

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Aaron Yauger	:	
	:	
v.	:	C-2019-3011311
	:	
Columbia Gas of Pennsylvania, Inc.	:	

INITIAL DECISION

Before
Mary D. Long
Administrative Law Judge

A Formal Complaint filed by a customer of a utility company is dismissed because the Complainant failed to appear for the hearing without good cause.

HISTORY OF PROCEEDINGS

On June 27, 2019, Aaron Yauger (Complainant) filed a Formal Complaint against Columbia Gas of Pennsylvania Inc. (Columbia). In his Complaint, he contended that Columbia installed a gas line at a house that he owns and failed to repair the street and the curb in front of the house. The Complainant explained that he is trying to sell the house, and the appearance of the street and the curb is making it difficult. Further, he generally complained about the customer service that he has received from Columbia. Columbia filed an Answer on July 18, 2019, denying the material allegations of the Complaint.

By hearing notice dated July 23, 2019, this matter was assigned to me and set for a hearing on September 5, 2019, at 10:00 a.m. I issued my customary prehearing order on July 29, 2019, which set forth the place and time of the hearing, instructions for requesting a continuance, and warned the Complainant that the case could be dismissed if he failed to appear.

By letter dated July 29, 2019, Columbia requested a continuance of the hearing due to the unavailability of a witness “who was involved in this matter.” Counsel stated that he made one attempt to contact the Complainant by telephone, but the call was terminated. By Interim Order dated August 2, 2019, the request for a continuance was denied.

None of the notices or orders described above were returned by the U.S. Postal Service as undeliverable.

The hearing convened as scheduled. Larry R. Crayne, Esquire, appeared on behalf of the Company along with two witnesses, James Daugherty, Operations Manager for the Company and Derek Laws, a field technician. The Complainant did not call the conference call number. After a brief recess to provide the Complainant additional time to call, the hearing proceeded in his absence. The Company made a Motion to Dismiss, which was taken under advisement. The record closed upon receipt of the transcript, by order dated October 7, 2019.

FINDINGS OF FACT

1. The Complainant is Aaron Yauger.
2. The Respondent is Columbia Gas of Pennsylvania, Inc., a jurisdictional public utility.
3. The Complainant did not call the conference number at 10:00 a.m. on Thursday, September 5, 2019.
4. The Complainant did not contact the Commission to explain his failure to appear.
5. The hearing notices and prehearing order were sent to the Complainant’s address on the Formal Complaint form and were not returned by the U.S. Postal Service as undeliverable.

DISCUSSION

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them.¹ However, this due process requirement is satisfied when the parties are provided notice and the opportunity to appear and be heard.² The Complainant had adequate notice of the time and date of the hearing, yet he failed to appear or explain why he could not attend the hearing at the scheduled time. Therefore, it is appropriate to dismiss his Complaint.

A hearing notice and prehearing order were sent to the Complainant. The prehearing order informed the Complainant that if he failed to appear for the hearing, he could lose his case. The prehearing order also provided instructions for contacting the Commission to request a change of the scheduled hearing date. The notices and orders were mailed to the address on the Formal Complaint and were not returned as undeliverable by the U.S. Postal Service. Notice mailed to a party's last known address and not returned by the post office is presumed to have been received.³ Therefore, the Complainant is deemed to have received these documents and had sufficient notice of the Commission's procedures and notice of the date and time of the scheduled hearing.

Section 332(a) of the Public Utility Code⁴ places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, the Complainant has the burden of demonstrating that the facts alleged in his Complaint are true and that he is entitled to the relief that he requested. By not appearing for the scheduled hearing to present evidence, the Complainant failed to meet his burden of proof. Consequently, the Complaint must be dismissed.

¹ *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlt. 1984).

² *Id.*

³ *Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 531, 317 A.2d 584 (1974); *Chartiers Industrial and Commercial Dev. Auth. v. Allegheny County Bd. of Property Assessment Appeals and Rev.*, 645 A.2d 944 (Pa.Cmwlt. 1994); *Geary v. Verizon Pennsylvania Inc.*, Docket No. C-2009-2118625 (Opinion and Order entered September 16, 2010).

⁴ 66 Pa.C.S. § 332(a).

The Complainant was notified of the scheduled hearing date and time, as well as how to contact the Office of Administrative Law Judge but failed to appear without explanation. Under these circumstances, the Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so.⁵ The due process rights of the Complainant have been fully protected. The Motion to Dismiss of the Company is granted, and the Complaint is dismissed.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of the dispute. 66 Pa.C.S. § 701.
2. The due process rights of the Complainant have been fully protected. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlth. 1984).
3. By failing to appear at his scheduled hearing, the Complainant has waived his claims and has failed to sustain his burden of proof. 66 Pa.C.S. § 332.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion to Dismiss the Complaint of Aaron Yauger at Docket C-2019-3011311, is granted.

⁵ 66 Pa.C.S. § 332(f).

