

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Yarnite Archil	:	
	:	
v.	:	F-2019-3012704
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Alphonso Arnold III  
Special Agent

**INTRODUCTION**

This Initial Decision dismisses the Complaint because the Complainant failed to appear for the hearing to prosecute her Complaint.

**HISTORY OF THE PROCEEDING**

On September 6, 2019, Yarnite Archil (Complainant or Ms. Archil) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW) alleging that PGW was threatening to or has already shut off her service, and that there were incorrect charges on her bill. The Complaint is a timely appeal from a decision issued by the Commission's Bureau of Consumer Services at BCS No. 3724376 wherein Ms. Archil was awarded a payment arrangement.

On September 26, 2019, PGW filed an Answer, admitting or denying the allegations in the Complaint and asking that the Commission dismiss the Complaint.

By Hearing Notice served on the parties on October 1, 2019, the Commission scheduled this matter for a telephonic hearing on November 26, 2019 at 10:00 a.m. and assigned the case to me. The Hearing Notice stated the following: “*Attention: You may lose the case if you do not take part in this hearing and present facts on the issues raised.*” (emphasis in the original).

A Prehearing Order, served on the parties on October 23, 2019, reminded the parties of the date and time of the hearing and addressed, *inter alia*, the procedures applicable to the hearing and the method by which a party could request a change of the scheduled hearing date if the date was not convenient for them. Furthermore, the Prehearing Order stated the following: “**You must be available on the scheduled day and time. If you fail to be available, your case will be dismissed.**” (emphasis in the original).

The Hearing Notice and the Prehearing Order informed the parties that the undersigned would call the parties by phone on the hearing date and time to connect the parties to the hearing.

On November 26, 2019, at 10:00 a.m., I called Ms. Archil at the phone number listed on her Complaint form. Ms. Archil did not answer. I left a voice message, informing Ms. Archil that I would attempt to call her again at 10:15 a.m.

The attorney for PGW, Graciela Christlieb, Esquire, was successfully contacted and connected to the hearing conference. Attorney Christlieb was ready to proceed with the hearing with a witness.

At 10:15 a.m., I called Ms. Archil and again she did not answer. I left a second voice message, informing Ms. Archil that the hearing would be held without her, and to contact the Commission if she wanted to provide a reason as to why she was unavailable to participate in the hearing.

The November 26, 2019 hearing was held at 10:15 a.m. without Ms. Archil. No witnesses were presented, and no exhibits were introduced for the record. PGW made a Motion to dismiss the Complaint for failure to prosecute.

The record closed on November 26, 2019, following the conclusion of the telephonic hearing.<sup>1</sup> As of the date of this Initial Decision, no communication has been made to the Office of Administrative Law Judge on Ms. Archil's behalf to explain her absence from the hearing. For the reasons discussed below, PGW's Motion will be granted, and the Complaint will be dismissed with prejudice.

### FINDINGS OF FACT

1. The Complainant is Yarnite Archil, whose mailing address is 900 East Sharpnack Street, 2<sup>nd</sup> Floor, Philadelphia, Pennsylvania.

2. The Respondent is Philadelphia Gas Works.

3. By Hearing Notice served upon the parties on October 1, 2019, the Commission scheduled this matter for a telephonic hearing on November 26, 2019.

4. The Hearing Notice served in this matter stated the following: "Attention: *You may lose the case if you do not take part in this hearing and present facts on the issues raised.*" (emphasis in the original).

5. By Prehearing Order served upon the parties on October 23, 2019, the parties were reminded of the date and time of the telephonic hearing and were provided with the method by which a party could request a continuance of the hearing date, if needed.

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<sup>1</sup> A 6-page transcript of the proceeding was filed on December 9, 2019.

6. The Prehearing Order served in this matter stated the following: “**You must be available on the scheduled day and time. If you fail to be available, your case will be dismissed.**” (emphasis in the original).

7. The Hearing Notice and the Prehearing Order served in this matter informed the parties that they would be contacted by phone on the hearing date and time to be connected to the hearing.

8. Neither the Hearing Notice nor the Prehearing Order served to the Complainant to her mailing address was returned to the Commission as being undeliverable by the postal authorities.

9. The Complainant was not available by phone to participate in the November 26, 2019 hearing.

10. The Complainant did not settle or withdraw her Complaint.

### DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must show that the named utility is responsible or accountable for the problem described in the Complaint. Patterson v. Bell Telephone Co. of Pa., 72 Pa. PUC 196 (1990); Feinstein v. Philadelphia Suburban Water Co., 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa.Cmwlt. 1990), alloc. den., 602 A.2d 863 (Pa. 1992); Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

If a Complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the Complainant will

prevail. If the utility rebuts the Complainant's evidence, the burden of going forward with the evidence shifts back to the Complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on the Complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001); see also, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlth. 1982).

