

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jennifer Woods	:	
	:	
v.	:	C-2018-3004372
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Gail M. Chiodo
Special Agent

INTRODUCTION

This decision grants a motion to dismiss for the failure to prosecute because the Complainant failed to appear for the hearing despite being given notice of the hearing.

HISTORY OF THE PROCEEDING

On August 27, 2018, Jennifer Woods (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent) in which she alleged that Respondent is threatening to shut off her service or has already shut off her service. As relief, Ms. Woods requested a payment arrangement (PAR).

On September 18, 2018, Respondent filed an Answer in which it admitted that it issued a ten-day shut off notice on June 25, 2018. Further, Respondent requested that Ms. Woods's complaint be dismissed, averring that Complainant is currently enrolled in

Respondent's Customer Responsibility Program (CRP) and the CRP is currently in default status for lack of payment.

On September 24, 2018, the Commission issued a Call-In Telephonic Hearing Notice setting an initial telephonic hearing for November 16, 2018 at 10:00 a.m. and the case was assigned to me pursuant to 52 Pa. Code § 56.174.¹ On September 28, 2018, a Prehearing Order was issued which again advised the parties of the date and time of the scheduled hearing and informed them of the procedures applicable to this proceeding including the procedure for requesting a continuance, if necessary.

Of note, the Hearing Notice stated: "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." (emphasis in original). Similarly, the Prehearing Order stated, *inter alia*, that: "**Complainant's failure to participate by phone using this method will result in the case being dismissed for failure to appear. You will not be called by the Special Agent.**" (emphasis in original).

Both the Hearing Notice and Prehearing Order were sent by first-class mail to Complainant at the address provided on her complaint. Neither of these documents were returned as undeliverable.

The hearing convened as scheduled on November 16, 2018 at 10:00 a.m. Mr. Laureto Farinas, Esq., appeared on behalf of PGW, along with a potential witness, and was prepared to proceed. Ms. Woods did not appear. After waiting for approximately fifteen minutes for Ms. Woods to appear, which she did not, the hearing proceeded. Attorney Farinas stated that in PGW's efforts to resolve this matter, he spoke with Ms. Woods on November 15, 2018 and Ms. Woods was aware of the hearing scheduled on November 16, 2018.

¹ 52 Pa. Code § 56.174 (providing for review by a special agent of decisions of the BCS and any other case in which the issue is solely the ability to pay).

Thereafter, Attorney Farinas made an oral motion to dismiss the complaint with prejudice for the failure to prosecute. I took this motion under advisement. No witnesses were presented and no exhibits were introduced for the record.²

The record closed following the conclusion of the hearing. No communication has been made to the Office of Administrative Law Judge (OALJ) by, or on behalf of, Complainant explaining her absence. For the reasons discussed below, the motion of PGW is granted and the complaint is dismissed with prejudice.

FINDINGS OF FACT

1. The Complainant is Jennifer Woods.
2. The Respondent is Philadelphia Gas Works.
3. On September 24, 2018, the Commission issued a Call-In Telephonic Hearing Notice setting an initial telephonic hearing for November 16, 2018 at 10:00 a.m.
4. On September 28, 2018, a Prehearing Order was issued, which, *inter alia*, advised the parties of the procedures applicable to this proceeding, including the method by which a party could request a continuance of the hearing date, if needed.
5. The Hearing Notice provided, *inter alia*, “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.” (emphasis in original).
6. The Prehearing Order provided, *inter alia*, “**Complainant’s failure to participate by phone using this method will result in the case being dismissed for failure to appear. You will not be called by the Special Agent.**” (emphasis in original).

² Pursuant to 52 Pa. Code § 56.174(3), the hearing was tape recorded. No court reporter was present.

7. Both the Hearing Notice and the Prehearing Order were sent to the Complainant by first-class mail to the address provided on her Complaint

8. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission by the United States Postal Service as undeliverable.

9. The hearing convened as scheduled on November 16, 2018 at 10:00 a.m.

10. Mr. Laureto Farinas, Esquire, appeared on behalf of PGW, along with one potential witness, and was prepared to proceed.

11. The Complainant did not appear for the November 16, 2018 hearing.

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). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950). In her complaint, Ms. Woods seeks relief in the form of a Commission-issued payment arrangement (PAR). As the party seeking relief, Ms. Woods bears the burden of proof.

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). This due process requirement is satisfied when the parties are accorded notice and the opportunity to be heard. *Id.*

Ms. Woods did not appear at the date and time set for the hearing in her case despite receiving notice of the hearing. Commission regulations address circumstances when a party fails to appear in a proceeding. Specifically, section 5.245 provides:

§ 5.245. Failure to appear, proceed or maintain order in proceedings.

(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.
- (3) Not be permitted to recall witnesses who were excused for further examination.

52 Pa. Code § 5.245(a).

The Hearing Notice and Prehearing Order were sent separately to Ms. Woods 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. Woods 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).

Consequently, Complainant had sufficient notice of the day, date and time of the scheduled hearing. *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016); *Zirkel v. UGI Utilities, Inc.*, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017). Further, both the Hearing Notice and the Prehearing Order warned Ms. Woods of the potential consequences that could result from choosing not to participate in the scheduled hearing, including dismissal of her complaint.

Further, Attorney Farinas noted at the hearing that in PGW's efforts to resolve this matter, he spoke with Ms. Woods on November 15, 2018 and Ms. Woods was aware of the hearing scheduled on November 16, 2018.

Ms. Woods did not appear at the time of the hearing, nor did she or anyone on her behalf request a continuance of the hearing. As such, Ms. Woods had notice and an opportunity to be heard in this proceeding but chose not to appear. Therefore, Ms. Woods's due process rights have been fully protected. *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa. Code § 5.245(a).

During the hearing, counsel for PGW moved to have the complaint dismissed with prejudice for lack of prosecution. By failing to appear and present any evidence in support of her complaint, Ms. Woods has failed to carry her burden. Thus, it is appropriate to dismiss the complaint with prejudice. *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995). Accordingly, the merits of the complaint will not be addressed in this Initial Decision.

CONCLUSIONS OF LAW

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

2. 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).

3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 54, 70 A.2d 854 (1950).

4. 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). This due process requirement is satisfied when the parties are accorded notice and the opportunity to be heard. *Id.*

5. 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; and 3) not be permitted to recall witnesses who were excused for further examination. 52 Pa. Code § 5.245(a).

6. Ms. Woods's due process rights have been fully protected. *Sentner v. Bell Telephone Co. of Pa.*, 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 her claim, the Complainant has failed to carry her burden of proof.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Philadelphia Gas Works to dismiss the formal complaint of Jennifer Woods with prejudice at Docket Number C-2018-3004372 for the failure to prosecute is granted.

2. That the formal complaint filed by Jennifer Woods at Docket Number C-2018-3004372 is hereby dismissed with prejudice.

3. That this matter be marked closed.

Date: November 16, 2018

/s/
Gail M. Chiodo
Special Agent