

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Alonna Pressley	:	
	:	
v.	:	F-2019-3014238
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the formal Complaint of Alonna Pressley against Philadelphia Gas Works because she failed to prosecute her Complaint.

HISTORY OF THE PROCEEDING

On November 8, 2019, Alonna Pressley (Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed checkmarks in the boxes indicating “I would like a payment agreement” and “[o]ther.” The Complainant wrote in that she was disputing her responsibility for a bill that belonged to a prior resident at her address. As relief, the Complainant requested that this prior balance be removed from her bill.

On December 2, 2019, the Respondent filed an Answer indicating that: on June 6, 2018, the Complainant contacted PGW to establish gas service in her name at 3015 N. 26th Street, Philadelphia, PA (service address); that PGW issued an AMR turn on; that per Experian, the

Complainant was linked to the Service Address and was advised that she is required to assume the balance owed; that on August 27, 2018 the Complainant filed a dispute challenging her responsibility for this balance; and that the Complainant's dispute was closed on September 20, 2018. PGW requested that the Complaint be dismissed.

By Hearing Notice dated December 6, 2019, an in-person hearing was scheduled for February 4, 2020 at 10:00 a.m., and the matter was assigned to me. The Hearing Notice advised the parties of the location, date and time of the scheduled hearing and warned in italicized and underlined type: "Attention: *You may lose the case if you do not come to this hearing and present facts on the issues raised.*"

I issued a Prehearing Order on December 10, 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 warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing. It also explained that the complainant bears the burden of proof to establish that the respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that she is entitled to the relief requested in the Complaint.

The hearing convened as scheduled on February 4, 2020. Counsel for PGW was present with a witness and was prepared to proceed. Ms. Pressley was not present and had not contacted this office to indicate whether she would or would not appear.

Because a customer who files a complaint before the Commission has an affirmative duty to make himself or herself available to participate in hearings on the complaint, I deemed Ms. Pressley's failure to appear at the location, date and time of the scheduled hearing as evidence that she did not wish to participate in the hearing.

No witnesses were presented and no exhibits were introduced into the record. Respondent's counsel 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 February 28, 2020 upon my receipt of the transcript.

FINDINGS OF FACT

1. The Complainant in this case is Alonna Pressley.
2. The Respondent in this case is Philadelphia Gas Works.
3. On November 8, 2019, the Complainant filed a Complaint with the Commission against the Respondent.
4. The Respondent filed an Answer on December 2, 2019.
5. By Hearing Notice dated December 6, 2019, the Commission scheduled this matter for an in-person Hearing on February 4, 2020 at 10:00 a.m.
6. By Prehearing Order dated December 10, 2019, the parties were reminded of the date and time of the hearing, directed the parties comply with various procedural requirements, and warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing.
7. Neither the Commission's Hearing Notice nor Prehearing Order was never returned to the sender.
8. The Complainant did not request a continuance of the February 4, 2020 hearing.

9. The Complainant failed to appear for the February 4, 2020 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.

The Commission sent notice of the February 4, 2020 hearing in this case to the Complainant on December 6, 2019, by regular first-class mail to the address stated on the Complaint. This notice informed the parties of the date and time of the hearing, as well as how to call in for the hearing. To my knowledge this piece of mail was never returned to the sender, the scheduling staff for the Office of Administrative Law Judge (OALJ) in Harrisburg.

In addition, I issued a prehearing order dated December 10, 2019, which, *inter alia*, warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to appear and participate in the hearing. The prehearing order, which was mailed to the Complainant at the address shown on the Complaint, was never returned. Accordingly, I must presume that this mail, which was sent in the ordinary course of business, was 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 scheduled hearing. Under the circumstances, it appears the Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. 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 her requested relief. By failing to participate and proffer any evidence to support her Complaint, the Complainant has failed to meet her burden. Under these circumstances, 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. 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).
3. 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 entitled 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 at Docket No. F-2019-3014238 is granted;

