

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lisandra Caraballo

v.

Philadelphia Gas Works

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C-2018-3005095

**INITIAL DECISION**

Before  
Christopher P. Pell  
Deputy Chief Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the formal Complaint of Lisandra Caraballo against Philadelphia Gas Works because she failed to prosecute her Complaint.

**HISTORY OF THE PROCEEDING**

On September 19, 2018, Lisandra Caraballo (Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). On the Complaint form, the Complainant placed checkmarks in the boxes marked “[i]ncorrect charges are on my bill” and “[o]ther.” Under the requested relief section, the Complainant requested the Commission to order PGW to cancel all charges under her name, alleging that the charges belong to the previous owner of the property.

On October 22, 2018, the Respondent filed an Answer denying that there are incorrect charges on the bill for service at 3580 Joyce Street, Philadelphia, PA (service address).

Respondent further indicated: that the Complainant established service at the service address on October 21, 2010; that the property is listed as residential gas heat and domestic appliances; that the property is equipped with an ERT device; that on July 23, 2012, after providing notice, PGW terminated the service at the curb for non-payment; that on November 14, 2017, a gas smell was reported at the service address; that a PGW technician visited the service address and discovered the service on with a bypass; that PGW removed the meter and installed locking devices; that on the same day the Complainant contacted PGW requesting to have the service restored; that PGW informed the Complainant that an investigation had to be completed before restoration terms could be provided; that the Complainant called again for restoration terms on November 15, 2017 and November 16, 2017; and that on November 20, 2017, PGW determined that the Complainant was responsible for the bypass and was billed based on historical usage at the property.

By Hearing Notice dated October 31, 2018, a hearing was scheduled for December 20, 2018, at 10:00 a.m., 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.”*

I issued a Prehearing Order on November 6, 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 attend 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.

By Order dated December 19, 2018, I granted PGW’s Motion for Continuance of Hearing.

By Telephonic Hearing Notice dated January 2, 2019, the hearing was rescheduled as a telephonic hearing for February 14, 2019 at 10:00 a.m. The Hearing Notice advised the parties of the date and time of the rescheduled hearing and warned in italicized type: *“Attention: You may lose the case if you do not take part in this hearing and present facts on the issues raised.”*

By Corrected Hearing Notice dated January 3, 2019, the February 14, 2019 telephonic hearing was changed to in-person. The Hearing Notice advised the parties of the location, date and time of the rescheduled hearing and again 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 convened as scheduled on February 14, 2019. Counsel for PGW was present with two witnesses and was prepared to proceed. Ms. Caraballo was not present and had not contacted this office to indicate that she would or would not appear.

Because a customer who files a complaint before the Commission has an affirmative duty to make himself or herself available to participate in hearings on the complaint, I deemed Ms. Caraballo’s failure to appear at the location, date and time of the scheduled hearing as evidence that she did not wish to participate in the hearing.

No witnesses were presented, and no exhibits were introduced into the record. Respondent’s counsel 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 18, 2019 upon my receipt of the transcript.

#### FINDINGS OF FACT

1. The Complainant in this case is Lisandra Caraballo.

2. The Respondent in this case is Philadelphia Gas Works.
3. On September 19, 2018, the Complainant filed a Complaint with the Commission against the Respondent.
4. The Respondent filed an Answer on October 22, 2018.
5. By Corrected Hearing Notice dated January 3, 2019, the Commission scheduled this matter for a hearing on February 14, 2019 at 10:00 a.m.
6. The Commission's Hearing Notice was never returned to the sender.
7. The Complainant did not request a continuance of the February 14, 2019 hearing.
8. The Complainant failed to appear for the February 14, 2019 hearing.
9. 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.

The Commission sent notice of the February 14, 2019 hearing in this case to the Complainant on January 3, 2019, by regular first-class mail to the address stated on the Complaint. To my knowledge this piece of mail was never returned to the sender, the scheduling staff for the Office of Administrative Law Judge (OALJ) in Harrisburg.

In addition, I issued a prehearing order dated November 6, 2018, which, *inter alia*, warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to appear and participate in the hearing. The prehearing order, which was mailed to the Complainant at the address shown on the Complaint, was never returned. 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 scheduled hearing. Under the circumstances, it appears the Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. 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 her requested relief. By failing to participate and proffer any evidence to support her Complaint, the Complainant has failed to meet her burden. Under these circumstances, 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. 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).

3. 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 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 at Docket No. C-2018-3005095 is granted;

2. That the Complaint of Lisandra Caraballo against Philadelphia Gas Works at Docket No. C-2018-3005095 is dismissed with prejudice; and

3. That the Secretary mark this docket closed.

Date: March 29, 2019

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/s/  
Christopher P. Pell  
Deputy Chief Administrative Law Judge