

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PHILADELPHIA OFFICE

STEVE ATUAHENE and
AGNES ATUAHENE

v. : F-2018-3004665

PHILADELPHIA GAS WORKS :

COMPLAINANTS EXCEPTIONS TO INITIAL DECISION

I. HISTORY OF THE PROCEEDING

Complainants incorporate herein the Commission's articulation of the History of the Proceeding as stated in the Commission's Initial Decision except the following:

The last but one paragraph under the Commission's Initial Decision which starts with:

"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 requested that another hearing be scheduled in the matter" is totally incorrect and

is totally incorrect and a complete misrepresentation of what happened when Steve Atuahene arrived at the Commission.

The fact is Steve Atuahene around 3:30 p.m. of the day before the hearing received a call from the PGW's counsel Farinas Laureto Esquire at which time Steve Atuahene told Mr Laureto that he was at Worcester,

in Massachusetts due a death in the family and asked Mr Laureto for continuance. Steve Atuahene also based the decision for continuance of the his request for the testing of the gas meters functionality which the gas PLW had not been able to conduct. Mr Laureto refused to agree to the continuance and Steve Atuahene told him he would attend the hearing. Steve Atuahene made every possible effort to attend to the hearing and as such left Massachusetts at about 7 p.m. on January 10, 2019 and had a problem with his car at New Haven, Connecticut and was forced to sleep there till around 7 a.m when he got help to fix the problem. Steve Atuahene arrived at Philadelphia around 10:15 a.m and arrived at the Commission's Office at around 10:25 a.m. The security at the office asked him to wait at the floor for about an hour to be escorted to the hearing room. Steve Atuahene was not allowed to enter the hearing room and around about 11:35 a.m two women from the commission came and informed Steve Atuahene that the case had been completed.

Therefore the Commission's history of the Proceeding especially the section that states that Steve Atuahene arrived at the Commission's Philadelphia Office at approximately 12:00 p.m "purporting to attend the hearing scheduled for that morning" is completely false and unsupported by the facts of what happened on January 11, 2019. Further, Mr Laureto Farinas, Esquire's failure to inform the Commission of the discussion that transpired between him and Steve Atuahene on January 10, 2019 and the fact that Steve Atuahene due to death in the family was in Massachusetts and had requested continuance is disingenuous. Secondly, the omission of the fact that

Steve Atuahene was not allowed to enter the hearing room and detained for over an hour in the building is highly suspicious of the intent of the process. These factual inaccuracies and distortion should be part of the history of the Proceeding.

RELEVANT FACTS

1. Complainants filed their formal complaint against PGW alleging that there are incorrect charges on their gas bills from PGW the Respondent

2. As relief, the complainants requested that the Commission facilitate an independent investigation on the functionality of PGW's meter and its readings.

3. While the Commission states that on October 4, 2018, PGW filed an Answer denying the material allegation of the complaint, complainants were not served nor did they receive such PGW's Answer.

4. Finally a hearing was scheduled for January 11, 2019 at 10 a.m. without any independent investigation on the functionality of PGW's meter on the property and its readings in clear violation of the requested relief.

5. Two weeks prior to the hearing complainants attempts to ^{work with} PGW to come in to test the meter seem to work when PGW's Meter was called to

schedule for the meter testing, however P4W failed to schedule such meter testing.

6. On January 8, 2019 complainants received a call of a family member who was dying and they rushed to Massachusetts on the January 9, 2019.

7. On Wednesday, Between January 8, 2019 and January 9, 2019 Steve Attuahere called the P4W's counsel on record Laureto Farinas, Esquire to inform him of the complainants effort to get P4W to test the meter without success.

8. On January 10, 2019 between 3 p.m and 4 p.m Mr Laureto Farinas reached Steve Attuahere in response to his various calls to him at which time Steve Attuahere explained to Mr Farinas that due to a) the P4W's failure to conduct a test of the meter and the fact that as Emergency of their family members serious illness that had taken complainants to Massachusetts he would like to suggest that P4W agree to continuance but Mr Farinas did not agree.

