

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Amber Cozart	:	
	:	
v.	:	C-2018-2646671
	:	
Philadelphia Gas Works	:	

INITIAL DECISION ON REMAND

Before
Alphonso Arnold III
Special Agent

INTRODUCTION

This Initial Decision on Remand dismisses the Complaint because the Complainant failed to appear for the hearing on remand to prosecute her Complaint.

HISTORY OF THE PROCEEDING

On February 5, 2018, Amber Cozart (Complainant) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW) seeking a Commission-issued payment arrangement. The Complaint is an untimely appeal from the Commission's Bureau of Consumer Services (BCS) decision issued on October 26, 2017 at BCS No. 3565873.

The Respondent filed an Answer on March 1, 2018. The Answer requests that the Commission deny the Complainant's Complaint.

A telephonic hearing was conducted in this matter on April 23, 2018, at 10:00 a.m. The Complainant appeared pro se and testified on her own behalf. The Complainant

presented no exhibits for the record. The Respondent was represented by Graciela Christlieb, Esquire, who presented the testimony of Tiffany Jones, a Senior Customer Review Officer at PGW. Attorney Christlieb presented three exhibits, all of which were admitted into the record.

I issued an Initial Decision (ID) in this matter on April 24, 2018. I found that Ms. Cozart was not eligible for a second Commission-issued payment arrangement because she did not experience a change in income, as required by 66 Pa.C.S. § 1405(d)¹, after her first Commission-issued payment arrangement. I also found that she was not eligible for an extension of her first payment arrangement, under 66 Pa.C.S. § 1405(e)², because she did not default on her first payment arrangement as a result of a significant change of circumstance.³ In conclusion, my ID denied the Complainant's request for a Commission-issued payment arrangement. I did note, however, that the rate which PGW stated the Complainant would be required to pay monthly if she were to enroll in its Customer Responsibility Program (CRP) appeared to have been miscalculated.

By Opinion and Order entered September 17, 2018, the Commission vacated my ID and remanded this proceeding to the Office of Administrative Law Judge (OALJ) for such further proceedings as may be necessary and for the issuance of an ID on Remand, consistent with the Opinion and Order. In summary, the Opinion and Order remanded the matter to the OALJ in order to further develop the factual record as it relates to three specific issues: (1) The extent and impact that the Complainant's bedbug infestation had on her household; (2) How the Respondent calculates "household income," and; (3) Whether the Complainant's CRP payment

¹ **(d) Number of payment arrangements.**--Absent a change in income, the commission shall not establish or order a public utility to establish a second or subsequent payment arrangement if a customer has defaulted on a previous payment arrangement established by a commission order or decision. A public utility may, at its discretion, enter into a second or subsequent payment arrangement with a customer. 66 Pa.C.S. § 1405(d).

² **(e) Extension of payment arrangements.**--If the customer defaults on a payment arrangement established under subsections (a) and (b) as a result of a significant change in circumstance, the commission may reinstate the payment arrangement and extend the remaining term for an initial period of six months. The initial extension period may be extended for an additional six months for good cause shown.

³ **"Significant change in circumstance."** Any of the following criteria when verified by the public utility and experienced by customers with household income less than 300% of the Federal poverty level: (2) Catastrophic damage to the customer's residence resulting in a significant net cost to the customer's household. 66 Pa.C.S. § 1403. Specifically, Ms. Cozart testified that her household had suffered from a bedbug infestation. I determined that the damage caused to her home by the bedbug infestation was not "catastrophic" in nature.

amount is consistent with Philadelphia Gas Works' approved Universal Service and Energy Conservation Plan and other rules and precedent as applicable.

By Hearing on Remand Notice⁴ served upon the parties on September 18, 2018, the Commission scheduled this matter for a call-in telephonic hearing on remand for Thursday, October 18, 2018, at 10:00 a.m. Furthermore, the Hearing on Remand 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 September 19, 2018 again advised the parties of the date and time of the hearing on remand and addressed, *inter alia*, the method by which the parties could call-in to participate in the hearing on remand, the procedures applicable to the hearing on remand, and the method by which a party could request a change of the scheduled hearing on remand 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 18, 2018, telephonic hearing on remand as scheduled. The Complainant was not present on the telephone conference line at 10:00 a.m. Despite the warnings on the Hearing on Remand Notice and the September 19, 2018 Prehearing Order warning the Complainant that she would not be called by the Special Agent, I placed a phone call to the Complainant using the phone number that the Complainant listed on the Complaint form to assess if she intended on participating in the hearing on remand. My call was transferred straight to a voice message system. I left a voicemail, reminding her of the hearing on remand, providing her with the method by which she could call-in to participate in the hearing on remand, and warning her of the consequences if she did not call-in to participate.

⁴ A Hearing on Remand Notice was issued on August 14, 2018, scheduling this matter for a call-in telephonic hearing on remand for Friday, September 14, 2018. Upon realization that the Commission's Opinion and Order had not yet been entered, a Cancellation Notice was issued on August 20, 2018 cancelling the September 14, 2018 hearing on remand.

The hearing began at approximately 10:17 a.m. The Complainant did not call-in to the hearing on remand to participate. Attorney Graciela Christlieb was present at the hearing on remand on behalf of the Respondent. As of the date of this ID on Remand, no communication has been made to the OALJ on the Complainant's behalf to explain her absence.

