

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Dmytro Bova	:	
	:	
v.	:	C-2018-3002149
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the formal Complaint of Dmytro Bova against Philadelphia Gas Works because he failed to prosecute his Complaint.

HISTORY OF THE PROCEEDING

On May 19, 2018, Dmytro Bova (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 checkmarks in boxes indicating “[t]he utility is threatening to shut off my service or has already shut off my service,” “[i]ncorrect charges are on my bill,” and “[o]ther.” Complainant indicated that his Complaint concerns gas service to 260 W. Queen Lane, Unit 2 (service address). Complainant challenged PGW’s decision to place his tenant’s gas service and outstanding bill in his name after discovering a commercial gas dryer in the basement connected to the gas meter of the service address. Complainant requested that this bill and all charges be placed back on his tenant’s account.

On June 12, 2018, Respondent filed an Answer admitting that it issued a shut off notice for the gas service at the service address. Respondent further answered: that the Complainant is the owner of the service address; that PGW's records show that the account for service at the service address was in the name of Norma Pinney as of September 19, 2016; that on August 8, 2017, Ms. Pinney contacted PGW to verify that she was only paying for gas for her unit and not the first floor; that on September 6, 2017, a Dispute Resolution Unit (DRU) representative was at the service address to investigate Ms. Pinney's foreign load claim; that during this visit, the DRU representative found a commercial washer and a 22,000 BTU commercial dryer attached to the meter of the service address; that on September 7, 2017, a dispute was entered due to the foreign load; that on September 20, 2017, the gas account to the service address was placed in the Complainant's name due to the discovery of foreign load; and that on October 5, 2017, PGW issued the Complainant and Ms. Pinney a letter explaining that foreign load was discovered at the property.

By Hearing Notice dated June 18, 2018, a hearing was scheduled for July 30, 2018, at 10:00 a.m., 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 June 20, 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.

The hearing convened as scheduled on July 30, 2018. Counsel for PGW was present with a witness and was prepared to proceed. Mr. Bova was not present, and had not contacted this office to indicate that he would or would not appear.

Because a customer who files a complaint before the Commission has an affirmative duty to make himself or herself available to participate in hearings on the complaint, I deemed Mr. Bova's failure to appear at the location, date and time of the scheduled hearing as evidence that he did not wish to participate in 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 pursuant to 52 Pa. Code § 5.245. In accordance with Commission policy, I am granting the Motion.

The record closed on September 28, 2018 upon my receipt of the hearing transcript.

FINDINGS OF FACT

1. The Complainant in this case is Dmytro Bova.
2. The Respondent in this case is Philadelphia Gas Works.
3. On May 19, 2018, the Complainant filed a Complaint with the Commission against the Respondent.
4. The Respondent filed an Answer on June 12, 2018.
5. By Hearing Notice dated June 18, 2018, the Commission scheduled this matter for a hearing on July 30, 2018 at 10:00 a.m.
6. The Commission's Hearing Notice was never returned to the sender.
7. The Complainant did not request a continuance of his hearing.
8. The Complainant failed to appear for the July 30, 2018, hearing.

9. 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.Cmwlt. 1984). This due process requirement is satisfied, however, when the administrative agency provides the parties notice and the opportunity to be heard.

The Commission sent notice of the hearing in this case to the Complainant on June 18, 2018, by regular first-class mail to the address stated on the Complaint. 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 June 20, 2018, which, *inter alia*, warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to appear and participate in the hearing. The prehearing order, which was mailed to the Complainant at the address shown on the Complaint, was never 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 scheduled hearing. Under the circumstances, it appears the Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. 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 his requested relief. By failing to participate and proffer any evidence to support his Complaint, the Complainant has failed to meet his burden. Under these circumstances, 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 at Docket No. C-2018-3002149 is granted;

