

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Temple of Bethel	:	
	:	
v.	:	C-2020-3018097
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complaint of Temple of Bethel against Philadelphia Gas Works because neither the Complainant nor a counsel for the Complainant appeared at the hearing to prosecute the Complaint.

HISTORY OF THE PROCEEDING

On February 7, 2020, Temple of Bethel (Complainant or Temple of Bethel) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant states that the utility is threatening to shut off the gas service and that there are incorrect charges on the gas bill. As relief, the Complainant requests that the heater, radiators, and pipes at the Service Address be fixed.

On March 3, 2020, PGW filed an Answer denying the material allegations of the Complaint.

By Hearing Notice dated March 4, 2020, an initial in-person hearing was scheduled for April 9, 2020, at 10:00 a.m. The Hearing Notice advised the parties of the location, date and time of the scheduled hearing and warned in italicized type: “*Attention: You may lose the case if you do not come to this hearing and present facts on the issues raised.*”

Due to the COVID-19 pandemic, the in-person hearing was changed to a telephonic hearing and rescheduled for June 11, 2020, at 10:00 a.m., by Initial Hearing Type Change/Rescheduled Notice issued on April 23, 2020. The Notice warned in underlined bold type: “**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.**”

I issued a Prehearing Order on May 26, 2020. The Prehearing Order directed the parties to comply with various procedural requirements and directed that a request to change the scheduled hearing should be sent to me at least five days prior to the hearing date, be in writing and state the agreement or opposition of the other party. It also warned in underlined bold type: “**You must call into the hearing on the scheduled day and time (Thursday, June 11, 2020, at 10:00 a.m.) If you fail to do so, your case will be dismissed. You will not be called by the Administrative Law Judge.**”

The Hearing Notices and the Prehearing Order were served electronically (eService) upon the parties, per the audit history of the docket. Neither the Hearing Notices nor the Prehearing Order were returned as undeliverable.

The hearing began on June 11, 2020, as scheduled. Counsel for PGW was present with a witness and was prepared to proceed. Neither Complainant nor a counsel for the Complainant called into the hearing at the scheduled time. The hearing convened at approximately 10:50 a.m., after I confirmed that the Complainant had not called, or otherwise shown good cause not to appear at the scheduled hearing. Tr. 4-5.

Counsel for PGW moved to dismiss the Complaint for lack of prosecution. That Motion is granted pursuant to the ordering paragraphs below.

The record closed on June 23, 2020, upon my receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is Temple of Bethel.
2. The Respondent is Philadelphia Gas Works.
3. On February 7, 2020, the Complainant filed a Complaint with the Commission against the Respondent.
4. On March 3, 2020, the Respondent filed an Answer to the Complaint.
5. By Hearing Notice dated March 4, 2020, an initial in-person hearing was scheduled for April 9, 2020, at 10:00 a.m.
6. Due to the COVID-19 pandemic, the in-person hearing was changed to a telephonic hearing and rescheduled for June 11, 2020, at 10:00 a.m., by Initial Hearing Type Change/Rescheduled Notice issued on April 23, 2020.
7. On May 26, 2020, a Prehearing Order was sent to all parties containing, *inter alia*, a warning of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing.
8. Both Hearing Notices and the Prehearing Order were served electronically (eService) upon the Complainant.
9. Neither the Hearing Notices nor the Prehearing Order were returned as undeliverable.
10. The Complainant failed to appear at the June 11, 2020 hearing.

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). This due process requirement is satisfied, however, when the administrative agency provides the parties notice and the opportunity to be heard. *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (Pa.Cmwlth. 2016).

On March 4, 2020, the Commission sent notice of the initial hearing to the Complainant by electronic mail. The Hearing Notice advised the parties of the location, date and time of the scheduled hearing and warned in italicized type: “*Attention: You may lose the case if you do not come to this hearing and present facts on the issues raised.*” Due to the COVID-19 pandemic, the in-person hearing was changed to a telephonic hearing and rescheduled for June 11, 2020 at 10:00 a.m., by Initial Hearing Type Change/Rescheduled Notice issued on April 23, 2020. The Notice warned in underlined bold type: “**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.**” In addition, I issued a Prehearing Order on May 26, 2020, also warning in underlined, bold type: “**You must call into the hearing on the scheduled day and time (Thursday, June 11, 2020, at 10:00 a.m.) If you fail to do so, your case will be dismissed. You will not be called by the Administrative Law Judge.**”

The Hearing Notices and the Prehearing Order were served electronically (eService) upon the parties, per the audit history of the docket. Neither the Hearing Notices nor the Prehearing Order were returned as undeliverable. Accordingly, I must presume that these documents, which were sent in the ordinary course of business, were received by the Complainant. *Morella v. PECO Energy Co.*, 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).

Neither Complainant nor a counsel for the Complainant appeared for the hearing or contacted the Commission. Under these circumstances, the Complainant has had ample

opportunity to appear and be heard in this proceeding. Therefore, the due process rights of the Complainant have been fully protected. *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa. Code § 5.245(a).

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 it is entitled to relief. By failing to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden. Therefore, the Complaint should be dismissed. *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); *El-Ayazra v. West Penn Power Co.*, 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 of and the parties to this proceeding. 66 Pa.C.S. § 701.

2. Absent notification indicating that notice failed to be delivered electronically to the Complainant, the Complainant is deemed to have received notice and had sufficient notice of the day, date and time of the scheduled hearing. *Morella v. PECO Energy Co.*, 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).

3. The due process rights of the Complainant have been fully protected in this proceeding. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa. Code § 5.245(a).

4. By failing to appear for the hearing and proffer any evidence to support the Complaint, the Complainant has failed to meet the burden of proving that it 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 Philadelphia Gas Works to dismiss the formal Complaint filed by Temple of Bethel at Docket No. C-2020-3018097 is granted.
2. That the formal Complaint of Temple of Bethel against Philadelphia Gas Works at Docket No. C-2020-3018097 is dismissed without prejudice.
3. That Docket No. C-2020-3018097 be marked closed.

Date: August 17, 2020

_____/s/
Eranda Vero
Administrative Law Judge