

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Anthony Magsam	:	
	:	
v.	:	C-2019-3011680
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Angela T. Jones
Administrative Law Judge

INTRODUCTION

This Initial Decision grants Philadelphia Gas Works’ Motion to Dismiss the formal Complaint (Complaint) of Anthony Magsam with prejudice because he failed to appear for the hearing and prosecute his Complaint.

HISTORY OF THE PROCEEDING

On July 22, 2019, Anthony Magsam (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 noted that: (1) the utility has already shut of his service; (2) he is having reliability, safety or quality problems with his service; (3) PGW digging up his lawn at the curb to discontinue service was questionable when a shut off valve was accessible on the outside of 1400 Tyson Avenue, Philadelphia, Pennsylvania (service address); and (4) the requirement for someone to be at the service address to allow PGW personnel to inspect gas appliances and restore service is against his U.S. constitutional rights of reasonable search and seizure.

The Complaint did not include a request for relief. The Complaint was missing page 4 where the request for the relief is located on the form. However, because the Complaint was filed with the Commission, it is implicit that the Complainant is looking to the Commission to resolve the Complaint.

The Complaint was served electronically (eService) by the Commission's Secretary on July 23, 2019, 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, Laureto Farinas, Esquire, filed an Answer on August 12, 2019. The Answer admitted that the Respondent issued a notice to terminate service for nonpayment at the Complainant's service address. The Respondent denied all other material allegations of the Complaint.

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

By Hearing Notice dated August 16, 2019, this Complaint was scheduled for an Initial In-Person Hearing on Tuesday, October 1, 2019, at 10:00 a.m. The matter was assigned to the undersigned, Administrative Law Judge Angela T. Jones.

By Prehearing Order dated August 20, 2019, the undersigned provided, among other instructions, the procedural rules for this proceeding.

The Initial Hearing convened as scheduled on October 1, 2019. Counsel for the Respondent, Attorney Farinas, was present and was accompanied by two witnesses. Neither the Complainant nor a counsel for the Complainant appeared at the hearing. Consistent with the practice of the undersigned, the hearing recessed for approximately 15 minutes to provide the Complainant time to communicate a reason why he would be late or would be unable to appear.

The hearing reconvened at approximately 10:25 a.m. and the Complainant was still absent. Attorney Farinas moved to dismiss the Complaint with prejudice for failure to prosecute. That Motion is granted pursuant to the ordering paragraphs below.

The transcript of this hearing consists of seven pages. The record closed on October 17, 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 Anthony Magsam, whose mailing address is 1400 Tyson Avenue, Philadelphia, PA 19111.

2. The Respondent is PGW, a jurisdictional public utility that provides gas distribution service in the Commonwealth of Pennsylvania.

3. On July 22, 2019, the Complainant filed a Complaint with the Commission against the Respondent.

4. The Respondent filed its Answer on August 12, 2019, which denied any wrongdoing.

5. A Hearing Notice dated August 16, 2019, was sent by regular first-class mail to the Complainant and scheduled a hearing for Tuesday, October 1, 2019, at 10:00 a.m.

6. A Prehearing Order, dated August 20, 2019, provided the Complainant with the proper procedure to participate in the scheduled hearing and to obtain a continuance to reschedule the hearing date.

7. None of the documents mailed to the Complainant at the address provided in his Complaint were returned to the Commission by the United States post office as undeliverable.

8. The Hearing Notice and the Prehearing Order contained a warning that the Complaint could be dismissed if the Complainant failed to appear at the hearing.

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

DISCUSSION

In this Complaint, the Complainant indicated that the Respondent terminated his gas service, the Complainant had reliability, safety or quality issues with his service, the Complainant questioned the necessity of digging at the curb to terminate service, and the Complainant questioned whether restoration of service by permitting Respondent's personnel into his service address to inspect gas appliances is against his U.S. constitutional rights of reasonable search and seizure. Implicit in the Complaint is a request for resolution and relief from the Commission.

As the party seeking relief from the Commission, the burden of proof rests on the Complainant. 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.Cmwlth. 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). The issues in this proceeding are determined by whether the Complainant sustained his burden of proof.

Administrative agencies, like the 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).

The Commission sent a Hearing Notice dated August 16, 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 undersigned issued a Prehearing Order dated August 20, 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 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 Hearing Notice and the Prehearing Order contained a warning that the Complaint could be dismissed if the Complainant failed to appear at the hearing. The Complainant made no attempt whatsoever to notify the presiding officer that he did not plan to participate in the hearing scheduled for October 1, 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).

As the party bringing this Complaint, the Complainant bears the burden of proving by a preponderance of the evidence that he 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, at 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 also, *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 his Complaint. The failure of the Complainant to appear at this scheduled hearing is unexcused. By his failure to attend the hearing and present evidence on the issues raised, the Complainant failed to sustain his 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 he 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. The 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 August 16, 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, Anthony Magsam, failed to sustain his burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion by Laureto Farinas, Esquire, on behalf of Philadelphia Gas Works to dismiss the formal Complaint of Anthony Magsam at Docket No. C-2019-3011680 for lack of prosecution is granted.

2. That the formal Complaint filed by Anthony Magsam against Philadelphia Gas Works at Docket No. C-2019-3011680, is dismissed in its entirety with prejudice.

3. That the Secretary's Bureau mark Docket No. C-2019-3011680 closed.

Dated: October 17, 2019

_____/s/
Angela T. Jones
Administrative Law Judge