9. At that point Steve Attuahere told Mr Farinas that he was in Massachusetts for family emergency but will make every effort to attend the hearing to request continuance to facilitate the meter test but in case he was late Mr Farinas should inform the Commission that he was coming.

10. Complainants left Worcester, Massachusetts at about 7 p.m. on January 10, 2019, some day Steve Atuahene talked to Mr. Farinas but around 10 p.m. they sensed a problem with the vehicle and drove about a mile for safety and help, but unfortunately there was a flat tire problem.

11. Complainants got help around 7 a.m. on January 11, 2019 but due to traffic on the road especially the New Jersey Turnpike they were forced to take Route 1 in New Jersey which was a fatal decision and arrived in Philadelphia around 10:15 a.m.

12. After 10 minutes attempt to get a parking around the 8th Street between Chestnut and Arch Streets in Philadelphia which is close to the Commission's Office in Philadelphia Complainants decided that Agnes Atuahene should stay in the car to avoid being towed while Steve Atuahene attend the hearing.

13. Steve Atuahene arrived at the hearing floor when the Commission is located at around 10:25 a.m. and was told by the security to ~~wait~~ wait and a personnel from the Commission would come to lead him to the hearing.

14. Steve Atuahene waiting ~~for~~ at the floor of the Commission from 10:25 a.m. until ~~11:45~~ 11:45 a.m. where two women from the Commission came and

inform him that the hearing had ended.

15. It should be noted that during the period from 10:25 a.m. to 11:45 a.m. nobody include the PCW personnel came out from the hearing room to the place Steve Atuahene was standing which is the place the elevators are.

16. Hence the Commission's Initial Decision's statement "Mr Atuahene arrived at the Commission's Philadelphia Office at approximately 12:00 p.m. is incorrect.

17. On the contrary, Steve ~~Atuahene~~ Atuahene was made to stand on the floor from 10:25 a.m. up to approximately 12:00 p.m. that day, January 11, 2019.

18. Therefore, the Commission's statement # 10 of the Findings of Fact that "The complainants failed to appear for the scheduled hearing" is completely and absolutely false.

A R G U M E N T

THE ADJUDICATION OF THIS CASE AND THE RESULTANT INITIAL DECISION OF ADMINISTRATIVE LAW JUDGE ERANDA VERO WNSTITUTE GROSS ERROR OF LAW AND MANIFEST ABUSE OF DISCRETION AND AS SUCH THE COMMISSION ^{SHOULD} OVERTURN, SET ASIDE OR VACATE THE INITIAL DECISION OF THE COMMISSION AS SAID INITIAL DECISION IS VIOLATIVE OF DUE PROCESS AND PROPERTY RIGHT.

1. THE ADMINISTRATIVE LAW JUDGE'S CONTENTION THAT IT COMPLIED WITH DUE PROCESS IS COMPLETELY ERRONEOUS AND SHOULD BE OVERTURN, SET ASIDE OR VACATED.

First, Complainants filed ~~the~~ Application pursuant to 52 Pa Code § 1.15 which permits the Commission to grant an extension ~~on~~ for Extension of Time on March 27, 2019 and the Commission granted April 17, 2019 and the ~~the~~ Order was received on April 22, 2019 which is the day the Commission extended the filing of the Exceptions. The Order of Extension for filing the Exception is clearly prejudicial and violative of both procedural and substantive due process of law.