No witnesses were presented, and no exhibits were introduced for the record. PGW moved to have the Complaint dismissed for failure to prosecute.

The record⁵ closed on October 18, 2018, following the conclusion of the telephonic hearing on remand. For the reasons discussed below, the Complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant is Amber Cozart.
2. The Respondent is Philadelphia Gas Works.
3. The Complainant filed a Complaint against Philadelphia Gas Works on February 5, 2018.
4. The Respondent filed an Answer to the Complaint on March 1, 2018.
5. A telephonic hearing was conducted on April 23, 2018, whereupon both parties were present and presented evidence.
6. An Initial Decision was issued on April 24, 2018, whereupon the Complainant's request for a Commission-issued payment arrangement was denied.

⁵ The telephonic hearing on remand was recorded over the phone by means of a tape recorder. No Court Reporter was present.

7. A Commission Opinion and Order entered on September 17, 2018 vacated the April 24, 2018 Initial Decision and remanded the proceeding to the Office of Administrative Law Judge for further proceedings as may be necessary.

8. By Hearing on Remand Notice, served upon the parties on September 18, 2018, a hearing on remand in this matter was scheduled for October 18, 2018 at 10:00 a.m.

9. By Prehearing Order, served upon the parties on September 19, 2018, the parties were again informed of the date and time of the telephonic hearing on remand and were provided with the method by which a party could request a continuance of the hearing on remand date, if needed.

10. Both the Hearing on Remand Notice and the September 19, 2018 Prehearing Order warned the Complainant, in bold and underline type, that her case will be dismissed if she fails to call-in to the hearing on remand on the scheduled day and time.

11. The Complainant was not present on the hearing on remand telephone conference line at 10:00 a.m. on October 18, 2018.

12. The Presiding Officer placed a phone call to the Complainant, at the phone number listed on the Complaint form, and left a voicemail reminding the Complainant of the hearing on remand, providing her with the method by which she could call-in to participate, and warning her of the consequences if she did not call-in to participate.

13. The Complainant did not call-in to the hearing on remand to participate.

14. The Complainant did not withdraw or settle her Complaint with Philadelphia Gas Works, nor did she request a continuance of the hearing date.

15. As of October 26, 2018, no communication has been made to the Office of Administrative Law Judge on behalf of the Complainant to explain her absence from the hearing on remand.

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, Ms. Cozart filed a Complaint against PGW seeking legal relief in the form of a payment arrangement. As a result, the burden of proof is on Ms. Cozart to show that she is eligible for a payment arrangement.

As noted, an ID was issued in this case on April 24, 2018, finding that the Complainant did not meet her burden of proof to show that she was eligible for a Commission-issued payment arrangement. No exceptions to my ID were filed, however, the Commission exercised its ability to review my ID.⁶ The Commission, through its Opinion and Order entered in this case on September 17, 2018, remanded the case to the OALJ for further proceedings to further develop the record as it relates to three specific issues. Despite the remand, the burden of proof remains with the Complainant. Given that the Complainant did not appear for the

⁶ **Exceptions and appeal procedure.**--Any party to a proceeding referred to an administrative law judge under section 331(b) may file exceptions to the decision of the administrative law judge with the commission, in a form and manner and within the time to be prescribed by the commission. The commission shall rule upon such exceptions within 90 days after filing. If no exceptions are filed, the decision shall become final, without further commission action, unless two or more commissioners within 15 days after the decision request that the commission review the decision and make such other order, within 90 days of such request, as it shall determine. 66 Pa.C.S. § 332(h).

remanded hearing, no evidence was presented as to the three specific issues, and thus the merits of the three issues will not be addressed in this ID.

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).

Ms. Cozart did not participate in the October 18, 2018 hearing on remand. The date and time of the hearing on remand were provided in the Hearing on Remand Notice and the September 19, 2018 Prehearing Order. The method by which Ms. Cozart could call-in to the hearing on remand to participate in the hearing was provided in the Notice and Order. Furthermore, both the Notice and Order warned Ms. Cozart of the potential consequences that could result from choosing not to participate in the scheduled hearing on remand, including dismissal of the Complaint.

The Notice and Order were sent separately to Ms. Cozart 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 Ms. Cozart in the ordinary course of business, were received by her. 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 on remand and for whatever reason chose not to appear to prosecute her Complaint. The Complainant made no attempt to notify the presiding officer that she did not plan to participate in the scheduled October 18, 2018, hearing on remand.

Additionally, despite the Notice and Order warning the Complainant that the Special Agent would not call her on the day of the hearing, I nonetheless placed a phone call to the Complainant using the phone number that was listed on her Complaint form. I was transferred to a voice message system, whereupon I left a voicemail reminding the Complainant

of the hearing on remand, providing her with the method by which she could call-in to participate, and warning her of the consequences if she did not call-in to participate.

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 her 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. § 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 she 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 her 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 her scheduled hearing, the Complainant waived her 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. § 332(f); 52 Pa. Code § 5.245(a).

6. Ms. Cozart'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 her 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 at Docket Number C-2018-2646671 for failure to prosecute is granted.

2. That the Complaint filed by Amber Cozart against Philadelphia Gas Works on February 5, 2018 at Docket Number C-2018-2646671 is hereby dismissed.

3. That the Secretary's Bureau mark the docket at Docket Number C-2018-2646671 closed.

Date: October 26, 2018

/s/
Alphonso Arnold III
Special Agent