

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Arnell Howard

v.

Philadelphia Gas Works

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C-2017-2629673

**INITIAL DECISION**

Before  
Marta Guhl  
Administrative Law Judge

**INTRODUCTION**

This initial decision grants the Respondent's Motion to Dismiss the Complainant's formal Complaint (Complaint) because the Complainant failed to appear for the scheduled hearing in this matter.

**HISTORY OF THE PROCEEDING**

On October 16, 2017, Arnell Howard (Complainant) filed a Complaint against Philadelphia Gas Works (PGW or Respondent) alleging that her service had been shut off and there were incorrect charges on her bills. The Complainant also indicated that there were customer service issues and she requested a payment arrangement.

On November 7, 2017, PGW filed its Answer, acknowledging that the Complainant was seeking a payment arrangement, but denied that there were incorrect charges on her bills or that there were any customer service issues.

This Complaint is an appeal of an informal complaint at the Bureau of Consumer Services (BCS) where a decision was issued on August 16, 2017, at Case No. 3552982. The BCS dismissed the informal complaint.

By Hearing Notice dated December 1, 2017, an initial hearing was scheduled for Thursday, February 8, 2018, at 10:00 a.m., and the matter was assigned to me. The Hearing Notice advised the parties of the procedure for the hearing, as well as the date, time and location of the scheduled hearing and warned in italicized and underlined type: "Attention: You may lose the case if you do not come to this hearing and present facts on the issues raised."

A Prehearing Order was issued on February 2, 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 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 participate in the hearing, including the dismissal of the Complaint. 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 she is entitled to the relief requested in the Complaint.

The hearing scheduled for February 8, 2018 was cancelled because state offices were closed in Philadelphia due to a parade scheduled for the Philadelphia Eagles.

Via Call-In Telephone Hearing Notice dated March 2, 2018, the matter was rescheduled for an initial call-in telephonic hearing on Thursday, March 29, 2018 at 10:00 a.m. The notice indicated the following:

**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 Administrative Law Judge.**

The hearing proceeded as scheduled on March 29, 2018. Counsel for PGW, Laureto Farinas, called in to participate in the hearing but the Complainant did not call in. However, the Complainant called the presiding officer's office prior to the hearing and left a voicemail message, which indicated that there was a death in her family and she would not be able to participate in the hearing. She also requested a continuance at that time. I relayed that information to counsel for PGW and he indicated that the Respondent had no objection to continuing the hearing, due to the circumstances. I granted the Complainant's request for a continuance.

The matter was rescheduled via Call-In Telephone Hearing Notice dated April 24, 2018, for Thursday, May 17, 2018, at 10:00 a.m. The notice also indicated that the parties were responsible for calling in for the hearing and if a party failed to do so, the case may be dismissed.

The hearing convened as scheduled on May 17, 2018. Counsel for PGW was present with one potential witness and was prepared to proceed. The Complainant initially called in to participate in the hearing but voluntarily disconnected from the call before the hearing could start. The Complainant did not call again to participate in the hearing or provide any explanation as to why she chose to discontinue the call. On May 18, 2018, the Complainant called the presiding officer's office and spoke to a staff member, indicating she was dealing with a lot of health issues but did not request to reopen the matter or to reschedule the hearing.

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 (Motion) pursuant to 52 Pa.Code § 5.245. In accordance with Commission policy, I am granting the Motion.

The record was closed on June 8, 2018, when I received a copy of the hearing transcript.

## FINDINGS OF FACT

1. The Complainant in this case is Arnell Howard who resides at 4545 North 19<sup>th</sup> Street, Philadelphia, Pennsylvania 19140.

2. The Respondent in this proceeding is Philadelphia Gas Works.

3. By Call-In Telephone Hearing Notice dated March 2, 2018, a telephonic hearing was scheduled for Thursday, March 29, 2018 at 10:00 a.m., with both parties given notice.

4. The hearing on March 29, 2018, proceeded as scheduled but the Complainant did not call in at the time of the hearing.

5. Prior to the hearing the Complainant called the presiding officer's office to request a continuance due to a death in the family.

6. This information was relayed to the Respondent and PGW had no objection to the continuance request.

7. I orally granted the continuance request at the time of the hearing on March 29, 2018.

8. By Call-In Telephone Hearing Notice dated April 24, 2018, a telephonic hearing was scheduled for Thursday, May 17, 2018, at 10:00 a.m., with both parties given notice.

9. Both parties were advised of the procedures for requesting a continuance of a scheduled hearing by Prehearing Order dated February 2, 2018.