On the substantive level, the Administrative Law Judge's ^(ALJ) whole decision is based on erroneous restriction of due process and its subsequent alleged compliance. The ALJ failed to understand the Complainants request for relief. Here, the Complainants as ALJ eloquently stated at paragraph

averred that:
"4 of its findings of fact, "As relief, the complainants requested that the Commission facilitate an independent investigation on the functionality of PGW's meter and its readings." Such relief does not call for ~~that~~ a hearing alone. The Commission or the ALS could have ordered the parties to appoint an independent party qualified to "facilitate independent investigation ~~of~~ on the functionality of PGW's meter and its readings." Here, in clear violation of due process the Commission and, indeed the ALS failed to act accordingly. Procedural due process demands notice and an opportunity to defend or prosecute a claim, and if the hearing was going to be dispositive hearing then there was need to provide independent investigation to support the Commission's findings and lack of such action is clearly violative of procedural due process.

All told, procedurally the Commission grant of Complainants Application ~~for~~ Extension of time for 20 days filed on March 27, 2019 and granted on April 17, 2019 to file the Exception on April 22, 2019 a Monday after Easter Holidays considering April 19, 2019 was a holiday with April 20, 2019 and ~~20~~ April 21, 2019 a week end; such process is clearly on fair and arbitrary and violative on substantive due process of the law. Further, the requested relief of Complainants for the Commission to facilitate an independent investigation on the functionality of PGW's meter and its readings could have been primarily been achieved without a hearing as the Commission could have issue an Order to that effect prior to the hearing. Hence ALS grossly erred and manifestly abuse discretion.

2. THE ALJ'S DECISION TO GRANT PGW'S MOTION TO DISMISS COMPLAINANTS' FORMAL COMPLAINT WITHOUT DUE PROCESS NOTICE CONSTITUTE GROSS ABUSE OF ERROR OF LAW AND MANIFEST ABUSE OF DISCRETION.

When Complainants filed the complaint, as part of the relief they "requested that the Commission facilitate an independent investigation on the functionality of PGW's meter and its readings." Hoping that the ALJ would issue an order to effectuate this quoted relief Complainants did not pursue the granted discovery request. However, due to lack of ALJ's inaction two weeks prior to the hearing Complainants attempted to work with PGW and requested PGW to conduct test of their meter but it failed to do so timely and on January 8, 2019 Steve Atuahere received a call from a family member that ~~was~~ a member was ^{close to death} ~~on death~~ in Massachusetts, ^{so} ~~whereby~~ Complainants rushed to Massachusetts. All the same while in Massachusetts Steve Atuahere between January 8, 2019 and January 9, 2019 called Laureto Farinas Esq., PGW counsel to complain of the PGW failure to come and test the meter and the need to continue the case to accommodate the testing. On January 10, 2019 between the hours of 3 p.m and 4 p.m Steve Atuahere received a call from attorney Farinas when he explained to him about the failure to test ~~and~~ the meter and the need to continue the hearing to accommodate the completion of the testing. When Mr Farinas refused to agree to continuance Steve Atuahere informed him that he would come to the hearing to ask for continuance but may be late as he would be coming from Massachusetts. So since attorney Farinas as the officer of the Court or the Commission he ~~could~~ ^{have} relayed the need to wait ~~for~~

for Atuehere's late arrival. PLW is in effect filed its Motion To Dismiss in ~~both~~ bad faith. More importantly, as the ~~to~~ ALJ concededly admitted Steve Atuehere was at the hearing though late to the proceeding in fairness the court court have denied the Motion To Dismiss. Lastly due to the fact that the request for testing could had been ordered without the presence of the complainants the granting of the Motion was improper, violative of both procedural and substantive due process which according to *Vischuck v. Boucher* 60 A.2d 381 (1948) ~~invalidate the Order~~ ~~is argued~~ and should be set aside, vacate or overruled.

3. A L J'S ADJUDICATION OF THIS CASE CONSTITUTE GROSS ERROR OF LAW AND MANIFEST ABUSE OF DISCRETION DUE TO A L J'S VIOLATION OF COMPLAINANTS PROPERTY RIGHTS, DUE PROCESS AND FIRST AMENDMENT RIGHT OF EFFECTIVE ACCESS TO THIS COMMISSION'S ADJUDICATION.

