

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Leona McCarthy	:	
	:	
v.	:	C-2018-3000472
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Angela T. Jones
Administrative Law Judge

INTRODUCTION

The undersigned through this decision dismisses the formal complaint (Complaint) filed in this matter for failure of the Complainant to appear at the hearing and prosecute the Complaint.

HISTORY OF THE PROCEEDING

On March 13, 2018, the Complainant, Leona McCarthy, filed a Complaint with the Pennsylvania Public Utility Commission (Commission or PUC) against Philadelphia Gas Works (PGW or Company or Respondent). The Complainant indicated that the utility was threatening or had already terminated the Complainant’s gas service and that the Complainant wanted a payment agreement. The Complainant requested that the Commission grant her a payment arrangement for gas services from the Respondent.

The Complaint was served on PGW electronically (eService) by the Commission’s Secretary on March 15, 2018, according to the audit history of the docket. The

eService is pursuant to the waiver of Section 702 program, under which the Respondent waives the service requirements in 66 Pa.C.S. § 702.

On April 4, 2018, Graciela Christlieb, Esquire, counsel for the Respondent, filed an Answer to the Complaint. The Answer admitted that the Complainant seeks a payment arrangement. The Answer averred that a payment arrangement, issued to the Complainant by the Commission on May 7, 2013, was broken and has not been satisfied. The Respondent's Answer referenced the Commission's Bureau of Consumer Services' (BCS) written decision at Case No. 3542897 issued on December 12, 2017, which denied a payment arrangement requested by the Complainant because a previous Commission-issued payment arrangement was not satisfied.

The Respondent requested that the Commission find against the Complainant and dismiss the Complaint.

A Hearing Notice dated April 6, 2018, notified the parties that an initial in-person hearing was scheduled for Tuesday, May 22, 2018, at 9:30 a.m. This Notice indicated that the case was assigned to the undersigned Administrative Law Judge (ALJ) as the presiding officer. This matter was scheduled in call-of-the-docket fashion where multiple cases are scheduled for the same date and time and the presiding officer calls each case and hears the Complaints in succession.

A Prehearing Order dated April 9, 2018, provided procedural rules and guidelines for the proceeding and emphasized the following:

- (1) a request to change the scheduled hearing should be sent at least five days prior to the hearing date;
- (2) the request for a hearing change is to be in writing and sent to all parties of record; and
- (3) a caution that Complainant may lose the case if she does not take part in the hearing and present evidence on the issues raised.

The evidentiary hearing convened at 2:59 p.m. on May 22, 2018. The Complainant was not present and had not communicated a reasonable excuse why she was unable to appear timely. Attorney Christlieb as counsel for the Respondent was present along with one potential

witness. The hearing was scheduled for 9:30 a.m. so the normal practice to recess to allow the Complainant to provide a reasonable excuse for her absence was forgone. Attorney Christlieb moved to dismiss the Complaint with prejudice. I stated that I would rule on the motion in writing and adjourned.

The transcript of this Complaint consists of seven pages of transcribed testimony. The record closed on June 25, 2018, when the undersigned received the transcript.

To date, there has been no further communication from the Complainant. This matter is ripe for decision.

FINDINGS OF FACT

1. The Complainant is Leona McCarthy, who requests a payment arrangement for gas service received from the Respondent at 2719 E. Thompson Street, Philadelphia, Pennsylvania (service address).

2. The Respondent is Philadelphia Gas Works, a jurisdictional public utility that provides gas distribution service in the Commonwealth of Pennsylvania.

3. On March 13, 2018, the Complainant filed a Complaint with the Commission against the Respondent.

4. The Respondent filed its Answer on April 4, 2018, which denied any wrongdoing.

5. A Hearing Notice dated April 6, 2018, was sent by regular first-class mail to the Complainant and scheduled an initial hearing for Tuesday, May 22, 2018, at 9:30 a.m.

6. A Prehearing Order, dated April 9, 2018, advised the Complainant of the proper procedure to participate in the initial hearing and to obtain a continuance to reschedule the hearing date.

7. None of the documents mailed to the Complainant were returned to the Commission by the United States post office as undeliverable.

8. Neither the Complainant nor any counsel representing the Complainant timely appeared at the scheduled hearing on May 22, 2018.

9. The Complainant did not settle or withdraw the Complaint.

DISCUSSION

In this Complaint, the Complainant requested a payment arrangement and indicated that her gas service was either terminated or scheduled to be terminated by the Respondent. The issue in this proceeding is determined by whether the Complainant sustained her burden of proof. By failing to participate in the hearing, the Complainant was unable to meet this burden.

The party seeking affirmative relief from the Commission bears the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the Complaint to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976). This responsibility or accountability to the named utility must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992). A preponderance of the evidence is that which is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

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. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlth. 1984). Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 1994).

The Commission sent a Hearing Notice dated April 6, 2018, to the Complainant by regular first-class mail to the address listed on the Complaint. This document was never returned to the sender, the scheduling staff of the Office of Administrative Law Judge (OALJ) in Harrisburg.

