

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Eric Smalls	:	
	:	
v.	:	F-2019-3014115
	:	
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 his Complaint.

HISTORY OF THE PROCEEDING

On November 1, 2019, Eric Smalls (Complainant or Mr. Smalls) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW). Mr. Smalls alleged that he was not responsible for gas service ordered in his name while he was incarcerated. The Complaint is a timely appeal of a decision made by the Commission's Bureau of Consumer Services (BCS) at BCS No. 3677065.

On December 2, 2019, 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 December 12, 2019, the Commission scheduled this matter for a telephonic hearing on February 11, 2020 and assigned the case to me as presiding officer. A Prehearing Order, served on the parties on January 31, 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 February 11, 2020, hearing was held as scheduled. Mr. Smalls appeared *pro se*. Laureto Farinas, Esquire, appeared on behalf of PGW with one witness. The parties made a request to continue the hearing, and as a result, the continuance request was granted on the record. No witnesses were presented, and no exhibits were introduced for the record.

By Hearing Notice served on the parties on February 11, 2020, the matter was scheduled for a further hearing on April 21, 2020. The April 21, 2020 hearing was subsequently cancelled. By Hearing Notice served on the parties on May 22, 2020, the matter was rescheduled for a further hearing on June 30, 2020.

The May 22, 2020 Hearing Notice was served to Mr. Smalls electronically at the email address Mr. Smalls listed on his Complaint form. This document was 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).

The May 22, 2020 Hearing Notice informed the parties that in order to participate in the June 30, 2020 hearing they would need to call a toll-free Conference Number and enter a Participant Passcode. The Notice also gave the following warning: “**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 original).

The June 30, 2020 hearing was held as scheduled. Laureto Farinas, Esquire, appeared on behalf of PGW with one witness. Mr. Smalls did not appear for the hearing at 10:00 a.m., thus the hearing was delayed to give Mr. Smalls additional time to call in. The hearing began at 10:15 a.m. without Mr. Smalls 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 30, 2020, following the conclusion of the telephonic hearing. As of the date of this Initial Decision, I have received no communication on Mr. Smalls' behalf to explain his 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 Eric Smalls.
2. The Respondent is Philadelphia Gas Works.
3. By Hearing Notice served on the parties on May 22, 2020, the Commission scheduled this matter for a further telephonic hearing on June 30, 2020 at 10:00 a.m.
4. The Hearing Notice was served to Mr. Smalls electronically at the email address Mr. Smalls listed on his Complaint form.
5. The Commission did not receive any return email that indicated that the Hearing Notice failed to be delivered electronically at the email address provided by Mr. Smalls on his Complaint form.

6. The Hearing Notice informed the parties that in order to participate in the June 30, 2020 hearing they would need to call a toll-free Conference Number and enter a Participant Passcode.

7. The Hearing Notice gave the following warning: “**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 original).

8. Mr. Smalls did not call in to participate in the June 30, 2020 further 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.Cmwth. 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.Cmwth. 1984).

The Complainant did not participate in the June 30, 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 was provided in the May 22, 2020, Hearing Notice served to the Complainant in this matter. The Notice was served electronically on the Complainant to the email address that the Complainant listed on his 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 was in compliance with the Commission's Emergency Order.

The Commission did not receive any return email that indicated that the Notice failed to be delivered electronically at the email address provided by the Complainant on his 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 his 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 informed the Complainant that on June 30, 2020 at 10:00 a.m. he 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 warned the Complainant that his case would be dismissed if he failed to participate in the scheduled hearing. The Complainant made no attempt to notify the presiding officer that he 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 his 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 his Complaint. Therefore,

the Respondent's Motion to dismiss the Complaint is granted. Mr. Smalls' Complaint will be dismissed without prejudice.¹

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 his 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).

¹ PGW moved for the Complaint be dismissed with prejudice. Due to the COVID-19 pandemic, the Complaint will be dismissed without prejudice.

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 Eric Smalls v. Philadelphia Gas Works, Docket No. F-2019-3014115, is granted.

2. That Eric Smalls' Complaint against Philadelphia Gas Works at Docket No. F-2019-3014115 is dismissed without prejudice.

3. That the docket at Docket No. F-2019-3014115 is marked closed.

Date: July 6, 2020

/s/
Alphonso Arnold III
Special Agent