

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Mecca Caribbean & Soul Food	:	
	:	
v.	:	C-2019-3014768
	:	
UGI Utilities, Inc.	:	

INITIAL DECISION

Before
Joel H. Cheskis
Deputy Chief Administrative Law Judge

INTRODUCTION

This decision grants a motion to dismiss for failure to prosecute because the complainant failed to appear for the hearing at the designated date and time despite being given notice of the hearing.

HISTORY OF THE PROCEEDING

On December 4, 2019, Mecca Caribbean & Soul Food (Mecca) filed with the Pennsylvania Public Utility Commission (Commission) a formal complaint against UGI Utilities, Inc. (UGI), docket number C-2019-3014768. In its complaint, Mecca averred that UGI is threatening to shut off its service or has already shut off its service and that it would like a payment agreement. Mecca added that, due to the number of electrical issues in the building, it has not been able to open for business consistently.

On December 11, 2019, UGI filed an answer and new matter in response to the complaint. In its answer, UGI admitted or denied the various averments in the complaint. In

particular, UGI admitted that the utility service is scheduled to be terminated and denied that Mecca is eligible for a payment agreement because it is a commercial business account. In its new matter, UGI averred that Mecca is required to be represented by an attorney because it is a commercial business.

On December 16, 2019, a hearing notice was issued establishing an initial call-in telephonic hearing for this matter for Tuesday, February 4, 2020 at 10:00 a.m. A prehearing order was also issued on December 16, 2019 setting forth various procedural rules that would govern the hearing. Of note, the prehearing order indicated that “if a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party.”

On January 28, 2020, counsel for UGI requested that the hearing scheduled for February 4, 2020 be continued since he would not be available on that date. Counsel indicated that the representative for the complainant, Ela Perez, did not oppose the request and that the parties continue to speak to settle the matter. The request for a continuance was granted informally via email on that same day. A cancellation notice was issued on February 3, 2020, cancelling the hearing scheduled for February 4, 2020, and rescheduling the hearing for Thursday, March 25, 2020. The request for a continuance was formally granted via order dated February 11, 2020.

On March 16, 2020, however, the telephonic hearing scheduled for March 25, 2020 was cancelled due to the Covid-19 pandemic.¹ On May 1, 2020, a hearing cancellation/reschedule notice was issued setting the initial call-in telephonic hearing for Thursday, July 23, 2020. Of note, as with all hearing notices issued by the Commission, the notice indicated that if a party fails to appear for the hearing, the case will be dismissed.

¹ The Commission’s offices were closed beginning on March 16, 2020, pursuant to an Executive Order issued by the Pennsylvania Deputy Secretary for Human Resources and Management due to the COVID-19 pandemic. However, the Commission has continued working remotely.

The hearing convened on July 23, 2020, as scheduled. Larry Crayne, Esquire, appeared on behalf of UGI. No one appeared on behalf of Mecca.

The record in this case consists of the transcript of eight pages. The record closed when the transcript was filed with the Commission on July 31, 2020. This Initial Decision grants the motion of UGI made at the conclusion of the hearing to dismiss the complaint for failure to prosecute.

FINDINGS OF FACT

1. The Complainant in this case is Mecca Caribbean & Soul Food.
2. The Respondent in this case is UGI Utilities, Inc.
3. No one called in to the hearing as instructed on the hearing notice and in the prehearing order on behalf of Mecca at the designated date and time. Tr. 3-4.
4. The hearing was delayed 12 minutes to accommodate any delay in anyone appearing at the hearing on behalf of Mecca. Tr. 3.
5. Mecca received notice of the hearing when they were sent a hearing notice via e-service on May 1, 2020. Tr. 4.
6. Mecca received notice of the hearing when they were sent a prehearing order via e-service on December 16, 2019. Tr. 4.
7. Both the hearing notice and the prehearing order indicated that a party may lose the case if they do not appear and take part in the hearing. Tr. 4-5.
8. Neither the hearing notice nor the prehearing order sent to Mecca were returned to the Commission as undeliverable.

9. Counsel for UGI indicated during the hearing the efforts that the company took to provide Mecca with notice of the hearing. Tr. 5.

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). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990). “Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950). The offense must be a violation of the Public Utility Code, the Commission’s regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, based on a reading of the complaint, Mecca complained that UGI is threatening to terminate service or has already terminated service and requested a payment agreement. Mecca, therefore, has the burden of proof in this proceeding.

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 when the parties are afforded notice and the opportunity to be heard. Id.

No one appeared on behalf of Mecca at the date and time set for the hearing in this case despite notice of the hearing having been provided. Commission regulations address circumstances when a party fails to appear in a proceeding. Section 5.245 provides:

§ 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.

(3) Not be permitted to recall witnesses who were excused for further examination.

52 Pa.Code § 5.245(a).

The prehearing order and both hearing notices were sent to Mecca by e-service and none of these documents were returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents sent to Mecca in the ordinary course of business were received by Mecca. 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). Of note, the hearing notices and the prehearing order stated that, if a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party. Furthermore, counsel for UGI indicated during the hearing the efforts that the company took to provide Mecca with notice of the hearing. Tr. 5.

No one appeared on behalf of Mecca at the time of the hearing, nor did anyone ever request a postponement or continuance of the hearing. As such, Mecca had notice and an opportunity to be heard in this proceeding but chose not to appear. Therefore, Mecca's due process rights have been fully protected. Sentner v. Bell Telephone Co. of Pa., Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa.Code § 5.245(a).

During the hearing, counsel for UGI moved to have the complaint dismissed for lack of prosecution. Tr. 6. By failing to appear and present any evidence in support of the complaint, Mecca has failed to carry its burden. Thus, it is appropriate to dismiss the complaint.

Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Order entered December 26, 1995). Accordingly, the merits of the complaint will not be addressed in this Initial Decision.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.

2. 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).

3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950).

4. 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 when the parties are afforded notice and the opportunity to be heard. Id.

5. 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; and 3) not be permitted to recall witnesses who were excused for further examination. 52 Pa.Code § 5.245(a).

6. Mecca's due process rights have been fully protected. Sentner v. Bell Telephone Co. of Pa., Docket No. F-00161106 (Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

7. Mecca has failed to carry its burden of proof in this proceeding.

