

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Russell Spady	:	
	:	
v.	:	C-2019-3014725
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

The Complainant did not appear for the hearing and the formal Complaint (Complaint) is dismissed for failure to prosecute.

HISTORY OF THE PROCEEDING

On December 2, 2019, Russell Spady (Complainant) filed a formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW, Company or Respondent). On the Complaint form, the Complainant states that the Company is threatening to shut off or has shut off his utility service and that the Company says he owes \$15,000.00 to restore his service. The Complainant requests that the Company remove any theft of service charges.

The formal Complaint is an untimely appeal of a Bureau of Consumer Services (BCS) decision at Case No. 3737227 issued on October 1, 2019, which dismissed the Complainant's informal complaint.

PGW filed an Answer on December 23, 2019. PGW denied all material allegations of fact in the Complaint.

On December 24, 2019, a Hearing Notice was mailed to all parties, setting an Initial In-Person Hearing for Thursday, February 13, 2020 at 10:00 a.m. and the matter was assigned to me. The Notice indicated in italicized and underlined text: “*Attention: You may lose the case if you do not come to this hearing and present facts on the issues raised.*” The Notice was mailed to the Complainant at the address on the formal Complaint and was not returned by the U.S. Postal Service as being undeliverable.

A Prehearing Order was issued and mailed to all parties on December 26, 2019, again informing the Complainant of the date, time and location of the hearing and providing procedural information. The Prehearing Order was mailed to the Complainant at the address on the formal Complaint and was not returned by the U.S. Postal Service as being undeliverable. The Prehearing Order on page 2 also advised the Complainant that:

A request for a change of the scheduled hearing date must state the agreement or opposition of other parties, and must be submitted in writing no later than five (5) business days prior to the hearing. . . Changes are granted only in rare situations where good cause exists. (Emphasis in the original)

(Emphasis in original). Also, in bold print on page 3, the Prehearing Order advised that:

THE COMPLAINT WILL BE DISMISSED IF THE CUSTOMER FAILS TO PARTICIPATE IN THE HEARING AND PRESENT EVIDENCE IN SUPPORT OF THE COMPLAINT.

The hearing began on February 13, 2020, at 10:23 a.m. Laureto Farinas, Esquire, was present on behalf of PGW. The Complainant was not present. The Complainant had not called or otherwise contacted the Commission to request a continuance or to explain his absence. Attorney Farinas moved that the matter be dismissed for failure to prosecute.

The record closed on February 27, 2020, upon my receipt of the 7-page transcript. PGW's Motion to Dismiss for failure to prosecute is ready for a decision.

FINDINGS OF FACT

1. The Complainant is Russell Spady, who resides at 647 North 56th Street, Philadelphia, Pennsylvania 19131.
2. Philadelphia Gas Works is the Respondent.
3. On December 2, 2019, the Complainant filed this action.
4. The Respondent filed an Answer on December 23, 2019.
5. On December 24, 2019, a Hearing Notice was mailed to all parties, setting an Initial In-Person Hearing for Thursday, February 13, 2020, beginning at 10:00 a.m.
6. The Hearing Notice was mailed to the Complainant at the address provided in the Complaint.
7. A Prehearing Order was issued and mailed to all parties on December 26, 2019, again informing the Complainant of the date, time and location of the hearing and providing procedural information.
8. The Prehearing Order was mailed to the Complainant at the address provided in the Complaint.
9. The Prehearing Order at page 2 also advised the Complainant that:

A request for a change of the scheduled hearing date must state the agreement or opposition of other parties, and must be submitted in writing no later than five (5) business days

prior to the hearing. . .Changes are granted only in rare situations where good cause exists.

(Emphasis in original).

10. In bold print, the Prehearing Order advised on page 3 that:

THE COMPLAINT WILL BE DISMISSED IF THE CUSTOMER FAILS TO PARTICIPATE IN THE HEARING AND PRESENT EVIDENCE IN SUPPORT OF THE COMPLAINT.

11. On the day of the hearing, PGW was present and represented by counsel.
12. The Complainant was not present when the hearing began at 10:23 a.m.
13. The Complainant has not contacted the Commission about the hearing.
14. None of the documents mailed to the Complainant were returned as undeliverable.
15. The Complainant did not request a continuance or provide a statement of "good cause" for his absence on the scheduled hearing date.

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). The essential elements of due process in an administrative proceeding are notice and an opportunity to be heard. *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (Pa.Cmwlth. 2016). Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 1994).

A Hearing Notice and a Prehearing Order were mailed to the Complainant. The Prehearing Order and the Hearing Notice contained information regarding the date, time and location of the hearing. These documents were mailed to the address provided by the Complainant in his Complaint and none of these documents was returned by the U.S. Postal Service to the Commission as undeliverable. It is therefore deemed that the Complainant received these documents and had notice of the date and time of the scheduled hearing. *Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 531, 317 A.2d 584 (1974).

As the Commission noted in *Strydio v. PPL Electric Utilities Corporation*, 2018 Pa. PUC LEXIS 258, *8, Docket No. C-2017-263304, p. 6 (Opinion and Order entered July 18, 2018) "[o]nce notice of a hearing and the opportunity to be heard have been provided by the Commission, it is the responsibility of the parties to appear and participate in the hearing," *citing, 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). The Complainant was notified of the scheduled hearing and did not appear. To date, the Complainant has not contacted the Commission or the undersigned regarding this hearing. The Complainant has waived the opportunity to participate in the hearing by failing to appear. 52 Pa.Code § 5.245(a); *Jefferson v. UGI Utilities, Inc.*, 1995 Pa. PUC LEXIS 159 (Opinion and Order entered December 26, 1995).

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 he is entitled to relief. By failing to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden. The Complaint will be dismissed. *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 and the parties to this proceeding. 66 Pa.C.S. § 701.

2. The Complainant received notice of the hearing. *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 1994), *appeal denied*, 653 A.2d 1234 (Pa. 1994).

3. The due process rights of the Complainant have been fully protected in this proceeding. *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (Pa.Cmwlth. 2016); *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. As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).

5. The Complainant did not participate in the hearing, failed to appear for the hearing and did not present any evidence; therefore, he failed to meet his burden of proving he is eligible to the relief that is sought 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 Russell Spady at Docket No. C-2019-3014725 is granted.

