

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Charles Graham	:	
	:	
v.	:	C-2018-3003302
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Alphonso Arnold III
Special Agent

INTRODUCTION

This Initial Decision dismisses the Complaint because the Complainant failed to appear for the hearing to prosecute his Complaint.

HISTORY OF THE PROCEEDING

On July 2, 2018, Charles Graham (Complainant) filed a Complaint¹ with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW). In his Complaint, Mr. Graham indicated that PGW was threatening to shut off or had already shut off his service and requested a payment arrangement.

¹ The Complaint received a “C” docket number, instead of the “F” docket number that is used to identify timely appeals from the decisions of the Bureau of Consumer Services (BCS). Despite this classification, the Complaint is clearly a timely appeal of BCS Case No. 3607019. See 52 Pa. Code §§ 56.172; 56.173.

On August 1, 2018, PGW filed an Answer to the Complaint. The Answer generally denied all material allegations of fact and law in the Complaint and requested that the Commission deny and dismiss the Complainant's Complaint.

By Hearing Notice served upon the parties on August 15, 2018, the Commission scheduled this matter for a call-in telephonic hearing on Tuesday, October 2, 2018, at 10:00 a.m., and assigned the case to me. Furthermore, the Hearing Notice stated the following, in bold and underline type: "**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.**"

A Prehearing Order, served upon the parties on August 15, 2018, also provided the date and time of the hearing and addressed, *inter alia*, the method by which the parties could call-in to participate in the hearing, the procedures applicable to the hearing, and the method by which a party could request a change of the scheduled hearing date if the date was not convenient for them. Furthermore, the Prehearing Order stated the following, in bold and underline type: "**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.**"

I conducted the October 2, 2018, telephonic hearing as scheduled. The Complainant was not present on the telephone conference line at 10:00 a.m. The start of the hearing was delayed until approximately 10:15 a.m. to provide the Complainant with additional time to call-in to participate. The Complainant did not call-in to the hearing to participate. No communication was made to the Office of Administrative Law Judge on the Complainant's behalf to explain his absence. Attorney Graciela Christlieb was present at the hearing on behalf of the Respondent with a witness and was ready to proceed.

No witnesses were presented, and no exhibits were introduced for the record. PGW made an oral Motion to Dismiss the Complaint for Lack of Prosecution, with prejudice. PGW was informed that the Motion would be taken under advisement.

The record² closed on October 2, 2018, following the conclusion of the telephonic hearing. For the reasons discussed below, the Respondent's Motion to Dismiss the Complaint for Lack of Prosecution will be granted, and the Complaint will be dismissed with prejudice.

FINDINGS OF FACT

1. The Complainant is Charles Graham.
2. The Respondent is Philadelphia Gas Works.
3. By Hearing Notice, a hearing in this matter was scheduled for October 2, 2018.
4. The Hearing Notice was sent by first-class mail on August 15, 2018 to the address that the Complainant listed on his Complaint.
5. By Prehearing Order, the parties were provided with the method by which a party could request a continuance of the hearing date, if needed.
6. The Prehearing Order was sent by first-class mail on August 15, 2018 to the address that the Complainant listed on his Complaint.
7. Both the Hearing Notice and Prehearing Order warned the Complainant, in bold and underline type, that his case will be dismissed if he fails to call-in to the hearing on the scheduled day and time.
8. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as being undeliverable by the United States Postal Services.

² The telephonic hearing was recorded by means of a tape recorder. No Court Reporter was present.

9. The Complainant did not appear for the October 2, 2018 hearing.

10. The Complainant did not withdraw or settle his Complaint with PGW, nor did he request a continuance of the hearing date.

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). To satisfy this burden, the Complainant must show that the named 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). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa.Cmwlt. 1990), alloc. den., 602 A.2d 863 (Pa. 1992); Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980).

In this proceeding, Mr. Graham filed a Complaint against PGW seeking legal relief in the form of a payment arrangement. As a result, the burden of proof is on Mr. Graham to show that he is eligible for a payment arrangement.

