

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Darnell D. Jones	:	
	:	
v.	:	C-2019-3014569
	:	
Columbia Gas of Pennsylvania, Inc.	:	

INITIAL DECISION

Before
Conrad A. Johnson
Administrative Law Judge

INTRODUCTION

This decision dismisses the Complaint filed in this matter for Complainant’s failure to appear for the hearing to prosecute the Complaint.

HISTORY OF THE PROCEEDING

On November 14, 2019, Complainant Darnell D. Jones (Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Columbia Gas of Pennsylvania, Inc. (Columbia Gas). Complainant alleged the following: 1) the utility is threatening to shut off my service or has already shut off my service; 2) incorrect charges are on my bill; and 3) I am having a reliability, safety or quality problem with my service. Complaint ¶ 4. As relief, Complainant seeks a Commission order directing Columbia Gas to show the correct sums and payment dates on his bills. Complaint ¶ 5.

Columbia Gas filed an Answer on December 13, 2019, admitting Complainant had received notice of termination for failure to timely pay his monthly bills in full. Columbia Gas denied the remainder of the material allegations of the Complaint. Answer ¶ 4.

By Call-In Telephone Hearing Notice dated December 20, 2019, the Parties were informed that this matter was assigned to me, pursuant to 52 Pa.Code § 56.173, for a call-in telephonic hearing on February 4, 2020 at 10:00 a.m. The Hearing Notice provided the Parties with the Toll-Free Bridge Number and the PIN to dial on the morning of the hearing in order to participate in the telephonic hearing. The Hearing Notice further stated, “*Attention: you may lose the case if you do not take part in this hearing and present facts on the issues raised.*” (emphasis in original).

On December 26, 2019, I issued a Prehearing Order reminding the Parties to call, on the date and at the time of the hearing scheduled for February 4, 2020 at 10:00 a.m., the Toll-Free Bridge Number and enter the PIN in order to participate in the telephonic hearing. The Prehearing Order stated as follows: “**You must call into the hearing on the scheduled day and time. If you fail to do so, your case will be dismissed. You will not be called by the Administrative Law Judge.**” (emphasis in original). The Prehearing Order informed the Parties about the applicable procedural rules, including the procedure to follow to request a hearing continuance.

The Hearing Notice and Prehearing Order informing the Parties of the place, day, date and time of the hearing, were mailed in the ordinary course of the Commission’s business to the address listed in Complainant’s Complaint. The Prehearing Order was not returned by the U.S. Postal Service as undeliverable to Complainant.

On February 4, 2020, by 10:00 a.m., counsel for Columbia Gas, Larry R. Crayne, Esquire, and I had appeared for the telephonic proceeding. The court reporter was also present. Complainant had not called into the telephonic proceeding. Attorney Crayne was prepared to proceed with his witness, Judy Gawlowski, a business analyst.

I recessed the hearing at 10:05 a.m., to permit additional time for Complainant to appear or to contact the Office of Administrative Law Judge (OALJ) to explain his absence. The telephonic proceeding remained open with counsel for Columbia Gas and the court reporter in

the telephonic hearing. I then left the hearing room to determine whether Complainant had called into the OALJ. Complainant had not called into the OALJ.

When I returned to the hearing room at 10:26 a.m., Complainant had not entered the proceeding nor had he called into the OALJ to explain his absence. Accordingly, the hearing proceeded in Complainant's absence. As a result, counsel for Columbia Gas moved for dismissal of the Complaint with prejudice for lack of prosecution. I informed counsel that the motion would be taken under advisement and an Initial Decision would be issued. The record closed upon adjournment of the hearing at 10:30 a.m. on February 4, 2020.

