainant received notice of the hearing. *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlt. 1994), appeal denied, 653 A.2d 1234 (Pa. 1994).

3. 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).

4. As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).

5. By choosing to leave and not participate in the hearing and by choosing not to proffer any evidence to support the Complaint, the Complainant has failed to meet the

burden of proving entitlement to the relief that is sought 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 Candace Ringgold at Docket No. C-2018-2642286 is granted.
2. That the Complaint of Candace Ringgold against Philadelphia Gas Works at Docket No. C-2018-2642286 is dismissed with prejudice for failure of the Complainant to appear for the hearing and prosecute the Complaint.
3. That Docket No. C-2018-2642286 is marked closed.

Date: July 27, 2018

/s/
Darlene Davis Heep
Administrative Law Judge