

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Virginia Bell	:	
	:	
v.	:	F-2018-3002829
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Darlene Davis Heep
Administrative Law Judge

INTRODUCTION

The Complainant did not appear for the hearing and the formal Complaint (Complaint) is dismissed for failure to prosecute.

HISTORY OF THE PROCEEDING

On June 18, 2018, Virginia Bell (Complainant or Ms. Bell) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent). The Complainant is a gas customer of PGW. This is a timely appeal of a Bureau of Consumer Services decision, No. 3612858.

In the Complaint, Ms. Bell stated that the utility was threatening to shut off her service and that she needed an affordable payment arrangement.

On July 9, 2018, PGW filed an Answer denying all material allegations of fact and conclusions of law in the Complaint. PGW also stated that the company issued the

Complainant a 10-day shut off notice on March 28, 2018 because she had a past due balance of \$6,082.98.

On July 27, 2018, a Hearing Notice was issued and mailed to all parties setting an Initial Hearing for August 29, 2018, at 10:00 a.m. The hearing was assigned to the undersigned.

A Prehearing Order was issued and mailed to all parties on July 27, 2018, informing the parties of the date of the hearing and providing procedural information. The Prehearing Order advised the parties that:

A request for a change of the scheduled hearing date must state the agreement or opposition of other parties and must be submitted in writing no later than five (5) business days prior to the hearing. . . Changes are granted only in rare situations where good cause exists.

In bold print, the Prehearing Order also advised that:

THIS CASE WILL BE DISMISSED IF THE CUSTOMER FAILS TO PARTICIPATE IN THE HEARING AND PRESENT EVIDENCE IN SUPPORT OF THE COMPLAINT.

The matter was called and presided over by Administrative Law Judge Angela Jones.¹ Graciela Christlieb, Esquire, appeared on behalf of PGW with a witness, Andrew Pinkney, and was prepared to proceed at 10:00 a.m. as scheduled. The Complainant was not present. The Complainant had not arrived by 10:18 a.m. A recess was taken.

ALJ Jones reconvened the hearing at approximately 10:40 a.m. The Complainant had not appeared. At that time, PGW moved to dismiss the matter for failure to prosecute. The hearing adjourned at 10:43 a.m. (Tr. 7).

The record closed upon receipt of the transcript on September 21, 2018.

¹ The undersigned was absent due to a family medical matter.

FINDINGS OF FACT

1. The Complainant is Virginia Bell, who received PGW gas service in Philadelphia.
2. Philadelphia Gas Works is the Respondent.
3. On June 18, 2018, the Complainant filed this action.
4. The Respondent filed an Answer on July 9, 2018.
5. By Hearing Notice issued July 27, 2018, the Commission scheduled an Initial Hearing for August 29, 2018 beginning at 10:00 a.m.
6. The Hearing Notice was mailed to the Complainant at the address provided in the Complaint.
7. A Prehearing Order was issued on July 27, 2018 and mailed to the Complainant's address as listed in the Complaint.
8. The Prehearing Order again informed the Complainant of the date, time and location of the hearing and provided procedural information.
9. The Prehearing Order informed the Complainant that the case would be dismissed if she failed to participate in the hearing and present evidence in support of her Complaint.
10. The Prehearing Order also advised the Complainant that:

A request for a change of the scheduled hearing date must state the agreement or opposition of other parties and must be submitted in writing no later than five (5)

business days prior to the hearing. . . Changes are granted only in rare situations where good cause exists.

11. At 10:00 a.m. on August 29, 2018, as scheduled, Philadelphia Gas Works appeared at the hearing through counsel, prepared to proceed.

12. The Complainant was not present and at approximately 10:40 a.m., counsel for PGW moved that the matter be dismissed for failure to prosecute.

13. None of the documents mailed to the Complainant were returned as undeliverable.

14. The Complainant did not request a continuance or provide a statement of "good cause" for her absence on the scheduled hearing date.

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.Cmwlth. 1984). The essential elements of due process in an administrative proceeding are notice and an opportunity to be heard. *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (Pa.Cmwlth. 2016). Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 1994).

A Hearing Notice and a Prehearing Order were mailed to Ms. Bell. All documents mailed to the Complainant contained the date, time and location of the hearing and all were mailed to the Complainant at the address that she provided to the Commission on the formal Complaint form. None of these documents was returned by the U.S. Postal Service to the Commission as undeliverable. The Complainant is therefore deemed to have received these documents and to have had notice of the day, date and time of the scheduled hearing.

As the Commission noted in *Strydio v. PPL Electric Utilities Corporation*, 2018 Pa. PUC LEXIS 258, *8, Docket No. C-2017-263304, p. 6 (Opinion and Order entered July 18, 2018), "[o]nce notice of a hearing and the opportunity to be heard have been provided by the Commission, it is the responsibility of the parties to appear and participate in the hearing", *citing Mumma v. PPL Electric Utilities Corporation*, Docket No. C-00014869 (Order entered January 24, 2002); *Sentner v. Bell Tel. Co. of PA*, Docket No. F-00161106 (Order entered October 25, 1993). The Complainant did not appear for the hearing as scheduled and as she was notified. To date, the Complainant has not contacted the Commission or the undersigned regarding this hearing. The Complainant has waived the opportunity to participate in the hearing by failing to appear. 52 Pa.Code § 5.245(a); *Jefferson v. UGI Utilities, Inc.*, 1995 Pa. PUC LEXIS 159 (Opinion and Order entered December 26, 1995).

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 or she is entitled to relief. By failing to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden. The Complaint will be dismissed. *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 and the parties to this proceeding. 66 Pa.C.S. § 701.

2. The Complainant received notice of the hearing. *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 1994), *appeal denied*, 653 A.2d 1234 (Pa. 1994).

3. The due process rights of the Complainant have been fully protected in this proceeding. *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (Pa.Cmwlt. 2016); *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

4. As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).

5. The Complainant did not participate in the hearing, failed to appear for the hearing and did not present any evidence. Therefore, she failed to meet her burden of proving entitlement to the relief that is sought 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 by Virginia Bell at Docket No. F-2018-3002829 is granted.

2. That the Complaint of Virginia Bell against Philadelphia Gas Works at Docket No. F-2018-3002829 is dismissed.

3. That Docket No. F-2018-3002829 is marked closed.

Date: November 15, 2018

/s/
Darlene Davis Heep
Administrative Law Judge