FINDINGS OF FACT

1. Complainant in this proceeding is Darnell D. Jones.
2. Respondent Columbia Gas of Pennsylvania, Inc. is a jurisdictional public utility providing gas service to Complainant and Pennsylvania customers.
3. On November 14, 2019, Mr. Darnell Jones filed a Complaint against Respondent with the Commission.
4. On December 13, 2019, Columbia Gas filed an Answer to the Complaint.
5. By Call-In Telephone Hearing Notice dated December 20, 2019, the Parties were informed that a call-in telephonic hearing in this proceeding would convene on February 4, 2020, at 10:00 a.m.
6. On December 26, 2019, a Prehearing Order was issued to the Parties reminding them of the date, time, and manner of the hearing and advising them of the applicable procedural rules, including the procedure to request a continuance at least five days before the scheduled hearing date.

7. The Prehearing Order stated as follows: “**You must call into the hearing on the scheduled day and time. If you fail to do so, your case will be dismissed. You will not be called by the Administrative Law Judge.**” (emphasis in original).

8. The Hearing Notice and Prehearing Order were mailed, by first-class mail, postage prepaid, to Mr. Jones at the address provided by Mr. Jones in his Complaint.

9. The Hearing Notice and Prehearing Order were not returned by the U.S. Postal Service as undeliverable to Mr. Jones.

10. Counsel for Respondent and its witness were present by 10:00 a.m. on February 4, 2020, for the telephone hearing.

11. By 10:26 a.m. on February 4, 2020, Mr. Jones had not appeared for the telephone hearing.

12. When Mr. Jones did not appear for the telephone hearing, Respondent moved for dismissal of the Complaint with prejudice for lack of prosecution.

DISCUSSION

Due Process

The Commission satisfies the requirement of affording a complainant with administrative due process, by providing timely notice of the hearing on the complaint and the opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm’n*, 479 A.2d 10 (Pa.Cmwlth. 1984).

The December 20, 2019, Call-In Telephone Hearing Notice and the December 26, 2019, Prehearing Order were mailed, in the ordinary course of the Commission’s business, to Complainant’s address listed in the Complaint. The Hearing Notice and Prehearing Order were not returned to the Commission by the U.S. Postal Service as undeliverable to Mr. Jones. There is a presumption in the law that Mr. Jones received the copies of the Hearing Notice and

Prehearing Order. *Berkowitz v. Mayflower Securities, Inc.*, 317 A.2d 584 (Pa. 1974); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Judge v. Celina Mutual Ins. Co.*, 449 A.2d 658 (Pa.Super. 1982); and *Samaras v. Hartwick*, 698 A.2d 71 (Pa.Super. 1997). Accordingly, Complainant's due process rights have been fully protected.

Burden of Proof

Pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa.C.S. § 332(a), the burden of proof is on the proponent of a rule or order. In this proceeding, Complainant is the proponent of a rule or order. Therefore, Mr. Jones had the burden of proving he was entitled to the relief requested in his Complaint. Respondent was present for the hearing through its attorney and witness. However, Mr. Jones was not present for the hearing.

Section 332(f) of the Code, 66 Pa.C.S. § 332(f), provides in pertinent part:

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....

Since Mr. Jones failed to appear and participate in the scheduled hearing, personally or by telephone, his Complaint may be dismissed with prejudice. See *Martin Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995); *El-Ayazra v. West Penn Power Company*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa.Code § 5.245.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding. 66 Pa.C.S. § 701.
2. Complainant, as the proponent of a rule or order, has the burden of proof. 66 Pa.C.S. § 332(a).

3. When a complainant fails to appear for a scheduled conference or hearing, the complaint may be dismissed with prejudice. *Martin Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995); *El-Ayazra v. West Penn Power Company*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa.Code § 5.245.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Columbia Gas of Pennsylvania, Inc. to dismiss the Complaint of Darnell D. Jones at Docket No. C-2019-3014569 is granted.

2. That the Complaint of Darnell D. Jones against Columbia Gas of Pennsylvania, Inc. at Docket No. C-2019-3014569 is dismissed, for the failure of Darnell D. Jones to prosecute his Complaint.

3. That the Secretary's Bureau shall mark Docket No. C-2019-3014569 closed.

Date: February 18, 2020

/s/
Conrad A. Johnson
Administrative Law Judge