

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Shannon Smith	:	
	:	
v.	:	C-2019-3014018
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Kailey B. Maguire
Special Agent

INTRODUCTION

This decision grants a motion to dismiss for failure to prosecute the complaint of a natural gas service customer for the failure of the Complainant to appear at the scheduled hearing, at the designated date and time, despite being given notice of the hearing.

HISTORY OF THE PROCEEDING

On November 4, 2019, Shannon Smith (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent). In her complaint, Ms. Smith averred PGW was threatening to shut off her service or had already shut off her service. As relief, Complainant requested a payment arrangement.

On November 25, 2019, PGW filed an answer in response to the complaint asserting, *inter alia*, it terminated service at 1810 W. Rockland Street, Philadelphia, Pennsylvania (service address) on October 2, 2019, due to non-payment, and denied all other

material allegations in the complaint. PGW concluded its answer by requesting dismissal of the complaint.

The parties have selected to accept electronic service in this Commission proceeding. By selecting electronic service (eService), the parties have agreed that being provided with a notification of the filings as well as a link to the filings in this proceeding via e-mail shall constitute valid legal service in lieu of service through first class mail. Therefore, all documents in this proceeding were served electronically to the parties instead of by first-class mail.¹

On December 3, 2019, the Commission issued a Call-In Telephonic Hearing Notice to the parties, establishing an initial telephonic hearing for January 15, 2020, at 10:00 a.m. and assigning the undersigned as presiding officer.² Of note, the Hearing Notice advised the parties: “*Attention: You may lose this case if you do not take part in this hearing and present facts on the issues raised.*” (emphasis in the original).

On December 4, 2019, a Prehearing Order was issued reminding the parties of the date and time of the hearing and addressed, *inter alia*, the procedures applicable to the hearing including the method by which a party could request a change of the scheduled hearing date if the date was not convenient for them. Further, the Prehearing Order advised the parties:

If you fail to participate in the hearing on the scheduled day and time, the hearing will proceed in your absence. You will be deemed to have waived the opportunity to participate in the hearing. **The case may be dismissed ‘with prejudice,’ whereby, you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.**

(emphasis in the original).

¹ Service may be made electronically to filing users who have agreed to receive electronic service. Filing users will be sent an electronic mail notice informing them that a document was posted on the Commission’s electronic filing system and providing a link to the document on the same day the document is posted. 52 Pa. Code § 1.53(b)(3).

² 52 Pa. Code § 56.174 provides for review by a special agent of any case in which the issue is solely the ability to pay.

Both the Hearing Notice and Prehearing Order were sent to Ms. Smith at the e-mail address she provided to the eService system. The Commission's case docketing system contains no notification that the Hearing Notice and/or Prehearing Order failed to be served electronically to the e-mail address provided by the Complainant.

The hearing convened on January 15, 2020, at 10:00 a.m., as scheduled. Graciela Christlieb, Esquire, appeared on behalf of Respondent and was ready to proceed with one witness. Complainant did not appear. After waiting for approximately fifteen minutes for Complainant to appear and participate, the hearing proceeded in Complainant's absence. As a result, Respondent moved to dismiss the complaint with prejudice for failure of Complainant to appear and prosecute her complaint. The undersigned informed counsel the motion would be taken under advisement and a ruling would be issued in an initial decision.

The record closed on January 15, 2020, following the conclusion of the telephonic hearing.³ As of the date of this decision, no communication has been made to the Office of Administrative Law Judge (OALJ) by Ms. Smith or on her behalf explaining the January 15, 2020 absence. For the reasons discussed below, this decision grants Respondent's motion to dismiss the complaint with prejudice.

FINDINGS OF FACT

1. Complainant is Shannon Smith.
2. Respondent is Philadelphia Gas Works.
3. The service address is 1810 W. Rockland Street, Philadelphia, Pennsylvania.
4. The parties have selected to accept eService in this Commission proceeding. By selecting eService, the parties have agreed that being provided with a notification of the filings

³ Pursuant to 52 Pa. Code § 56.174(3), the hearing was tape recorded. No court reporter was present.

as well as a link to the filings in this proceeding via e-mail shall constitute valid legal service in lieu of service through first class mail. Therefore, all documents in this proceeding were served electronically to the parties instead of by first class mail.