10. By Hearing Notices dated March 2, 2018, and April 24, 2018, the Complainant was advised that the Complaint would be dismissed if she failed to participate in the scheduled hearing.

11. The Hearing Notices and Prehearing Order were not returned by the United States postal authorities as being undeliverable.

12. The Respondent called in to participate in the hearing at the scheduled date and time by legal counsel and a potential witness and was prepared to proceed.

13. The Complainant called in for the hearing on May 17, 2018, but voluntarily disconnected the telephone call before the hearing could start.

14. The Complainant did not call again to participate in the hearing or provide any explanation as to why she chose to discontinue the call on that date.

15. On May 18, 2018, the Complainant called the presiding officer's office and spoke to a staff member, indicating she was dealing with a lot of health issues but did not request to reopen the matter or to reschedule the hearing.

16. The Complainant did not settle or withdraw the Complaint nor obtain a continuance prior to the scheduled hearing.

#### DISCUSSION

The Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, the Complainant has the burden of proof in this matter pursuant to 66 Pa.C.S. § 332(a).

To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the Respondent public utility is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa. PUC 196 (1990), *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. PUC 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa. Super. 278, 166 A.2d 96 (1960); *Murphy v. Dep't of Public Welfare*, 480 A.2d 382 (Pa.Cmwlth. 1984).

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). However, this due process requirement is satisfied when the parties are provided notice and the opportunity to appear and be heard. *Id.*

Notice of the May 17, 2018, hearing in this case was sent to the Complainant on April 24, 2018, by regular first-class mail to the address stated on the Complaint. This piece of mail was never returned to the sender, the scheduling staff for the Office of Administrative Law Judge in Harrisburg. The Prehearing Order was also never returned to the sender. Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *Meierdierck v. Miller*, 394 Pa. 484, 147 A.2d 406 (1959); *Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 531, 317 A.2d 584 (1974). Therefore, the Complainant is deemed to have received this document and had sufficient notice of the call in procedure, date and time of the scheduled hearing.

The Complainant was notified of the scheduled hearing date, time, and call in procedure for the hearing. The Complainant successfully executed the call-in procedure; however, she chose to voluntarily discontinue her call prior to the start of the hearing. The Complainant made no attempt whatsoever to call in for the hearing after voluntarily disconnecting her initial telephone call, or to notify me that she did not plan to appear for the hearing. The Complainant did not contact the presiding officer's office until the following day and did not request to reopen the matter or request a continuance. The Complainant had already been granted a continuance in this matter due to a death in her family. While I am sympathetic to the Complainant's circumstances, the Complainant has a large balance and does not seem to be able to proceed with her complaint, at this time. Under these circumstances, it appears Complainant had ample opportunity to be heard in this proceeding, but voluntarily chose not to do so. Therefore, the due process rights of the Complainant have been fully protected.

By not appearing for the scheduled hearing, the Complainant failed to bear her burden of proof. Consequently, the Complaint must be dismissed.

Under Section 5.245 of the Pennsylvania Code, if the presiding officer finds, after notice and opportunity for hearing, that the actions of a party in a proceeding obstruct the orderly conduct of the proceeding and are inimical to the public interest, the Commission or the presiding officer may take appropriate action, including dismissal of the complaint, if the action is that of complainant. 52 Pa.Code § 5.245(c). 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).

## CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and subject matter of this proceeding. 66 Pa.C.S. § 701.
2. Pursuant to 66 Pa.C.S. § 332(a), the burden of proof in this proceeding is upon the Complainant.
3. By failing to appear at the scheduled hearing and failing to present any evidence, the Complainant has failed to satisfy the burden of proof.
4. Notice properly mailed to a party's last known address and not returned is presumed to have been received. *Meierdierck v. Miller*, 394 Pa. 484, 147 A.2d 406 (1959); *Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 531, 317 A.2d 584 (1974).
5. The Complainant had notice of the call in procedure, date and time of the scheduled hearing.
6. The due process rights of Complainant have been fully protected in this proceeding. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlth. 1984).
7. A formal Complaint may be dismissed if, after notice and opportunity to be heard, a Complainant fails to appear and prosecute the Complaint. 52 Pa.Code § 5.245(c). *See also Mumma v. PPL Electric Utilities Corp.*, Docket No. C-00014869 (Opinion and Order entered January 24, 2002).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Philadelphia Gas Works to dismiss the Complaint filed at Docket No. C-2017-2629673 is granted;
2. That the Complaint of Arnell Howard against Philadelphia Gas Works at Docket No. C-2017-2629673 is dismissed; and
3. That Docket No. C-2017-2629673 be marked closed.

Date: August 30, 2018

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Marta Guhl  
Administrative Law Judge