

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Marvin Steadman	:	
	:	
v.	:	C-2018-3002425
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Gail M. Chiodo
Special Agent

INTRODUCTION

This decision grants a motion to dismiss for failure to prosecute because the Complainant failed to appear for the hearing at the designated date and time despite being given notice of the hearing.

HISTORY OF THE PROCEEDING

On May 16, 2018, Marvin Steadman (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (“Commission”) against Philadelphia Gas Works (PGW) in which he requested a new payment arrangement. The complaint is an untimely appeal from the decision of the Commission’s Bureau of Consumer Services (BCS) at Case Number 3589463, dated February 22, 2018, which granted Complainant a Level 3¹ payment arrangement

¹ A Level 3 customer is defined as a household with a gross monthly income level exceeding 250% of the Federal poverty level and not more than 300% of the Federal poverty level and is provided with a repayment period of not more than one year. 66 Pa.C.S. § 1405(b)(3).

(PAR) and directed Complainant to pay a total of \$670 per month, consisting of \$127 for his budget bill, plus \$543 on his arrearage of \$6,514.18.

On June 22, 2018, PGW filed an answer to the complaint in which it requested that Mr. Steadman's complaint be dismissed noting that Complainant was already provided the Commission-issued PAR above.

On June 26, 2018, the Commission issued a Call-In Telephonic Hearing Notice ("Hearing Notice") setting an initial telephonic hearing for August 7, 2018 at 10:00 a.m. The case was assigned to me pursuant to 52 Pa. Code § 56.174.² On June 27, 2018, a Prehearing Order was issued which again advised the parties of the date and time of the scheduled hearing and informed them of the procedures applicable to this proceeding including the procedure for requesting a continuance, if necessary.

Of note, the Hearing Notice stated: "**At the above date and time, you must call into the hearing. If you fail to do so, your case will be dismissed. You will not be called by the Special Agent.**" (emphasis in bold print and underlining in original). Similarly, the Prehearing Order stated, *inter alia*, that: "**You must call into the hearing on the scheduled day and time. If you fail to do so, your case will be dismissed. You will not be called by the Special Agent.**" (emphasis in bold print and underlining in original).

Both the Hearing Notice and the Prehearing Order were sent to the parties by electronic service (eService), since both parties selected to receive notifications in this manner. By selecting eService, the parties have agreed that being provided a notification of the filings as well as a link to the filings via electronic mail shall constitute valid legal service in lieu of service through first class mail.³ Neither of these documents were returned as undeliverable.

² 52 Pa. Code § 56.174 (providing for review by a special agent of decisions of the BCS and any other case in which the issue is solely the ability to pay).

³ See 52 Pa. Code § 1.53(b)(3) which provides, "Service may be made electronically to filing users who have agreed to receive electronic service. Filing users will be sent an electronic mail notice informing them that a document was posted on the Commission's electronic filing system and providing a link to the document on the same day the document is posted."

The hearing convened as scheduled on August 7, 2018 at 10:00 a.m. Ms. Graciela Christlieb, Esquire, appeared on behalf of PGW, along with a potential witness, and was prepared to proceed. Mr. Steadman did not appear. After waiting for approximately fifteen minutes for Mr. Steadman to appear, which he did not, Attorney Christlieb made an oral motion to dismiss the complaint for the failure to prosecute. I took this motion under advisement. No witnesses were presented and no exhibits were introduced for the record.⁴

The record closed at the end of the day of the hearing. No communication has been made to the Office of Administrative Law Judge by, or on the behalf of, Complainant explaining his absence. For the reasons discussed below, the motion of PGW will be granted and the complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant is Marvin Steadman.
2. The Respondent is PGW.
3. By Call-In Telephonic Hearing Notice dated June 26, 2018, an initial telephonic hearing was scheduled for August 7, 2018 at 10:00 a.m.
4. The Call-In Telephonic Hearing Notice provided, *inter alia*, “**At the above date and time, you must call into the hearing. If you fail to do so, your case will be dismissed. You will not be called by the Special Agent.**” (emphasis in bold print and underlining in original).
5. By Prehearing Order dated June 27, 2018, the parties again were advised of the date and time of the scheduled hearing and informed of the procedures applicable to this proceeding, including the method by which a party could request a continuance of the hearing date, if needed.

⁴ Pursuant to 52 Pa. Code § 56.174(3), the hearing was tape recorded. No court reporter was present.

6. The Prehearing Order provided, *inter alia*, “**You must call into the hearing on the scheduled day and time. If you fail to do so, your case will be dismissed. You will not be called by the Special Agent.**” (emphasis in bold print and underlining in original).