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.Cmwlt. 1984).

Mr. Graham did not participate in the October 2, 2018 hearing. The date and time of the hearing were provided in the Hearing Notice and the Prehearing Order. The method by

which Mr. Graham could call-in to the hearing to participate in the hearing was provided in the Notice and Order. Furthermore, both the Notice and Order warned Mr. Graham of the potential consequences that could result from choosing to not participate in the scheduled hearing, including dismissal of the Complaint.

The Hearing Notice and Prehearing Order were sent separately to Mr. Graham by regular first-class mail and neither of them were returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents, which were sent to Mr. Graham in the ordinary course of business, were received by him. Berkowitz v. Mayflower Securities, Inc., 455 Pa. 531, 317 A.2d 584 (1974); Meierdierck v. Miller, 394 Pa. 484, 147 A.2d 406 (1959); Samaras v. Hartwick, 698 A.2d 71 (Pa. Super. 1997); Judge v. Celina Mutual Insurance Co., 303 Pa. Super. 221, 444 A.2d 658 (1982). Therefore, the Complainant is deemed to have had sufficient notice of the day, date and time of the scheduled hearing and for whatever reason chose not to appear to prosecute his Complaint. The Complainant made no attempt to notify the presiding officer that he did not plan to participate in the scheduled October 2, 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 have been provided to the parties, it is the responsibility of both parties to appear and participate in the hearing. Schneider v. Pa. Pub. Util. Comm'n, 479 A.2d 10 (Pa.Cmwlt. 1984). Therefore, 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). The Complainant did not appear, and the hearing proceeded in his absence. 66 Pa.C.S.A. § 332(f) and 52 Pa.Code § 5.245(a) provide that a party that fails to be represented at a scheduled hearing shall waive the opportunity to participate in the hearing and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat.

(f) Actions of parties and counsel.--Any party who shall fail to be represented at a scheduled conference or hearing after being duly notified thereof, shall be deemed to have waived the opportunity to participate in such conference or hearing, and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat, or to recall for further examination of witnesses who were excused, unless the presiding officer shall determine that failure to be

represented was unavoidable and that the interests of the other parties and the public would not be prejudiced by permitting such reopening or further examination. . . .

66 Pa.C.S.A. § 332(f).

(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.

. . . .

52 Pa. Code § 5.245(a).

As stated, the Complainant bears the burden of proving by a preponderance of the evidence that he is entitled to relief. By choosing not to participate in the hearing and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden.

The due process rights of the Complainant have been protected. The Complainant had notice of the scheduled hearing and failed to appear to prosecute his Complaint. Therefore, the Respondent's Motion to Dismiss the Complaint for Lack of Prosecution is granted. Accordingly, the Complaint in this matter will be dismissed in its entirety with prejudice. El-Ayazra v. West Penn Power Company, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); Volgstadt v. UGI Penn Natural Gas, Inc., Docket No. F-02266429 (Opinion and Order entered September 12, 2008) and Martin Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Opinion and Order entered December 26, 1995).

CONCLUSIONS OF LAW

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

2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).

3. Administrative agencies 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).

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 (Opinion and Order entered October 25, 1993).

5. By failing to appear at his scheduled hearing, the Complainant waived his opportunity to participate in the hearing and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat, or to recall for further examination of witnesses who were excused. 66 Pa.C.S.A. § 332(f); 52 Pa. Code § 5.245(a).

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

7. By failing to appear and proffer any evidence in support of the Complaint, the Complainant has failed to meet his burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Philadelphia Gas Works to dismiss the Complaint of Charles Graham at Docket Number C-2018-3003302 with prejudice for Failure to Prosecute is granted.

2. That the Complaint filed by Charles Graham against Philadelphia Gas Works on July 2, 2018, at Pennsylvania Public Utility Commission Docket Number C-2018-3003302 is hereby dismissed with prejudice.

3. That the Docket at Docket Number C-2018-3003302 be marked closed.

Date: October 2, 2018

_____/s/
Alphonso Arnold III
Special Agent