

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Robert Adams	:	
	:	
v.	:	F-2018-3005950
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Steven K. Haas
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses, with prejudice, a formal complaint due to the Complainant’s failure to appear at the initial hearing and prosecute his complaint.

HISTORY OF THE PROCEEDING

On November 5, 2018, the Complainant, Robert Adams, filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW) at Docket No. F-2018-3005950. In his complaint, Mr. Adams checked the boxes on the complaint form indicating “other” and that he would like a payment arrangement. He alleges that there are incorrect charges on his account and seeks an affordable payment arrangement.

On December 3, 2018, PGW filed an answer to Mr. Adams’ complaint. In its answer, PGW avers that the Complainant had a previous Commission-ordered payment arrangement and that he defaulted on that arrangement. PGW avers that the Commission may

not establish a second payment arrangement for the Complainant. PGW requests that the complaint be dismissed.

On December 10, 2018, the Commission issued a Telephone Hearing Notice by which it scheduled an initial telephonic hearing for Monday, January 28, 2019, at 10:00 a.m., and assigned me as the Presiding Officer. On December 11, 2018, the Commission issued a second Telephone Hearing Notice (Hearing Notice) by which it rescheduled the initial telephonic hearing for Thursday, January 31, 2019. The Hearing Notice instructed the parties that if their telephone number changed, to provide the new number to me prior to the hearing. The notice also informed the parties that they may lose the case if they do not appear at the hearing.

On December 17, 2018, I issued a Prehearing Order in which I set forth certain procedural requirements pertaining to the hearing. The Prehearing Order provided the date and time of the hearing and stated, “you may lose this case if you do not take part in this hearing and present evidence on the issues raised.” Both the Hearing Notice and the Prehearing Order were sent to Mr. Adams at the address provided by him on his complaint form. Neither was returned to the Commission as undeliverable.

The hearing convened, as scheduled, at 10:00 a.m. on January 31, 2019. Graciela Christlieb, Esquire, appeared on behalf of PGW. I called the telephone number provided by the Complainant on his complaint form and let it ring eight times. There was no answer. I called the number a second time at approximately 10:08 a.m. Again, my call went unanswered.

I checked with the Office of Administrative Law Judge, as well as my e-mail and phone messages. None of the notices sent to the Complainant were returned to the Commission as undeliverable. PGW’s counsel moved to dismiss the complaint with prejudice due to the Complainant’s failure to appear at the hearing and prosecute his complaint.

The hearing concluded and a brief transcript was generated. I closed the record on February 1, 2019. This Initial Decision grants PGW’s motion to dismiss the complaint with prejudice for failure of the Complainant to appear and prosecute his case.

FINDINGS OF FACT

1. The Complainant in this proceeding is Robert Adams.
2. The Respondent in this proceeding is Philadelphia Gas Works.
3. On November 5, 2018, the Complainant filed a formal complaint against Philadelphia Gas Works.
4. On December 3, 2018, PGW filed an answer to the complaint.
5. On December 11, 2018, a Telephone Hearing Notice was sent to the parties which scheduled an initial telephonic hearing for Thursday, January 31, 2019, at 10:00 a.m.
6. On December 17, 2018, a Prehearing Order was sent to the parties which set forth certain procedural requirements associated with the initial hearing.
7. Both the Prehearing Order and the Hearing Notice instructed the parties that if their telephone numbers changed, they should provide the new numbers to me prior to the hearing.
8. Both the Prehearing Order and the Hearing Notice warned the parties that they may lose the case if they did not take part in the hearing and present evidence on the issues raised.
9. The Hearing Notice and the Prehearing Order were sent to Mr. Adams by first class mail to the address provided by him on his complaint form.
10. Neither the Hearing Notice nor the Prehearing Order that was sent to the Complainant was returned to the Commission as undeliverable.

11. I called the Complainant at the number provided on his complaint at 10:00 a.m. on January 31, 2019, and again at approximately 10:08 a.m.

12. The Complainant did not answer either of my telephone calls on the morning of the hearing.

13. The Complainant failed to appear at the scheduled date and time for the hearing.

DISCUSSION

Mr. Adams filed a formal complaint against PGW in which he alleges that there are incorrect charges on his bills and seeks a payment arrangement.

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). As the party seeking relief from the Commission, Mr. Adams bears the burden of proof in this proceeding.

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 provided with notice and an opportunity to be heard. Id.

No one appeared on behalf of Mr. Adams at the date and time set for the hearing in his case, despite notice of the hearing having been provided. Commission regulations address circumstances when a party fails to appear in a proceeding. 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 the Prehearing Order were both sent to Mr. Adams by first class mail to the address provided by him on his complaint form. Neither of these notices were returned to the Commission as undeliverable. Accordingly, it may be presumed that these documents sent to the Complainant in the ordinary course of business were received by him. 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). As noted above, both notices stated that the parties may lose the case if they fail to appear and present evidence on the issues raised.

No request for a postponement or continuance of the hearing was received by my office. Mr. Adams had notice of the hearing and an opportunity to be heard in this proceeding but chose not to participate. Therefore, the Complainant's due process rights have been fully protected. Sentner v. Bell Telephone Company of Pennsylvania, Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa.Code § 5.245(a).

During the hearing, counsel for PGW moved for dismissal of the complaint, with prejudice, for lack of prosecution. By failing to appear and present any evidence in support of

his complaint, Mr. Adams failed to meet his burden of proof. Thus, the complaint will be dismissed with prejudice. Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Order entered December 26, 1995).

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. 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 provided with notice and an 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. Mr. Adams' due process rights have been fully protected. Sentner v. Bell Telephone Company of Pennsylvania, Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa.Code § 5.245(a).

7. Mr. Adams failed to carry his burden of proof in this proceeding.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Philadelphia Gas Works to dismiss, with prejudice, the formal complaint of Robert Adams at Docket Number F-2018-3005950 for failure to prosecute is granted.

2. That the Formal Complaint filed by Robert Adams at Docket No. F-2018-3005950 is dismissed with prejudice.

3. That this matter be marked closed.

Date: February 4, 2019

/s/
Steven K. Haas
Administrative Law Judge