

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Steve Atuahene and Agnes Atuahene	:	
	:	
v.	:	F-2018-3004665
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision grants Philadelphia Gas Works’ Motion to Dismiss the formal Complaint (Complaint) of Steve Atuahene and Agnes Atuahene with prejudice because they failed to appear and prosecute the case.

HISTORY OF THE PROCEEDING

On September 12, 2018, Agnes and Steve Atuahene (the Complainants) filed a formal Complaint against Philadelphia Gas Works (Respondent or PGW) with the Pennsylvania Public Utility Commission (Commission), alleging that there are incorrect charges on their gas bills from the Respondent. As relief, the Complainants requested that the Commission facilitate an independent investigation on the functionality of PGW’s meter and its readings.

The present Complaint is a timely appeal of the decision issued by the Commission’s Bureau of Consumer Services (BCS), BCS Case No. 3595807.

On October 4, 2018, Respondent filed an Answer denying the material allegations of the Complaint.

A Hearing Notice dated October 15, 2018, notified the parties that an initial hearing was scheduled in this matter for Tuesday, November 27, 2018, at 10:00 a.m.

A Prehearing Order was issued on November 5, 2018, advising the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to the proceeding, and directing the submission of documents prior to the hearing.

On November 13, 2018, the Complainants submitted an Application for Leave to Conduct Discovery as well as a request to continue the scheduled hearing for a period of 30-45 days in order to conduct said discovery.

By letter dated November 14, 2018, counsel for PGW, Laureto Farinas, Esq., indicated that PGW had no objections to the Complainants' request for a continuance of the hearing and invited the Complainants to contact him directly in order to coordinate informal discovery efforts.

By Order dated November 15, 2018, I granted the Complainants' request for a continuance of the hearing and cancelled the November 27, 2018 hearing.

A Corrected Hearing Notice dated December 19, 2018, notified the parties that an initial hearing was scheduled in this matter for Friday, January 11, 2019, at 10:00 a.m.

The hearing convened as scheduled on January 11, 2019. Laureto Farinas, Esq., appeared representing PGW. Neither Complainants nor a counsel for the Complainants appeared at the hearing. The hearing reconvened at approximately 10:18 a.m., after I confirmed that the Complainants had not called, or otherwise shown good cause not to appear at the scheduled

hearing. Counsel for PGW moved to dismiss the Complaint with prejudice for lack of prosecution. The hearing concluded at approximately 10:30 a.m.

At approximately 12:00 p.m. on the day of the hearing, Mr. Atuahene came to the Commission's Philadelphia Office purporting to attend the hearing scheduled for that morning. He orally explained to Commission staff that he had been out of state and had just returned. Mr. Atuahene did not provide any additional details regarding his failure to appear at the hearing. He requested that another hearing be scheduled in this matter.

The record was closed upon receipt of the hearing transcript on February 4, 2019.

FINDINGS OF FACT

1. The Complainants are Steve Atuahene and Agnes Atuahene, whose mailing address is 7500 North 21st Street, Philadelphia, PA 19138.
2. The Respondent is Philadelphia Gas Works.
3. On September 12, 2018, the Complainants filed a formal Complaint against PGW alleging that there are incorrect charges on their gas bills from the Respondent.
4. As relief, the Complainant requested that the Commission facilitate an independent investigation on the functionality of PGW's meter and its readings.
5. On October 4, 2018, the Respondent filed an Answer denying the material allegations of the Complaint.
6. A Hearing Notice dated October 15, 2018, notified the parties that an initial hearing was scheduled in this matter for Tuesday, November 27, 2018, at 10:00 a.m.

7. A Prehearing Order issued on November 5, 2018, advised the parties of the proper procedure to obtain a continuance to reschedule the hearing date.

8. On November 13, 2018, the Complainants submitted an Application for Leave to Conduct Discovery as well as a request to continue the scheduled hearing for a period of 30-45 days in order to conduct said discovery.

9. An Order dated November 15, 2018, granted the Complainants' request for a continuance of the hearing and cancelled the November 27, 2018 hearing.

10. A Corrected Hearing Notice dated December 19, 2018, notified the parties that an initial hearing was scheduled in this matter for Friday, January 11, 2019, at 10:00 a.m.

9. None of the documents mailed to Complainants at the address provided in their Complaint were returned to the Commission by the United States Postal Service as undeliverable.