7. The Call-In Telephonic Hearing Notice was eServed on the parties on June 26, 2018, and the Prehearing Order was eServed on the parties on June 27, 2018.

8. The Audit History of the Commission’s docketing system contains no notification that either the Hearing Notice or the Prehearing Order failed to be delivered electronically at the e-mail address provided by Complainant.

9. The hearing convened as scheduled on August 7, 2018 at 10:00 a.m.

10. Attorney Christlieb appeared on behalf of PGW, along with one potential witnesses, and was prepared to proceed.

11. The Complainant did not appear for the August 7, 2018 hearing.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950). As the party seeking relief, Mr. Steadman bears the burden of proof.

In his complaint, Mr. Steadman seeks relief in the form of another Commission-issued payment arrangement (PAR). The complaint is an untimely appeal from the decision of the Commission’s Bureau of Consumer Services (BCS) at Case Number 3589463, dated

February 22, 2018, which granted Complainant a Level 3 PAR and directed Complainant to pay a total of \$670 per month, consisting of \$127 for his budget bill, plus \$543 on his arrearage of \$6,514.18.

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 when the parties are accorded notice and the opportunity to be heard. *Id.*

Mr. Steadman did not appear at the date and time set for the hearing in his case despite receiving notice of the hearing. Commission regulations address circumstances when a party fails to appear in a proceeding. Specifically, section 5.245 provides:

§ 5.245. Failure to appear, proceed or maintain order in proceedings.

- (a) After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will:
 - (1) Be deemed to have waived the opportunity to participate in the conference or hearing.
 - (2) Not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing.
 - (3) Not be permitted to recall witnesses who were excused for further examination.

52 Pa. Code § 5.245(a).

The Hearing Notice and Prehearing Order were served electronically on the Complainant in accordance with his selection to receive electronic service of all documents instead of receiving a paper copy in the mail. Eservice, in lieu of paper service, constitutes valid legal service. 52 Pa. Code § 1.53(b)(3). According to the Audit History of the Commission's docketing system, the Commission served the Hearing Notice on the Complainant on June 26, 2018 and the Prehearing Order on June 27, 2018. The Audit History of the Commission's

docketing system contains no notification that either document failed to be delivered electronically at the email address provided by the Complainant. Therefore, the Complainant is deemed to have received these documents and had sufficient notice of the day, date and time of the scheduled hearing. *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016); *Zirkel v. Philadelphia Gas Works*, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017). Further, both the Hearing Notice and Prehearing Order warned Mr. Steadman of the potential consequences that could result from choosing not to participate in the scheduled hearing, including dismissal of his complaint.

Mr. Steadman did not appear at the time of the hearing, nor did he or anyone on his behalf request a continuance of the hearing. As such, Mr. Steadman had notice and an opportunity to be heard in this proceeding but chose not to appear. Therefore, Mr. Steadman's due process rights have been fully protected. *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa. Code § 5.245(a).

During the hearing, counsel for PGW moved to have the complaint dismissed for lack of prosecution. By failing to appear and present any evidence in support of his complaint, Mr. Steadman has failed to carry his burden. Thus, it is appropriate to dismiss the complaint. *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995). Accordingly, the merits of the complaint will not be addressed in this Initial Decision.

CONCLUSIONS OF LAW

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

2. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950).

4. 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 when the parties are accorded notice and the opportunity to be heard. *Id.*

5. Service may be made electronically to filing users who have agreed to receive electronic service. Filing users will be sent an electronic mail notice informing them that a document was posted on the Commission's electronic filing system and providing a link to the document on the same day the document is posted. 52 Pa. Code § 1.53(b)(3).

6. After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will: 1) be deemed to have waived the opportunity to participate in the conference or hearing; 2) not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing; and 3) not be permitted to recall witnesses who were excused for further examination. 52 Pa. Code § 5.245(a).

7. Mr. Steadman's due process rights have been fully protected. *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-00161106 (Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

8. By failing to appear and proffer any evidence in support of his claim, the Complainant has failed to carry his burden of proof.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Philadelphia Gas Works to dismiss the formal complaint of Marvin Steadman at Docket Number C-2018-3002425 for failure to prosecute is granted.
2. That the formal complaint filed by Marvin Steadman at Docket Number C-2018-3002425 is hereby dismissed.
3. That this matter be marked closed.

Date: August 10, 2018

_____/s/_____
Gail M. Chiodo
Special Agent