

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Althea Poe-Henderson	:	
	:	
v.	:	F-2019-3010206
	:	
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 Althea Poe-Henderson with prejudice because she failed to appear and prosecute the case.

HISTORY OF THE PROCEEDING

On May 30, 2019, Althea Poe-Henderson (Ms. Poe-Henderson or Complainant) filed a Complaint against Philadelphia Gas Works (Respondent or PGW) with the Pennsylvania Public Utility Commission (Commission) alleging that the utility is threatening to shut off her gas service, that there are incorrect charges on her gas bills from PGW, and that she is having a reliability, safety or quality problem with her gas service. As relief, Ms. Poe-Henderson requests monetary damages for a life-threatening experience related to a gas leak.

The Complaint was filed as a timely appeal of the Commission’s Bureau of Consumer Services (BCS) decision, at BCS Case No. 3640822.

On June 19, 2019, Respondent filed an Answer denying the material allegations of the Complaint.

A Hearing Notice dated July 8, 2019, notified the parties that an initial hearing was scheduled in this matter for August 7, 2019, at 10:00 a.m.

A Prehearing Order was issued on July 26, 2019, 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.

Due to a conflict in my schedule, the August 7, 2019 hearing was rescheduled for a later date. Ms. Poe-Henderson expressed a desire to attend the hearing via telephone. Tr. 10-11. A Hearing Cancellation/Reschedule/Type Change Notice dated August 2, 2019, notified the parties that an initial hearing was rescheduled in this matter for September 6, 2019, and that the hearing would be conducted over the telephone. The Hearing Cancellation/Reschedule/Type Change Notice provided the parties with instructions for dialing into the telephonic hearing.

The hearing convened as scheduled on September 6, 2019, at 10:00 a.m. Graciela Christlieb, Esq. appeared representing PGW. Neither Complainant nor a counsel for the Complainant appeared at the hearing. Because by 10:10 a.m. Ms. Poe-Henderson had still not joined the telephonic hearing, I took it upon myself to call her at the telephone number (215) 753-XXXX that she provided in her formal Complaint form. Tr. 12. Ms. Poe-Henderson answered the phone. *Id.* I provided her with the dial-in information (toll-free telephone number and passcode) to join the hearing. *Id.* When Ms. Poe-Henderson failed to join the telephonic hearing by 10:20 a.m., I called her again. My call went unanswered. *Id.* I called her a third time. *Id.* This time, Ms. Poe-Henderson answered my call, but as soon as I identified myself, she hung up the phone. *Id.* I called her two more times to ascertain that my last call was not disconnected by accident and that she understood the reason for my call. *Id.* However, Ms. Poe-Henderson did not answer my calls. *Id.* The hearing reconvened at approximately 10:31 a.m. after I confirmed that the Complainant 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. That Motion is granted pursuant to the ordering paragraphs below.

The record was closed upon receipt of the hearing transcript on September 27, 2019.

FINDINGS OF FACT

1. The Complainant is Althea Poe-Henderson, whose mailing address is 8123 Forrest Avenue, 2nd Floor, Philadelphia, PA 19150.
2. The Respondent is Philadelphia Gas Works.
3. On May 30, 2019, Ms. Poe-Henderson filed a Complaint against PGW alleging that the utility is threatening to shut off her gas service, that there are incorrect charges on her gas bills from PGW, and that she is having a reliability, safety or quality problem with her gas service.
4. As relief, Ms. Poe-Henderson requests monetary damages for a life-threatening experience related to a gas leak.
5. On June 19, 2019, the Respondent filed an Answer denying the material allegations of the Complaint.
6. A Hearing Notice dated July 8, 2019, notified the parties that an initial hearing was scheduled in this matter for August 7, 2019, at 10:00 a.m.
7. The Hearing Notice advised the parties that a party may lose the case if they fail to appear at the scheduled hearing.