~~But~~, In its discussion of this case the ALJ whole argument is that complainants were given proper and sufficient notice of the hearing and therefore the Commission had complied with due process and as such the ALJ's decision to grant PLW's Motion To Dismiss Complaint is warranted. ALJ's argument is completely misplaced. Complainants do not deny required notice of the hearing. In fact complainants admittedly received ample notice of the scheduled hearing. So the issue before the Commission in this EXCEPTIONS Filing is not related to the notice of the hearing but various infractions in the adjudication of the complaint.

First the underlying issue of complainants complaint is the functionality of the PLW meter and in this vein

Complainants in their relief "requested that the Commission facilitate an independent investigation on the functionality of PLW's meter and its readings." A hearing is not needed to effectuate this end and so complainants' failure to attend the hearing on time is not the proper adjudication of this phase of the complaint. ALJ could have issued an Order to effectuate this end. Hence ALJ's issuance of Motion To Dismiss the complaint is ~~an~~ arbitrary, capricious and violative of the substantive due process of the law.

Secondly, regardless of the Commission's procedure Steve Atuohere was completely prevented from entering the hearing room despite the fact that he has a case and had been notice to come to said room. The Notice of the hearing did not identify the hearing room only the day, Friday, January 11, 2018 at 10:00am. Lack of specificity of the hearing room with the resultant refusal of the security of the floor to allow complainant to enter the hearing room constitute arbitrary and capricious administration of justice which is violative of substantive due process of law. For ~~the~~ ALJ decision is based on hearsay since complainants were not allow to be ~~not~~ questioned by the ALJ herself.

Thirdly, the only record the ALJ had was that Steve Atuohere ~~was~~ arrived at the hearing at approximately 12:00 p.m. when the two personnel met Steve Atuohere and after he had been detained there for an hour and half. PLW's attorney was not questioned if and whether he talked to complainants prior to the hearing and PLW's attorney failed to offer said relevant ~~of~~ information. PLW's failure to disclose such information about ~~to~~ its counsel phone call to Steve Atuohere on January 10, 2019 constitute a fraud and bad faith to

obtain Fraudulent ~~Motion~~ Order to dismiss complaint, Hence, said Order was obtained by Fraud and void ab initio.

Fourthly, ALJ's decision is violative of Complainants property rights under both the Pennsylvania and United States Constitution. Pennsylvania Constitution Article I, Section 1 (Inherent rights of mankind) provides that:

"All men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and ... of pursuing own happiness."

Here ALJ's grant of P4W's Motion To Dismiss without notice and despite Steve Atuahene's presence at the hearing building at 10:25 am. of the hearing day and being denied the right to enter hearing room is clear violation of his first amendment right of access to the PUC hearing and clear violation of Complainants rights to enjoy and defend and protect property due to P4W's Fraudulent procurement of underserve dismissal of their complaint.

Further, the 5th and 14th Amendment to U.S. Constitution relating to due process is implicated by the ~~the~~ ALJ's decision.

CONCLUSION

For all the foregoing reason Complainants respectfully request this Commission to set aside, vacate or overturn the ALJ's Initial Decision

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

RESPECTFULLY SUBMITTED

STEVE ^{AT} ATUAHENE

AGNES ATUAHENE

CERTIFICATE OF SERVICE

I, STEVE ATUAHINE, hereby certify that a true and correct copy of the foregoing motion/petition and accompanying papers, was served on the below listed addresses by first-class United States mail, postage pre-paid on

4 - 22 - 19 (date).

Name: LAURETO FARINAS ESQ
Address: 800 W. Montgomery Ave
Address: _____
City, State, zip: Phila PA 19122

Name: _____
Address: _____
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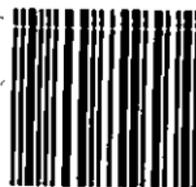
Dated: 4/22/19

By: SA

STEVE ATUAHENE
7500 North 21st Street
Phila PA 19138



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