5. On December 3, 2019, a Call-In Telephone Hearing Notice was issued, scheduling this matter for a telephonic hearing to be held on January 15, 2020, at 10:00 a.m.

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

7. By Prehearing Order issued on December 4, 2019, the parties were informed of the date and time of the call-in telephonic hearing and were provided with various procedures applicable to the hearing, notably, the method by which a party could request a continuance of the hearing date, if needed.

8. The Prehearing Order advised the parties: “If you fail to participate in the hearing on the scheduled day and time, the hearing will proceed in your absence. You will be deemed to have waived the opportunity to participate in the hearing. **The case may be dismissed ‘with prejudice,’ whereby, you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.**” (emphasis in the original).

9. Both the Hearing Notice and Prehearing Order provided the parties with the toll-free bridge telephone number and PIN number to participate in the hearing.

10. The Commission's case docketing system contains no notification that the Hearing Notice or the Prehearing Order failed to be delivered electronically at the e-mail address provided by the Complainant.

11. Complainant did not appear by phone to participate in the January 15, 2020 telephonic hearing.

12. As of the date of this decision, no communication has been made to the Office of Administrative Law Judge by Ms. Smith or on her behalf explaining the January 15, 2020 absence.

DISCUSSION

Due Process

As an administrative agency of the Commonwealth, the Commission is required to provide due process to the parties appearing before it. 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.Cmwlt. 1984). The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Montefiore Hospital Ass'n of Western Pa. v. Pa. Pub. Util. Comm'n*, 421 A.2d 481, 484 (Pa. Cmwlt. 1980).

The Commission is required to fix the time and place of a hearing in a complaint proceeding and to serve notice thereof upon the parties in interest. *See* 66 Pa. C.S. § 703(a)-(b). Service on interested persons is sufficient to provide notice. 52 Pa. Code § 5.201(a). Once notice of a hearing and the opportunity to be heard have been provided to the parties, it is the responsibility of the parties to appear and participate in the hearing. *Mumma v. PPL Electric Utilities Corporation*, Docket No. C-00014869 (Order entered January 24, 2002); *Sentner v. Bell Tel. Co. of PA*, Docket No. F-00161106 (Order entered October 25, 1993) (*Sentner*).

In the instant matter, the record shows Complainant was provided both notice and the opportunity to appear and be heard. The December 3, 2019 Hearing Notice and the December 4, 2019 Prehearing Order informed the parties of the date and time of the hearing and addressed, *inter alia*, how to request a continuance prior to the hearing, and that failure to appear for the hearing and present evidence on the issues raised in the complaint would result in dismissal of the complaint.

Both documents were served by eService in accordance with Complainant's selection to receive electronic service of all documents instead of receiving a paper copy via

first-class mail. EService, in lieu of paper service, constitutes valid legal service. 52 Pa.Code § 1.53(b)(3). The Commission's case docketing system contains no notification that the Hearing Notice and/or Prehearing Order failed to be served electronically to the e-mail address provided by the Complainant. 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 the complaint. *Morella v. PECO Energy Company*, Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016); *Zirkel v. Philadelphia Gas Works*, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017). The Complainant made no attempt to notify the presiding officer that she did not plan to participate in the scheduled hearing. Accordingly, it must be presumed these documents, which were eServed to the e-mail address provided by the Complainant, were received by Ms. Smith.

Under these circumstances, the Complainant had ample notice and opportunity to appear and be heard in this proceeding, however, chose not to do so. Additionally, Complainant made no attempt to notify the Presiding Officer she did not plan on participating in the scheduled hearing. Therefore, the due process rights of Complainant have been fully protected. *Sentner*.

Failure to Appear

Both the Public Utility Code and the Commission's regulations provide that, after being notified, a party who fails to appear at a scheduled hearing shall be deemed to have waived the opportunity to participate in the hearing and shall not be permitted thereafter to reopen the disposition of the matter accomplished at the hearing, and not be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f); 52 Pa.Code § 5.245(a)-(b). However, these provisions do not apply if the presiding officer determines that the failure to be represented was unavoidable and that the interests of the other parties and the public would not be prejudiced by permitting the reopening or further examination, 66 Pa.C.S. § 332(f); 52 Pa.Code § 5.245(a)-(b), or if the presiding officer determines that the complainant demonstrated a good faith attempt to attend the hearing. *See, e.g., Then v. Philadelphia Gas Works*, Docket No. F-2012-2318264 (Order entered June 13, 2013); *see also, Wiggins v. PECO Energy Co.*, Docket No. C-2010-2190335 (Order entered October 27, 2011).

