

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lifsha Rosenstein	:	
	:	
v.	:	F-2018-3006125
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Angela T. Jones  
Administrative Law Judge

**INTRODUCTION**

The undersigned through this decision dismisses the formal Complaint (Complaint) filed in this matter for failure of the Complainant to appear at the hearing and prosecute the Complaint.

**HISTORY OF THE PROCEEDING**

On November 14, 2018, Lifsha Rosenstein (Complainant) filed a Complaint with the Pennsylvania Public Utility Commission (PUC or Commission) against the Philadelphia Gas Works (PGW or Respondent or Company). The Complainant requested a payment arrangement. The Complainant challenged the current income guidelines relevant to her because after her medical expenses are paid, she finds it difficult to pay her bills on her current income.

The Complainant requested that the Commission reevaluate the standard of poverty for low income program assistance. The Complainant requested the Commission to consider extraordinary circumstances and not just gross income.

The Complaint is a timely appeal of the decision of the Commission's Bureau of Consumer Services dated October 17, 2018 at BCS number 3640413. The Complaint was served electronically (eService) by the Commission's Secretary on November 21, 2018, per the audit history of the docket. The eService is pursuant to the Waiver of Section 702 program, under which the Respondent waives the service requirements in 66 Pa.C.S. § 702.

Counsel for the Respondent, Graciela Christlieb, Esquire, filed an Answer on December 11, 2018. The Answer admitted that the Complainant requested a payment arrangement.

Also, in the Answer, the Respondent averred that the BCS at number 3640413 concluded that a payment arrangement be established for the Complainant in an informal complaint at Case No. 3640413 with the following terms:

- (1) \$124.00 monthly budget billing,
- (2) \$74.00 monthly toward arrears for a total amount of \$198.00 per month ( $\$124.00 + \$74.00 = \$198.00$ ), and
- (3) the payment arrangement to begin with the Complainant's November 2018 bill due date.

The Respondent requested that the Commission find against the Complainant and dismiss the Complaint.

By Hearing Notice dated December 20, 2018, this Complaint was scheduled for an initial hearing on Tuesday, February 5, 2019, at 10:00 a.m. The matter was assigned to the undersigned Administrative Law Judge (ALJ), Angela T. Jones.

By Prehearing Order dated January 14, 2019, the undersigned provided the procedural rules for this proceeding.

The initial hearing convened as scheduled on February 5, 2019. Lifsha Rosenstein was present and represented herself. Counsel for the Respondent, Attorney Christlieb, was present and was accompanied by one witness.

During the hearing the parties reached an agreement. The parties agreed to have the agreement put in writing through a decision by the presiding officer.

By Order dated March 21, 2019, the undersigned filed an exhibit identified as hearing exhibit 1, which is the BCS decision at Case No. 3640413 dated October 17, 2018.

By Order dated April 30, 2019, the record was reopened for sworn testimony based on Commission precedent. See *Dunstan v. Duquesne Light Co.*, Docket No. F-2008-2051332 (Opinion and Order entered March 25, 2009) (memorializing an agreement between two parties without sworn testimony is not a Commission agreement); and *Investigation of the existing railroad bridge structure at the public grade-separated crossing (DOT 148 962 B) where SR 4035 (Yellow Dog Road) crosses below grade, the abandoned rail line of the Buffalo and Pittsburg Railroad, Inc., in West Franklin Township, Armstrong County*, Docket No. I-2014-2405193 (Opinion and Order entered July 2, 2018) (a complete record based on substantial evidence is a requirement for a Commission decision). The parties were given the opportunity to provide evidence of the agreement reached by filing a certificate of satisfaction by a date certain. Otherwise, a further evidentiary hearing would be rescheduled. No certificate of satisfaction was filed.

By Hearing Notice dated May 29, 2019, a Further In-Person Hearing was scheduled for Wednesday, July 10, 2019, at 10:00 a.m.

The evidentiary hearing convened as scheduled on July 10, 2019. The Complainant was not present and did not communicate an excuse as to why she was unable to appear. Consistent with the practice of the undersigned, the hearing recessed for approximately 15 minutes to provide the Complainant time to communicate a reasonable excuse as to why she would be later or would be unable to appear. The hearing reconvened at approximately 10:25 a.m. and the Complainant was still absent. Attorney Christlieb moved to dismiss the Complaint with prejudice for failure to prosecute. I stated that I would rule on the motion in writing and adjourned.

The transcript of these combined hearings consists of 34 pages. The record closed on August 5, 2019, when the undersigned received a copy of the transcript.

To date, there has been no further communication from the Complainant. This matter is ripe for decision.

### FINDINGS OF FACT

1. The Complainant is Lifsha Rosenstein.
2. The Respondent is PGW, a jurisdictional public utility that provides gas distribution service in the Commonwealth of Pennsylvania.
3. On November 14, 2018, the Complainant filed a Complaint with the Commission against the Respondent.
4. The Respondent filed its Answer on December 11, 2018, which denied any wrongdoing.
5. A Prehearing Order, dated January 14, 2019, provided the Complainant with the proper procedure to participate in the initial hearing and to obtain a continuance to reschedule the hearing date.
6. A Hearing Notice dated May 29, 2019, was sent by regular first-class mail to the Complainant and scheduled a hearing for Wednesday, July 10, 2019, at 10:00 a.m.
7. None of the documents mailed to the Complainant were returned to the Commission by the United States post office as undeliverable.
8. Neither the Complainant nor any counsel representing the Complainant appeared at the scheduled further hearing on July 10, 2019.