8. A Prehearing Order was issued on July 26, 2019, 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.

9. The Prehearing Order advised the parties that a party may lose the case if they fail to appear at the scheduled hearing.

10. Due to a conflict in my schedule, the August 7, 2019 hearing was rescheduled for a later date.

11. Prior to August 2, 2019, Ms. Poe-Henderson expressed a desire to attend the hearing via telephone. Tr. 10-11.

12. A Hearing Cancellation/Reschedule/Type Change Notice dated August 2, 2019, notified the parties that an initial hearing was rescheduled in this matter for September 6, 2019, at 10:00 a.m., and that the hearing would be conducted over the telephone.

13. None of the documents mailed to Complainant at the address provided in her Complaint were returned to the Commission by the United States Postal Service as undeliverable.

14. The Complainant failed to appear at the scheduled hearing.

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

DISCUSSION

In this formal Complaint, Ms. Poe-Henderson alleged the utility is threatening to shut off her gas service, that there are incorrect charges on her gas bills from PGW, and that she is having a reliability, safety or quality problem with her gas service. As relief, Ms. Poe-Henderson requested monetary damages for a life-threatening experience related to a gas leak.

As the party seeking affirmative relief from the Commission, the burden of proof rests on the Complainant. 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).

A Hearing Notice dated July 8, 2019, a Prehearing Order dated July 26, 2019, and a Hearing Cancellation/Reschedule/Type Change Notice dated August 2, 2019, were mailed to Ms. Poe-Henderson at the address listed on her formal Complaint form. Both documents advised the parties that a party may lose the case if they fail to appear at the scheduled hearing. None of these documents was returned to the Commission as undeliverable by the post office. Therefore, the Complainant was deemed to have received these documents and had sufficient notice of the day, date and time of the scheduled hearing.

The hearing convened as scheduled on September 6, 2019, at 10:00 a.m. Graciela Christlieb, Esq., appeared representing PGW. Neither Complainant nor a counsel for the Complainant dialed into the telephonic hearing by the scheduled time. Because by 10:10 a.m. Ms. Poe-Henderson had still not joined the telephonic hearing, I took it upon myself to call her at the telephone number (215) 753-XXXX that she provided in her formal Complaint form. Tr. 12.

Ms. Poe-Henderson answered the phone. *Id.* I provided her with the dial-in information (toll-free telephone number and passcode) to join the hearing. *Id.* When Ms. Poe-Henderson failed to join the telephonic hearing by 10:20 a.m., I called her again. My call went unanswered. *Id.* I called her a third time. *Id.* This time, Ms. Poe-Henderson answered my call, but as soon as I identified myself, she hung up the phone. *Id.* I called her two more times to ascertain that my last call was not disconnected by accident and that she understood the reason for my call. *Id.* However, Ms. Poe-Henderson did not answer my calls. *Id.* Neither the Complainant nor a representative licensed to practice law in this Commonwealth appeared at the hearing on her behalf. To date, there is no further information about the Complainant regarding this hearing. Her failure to appear 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 Complainant waived the opportunity to participate in the hearing by failing to appear. Ms. Poe-Henderson'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 Complainant, Althea Poe-Henderson 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, Complainant waived the opportunity to participate in the hearing. 52 Pa.Code § 5.245(a); *Martin W. Jefferson v. UGI Utilities, Inc.*, 1995 Pa. PUC LEXIS 159.

5. Ms. Poe-Henderson has failed to meet her burden of proving that she is entitled to the relief sought from the Commission.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Philadelphia Gas Works to dismiss the formal Complaint of Althea Poe-Henderson at Docket No. F-2019-3010206 is granted.

2. That the formal Complaint filed by Althea Poe-Henderson against Philadelphia Gas Works at Docket No. F-2019-3010206 is dismissed with prejudice for failure to prosecute.

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

Date: October 17, 2019

/s/
Eranda Vero
Administrative Law Judge