

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Alibeya Taylor	:	
	:	
v.	:	C-2020-3018837
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complaint of Alibeya Taylor against Philadelphia Gas Works because Complainant failed to appear for the hearing and prosecute her Complaint.

HISTORY OF THE PROCEEDING

On February 4, 2020, Alibeya Taylor (Complainant or Ms. Taylor) 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 statements: “I am having a reliability, safety or quality problem with my utility service,” and “Other.” The attachments to the Complaint appear to indicate that the water supply pipe to the service address was allegedly damaged and therefore the water was shut off until it can be repaired. The Complainant requests that the pipe be repaired, and water service restored.

On March 13, 2020, PGW filed an Answer with New Matter to the Complaint, with an attached Notice to Plead. In its Answer, PGW either admitted or denied the various averments of the Complaint. In its New Matter, PGW alleged that the Complainant was asking for monetary damages, which the Commission does not have jurisdiction to award. PGW requested that the Complaint be dismissed.

Also, on March 13, 2020, PGW filed Preliminary Objections with an attached Notice to Plead. PGW reiterated its claim that the Complainant was asking for monetary damages, which the Commission does not have jurisdiction to award. In addition, PGW averred that the Complaint lacks specificity since it fails to allege how PGW violated the Public Utility Code, Commission Regulation, or Order. PGW requested that the Complaint be dismissed.

The Complainant's Answer to PGW's Preliminary Objections was due no later than March 26, 2020. 52 Pa.Code §§ 5.61(a)(2), 5.101(f)(1), 1.56(a)(1) and (b)¹. The Complainant did not file an Answer to PGW's Preliminary Objections.

By Initial Call-In Telephonic Hearing Notice dated May 22, 2020, a telephonic hearing was scheduled for July 28, 2020, at 10:00 a.m., and the matter was assigned to me. The Hearing Notice advised the parties of the location, 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.**"

On June 15, 2020, I issued an Order denying PGW's Preliminary Objections.

The hearing began on July 28, 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 ten minutes to call-in but failed to do so.

¹ A party has 10 days (13 days if served by U.S. Mail) to respond to Preliminary Objections. Additionally, the Complainant did not file a reply to Respondent's New Matter within 20 days as required by 52 Pa. Code § 5.63.

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 September 27, 2020, upon my receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is Alibeya Taylor.
2. The Respondent is Philadelphia Gas Works.
3. On February 4, 2020, the Complainant filed a Complaint with the Commission against the Respondent.
4. On March 13, 2020, the Respondent filed an Answer with New Matter to the Complaint.
5. On March 13, 2020, the Respondent filed Preliminary Objections with an attached Notice to Plead.
6. The Complainant did not file an Answer to PGW's Preliminary Objections.
7. By Initial Call-In Telephonic Hearing Notice dated May 22, 2020, a telephonic hearing was scheduled for July 28, 2020, at 10:00 a.m.
8. On June 15, 2020, I issued an Order denying PGW's Preliminary Objections.
9. The Hearing Notice emailed to the Complainant 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).

10. 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.²

11. The Hearing Notice was not returned as undeliverable.

12. The Complainant failed to appear at the July 28, 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 May 22, 2020, the Commission sent notice of the Initial Call-In Telephonic Hearing to the Complainant at the email address provided on the Complaint. The Hearing Notice advised the parties of the location, 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**

² 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).

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 eService.

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 and prehearing order. 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 28, 2020 hearing. *Zirkel; Morella*.

As the Commission noted in *Strydio v. PPL Elec. Util. Corp.*, 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 Util., 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 she could lose her case if she did not participate in the hearing and 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 Util., 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, she failed to meet her burden of proving that she 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 Alibeya Taylor at Docket No. C-2020-3018837 is granted;
2. That the formal Complaint of Alibeya Taylor against Philadelphia Gas Works at Docket No. C-2020-3018837 is dismissed; and
3. That Docket No. C-2020-3018837 be marked closed.

Date: October 19, 2020

_____/s/
F. Joseph Brady
Administrative Law Judge