10. The Complainants failed to appear for the scheduled hearing.

11. The Complainants did not settle or withdraw this Complaint prior to the scheduled hearing date or obtain a continuance.

DISCUSSION

In this formal Complaint, Agnes and Steve Atuahene alleged that there are incorrect charges on their gas bills from the Respondent. As relief, the Complainants requested that the Commission facilitate an independent investigation on the functionality of PGW's meter and its readings. As the party seeking affirmative relief from the Commission, the burden of proof rests on the Complainants. 66 Pa.C.S.A. § 332(a).

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.Cmwlth. 1984). 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).

Two Hearing Notices, a Prehearing Order, and an Order granting the Complainants' first request for a continuance of the scheduled hearing were all mailed to the Complainants at the address listed on their formal Complaint form. None of the documents was returned to the Commission as undeliverable by the post office. Therefore, the Complainants are deemed to have received these documents and had sufficient notice of the day, date and time of the scheduled hearing. Neither the Complainants nor a representative licensed to practice law in this Commonwealth appeared at the hearing on their behalf.

In addition to the constructive notice, the Complainants also had actual notice of the day, date and time of the scheduled hearing as evidenced by Mr. Atuahene's coming to the Commission's Philadelphia Office at approximately 12:00 p.m. on the day of the hearing seeking to attend the hearing scheduled for that morning. He orally explained to Commission staff that he had been out of state and had just returned. Mr. Atuahene orally requested that another hearing be scheduled in this matter.

The Prehearing Order dated November 5, 2018, specifically instructed the parties that "A request for a change of the scheduled hearing date must state the agreement or opposition of other parties and should be submitted in writing no later than five (5) days prior to the hearing... **Changes are granted only in rare situations where good cause exists.**" Prehearing Order, ¶ 1. (Emphasis in the original). The Complainants' first request for a continuance of the hearing is a clear indication that they were aware of the procedure and able to follow it.

In addition, the two Hearing Notices as well as the Prehearing Order contained the telephone number of the Commission's Office of Administrative Law Judge (OALJ) in Philadelphia. The evidentiary hearing was recessed for approximately 20 minutes in order to give the Complainants a chance to make a late arrival or to inform the OALJ in case exigent circumstances impeded their timely arrival. Ultimately, the hearing reconvened only after I confirmed that the Complainants had not called, or otherwise shown good cause not to appear at the scheduled hearing.

When Mr. Atuahene arrived at the Commission's Philadelphia Office at approximately 12:00 p.m., he provided no details regarding his and Mrs. Atuahene's failure to attend the hearing apart from averring that he had been out of state and had just returned. The Complainants' reason for failing to attend the scheduled hearing, as recounted to Commission staff, does not constitute good cause or involve exigent circumstances excusing the Complainants' absence at the scheduled hearing. There is no indication that a good faith effort was made on their part to attend the hearing in a timely fashion or to ensure that the utility's and the Commission's resources were not wasted. In view of the above, I find that the Complainants' failure to appear at the scheduled hearing is unexcused.

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). The Complainants waived the opportunity to participate in the hearing by failing to appear. Agnes and Steve Atuahene's Complaint will be dismissed with prejudice. 52 Pa.Code § 5.245(a); *Jefferson v. UGI Utilities, Inc.*, 1995 Pa. PUC LEXIS 159.

CONCLUSIONS OF LAW

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

2. As the Complainants, Steve Atuahene and Agnes Atuahene had the burden of proof and failed to carry that burden. 66 Pa.C.S.A. § 332(a).

3. 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).

4. By failing to appear and be heard on this Complaint, the Complainants waived the opportunity to participate in the hearing. 52 Pa.Code § 5.245(a); *Jefferson v. UGI Utilities, Inc.*, 1995 Pa. PUC LEXIS 159.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Philadelphia Gas Works to dismiss the formal Complaint of Steve Atuahene and Agnes Atuahene at Docket No. F-2018-3004665 is granted.

2. That the formal Complaint filed by Steve Atuahene and Agnes Atuahene against Philadelphia Gas Works at Docket No. F-2018-3004665 is dismissed for failure to prosecute.

3. That the Secretary's Bureau should mark this matter closed.

Date: March 5, 2019

_____/s/_____
Eranda Vero
Administrative Law Judge