

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

George Johnson	:	
	:	
v.	:	C-2020-3020030
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complaint of George Johnson against Philadelphia Gas Works because he failed to appear for his hearing and prosecute his Complaint.

HISTORY OF THE PROCEEDING

On April 8, 2020, George Johnson (Complainant or Mr. Johnson) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed check marks next to the statement: "Other." The Complainant indicates that he cannot afford the balance that his father accrued at the Service Address and requests a reduction in the bill.

On June 18, 2020, PGW filed an Answer to the Complaint. In its Answer, PGW either admitted or denied the various averments of the Complaint. PGW requested that the Complaint be dismissed.

On June 22, 2020, a Telephonic Hearing Notice was issued, and an initial hearing was scheduled for Wednesday, July 22, 2020 at 10:00 a.m. and the matter was assigned to me. The Hearing Notice indicated in bold and underlined type the following: “**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 Administrative Law Judge.**” The Notice also indicated, “*Attention: You may lose the case if you do not take part in this hearing and present facts on the issues raised.*” (emphasis in original).

On July 15, 2020, I issued a Prehearing Order which reminded the parties of the date and time of the hearing and provided the procedures for the hearing. On page 4 of the Order, the Complainant was warned as follows: “**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).

The hearing began on July 22, 2020, as scheduled. Counsel for PGW was present with a witness and was prepared to proceed. The Complainant failed to call-in. The Complainant was given an additional 20 minutes to call-in but failed to do so.

No witnesses were presented, and no exhibits were introduced into the record. Counsel for PGW moved that the Complaint be dismissed for lack of prosecution pursuant to 52 Pa. Code § 5.245. In accordance with Commission policy, I am granting the Motion.

The record closed on July 31, 2020, upon my receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is George Johnson.
2. The Respondent is Philadelphia Gas Works.

3. On April 8, 2020, the Complainant filed a Complaint with the Commission against the Respondent.
4. On June 18, 2020, the Respondent filed an Answer to the Complaint.
5. By Telephonic Hearing Notice dated June 22, 2020, a telephonic hearing was scheduled for July 22, 2020, at 10:00 a.m.
6. The Hearing Notice 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 original).

7. The Hearing Notice was sent to the Complainant by email, at the email address provided by the Complainant on the Complaint, pursuant to Commission work from home orders related to the COVID-19 pandemic.¹
8. The Hearing Notice was not returned as undeliverable.
9. The Complainant failed to appear at the July 22, 2020 hearing.

¹ The Commission issued an Order 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).

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 June 22, 2020, the Commission sent notice of the Telephonic Hearing to the Complainant at the email address provided on the Complaint. The Hearing Notice advised the parties of the call-in information, date and time of the scheduled hearing and warned in bold and underlined 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.”

The Hearing Notice contained information about signing up for eService on the Commission’s website and provided the website address. The Complainant did not sign up for this service.

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. 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) (*Zirkel*); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered January 31, 2017) (*Morella*); 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 were returned as undeliverable. It is therefore deemed that the Complainant had notice of the date and time and participation information for the July 22, 2020 hearing. *Zirkel, Morella*.

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 Elec. Utils. 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 the case could be dismissed for failure to call-in and participate in the hearing. Thus, the Complainant has waived the opportunity to participate in the hearing by failing to appear. 52 Pa.Code § 5.245(a); *Jefferson v. UGI Utils., 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 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 on this basis as well. *Jefferson v. UGI Utils., 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. The Complainant received notice of the hearing. *Chartiers Indus. and Commercial Dev. Auth. v. Allegheny Cnty. Bd. of Prop. Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 1994), *appeal den.*, 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 Tel. 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 Philadelphia Gas Works to dismiss the formal Complaint filed by George Johnson at Docket No. C-2020-3020030 is granted.

2. That the formal Complaint of George Johnson against Philadelphia Gas Works at Docket No. C-2020-3020030 is dismissed without prejudice; and