The public interest is prejudiced by the wasteful use of the agency's and the respondent's time and resources in addressing a complaint. *See Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995) (*Jefferson*); *see also, e.g., Nichols v. Bell-Atlantic-Pa.*, Docket No. C-00956667 (Order entered August 4, 1995). Out of concern for the waste of the Commission's (and Respondent's) time and resources, the Commission has dismissed *pro se* complaints with prejudice for failure to appear at a hearing. *See e.g., Smith v. PECO Energy Co.*, Docket No. F-2014-2446204 (Order entered September 3, 2015); *Day v. PECO Energy Co.*, Docket No. C-2010-2181515 (Order entered June 10, 2011); and *Geary*.

In the instant matter, Complainant failed to appear for the hearing despite being given two written notices. Further, once the hearing began, the undersigned waited an additional fifteen minutes to allow Complainant time to appear. To date, no communication has been received by the OALJ, by or on behalf of Complainant, regarding whether Complainant's absence was unavoidable or that Ms. Smith made a good faith attempt to attend the hearing. Consequently, Complainant has waived the opportunity to participate in a hearing on the issues raised in the complaint.

Burden of Proof and Dismissal of Complaint

The proponent of any request for relief from the Commission bears the burden of proof. 66 Pa.C.S. § 332(a). To satisfy this burden, a complainant, as the proponent of the request for relief, must show 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 presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

Additionally, the Commission's decision must be supported by substantial evidence in the record. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence 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).

As the proponent of the request for relief from the Commission, Complainant bears the burden of proof. By failing to participate in the January 15, 2020 hearing and proffer any evidence to support the complaint, Complainant has failed to satisfy her burden. Accordingly, the merits of the complaint will not be addressed herein, and the complaint will be dismissed in its entirety with prejudice. *Williams v. PECO Energy Co.*, Docket No. C-2018-300734 (Opinion and Order entered March 14, 2019), citing, *inter alia*, *Jefferson*.

CONCLUSIONS OF LAW

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

2. The Commission is 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).

3. Service may be made electronically to filing users who have agreed to receive electronic service. Filing users will be sent an electronic mail notice informing them that a document was posted on the Commission's electronic filing system and providing a link to the document on the same day the document is posted. 52 Pa. Code § 1.53(b)(3).

4. Absent notification from the Commission's case docketing system indicating that notice has failed to be delivered electronically at the e-mail address provided by the Complainant, the Complainant is deemed to have received notice and had sufficient notice of the day, date and time of the scheduled hearing. *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016); *Zirkel v. Philadelphia Gas Works*, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017).

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 Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993).

6. After being notified, a party who fails to appear at a scheduled hearing shall be deemed to have waived the opportunity to participate in the hearing, not be permitted thereafter to reopen the disposition of the matter accomplished at the hearing, and not be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f); 52 Pa.Code § 5.245(a).

7. If the presiding officer determines that the failure to be represented was unavoidable and that the interests of the other parties and of the public would not be prejudiced by permitting the reopening or further examination, the presiding officer may find that a party did not waive the opportunity to participate in the hearing. 66 Pa.C.S. § 332(f); 52 Pa.Code § 5.245(a).

8. Complainant's due process rights have been fully protected and complainant's failure to appear was not unavoidable nor did Complainant make a good faith attempt to attending the hearing. *Sentner v. Bell Telephone Company of Pa.*, Docket No. F-00161106 (Order entered October 25, 1993); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

9. As the proponent of the request for relief, Complainant bears the burden of proof by a preponderance of the evidence standard. 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

10. By failing to appear and participate in the hearing and proffer any evidence in support of the complaint, Complainant has failed to satisfy her burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Philadelphia Gas Works to dismiss with prejudice the formal complaint of Shannon Smith at Docket No. C-2019-3014018 is granted.

2. That the complaint of Shannon Smith against Philadelphia Gas Works at Docket No. C-2019-3014018 is hereby dismissed with prejudice for failure to appear and prosecute the complaint.

3. That the Secretary's Bureau shall mark Docket No. C-2019-3014018 as closed.

Date: May 4, 2020

/s/
Kailey B. Maguire
Special Agent