

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tierra Hayes	:	
	:	
v.	:	C-2020-3016737
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Alphonso Arnold III
Special Agent

INTRODUCTION

This Initial Decision dismisses the Complaint because the Complainant failed to appear for the hearing to prosecute her Complaint.

HISTORY OF THE PROCEEDING

On January 16, 2020, Tierra Hayes (Complainant or Ms. Hayes) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW), seeking a payment arrangement.

On February 12, 2020, PGW filed an Answer to the Complaint, wherein it admitted or denied the averments in the Complaint. PGW requested that the Commission dismiss the Complaint.

By Hearing Notice served on the parties on February 14, 2020, the Commission scheduled this matter for a telephonic hearing on April 7, 2020 and assigned the case to me as

presiding officer. The telephonic hearing was cancelled and rescheduled to June 16, 2020 at 10:00 a.m. by Rescheduled Hearing Notice served on the parties on April 27, 2020. A Second Prehearing Order, served on the parties on June 3, 2020, addressed, inter alia, the procedures applicable to the hearing and the method by which a party could request a change of the scheduled hearing date if the date was not convenient for them.

The Rescheduled Hearing Notice and Second Prehearing Order were served to Ms. Hayes electronically, at the email address Ms. Hayes listed on her Complaint form. These documents were served electronically in compliance with the Commission's March 20, 2020, Emergency Order, which provides that service by the Commission on parties will be exclusively electronic during the pendency of the Proclamation of Disaster Emergency issued by Pennsylvania Governor Wolf in response to the COVID-19 pandemic. See, Emergency Order re Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements, M-2020-3019262 at 4 (Order entered March 20, 2020).

Both the Rescheduled Hearing Notice and Second Prehearing Order informed the parties that in order to participate in the June 16, 2020 hearing they would need to call a toll-free Conference Number and enter a Participant Passcode. The Notice and Order also stated the following: “**At the above date and time, you must in call into the hearing. If you fail to do so, your case will be dismissed. You will not be called by the Special Agent.**” (emphasis in the originals).

The June 16, 2020 hearing was held as scheduled. Graciela Christlieb, Esquire, appeared on behalf of PGW with one witness. Ms. Hayes did not appear for the hearing at 10:00 a.m., thus the hearing was delayed to give Ms. Hayes additional time to call in. The hearing began at 10:15 a.m. without Ms. Hayes having called in to participate. No witnesses were presented, and no exhibits were introduced for the record. PGW made a Motion to dismiss the Complaint with prejudice for failure to prosecute. PGW was informed that the Motion would be taken under advisement.

The record closed on June 16, 2020, following the conclusion of the telephonic hearing. As of the date of this Initial Decision, I have received no communication on Ms. Hayes' behalf to explain her absence from the telephonic hearing. For the reasons discussed below, PGW's Motion to dismiss will be granted, and the Complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant is Tierra Hayes.
2. The Respondent is Philadelphia Gas Works.
3. By Rescheduled Hearing Notice served on the parties on April 27, 2020, the Commission scheduled this matter for a telephonic hearing on June 16, 2020 at 10:00 a.m.
4. A Second Prehearing Order served on the parties on June 3, 2020, reminded the parties of the date and time of the telephonic hearing and addressed, inter alia, the procedures applicable to the hearing and the method by which a party could request a change of the scheduled hearing date if the date was not convenient for them.
5. The Rescheduled Hearing Notice and Second Prehearing Order were served to Ms. Hayes electronically, at the email address Ms. Hayes listed on her Complaint form.
6. The Commission did not receive any return email that indicated that the Rescheduled Hearing Notice or the Second Prehearing Order failed to be delivered electronically at the email address provided by Ms. Hayes on her Complaint form.
7. Both the Rescheduled Hearing Notice and Second Prehearing Order informed the parties that in order to participate in the June 16, 2020 hearing they would need to call a toll-free Conference Number and enter a Participant Passcode.

8. The Rescheduled Hearing Notice and Second Prehearing Order stated the following: “**At the above date and time, you must in call into the hearing. If you fail to do so, your case will be dismissed. You will not be called by the Special Agent.**” (emphasis in the originals).

9. Ms. Hayes did not call in to participate in the June 16, 2020 telephonic hearing.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must show that 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 that presented by the other party. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa.Cmwlt. 1990), alloc. den., 602 A.2d 863 (Pa. 1992); Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

Administrative agencies, like the Public Utility Commission, are 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.Cmwlt. 1984).

