

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Stephen P. Crane

v.

UGI Utilities, Inc.

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C-2019-3014372

INITIAL DECISION

Before
Darlene Davis Heep
Administrative Law Judge

INTRODUCTION

The Complaint is dismissed for the failure of the Complainant to appear for the hearing and prosecute the Complaint.

HISTORY OF THE PROCEEDING

On November 14, 2019, Stephen P. Crane (Complainant) filed a formal Complaint (Complaint) against UGI Utilities, Inc. (UGI, Respondent or Company). In the Complaint, Mr. Crane alleges that UGI did not properly restore his sidewalk after the company dug up the sidewalk to install new gas lines.

On December 3, 2019, Respondent filed its Answer (Answer), denying the material averments of the Complaint. UGI also stated that there were preexisting problems with the sidewalk and beneath it.

On December 4, 2019, a Hearing Notice was mailed to all parties, setting an Initial Call-In Telephonic Hearing for January 27, 2020 at 10:00 a.m.

On December 6, 2019, a Prehearing Order was mailed to all parties.

The hearing convened as scheduled on January 27, 2020. UGI was represented by Jorge Pereira, Esquire. The Complainant did not call in for the hearing. Attorney Pereira moved that the matter be dismissed for failure to prosecute. The motion was granted pending a written decision.

Subsequent to the January 27, 2020 hearing, the December 4, 2019 Prehearing Order mailed to the Complainant was returned as “undeliverable” by the United States Postal Service (USPS).

On February 25, 2020, a Further Call-In Telephonic Hearing Notice was mailed to all parties for a telephonic hearing to be held on April 1, 2020. Following Commission work from home orders related to the COVID-19 pandemic, the hearing was cancelled and rescheduled. On March 27, 2020, the undersigned emailed the Complainant at the email address provided by the Complainant in the Complaint, advising him that the hearing was cancelled and would be rescheduled.

On April 23, 2020, a Further Call-In Telephonic Hearing Notice setting a hearing for May 27, 2020 at 10:00 a.m. was issued. The Notice also included the telephone number to call in for the hearing and contact information for the Commission staff. The Notice was sent to the parties at the email addresses provided by the parties.

On May 8, 2020, a Prehearing Order was issued which addressed procedural matters and contained the hearing call-in telephone number and an email address to forward exhibits to the assigned Legal Assistant. The Prehearing Order was sent to the email addresses provided by the parties.

The hearing convened at 10:00 on May 27, 2020 as scheduled. UGI was represented by Larry R. Crayne, Esquire, who had two witnesses on the call prepared to testify. The Complainant did not call in. A recess was taken to allow the Complainant time to call in.

The hearing reconvened at 10:16 a.m. The Complainant was not present. Counsel for UGI moved that the matter be dismissed for failure to prosecute. The motion was granted pending a written decision.

The record closed on June 8, 2020, upon receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is Stephen P. Crane of Wescosville, Pennsylvania.
2. The Respondent is UGI Utilities, Inc. (UGI).
3. On November 19, 2019, the Complainant filed a formal complaint against UGI.
4. The Respondent filed an Answer on December 3, 2019.
5. On December 4, 2020, a Call-In Telephonic Hearing Notice was mailed to all parties, setting the hearing for January 27, 2020 at 10:00 a.m.
6. The December 4, 2020 Call-In Telephonic Hearing Notice contained a dial-in number and code to be entered by the parties to participate in the hearing.
7. A Prehearing Order for the January 27, 2020 telephonic hearing was mailed to all parties on December 6, 2019.
8. The hearing convened as scheduled on January 27, 2020.

9. The Complainant did not call in to the January 27, 2020 hearing and counsel for UGI moved that the matter be dismissed.

10. The UGI motion to dismiss for failure to prosecute was granted pending an issued decision.

11. After the January 27, 2020 hearing, the Prehearing Order was returned as undeliverable.

12. On February 25, 2020, a Further Call-In Telephonic Hearing Notice was issued for a hearing to be held on April 1, 2020.

13. Following Commission work from home orders related to the COVID-19 pandemic, the April 1, 2020 hearing was cancelled and rescheduled.

14. On March 27, 2020, an email was sent by the undersigned to the Complainant, at the email address provided by the Complainant on the Complaint, advising him that his April 1, 2020 hearing was cancelled and would be rescheduled.

15. The email sent by the undersigned to the Complainant on March 27, 2020, was not returned as undeliverable.

16. On April 23, 2020, a Further Call-In Telephonic Hearing Notice was issued setting a hearing for May 27, 2020 at 10:00 a.m.

17. The April 23, 2020 Hearing Notice also contained the telephone number to call in for the May 27, 2020 hearing and contact information for the Commission staff.

