

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Shari Palmer

v.

Philadelphia Gas Works

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F-2019-3013070

**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 September 13, 2019, Shari Palmer (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 indicated that the utility was threatening to shut off or had shut off her service and there were incorrect charges on her bills.

The formal Complaint is a timely appeal of a decision of the Bureau of Consumer Services (BCS) at Case No. 3659083 issued on July 17, 2019, which dismissed the Complainant's informal complaint.

On October 22, 2019, PGW filed an Answer and New Matter. PGW denied all material allegations of fact in the Complaint and indicated in the New Matter that a final bill had been issued on the account in March 4, 2015.

Also on October 21, 2019, PGW filed Preliminary Objections to the formal Complaint, in which PGW argued that the Commission lacks jurisdiction in the matter because it was beyond the statute of limitations under 66 Pa.C.S. § 3314 of the Public Utility Code.

On November 21, 2019, the Complainant filed a response to the Answer and New Matter but did not respond to the Preliminary Objections.

On December 4, 2019, a Hearing Notice was mailed to all parties, setting an Initial In-Person Hearing for Tuesday, February 4, 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 10, 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).

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.**

Due to a conflict in my schedule, the matter was rescheduled for a hearing on Monday, March 2, 2020, at 10:00 a.m. via a Cancellation/Reschedule Notice dated January 23, 2020. This 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. The Notice also contained the same warning as the December 4, 2019, Notice which indicated that the Complaint would be dismissed if the Complainant did not appear.

The hearing began on March 2, 2020, at 10:21 a.m. Graciela Christlieb, 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 her absence. Attorney Christlieb moved that the matter be dismissed for failure to prosecute.<sup>1</sup>

The record closed on May 6, 2020, upon receipt of the transcript. PGW's Motion to Dismiss for Failure to Prosecute is ready for a decision.

FINDINGS OF FACT

1. The Complainant is Shari Palmer, who resides at 4526 North 12<sup>th</sup> Street, Philadelphia, Pennsylvania 19140.
2. The Respondent is Philadelphia Gas Works.
3. On September 13, 2019, the Complainant filed this action.
4. The Respondent filed an Answer and New Matter on October 22, 2019.

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<sup>1</sup> I issued an Order on March 3, 2020 which addressed the Preliminary Objections and dismissed them because they were filed in an untimely manner under 52 Pa.Code §§ 5.101(d) and 5.61(a) of the Commission's regulations.

5. On December 4, 2019, a Hearing Notice was mailed to all parties, setting an Initial In-Person Hearing for Tuesday, February 4, 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 10, 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 4 that:

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

11. On January 23, 2020, a Cancellation/Reschedule Notice was mailed to the parties, indicating the hearing on February 4, 2020 was cancelled and the matter was rescheduled for an initial hearing on Monday, March 2, 2020 at 10:00 a.m.

12. The Notice was mailed to the Complainant at the address provided in the Complaint.

13. On the day of the hearing, PGW was present and represented by counsel.
14. The Complainant was not present when the hearing began at 10:21 a.m.
15. The Complainant has not contacted the Commission about the hearing.
16. None of the documents mailed to the Complainant were returned as undeliverable.
17. The Complainant did not request a continuance or provide a statement of "good cause" for her 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 her Complaint and none of these documents was returned by the U.S. Postal Service to the Commission as undeliverable. The Complainant was also sent the Cancellation/Reschedule Notice with the information regarding the rescheduled hearing. This Notice was sent to the Complainant at the address listed on the Complaint form and it was not returned by the U.S. Postal Service as being 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 she 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 and, therefore, she failed to meet her burden of proving that she is eligible for 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 Shari Palmer at Docket No. F-2019-3013070 is granted.

2. That the Complaint of Shari Palmer against Philadelphia Gas Works at Docket No F-2019-3013070 is dismissed.

3. That Docket No. F-2019-3013070 be marked closed.

Date: June 25, 2020

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/s/  
Marta Guhl  
Administrative Law Judge