The Complainant did not participate in the June 16, 2020 hearing. As a result of the Complainant’s nonappearance, the Respondent made an oral Motion to dismiss the Complaint for failure to prosecute.

The date and time of the hearing were provided in the Rescheduled Hearing Notice and Second Prehearing Order served to the Complainant in this matter. The Notice and

Order were served electronically on the Complainant to the email address that the Complainant listed on her Complaint form. The Commission's March 20, 2020 Emergency Order provides that service by the Commission on parties will be exclusively electronic during the pendency of the Proclamation of Disaster Emergency issued by Pennsylvania Governor Wolf in response to the COVID-19 pandemic. See, Emergency Order re Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements, M-2020-3019262 at 4 (Order entered March 20, 2020). Therefore, electronic service of the Notice and Order is in compliance with the Commission's Emergency Order.

The Commission did not receive any return email that indicated that the Notice or Order failed to be delivered electronically at the email address provided by the Complainant on her Complaint form. 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 her 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 Notice and Order informed the Complainant that on June 16, 2020 at 10:00 a.m. she was to dial a toll-free number and enter a passcode to call into the hearing to participate. The hearing was held without the Complainant because the Complainant never called into the hearing. The Notice and Order warned the Complainant that her case would be dismissed if she failed to participate in the scheduled hearing. The Complainant made no attempt to notify the presiding officer that she did not plan to participate in the scheduled hearing.

Under these circumstances, the Complainant had ample opportunity to appear and be heard in this proceeding but chose not to do so. Once notice of a hearing and the opportunity to be heard have been provided to the parties, it is the responsibility of both parties to appear and participate in the hearing. Schneider v. Pa. Pub. Util. Comm'n, 479 A.2d 10 (Pa.Cmwlth. 1984). Therefore, the due process rights of the Complainant have been fully protected. Sentner v. Bell Tel. Co. of Pa., Docket No. F-00161106 (Opinion and Order entered October 25, 1993). The Complainant did not appear, and the hearing proceeded in her absence. Both 66 Pa.C.S.A.

§ 332(f) and 52 Pa.Code § 5.245(a) provide that a party who fails to be represented at a scheduled hearing shall waive the opportunity to participate in the hearing and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat.

§ 332. Procedures in general.

(f) Actions of parties and counsel.--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, or to recall for further examination of witnesses who were excused, unless the presiding officer shall determine that failure to be represented was unavoidable and that the interests of the other parties and the public would not be prejudiced by permitting such reopening or further examination. . . .

66 Pa.C.S. § 332(f).

§ 5.245. Failure to appear, proceed or maintain order in proceedings.

(a) After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will:

(1) Be deemed to have waived the opportunity to participate in the conference or hearing.

(2) Not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing.

52 Pa. Code § 5.245(a)(1)-(2).

As the party seeking relief from the Commission, the Complainant bears the burden of proof. By choosing not to participate in the hearing and proffer any evidence to support the Complaint, the Complainant failed to meet this burden.

The due process rights of the Complainant have been protected. The Complainant had notice of the scheduled hearing and failed to appear to prosecute her Complaint. Therefore, the Respondent's Motion to dismiss the Complaint is granted. Ms. Hayes' Complaint will be dismissed without prejudice.

CONCLUSIONS OF LAW

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

2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).

3. Administrative agencies are 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).

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

5. By failing to appear at his scheduled hearing, the Complainant waived her opportunity to participate in the hearing and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat, or to recall for further examination of witnesses who were excused. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

6. The Complainant's due process rights have been fully protected. Sentner v. Bell Telephone Company of Pennsylvania, Docket No. F-00161106 (Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

7. By failing to appear and proffer any evidence in support of the Complaint, the Complainant has failed to meet the burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That Philadelphia Gas Works' Motion to dismiss the Complaint in the matter of Tierra Hayes v. Philadelphia Gas Works, Docket No. C-2020-3016737, is granted.
2. That Tierra Hayes' Complaint against Philadelphia Gas Works at Docket No. C-2020-3016737 is dismissed without prejudice.
3. That the docket at Docket No. C-2020-3016737 is marked closed.

Date: June 25, 2020

/s/
Alphonso Arnold III
Special Agent