Additionally, this Commission's decision must be supported by substantial evidence in the record. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 413 A.2d 1037 (Pa. 1980).

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).

The Complainant did not participate in the November 26, 2019 hearing. The date and time of the hearing were provided in the Hearing Notice and Prehearing Order served to the Complainant in this matter. The Notice and Order informed the Complainant that she was to be available by phone on November 26, 2019 at 10:00 a.m. to be contacted and connected to the hearing. The undersigned attempted to call and connect the Complainant to the hearing at 10:00 a.m. and 10:15 a.m., using the Complainant's phone number provided in the Complaint, but was unable to do so. The Complainant was warned through voice message that the hearing would proceed without her, due to her unavailability. The Notice and Order warned the Complainant that she may lose her case if she failed to participate in the scheduled hearing.

The Hearing Notice and Prehearing Order were sent to the Complainant by regular first-class mail. Neither document was returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents, which were sent to the Complainant in

the ordinary course of business, were received by her. Berkowitz v. Mayflower Securities, Inc., 455 Pa. 531, 317 A.2d 584 (1974); Meierdierck v. Miller, 394 Pa. 484, 147 A.2d 406 (1959); Samaras v. Hartwick, 698 A.2d 71 (Pa. Super. 1997); Judge v. Celina Mutual Insurance Co., 303 Pa. Super. 221, 449 A.2d 658 (1982). Therefore, the Complainant is deemed to have had sufficient notice of the day, date and time of the scheduled hearing and for whatever reason chose not to appear at the hearing to prosecute her Complaint. The Complainant made no attempt to notify the presiding officer that she did not plan to participate in the scheduled hearing.

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 have been provided to the parties, it is the responsibility of both parties to appear and participate in the hearing. Schneider v. Pa. Pub. Util. Comm'n, 479 A.2d 10 (Pa.Cmwlt. 1984). Therefore, 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). The Complainant did not appear, and the hearing proceeded in her absence. Both 66 Pa.C.S.A. § 332(f) and 52 Pa.Code § 5.245(a) provide that a party who fails to be represented at a scheduled hearing shall waive the opportunity to participate in the hearing and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat.

### **§ 332. Procedures in general.**

**(f) Actions of parties and counsel.**--Any party who shall fail to be represented at a scheduled conference or hearing after being duly notified thereof, shall be deemed to have waived the opportunity to participate in such conference or hearing, and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat, or to recall for further examination of witnesses who were excused, unless the presiding officer shall determine that failure to be represented was unavoidable and that the interests of the other parties and the public would not be prejudiced by permitting such reopening or further examination. . . .

66 Pa.C.S. § 332(f).

**§ 5.245. Failure to appear, proceed or maintain order in proceedings.**

(a) After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will:

(1) Be deemed to have waived the opportunity to participate in the conference or hearing.

(2) Not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing.

. . .

52 Pa. Code § 5.245(a).

As the party seeking relief from the Commission, the Complainant bears the burden of proof. By choosing not to participate in the hearing and proffer any evidence to support the Complaint, the Complainant failed to meet this burden.

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. Therefore, the Respondent's Motion to dismiss the Complaint is granted. Accordingly, the Complaint in this matter will be dismissed in its entirety with prejudice. El-Ayazra v. West Penn Power Company, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); Volgstadt v. UGI Penn Natural Gas, Inc., Docket No. F-02266429 (Opinion and Order entered September 12, 2008) and Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Opinion and Order entered December 26, 1995).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. § 701.

2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).

3. Administrative agencies 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).

4. Documents sent to a party in the ordinary course of business and not returned to the Commission as undeliverable are presumed to be received by the party. Berkowitz v. Mayflower Securities, Inc., 455 Pa. 531, 317 A.2d 584 (1974); Meierdierck v. Miller, 394 Pa. 484, 147 A.2d 406 (1959); Samaras v. Hartwick, 698 A.2d 71 (Pa. Super. 1997); Judge v. Celina Mutual Insurance Co., 303 Pa. Super. 221, 449 A.2d 658 (1982).

5. 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 (Opinion and Order entered October 25, 1993).

6. By failing to appear at her scheduled hearing, the Complainant waived her opportunity to participate in the hearing and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat, or to recall for further examination of witnesses who were excused. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

7. The Complainant's due process rights have been fully protected. Sentner v. Bell Telephone Company of Pennsylvania, Docket No. F-00161106 (Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

8. By failing to appear and proffer any evidence in support of the Complaint, the Complainant has failed to meet the burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Philadelphia Gas Works to dismiss the Complaint at Docket No. F-2019-3012704 for failure to prosecute is granted.
2. That the Complaint filed by Yarnite Archil against Philadelphia Gas Works at Docket No. F-2019-3012704 is hereby dismissed with prejudice.
3. That the docket at Docket No. F-2019-3012704 is marked closed.

Date: December 10, 2019

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/s/  
Alphonso Arnold III  
Special Agent