

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jasmin Chy	:	
	:	
v.	:	F-2018-3005644
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Alphonso Arnold III
Special Agent

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On October 25, 2018, Jasmin Chy (Complainant or Ms. Chy) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW). The Complainant in her Complaint indicated that PGW is threatening to shut off her service or has already shut of her service and requested a payment arrangement.

On November 19, 2018, PGW filed an Answer to the Complaint. The Respondent requested that the Commission find against the Complainant and dismiss the Complaint.

By Hearing Notice served upon the parties on November 27, 2018, the Commission scheduled this matter for a telephonic hearing on Tuesday, January 22, 2019 at 10:00 a.m., and assigned the case to me. Furthermore, the Hearing Notice stated the following: “*Attention: You may lose the case if you do not take part in this hearing and present facts on the issues raised.*” (emphasis in the original).

A Prehearing Order, served upon the parties on November 29, 2018, reminded the parties of the date and time of the hearing and addressed, *inter alia*, the procedures applicable to the hearing and the method by which a party could request a change of the scheduled hearing date if the date was not convenient for them. Furthermore, the Prehearing Order stated the following: “**You must be available on the scheduled day and time. If you fail to be available, your case will be dismissed.**” (emphasis in the original).

Both the Hearing Notice and the Prehearing Order informed the parties that the undersigned would contact the parties by phone at the scheduled date and time to connect the parties to the hearing conference phone line.

I conducted the January 22, 2019 telephonic hearing as scheduled. At 10:00 a.m., I called the phone number that I had on file for Ms. Chy. Ms. Chy did not answer the phone. I was not able to leave a voice message for Ms. Chy, as a voice message system was not set up for the phone number.

The attorney for PGW, Graciela Christlieb, Esquire, was successfully contacted and connected to the hearing conference phone line. Attorney Christlieb was joined by a witness and was ready to proceed with the hearing.

At 10:15 a.m., I again called the Complainant’s phone number. Again, Ms. Chy did not answer the phone.

The hearing was held without the Complainant. No communication was made to the Office of Administrative Law Judge 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 with prejudice for failure to prosecute.

The record¹ closed on January 22, 2019 following the conclusion of the telephonic hearing. For the reasons discussed below, the Complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant is Jasmin Chy.
2. The Respondent is Philadelphia Gas Works.
3. The Complainant filed a Complaint against PGW on October 25, 2018.
4. The Respondent filed an Answer to the Complaint on November 19, 2018.
5. By Hearing Notice served upon the parties on November 27, 2018, a telephonic hearing in this matter was scheduled for January 22, 2019 at 10:00 a.m.
6. By Prehearing Order served upon the parties on November 29, 2018, the parties were again informed of the date and time of the telephonic hearing and were provided with the method by which a party could request a continuance of the hearing date, if needed.
7. Both the Hearing Notice and the Prehearing Order warned the Complainant of the consequences of failing to participate in the scheduled telephonic hearing.
8. Both the Hearing Notice and the Prehearing Order informed the Complainant that she would be contacted by phone on the hearing date and time to be connected to the hearing conference phone line.

¹ The telephonic hearing was recorded by means of a tape recorder. No Court Reporter was present.

9. The Complainant was not available by phone to participate in the January 22, 2019 hearing.

10. The Complainant did not withdraw or settle her Complaint with PGW, nor did she request a continuance of the hearing date.

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. Chy 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. Chy to show that she is eligible for a payment arrangement.

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.Cmwlt. 1984).

Ms. Chy did not participate in the January 22, 2019 hearing. The date and time of the hearing were provided in the Hearing Notice and the Prehearing Order. The Notice and Order informed the Complainant that she was to be available by phone on January 22, 2019 at 10:00 a.m. to be contacted and connected to the hearing conference phone line. The undersigned attempted to call and connect the Complainant to the hearing conference phone line at 10:00 a.m. and 10:15 a.m., using the phone number on file for the Complainant, but was unable to do so. Both the Notice and Order warned Ms. Chy of the potential consequences that could result from choosing to not participate in the scheduled hearing, including dismissal of the Complaint.

The Hearing Notice and Prehearing Order were sent separately to Ms. Chy by regular first-class mail. Neither the Notice nor the Order were returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents, which were sent to Ms. Chy 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, 449 A.2d 658 (1982). Therefore, the Complainant is deemed to have had sufficient notice of the day, date and time of the scheduled hearing and for whatever reason chose not to be available so that she could appear at the hearing to prosecute her Complaint. The Complainant made no attempt to notify the presiding officer that she did not plan to participate in the scheduled January 22, 2019 hearing.

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.Cmwlth. 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.

§ 332. Procedures in general.

(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).

§ 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.

. . .

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 the relief that she is seeking. 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 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.Cmwlt. 1984).

4. Once notice of a hearing and the opportunity to be heard have 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. Chy'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 F-2018-3005644 for failure to prosecute is granted.

2. That the Complaint filed by Jasmin Chy against Philadelphia Gas Works on October 25, 2018 at Public Utility Commission Docket Number F-2018-3005644 is hereby dismissed with prejudice.

3. That the docket at Docket Number F-2018-3005644 is marked closed.

Date: January 24, 2019

/s/
Alphonso Arnold III
Special Agent