

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Thomas Picheco	:	
	:	
v.	:	C-2020-3018963
	:	
National Fuel Gas Distribution Corporation	:	

INITIAL DECISION

Before
Darlene Davis Heep
Administrative Law Judge

INTRODUCTION

This decision dismisses the Complaint for the failure of the Complainant to appear for the hearing and prosecute the Complaint.

HISTORY OF THE PROCEEDING

On February 14, 2020, Thomas Picheco (Complainant) filed a formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against National Fuel Gas Distribution Corporation (NFGD, Respondent or Company). In the Complaint, Mr. Picheco alleges that NFGD trespassed by entering his rental property at 659 W. 8th Street, Erie, Pennsylvania (service address) and then pulled a locking device off the meter and shut off the service. Mr. Picheco further alleges that the shut off caused water pipes in the kitchen and bathroom to freeze and as a result he had to replace the flooring in both rooms at a cost of approximately \$2,500.

On March 20, 2020, Respondent filed its Answer denying the material averments of the Complaint. NFGD averred that the service was in the name of the occupant of the service address and that the gas service was terminated upon the occupant's request.

On March 24, 2020, NFGD filed Preliminary Objections. In the Preliminary Objections, NFGD requested that the Commission dismiss Complainant's claims for damages and the other tort-based claims.

On June 1, 2020, a Hearing Notice was issued to the parties, setting an Initial Call-In Telephonic Hearing for July 10, 2020 at 10:00 a.m. On June 8, 2020, a Prehearing Order was sent to the parties setting out various procedures that would be applicable to the hearing. The Prehearing Order also reminded the parties of the date, time and call-in information for the July 10, 2020 hearing. Both the Hearing Notice and the Prehearing Order contained the call-in number and participation code and advised the Complainant that the case may be dismissed if the Complainant did not call in or participate in the hearing.

On June 26, 2020, an Order was issued sustaining the Preliminary Objections with respect to the claims for damages and any claims based in tort. The Order also stated that the parties should be prepared to proceed on the remaining issues at the hearing on July 10, 2020, as scheduled.

The hearing convened on July 10, 2020, at 10:00 a.m., as scheduled. NFGD was represented by counsel, Nathaniel Ehrman, Esq., and was prepared to proceed. The Complainant was not present; therefore, a brief recess was taken to allow the Complainant additional time to call.

The hearing reconvened at 10:12 a.m. The Complainant was not present. Counsel for NFGD moved that the matter be dismissed. This motion was taken under advisement.

The Complainant has not contacted my office since the hearing date.

The record closed on July 21, 2020, upon receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is Thomas Picheco of Erie, Pennsylvania.
2. The Respondent is National Fuel Gas Distribution Corporation.
3. Mr. Picheco owns the property at 659 W. 8th Street, Erie, Pennsylvania (service address).
4. On February 14, 2020, Mr. Picheco filed a formal Complaint against NFGD.
5. On March 20, 2020, Respondent filed its Answer, averring that the service was in the name of the occupant of the service address and that the gas service was terminated upon the occupant's request.
6. On March 24, 2020, NFGD filed Preliminary Objections requesting that the Commission dismiss claims for damages and tort-based claims.
7. On June 1, 2020, a Hearing Notice was issued to the parties, setting an Initial Call-In Telephonic Hearing for July 10, 2020, at 10:00 a.m.
8. On June 8, 2020, a Prehearing Order was sent to the parties setting out various procedures that would be applicable to the hearing.
9. Both the Hearing Notice and the Prehearing Order contained the dial-in number and participation code for the telephonic hearing.
10. The Hearing Notice was electronically served to the Complainant and 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).

11. The Prehearing Order was electronically served to the Complainant and 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).

12. On June 26, 2020, an Order was issued sustaining the Preliminary Objections with respect to the claims for damages and all claims based in tort.

13. The June 26, 2020 Order also stated that the parties should be prepared to proceed on the remaining issues at the hearing set for July 10, 2020.

14. The hearing convened on July 10, 2020 at 10:00 a.m. as scheduled.

15. NFGD was represented by counsel Nathaniel Ehrman, Esq. and was prepared to proceed.

16. The Complainant was not present at 10:00 a.m.; therefore, a brief recess was taken to allow the Complainant additional time to call in and to determine whether the Complainant had contacted my office.

17. The hearing reconvened at 10:12 a.m., the Complainant was not present and had not contacted the Commission.

18. The Complainant has not requested a continuance or contacted the Commission since the hearing date.

19. None of the documents electronically served to the Complainant 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 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).

The Hearing Notice and Prehearing Order for the July 10, 2020 hearing both contained the date, time and call-in information for the hearing and were served electronically to the email address that the Complainant listed on his Complaint form. Neither document was returned as undeliverable. Therefore, it is deemed that the Complainant had notice of the date, time and participation information for the hearing. *Id.*

As the Commission noted in *Strydio v. PPL Electric Utilities Corp.*, 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 Corp.*,

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 raised. 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 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 and the parties to this proceeding. 66 Pa.C.S. § 701.

2. The Complainant received notice of the hearing. *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).

