

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michele Thomas	:	
	:	
v.	:	C-2019-3012118
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complaint of Michele Thomas against Philadelphia Gas Works because she failed to appear for her hearing and prosecute her Complaint.

HISTORY OF THE PROCEEDING

On August 9, 2019, Michele Thomas (Complainant or Ms. Thomas) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW, Company or Respondent) with the Pennsylvania Public Utility Commission (Commission). In her Complaint, under paragraph 4 – Reason for Complaint, Ms. Thomas placed checkmarks next to the statements: “The utility is threatening to shut off my service or has already shut off my service” and “I would like a payment agreement.”

On September 9, 2019, PGW filed an Answer to the Complaint admitting that the Company issued a shut off notice to the Complainant.

By Hearing Notice dated September 12, 2019, an Initial Call-In Telephone Hearing was scheduled for Tuesday, October 29, 2019 at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on October 2, 2019. The Prehearing Order directed the parties to comply with various procedural requirements and directed that a request to change the scheduled hearing should be sent to me at least five days prior to the hearing date, be in writing and state the agreement or opposition of the other party. It also warned in underlined bold type: **“If the customer is not present and prepared to go forward with the case when it is called, the case will be dismissed by the Administrative Law Judge.”**

On October 29, 2019, I issued an Order granting the Complainant’s October 25, 2019 Motion for a Continuance.

By Cancel/Reschedule Hearing Notice dated October 29, 2019, an Initial Call-In Telephone Hearing was rescheduled for Thursday, December 19, 2019 at 10:00 a.m.

Both Hearing Notices advised the parties of the date, time, and telephone number to call into the scheduled hearing and warned in bold and underlined type: **“At the above date and time, you must call into the hearing. If you fail to do so, your case will be dismissed. You will not be called by the Administrative Law Judge.”**

The hearing began on December 19, 2019, as scheduled. The Respondent called-in with a witness available to testify. The Complainant failed to call-in. The Complainant was given an additional ten minutes to call-in but failed to do so.

No witnesses were presented, and no exhibits were introduced into the record. Counsel for PGW moved that the Complaint be dismissed with prejudice for lack of prosecution pursuant to 52 Pa. Code § 5.245. In accordance with Commission policy, I am granting the Motion.

The record closed on January 15, 2020, upon my receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is Michele Thomas.
2. The Respondent is Philadelphia Gas Works.
3. On August 9, 2019, the Complainant filed a Complaint with the Commission against the Respondent.
4. On September 9, 2019, the Respondent filed an Answer to the Complaint.
5. By Hearing Notice dated September 12, 2019, an Initial Call-In Telephone Hearing was scheduled for Tuesday, October 29, 2019 at 10:00 a.m.
6. On October 2, 2019, a Prehearing Order was sent to all parties containing, *inter alia*, a warning of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing.
7. On October 25, 2019, the Complainant filed a Motion for a Continuance due to her being unable to take time off from work.
8. On October 29, 2019, I issued an Order granting the Complainant's Motion for a Continuance.
9. By Cancel/Reschedule Hearing Notice dated October 29, 2019, an Initial Call-In Telephone Hearing was rescheduled for Thursday, December 19, 2019 at 10:00 a.m.
10. Both Hearing Notices warned in bold and underlined type: "**At the above date and time, you must call into the hearing. If you fail to do so, your case will be dismissed. You will not be called by the Administrative Law Judge.**"

11. Both Hearing Notices and the Prehearing Order were sent to the Complainant by regular first-class mail.
12. Neither the Hearing Notices nor the Prehearing Order were returned as undeliverable.
13. The Complainant failed to appear at the December 19, 2019 hearing.

DISCUSSION

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. *Schneider v. Pa. Pub. Util. Comm'n.*, 479 A.2d 10 (Pa. Cmwlth. 1984). This due process requirement is satisfied, however, when the administrative agency provides the parties notice and the opportunity to be heard.

On October 29, 2019, the Commission sent notice of the Initial Hearing in this case to the Complainant by regular first-class mail. The Hearing Notice advised the parties of the date, time, and telephone number to call into the scheduled hearing and warned in bold and underlined type: “**At the above date and time, you must call into the hearing. If you fail to do so, your case will be dismissed. You will not be called by the Administrative Law Judge.**” In addition, I issued a Prehearing Order on October 2, 2019, also warning of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing.

None of the documents mailed to the Complainant were returned as undeliverable. Accordingly, I must presume that these documents, which were sent in the ordinary course of business, were received by the Complainant. *Berkowitz v. Mayflower Securities, Inc.*, 317 A.2d 584 (Pa. 1974); *Meierdierck 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 did not appear for the hearing and has not contacted the Commission. Under these circumstances, the Complainant has had ample opportunity to appear

and be heard in this proceeding. Therefore, the due process rights of the Complainant have been fully protected. *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

Finally, Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of any request for relief. As the party bringing this Complaint, the Complainant bears the burden of proving by a preponderance of the evidence that she is entitled to relief. By failing to appear and proffer any evidence to support her Complaint, the Complainant has failed to meet this burden. Therefore, the Complaint should be dismissed with prejudice. *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Opinion and 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 subject matter of and the parties to 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. The due process rights of the Complainant have been fully protected in this proceeding. *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa. Code § 5.245(a).

4. By failing to appear for the hearing and proffer any evidence to support the Complaint, the Complainant has failed to meet her burden of proving that she is eligible to the relief that she seeks from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Philadelphia Gas Works to dismiss the Complaint filed by Michele Thomas at Docket No. C-2019-3012118 is granted.
2. That the Complaint of Michele Thomas against Philadelphia Gas Works at Docket No. C-2019-3012118 is dismissed with prejudice; and
3. That Docket No. C-2019-3012118 be marked closed.

Date: February 27, 2020

/s/
F. Joseph Brady
Administrative Law Judge