

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Bihong Guan	:	
	:	
v.	:	F-2018-3002626
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complaint of Bihong Guan against Philadelphia Gas Works because he failed to appear for his hearing and prosecute his Complaint.

HISTORY OF THE PROCEEDING

On May 25, 2018, Bihong Guan (Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission) because PGW transferred the balance from the tenant of 4253 Sansom Street, 1st Fl., Philadelphia, PA (Service Address), which is a property owned by the Complainant, to the Complainant upon the discovery of foreign load at the Service Address.

On August 1, 2018, PGW filed an Answer to the Complaint. In its Answer, PGW admitted that it discovered foreign load at the Service Address. PGW averred that the Complainant is the owner of the property at the Service Address. Further, PGW averred that it

transferred a balance of \$2,400.61 from the tenant's account to the Complainant's account due to foreign load being discovered at the Service Address.

By Call-In Telephone Hearing Notice dated August 20, 2018, an Initial Call-In Telephonic Hearing was scheduled for October 3, 2018 at 10:00 a.m., and the matter was assigned to the undersigned Administrative Law Judge (ALJ).

A Prehearing Order was issued on August 23, 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 call into 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.

Due to administrative reasons, the October 3, 2018 hearing needed to be rescheduled. By Call-In Telephone Hearing Notice dated September 10, 2018, the hearing was rescheduled for November 6, 2018, at 10:00 a.m.

On November 6, 2018, counsel for PGW called into the hearing at the scheduled time. The Complainant did not call in. However, due to an emergency, the undersigned was unable to preside over the hearing. As a result, the November 6, 2018 hearing was rescheduled. By Call-In Telephone Hearing Notice dated November 7, 2018, the hearing was rescheduled for November 26, 2018, at 10:00 a.m. All of the Hearing Notices advised the parties of the date, time, and telephone number to call into the scheduled hearing and warned in bold and underlined 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 Administrative Law Judge.**"

The hearing began on November 26, 2018, as scheduled. Counsel for PGW was present with a witness and was prepared to proceed. The Complainant was not present. The Complainant was given an additional ten minutes to call-in but failed to do so.

No witnesses were presented, and no exhibits were introduced into the record. Counsel for PGW 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 December 7, 2018, upon my receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is Bihong Guan.
2. The Respondent is Philadelphia Gas Works.
3. On May 25, 2018, the Complainant filed a Complaint with the Commission against the Respondent.
4. On August 1, 2018, the Respondent filed an Answer to the Complaint.
5. By Call-In Telephone Hearing Notice dated August 20, 2018, a hearing was scheduled for October 3, 2018, at 10:00 a.m.
6. On August 23, 2018, a Prehearing Order was sent to all parties containing, *inter alia*, a warning of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing.
7. Due to administrative reasons, the October 3, 2018, hearing needed to be rescheduled.

8. By Call-In Telephone Hearing Notice dated September 10, 2018, the hearing was rescheduled for November 6, 2018, at 10:00 a.m.
9. On November 6, 2018, counsel for PGW called into the hearing at the scheduled time.
10. On November 6, 2018, the Complainant did not call into the scheduled hearing.
11. Due to an emergency, the undersigned was unable to preside over the November 6, 2018, hearing and it was rescheduled.
12. By Call-In Telephone Hearing Notice dated November 7, 2018, the hearing was rescheduled for November 26, 2018, at 10:00 a.m.
13. All of the Hearing Notices advised the parties of the date, time, and telephone number to call into the scheduled hearing and warned in bold and underlined 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 Administrative Law Judge.**”
14. The Hearing Notices and Prehearing Order were sent to the Complainant by regular first-class mail.
15. None of the documents mailed to the Complainant were returned as undeliverable.
16. The Complainant failed to appear at the November 26, 2018 hearing.
17. 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.Cmwlth. 1984). This due process requirement is satisfied, however, when the administrative agency provides the parties notice and the opportunity to be heard.

On November 7, 2018, the Commission sent notice of the Initial Call-In Telephone Hearing in this case to the Complainant by regular first-class mail. The Hearing Notice advised the parties of the date, time, and telephone number to call into the scheduled hearing and warned in bold and underlined 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 Administrative Law Judge.**”

In addition, I issued a Prehearing Order on August 23, 2018, which, *inter alia*, warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing. To my knowledge, none of the documents mailed to the Complainant were returned as undeliverable. 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.*, 449 A.2d 658 (Pa. Super. 1982).

The Complainant did not appear for the hearing and has not contacted the Commission. Under these circumstances, the Complainant has had ample opportunity to appear and be heard in this proceeding. 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 relief. By failing to appear and proffer any evidence to support his Complaint, the Complainant has failed to meet this burden. Therefore, 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. Notice properly mailed to a party's last known address and not returned by the post office is presumed to have been received. *Berkowitz v. Mayflower Securities, Inc.*, 317 A.2d 584 (Pa. 1974); *Meirerdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa.Super. 1997); *Judge v. Celina Mutual Insurance Co.*, 449 A.2d 658 (Pa.Super. 1982).
3. 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).
4. 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 by Bihong Guan at Docket No. F-2018-3002626 is granted;
2. That the Complaint of Bihong Guan against Philadelphia Gas Works at Docket No. F-2018-3002626 is dismissed with prejudice; and
3. That Docket No. F-2018-3002626 be marked closed.

Date: January 17, 2019

_____/s/
F. Joseph Brady
Administrative Law Judge