

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Albert Boyd II	:	
	:	
v.	:	F-2018-3000108
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
F. Joseph Brady  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the formal Complaint of Albert Boyd II against Philadelphia Gas Works because he failed to appear for his hearing and prosecute his Complaint.

**HISTORY OF THE PROCEEDING**

On February 23, 2018, Albert Boyd II (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 check marks next to the boxes for “The utility is threatening to shut off my service or has already shut off my service,” and “I would like a payment agreement.”

On March 19, 2018, PGW filed an Answer to the Complaint. In its Answer, PGW admitted that it terminated service to the Complainant on November 27, 2017, for non-payment. PGW requested that the Commission dismiss the Complaint.

By Hearing Notice dated March 20, 2018, a hearing was scheduled for May 11, 2018, 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 April 3, 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 he is entitled to the relief requested in the Complaint.

On May 10, 2018, PGW filed a Motion for Continuance in order to allow more time to attempt to reach a settlement in this matter. Counsel for PGW represented that Mr. Boyd was in agreement with this request.

On May 14, 2018, I issued an Order granting the Respondent’s Motion for a Continuance.

By Hearing Cancellation/Reschedule Notice dated May 14, 2018, a hearing was rescheduled for June 20, 2018 at 10:00 a.m. The Hearing Cancellation/Reschedule 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.*”

The hearing began on June 20, 2018, at 10:00 a.m. as scheduled. Counsel for PGW was present with a witness and was prepared to proceed. The Complainant was not present.

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 closed on July 16, 2018, upon my receipt of the transcript.

#### FINDINGS OF FACT

1. The Complainant in this case is Albert Boyd II.
2. The Respondent in this case is Philadelphia Gas Works.
3. On February 23, 2018, the Complainant filed a Complaint with the Commission against the Respondent.
4. On March 19, 2018, the Respondent filed an Answer to the Complaint.
5. By Hearing Notice dated March 20, 2018, a hearing was scheduled for May 11, 2018.
6. On April 3, 2018, a Prehearing Order was sent to all parties containing, *inter alia*, a warning of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing.
7. On May 10, 2018, the Respondent filed a Motion for a Continuance.
8. On May 14, 2018, I issued an Order granting the Respondent's Motion for a Continuance.

9. By Hearing Cancellation/Reschedule Notice dated May 14, 2018, the hearing was rescheduled for June 20, 2018 at 10:00 a.m.

10. All hearing notices and orders were sent to the Complainant by regular first-class mail.

11. None of the documents mailed to the Complainant were returned as undeliverable.

12. The Complainant failed to appear at the June 20, 2018 hearing.

13. The Complainant did not settle or withdraw his 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.

On May 14, 2018, the Commission sent notice of the initial hearing in this case to the Complainant by regular first-class mail. 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 April 3, 2018, which, *inter alia*, warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing. Also, on May 14, 2018, I issued an Order granting the Respondent's Motion for a Continuance. Neither Order was 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 hearing and has not contacted the Commission. Under these circumstances, the Complainant has had ample opportunity to appear and be heard in this proceeding. 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 he is entitled to relief. By failing to appear and proffer any evidence to support his 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 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 his burden of proving that he is entitled to the relief that he 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 by Albert Boyd II at Docket No. F-2018-3000108 is granted;
2. That the Complaint of Albert Boyd II against Philadelphia Gas Works at Docket No. F-2018-3000108 is dismissed with prejudice; and
3. That Docket No. F-2018-3000108 be marked closed.

Date: August 8, 2018

\_\_\_\_\_/s/  
F. Joseph Brady  
Administrative Law Judge