## DISCUSSION

In this Complaint, the Complainant indicated that the Respondent threatened to terminate her gas service, and the Complainant requested a payment arrangement. The issues in this proceeding are determined by whether the Complainant sustained her burden of proof. By failing to participate in the hearing, the Complainant was unable to meet this burden.

The party seeking affirmative relief from the Commission bears the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the Complaint to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976). This responsibility or accountability to the named utility must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlt. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992). A preponderance of the evidence is that which is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

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.Cmwlt. 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.Cmwlt. 1994).

The undersigned issued a Prehearing Order dated January 14, 2019, which *inter alia*, instructed the parties that any request to change the scheduled hearing date should state the agreement or opposition of the other party and be submitted in writing no later than five days prior to the hearing. The Prehearing Order, which was mailed to the Complainant at the address shown in the Complaint, was never returned by the U.S. post office as undeliverable. Accordingly, it is presumed that this mailing, which was done through the ordinary course of business, was received

by the Complainant. *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).

The Commission sent a Hearing Notice dated May 29, 2019, to the Complainant by regular first-class mail to the address listed on the Complaint. This document was never returned to the sender, the scheduling staff of the Office of Administrative Law Judge (OALJ) in Harrisburg.

The Complainant is deemed to have received these documents and had notice of the day, date and time of the scheduled hearing. The Complainant was notified of the scheduled hearing date and time, as well as how to contact the OALJ. The Complainant made no attempt whatsoever to notify the presiding officer that she did not plan to participate in the hearing scheduled for July 10, 2019.

Under these circumstances, the Complainant had ample opportunity to appear and be heard in this proceeding but chose not to do so. Once notice of a hearing and the opportunity to be heard has been provided to the parties, it is the responsibility of both parties to appear and participate in the hearing. The due process rights of the Complainant have been fully protected. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

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 choosing not to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden.

As the Commission stated in *Mumma v. PPL Electric Utilities Corp.*, Docket No. C-00014869, p. 3 (Opinion and Order entered January 28, 2002), “It is well-established law that once timely notice of a hearing and the opportunity to be heard have been provided, it is the responsibility of the parties to be present and participate in the hearing.” See, *Schneider v. Pa.*

*Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlth. 1984); *Plummer v. Columbia Gas of Pa., Inc.*, Docket No. Z-00847836 (Opinion and Order entered September 27, 2001). The Pennsylvania Commonwealth Court has made it clear that in administrative hearings, “a party’s own negligence is not sufficient good cause as a matter of law for failing to appear at a ... hearing.” *Eat 'N Park Hospitality Group, Inc. v. Unemployment Compensation Board of Review*, 970 A.2d 492, 494 (Pa.Cmwlth. 2008).

The Respondent’s counsel moved that the Complaint be dismissed with prejudice for failure to prosecute. As stated above, the due process rights of the Complainant have been protected. The Complainant had notice of the scheduled hearing and failed to appear to prosecute her Complaint. The failure of the Complainant to appear at this scheduled hearing is unexcused. By her failure to attend the hearing and present evidence on the issues raised, the Complainant failed to sustain her burden of proof.

Due to the waste of the Commission’s and Respondent’s time, money and energy occasioned by the Complainant’s failure to appear at a hearing of which she had notice, this Complaint will be dismissed with prejudice in accordance with well-established Commission precedent. *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); *Evans v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00957229 (Opinion and Order entered July 12, 1996); *King v. PECO Energy Co.*, Docket No. C-00967919 (Opinion and Order entered January 16, 1997); *Kenny v. PPL Electric Utilities Corp.*, Docket No. C-20042399 (Final Order entered October 13, 2004); *Jones v. Peoples Natural Gas Co.*, Docket No. C-20054885 (Opinion and Order entered February 14, 2006); *El-Ayazra v. West Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); *Hack v. Pa. American Water Co.*, Docket No. F-2017-2618548 (Opinion and Order entered August 23, 2018); *Whaumbush v. PECO Energy Co.*, Docket No. C-2017-262269 (Opinion and Order entered August 23, 2018).

The Complainant waived the opportunity to participate in the hearing by failing to appear. This case will be dismissed. 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. § 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. By Hearing Notice dated May 29, 2019, the Complainant had notice of the day, date and time of the scheduled hearing. 52 Pa.Code § 5.201(a).

4. Once notice of a hearing and the opportunity to be heard has 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 (Order entered October 25, 1993).

5. As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).

6. The due process rights of the Complainant have been fully protected because the Complainant was afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlt. 1984).

7. A formal complaint may be dismissed if, after notice and an opportunity to be heard, a Complainant fails to appear and prosecute the Complaint. *Mumma v. PPL Electric Utilities Corp.*, Docket No. C-00014869 (Opinion and Order entered January 28, 2002).

8. The Complainant, Lifsha Rosenstein, failed to sustain her burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion by Graciela Christlieb, Esquire, on behalf of Philadelphia Gas Works to dismiss the formal Complaint of Lifsha Rosenstein at Docket No. F-2018-3006125 for lack of prosecution is granted.
2. That the formal Complaint filed by Graciela Christlieb against Philadelphia Gas Works at Docket No. F-2018-3006125, is dismissed in its entirety with prejudice.
3. That the Secretary's Bureau mark Docket No. F-2018-3006125 closed.

Dated: August 6, 2019

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/s/  
Angela T. Jones  
Administrative Law Judge