

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Melissa Benson

v.

Philadelphia Gas Works

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F-2018-3004677

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complaint of Melissa Benson against Philadelphia Gas Works because she failed to appear for her hearing and prosecute her Complaint.

HISTORY OF THE PROCEEDING

On September 7, 2018, Melissa Benson (Complainant or Ms. Benson) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission) alleging that there were incorrect charges on her bill.

On October 9, 2018, PGW filed an Answer to the Complaint denying that there were incorrect charges on the Complainant's bill and requesting that the Complaint be dismissed.

By Hearing Notice dated October 15, 2018, a hearing was scheduled for November 27, 2018, and the matter was assigned to me. The Hearing Notice advised the parties of the location, date and time of the scheduled hearing and warned in italicized type: “*Attention: You may lose the case if you do not come to this hearing and present facts on the issues raised.*”

A Prehearing Order was issued on October 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 appear for 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 she is entitled to the relief requested in the Complaint.

On November 26, 2018, Ms. Benson contacted this office by telephone and requested a continuance. Ms. Benson also represented that she contacted someone named “Julie” from PGW’s office who stated PGW does not object to the request.¹

On December 7, 2018, an Order was issued granting the Complainant’s Motion for a Continuance.

By Hearing Notice dated November 26, 2018, the hearing was rescheduled for January 18, 2019.

Due to administrative reasons, the January 18, 2019 hearing needed to be rescheduled again. By Hearing Notice dated January 4, 2019, the hearing was rescheduled for Friday, February 8, 2019, at 10:00 a.m. The Hearing Notice advised the parties of the location,

¹ It should be noted that upon notification of the continuance request being granted, Counsel for PGW, Graciela Christlieb, Esq., informed me that she was not aware of a person named “Julie,” nor anyone with a similar sounding name in PGW’s Legal Department or Customer Review Unit. Thus, I intended to seek clarification at the rescheduled hearing.

date and time of the scheduled hearing and warned in italicized type: “*Attention: You may lose the case if you do not come to this hearing and present facts on the issues raised.*”

The hearing began on February 8, 2019, 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 fifteen minutes to appear 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 March 11, 2019, upon my receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is Melissa Benson.
2. The Respondent is Philadelphia Gas Works.
3. On September 7, 2018, the Complainant filed a Complaint with the Commission against the Respondent.
4. On October 9, 2018, the Respondent filed an Answer to the Complaint.
5. By Hearing Notice dated October 15, 2018, a hearing was scheduled for November 27, 2018, at 10:00 a.m.
6. On October 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. On November 26, 2018, Ms. Benson requested a continuance.
8. On December 7, 2018, an Order was issued granting the Complainant's Motion for a Continuance.
9. By Hearing Notice dated November 26, 2018, the hearing was rescheduled for January 18, 2019.
10. Due to administrative reasons, the January 18, 2019 hearing needed to be rescheduled.
11. By Hearing Notice dated January 4, 2019, the hearing was rescheduled for Friday, February 8, 2019 at 10:00 a.m.
12. All of the Hearing Notices advised the parties of the date, time, and location of the scheduled hearing and warned in italicized type: "*Attention: You may lose the case if you do not come to this hearing and present facts on the issues raised.*"
13. All Hearing Notices and Orders were sent to the Complainant by regular first-class mail.
14. None of the documents mailed to the Complainant were returned as undeliverable.
15. The Complainant failed to appear at the February 8, 2019 hearing.
16. The Complainant did not settle or withdraw her 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 January 4, 2019, the Commission sent notice of the Initial Hearing in this case to the Complainant by regular first-class mail. The Hearing Notice advised the parties of the location, date and time of the scheduled hearing and warned in italicized type: “*Attention: You may lose the case if you do not come to this hearing and present facts on the issues raised.*”

In addition, I issued a Prehearing Order on October 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 she is entitled to relief. By failing to appear and proffer any evidence to support her 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 her burden of proving that she is entitled to the relief that she 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 Melissa Benson at Docket No. F-2018-3004677 is granted;
2. That the Complaint of Melissa Benson against Philadelphia Gas Works at Docket No. F-2018-3004677 is dismissed with prejudice; and
3. That Docket No. F-2018-3004677 be marked closed.

Date: March 27, 2019

_____/s/
F. Joseph Brady
Administrative Law Judge