18. The April 23, 2020 Hearing Notice was sent to the parties at the email addresses they provided.

19. In the email containing the Hearing Notice, the Complainant was advised that he should sign up for eFiling, or electric filing and access to this matter, and was provided the Commission website address.

20. The Hearing Notice emailed to the Complainant stated:

“The Public Utility Commission offers a free eFiling Subscription Service, which allows users to automatically receive an email notification whenever a document is added, removed, or changed on the PUC website regarding a specific case. Instructions for subscribing to this service are on the PUC’s website at http://www.puc.pa.gov/Documentation/eFiling_Subscriptions.pdf.”

21. The Complainant did not sign up for eService or eFiling.

22. The Hearing Notice emailed to the Complainant stated:

“At the above date and time, you must call into the hearing. If you fail to do so, your case will be dismissed. You will not be called by the Presiding Officer.”

and

“Attention: You may lose the case if you do not take part in this hearing and present facts on the issues raised.”

(Emphasis in originals).

23. On May 8, 2020, a Prehearing Order was issued for the May 27, 2020 hearing and addressed procedural matters and contained the call-in telephone number and an email address to forward exhibits to the assigned Legal Assistant.

24. The May 8, 2020 Prehearing Order advised:

“THIS COMPLAINT MAY BE DISMISSED IF THE COMPLAINANT FAILS TO PARTICIPATE IN THE HEARING AND PRESENT EVIDENCE IN SUPPORT OF THE COMPLAINT.”

(Emphasis in original).

25. The hearing convened at 10:00 a.m. on May 27, 2020 as scheduled.

26. UGI was represented by Larry R. Crayne, Esquire, who had two witnesses on the call prepared to testify.

27. The Complainant did not call in for the May 27, 2020 hearing at 10:00 a.m.

28. A recess was taken to allow the Complainant time to call in.

29. The hearing reconvened at 10:16 a.m. and the Complainant was not present and had not contacted the Commission.

30. The Hearing Notice and the Prehearing Order for the May 27, 2020 hearing were sent to the parties at the email addresses provided by the parties.

31. None of the emails sent to the Complainant by the Commission was returned as undeliverable.

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).

Following COVID-19 work restriction orders, the undersigned sent an email to the Complainant at the email address provided by the Complainant on the Complaint, advising him that the hearing in this matter scheduled for April 1, 2020 was cancelled and would be rescheduled. The hearing was rescheduled for May 27, 2020.

On April 23, 2020, a Hearing Notice for the May 27, 2020 hearing was sent to the email address provided by the Complainant. The email containing the Hearing Notice also informed the Complainant that he could sign up for eservice on the Commission's website and provided the website address. Included in the Hearing Notice itself was another statement informing the Complainant that he could sign up for the free Commission electronic filing service to receive and have notice of documents filed. The Complainant did not sign up for this service.

A Prehearing Order issued for the May 27, 2020 hearing was also sent to the Complainant at the email address that he provided. Both the Hearing Notice and the Prehearing Order contained the call-in telephone number and code to be used to participate in the hearing and provided contact information for the Commission and staff.

During this period of the Governor's Disaster Emergency Declaration in response to the COVID-19 pandemic, the Commission directed service to be electronic. Here, email was the method of delivery of notice for the hearing and prehearing order. Service was made pursuant to the Commission's Order issued on March 20, 2020, which provides that service by the Commission on parties will be exclusively electronic during the pendency of the Proclamation of Disaster Emergency. See, *Emergency Order re Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements*, M-2020-3019262, at 4 (March 20, 2020). Notice electronically served to a party with no notification that service failed

is presumed received. *Zirkel v. Philadelphia Gas Works*, Docket No. C-2016-2561176 (Final Order entered April 7, 2017); *Morella V. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered January 31, 2017); and *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Final Order entered December 19, 2019).

None of the emails sent by the Commission to the Complainant was returned as undeliverable. It is therefore deemed that the Complainant had notice of the date and time and participation information for the May 27, 2020 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 for the hearing. Additionally, the Hearing Notice advised the Complainant that his case could be dismissed if he did not call in and participate in the hearing.

To date, the Complainant has not contacted the Commission or the undersigned regarding the 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. The Complainant was advised in the Hearing Notice and the Prehearing Order that he could lose his case if he did not participate in the hearing or present facts on the issues presented. By failing to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden. Consequently, 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, did not present any evidence and, therefore, he failed to meet his burden of proving that he is eligible for the relief sought from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of UGI Utilities, Inc. to dismiss the Complaint filed by Stephen P. Crane at Docket Number C-2019-3014372 is granted.
2. That the Complaint of Stephen P. Crane against UGI Utilities, Inc. at Docket Number C-2019-3014372 is dismissed.
3. That Docket Number C-2019-3014372 be marked closed.

Date: July 2, 2020

_____/s/
Darlene Davis Heep
Administrative Law Judge