The undersigned issued a Prehearing Order dated April 9, 2018, which *inter alia*, instructed the parties that any request to change the scheduled hearing date should state the agreement or opposition of the other party and be submitted in writing no later than five days prior to the hearing. The Prehearing Order also stated the day, date and time for the scheduled initial hearing. The Prehearing Order, which was mailed to the Complainant at the address shown in the Complaint, was never returned by the U.S. post office as undeliverable. Accordingly, it is presumed that this mailing, which was done through the ordinary course of business, was received by the Complainant. *Berkowitz v. Mayflower Securities, Inc.*, 317 A.2d 584 (Pa. 1974); *Meirerdierck 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 is deemed to have received these documents and had sufficient notice of the day, date and time of the scheduled hearing. The Complainant was notified of the scheduled hearing date and time, as well as how to contact the OALJ. The Complainant made no attempt whatsoever to notify the presiding officer that she did not plan to participate in the scheduled May 22, 2018 hearing.

Under these circumstances, the Complainant had ample opportunity to appear and be heard in this proceeding but chose not to do so. Once notice of a hearing and the opportunity to be heard has been provided to the parties, it is the responsibility of both parties to appear and participate in the hearing. The due process rights of the Complainant have been fully protected. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

Section 332(a) of the Public Utility Code (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 not to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden.

The failure of the Complainant to appear at this scheduled hearing is unexcused. By her failure to attend the hearing and present evidence on the issue raised, the Complainant failed to sustain her burden of proof.

As the Commission stated in *Mumma v. PPL Electric Utilities Corp.*, Docket No. C-00014869 (Opinion and Order entered January 24, 2002), “It is well-established law that once timely notice of a hearing and the opportunity to be heard have been provided, it is the responsibility of the parties to be present and participate in the hearing.” See, *Schneider v. Pa. Pub. Util. Comm’n*, 479 A.2d 10 (Pa.Cmwlth. 1984); *Plummer v. Columbia Gas of Pa., Inc.*, Docket No. Z-00847836 (Opinion and Order entered September 27, 2001). The Pennsylvania Commonwealth Court has made it clear that in administrative hearings, “a party’s own negligence is not sufficient good cause as a matter of law for failing to appear at a ... hearing.” *Eat’N Park Hospitality Group, Inc. v. Unemployment Compensation Board of Review*, 970 A.2d 492, 494 (Pa.Cmwlth. 2008).

The Respondent’s counsel moved that the Complaint be dismissed with prejudice for failure to prosecute. The due process rights of the Complainant have been protected. The

Complainant had notice of the scheduled hearing and failed to appear to prosecute her Complaint.

Due to the waste of the Commission's and Respondent's time, money and energy occasioned by the Complainant's failure to appear at a hearing of which she had notice, this Complaint will be dismissed with prejudice in accordance with well-established Commission precedent. *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); *Evans v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00957229 (Opinion and Order entered July 12, 1996); *King v. PECO Energy Co.*, Docket No. C-00967919 (Opinion and Order entered January 16, 1997); *Kenny v. PPL Electric Utilities Corp.*, Docket No. C-20042399 (Final Order entered October 13, 2004); *Jones v. The Peoples Natural Gas Co. d/b/a Dominion Peoples*, Docket No. C-20054885 (Opinion and Order entered February 14, 2006); *El-Ayazra v. West Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016).

The Complainant waived the opportunity to participate in the hearing by failing to appear. This case will be dismissed. 52 Pa.Code § 5.245(a); *Martin W. Jefferson v. UGI Utilities, Inc.*, 1995 Pa. PUC LEXIS 159.

CONCLUSIONS OF LAW

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

2. Notice properly mailed to a party's last known address and not returned by the post office is presumed to have been received. *Berkowitz v. Mayflower Securities, Inc.*, 317 A.2d 584 (Pa. 1974); *Meirerdierck 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).

3. By Hearing Notice dated April 6, 2018, the Complainant had notice of the day, date and time of the scheduled hearing. 52 Pa.Code § 5.201(a).

4. 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).

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

6. The due process rights of the Complainant have been fully protected because the Complainant was afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlt. 1984).

7. A formal complaint may be dismissed if, after notice and an opportunity to be heard, a Complainant fails to appear and prosecute the Complaint. *Mumma v. PPL Electric Utilities Corp.*, Docket No. C-00014869 (Opinion and Order entered January 24, 2002).

8. The Complainant, Leona McCarthy, failed to sustain her burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion by Graciela Christlieb, Esquire, on behalf of Philadelphia Gas Works to dismiss the formal complaint of Leona McCarthy at Docket No. C-2018-3000472 for lack of prosecution is granted.

2. That the formal complaint filed by Leona McCarthy against Philadelphia Gas Works at Docket No. C-2018-3000472, is dismissed in its entirety with prejudice.

3. That Docket No. C-2018-3000472 is to be marked closed.

Dated: July 2, 2018

_____/s/
Angela T. Jones
Administrative Law Judge