

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lavender Anderson	:	
	:	
v.	:	F-2020-3020253
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Darlene Davis Heep
Administrative Law Judge

INTRODUCTION

The Complaint is dismissed for the failure of the Complainant to appear for the hearing and prosecute the Complaint.

HISTORY OF THE PROCEEDING

On March 13, 2020, Lavender Anderson (Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW, Respondent or Company) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, Ms. Anderson alleges that there are incorrect charges on her PGW bill. The Complaint was served on PGW on June 6, 2020.¹

¹ On March 6, 2020, Governor Tom Wolf issued a Proclamation of Disaster Emergency proclaiming the existence of a disaster emergency throughout the Commonwealth due to concerns about COVID-19. As a result, the Commission's offices were closed on March 11, 2020, which delayed service of the Complaint upon PGW.

On July 2, 2020, Respondent filed its Answer, denying the material averments of the Complaint. PGW also asserted that the bill in dispute includes previously unbilled charges for the period December 31, 2018, through March 28, 2019, and that PGW offered the Complainant amortization of the bill.

On July 7, 2020, a hearing notice was emailed to the Complainant and served to the Respondent, setting an Initial Call-In Telephonic Hearing for August 11, 2020, at 10:00 a.m.

On July 7, 2020, a Prehearing Order, setting forth the procedures for a telephonic hearing and reminding the parties of the hearing date and time, was emailed to the Complainant and served to the Respondent.

The telephonic hearing began as scheduled at 10:00 a.m. on August 11, 2020. Graciela Christlieb, Esquire, appeared on behalf of PGW with one witness. The Complainant did not call in.

A short break was taken to allow the Complainant time to call in. At 10:16 a.m., the hearing resumed, and the Complainant had not made an appearance. Counsel for PGW moved that the matter be dismissed for failure to prosecute. This motion was taken under advisement.

The record closed on August 21, 2020, upon receipt of the transcript. For the reasons set forth below, the Complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant is Lavender Anderson.
2. The Respondent is Philadelphia Gas Works.
3. On March 13, 2020, the Complainant filed this action against PGW.

4. The Respondent filed an Answer on July 2, 2020.
5. On July 7, 2020, a Telephonic Hearing Notice scheduling a hearing on August 11, 2020, was issued.
6. The hearing began as scheduled at 10:00 a.m. on August 11, 2020.
7. Attorney Graciela Christlieb representing PGW called in to the hearing and was prepared to proceed with one witness.
8. The Complainant did not call in to the hearing.
9. This Hearing Notice contained the date, time and dial-in number and code for participation in the hearing and also advised the Complainant that she may lose the hearing if she did not participate.
10. A Prehearing Order also reminded the parties of the date, time and dial-in number and code for the hearing and also advised the Complainant that the case would be dismissed if she did not call in and participate.
11. The Hearing Notice and Prehearing Order were sent to the email address provided by the Complainant.
12. The Complainant did not request a continuance or provide a statement of good cause for her absence on the scheduled hearing date.
13. 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) (*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).

The Notice and Prehearing Order for the August 11, 2020 hearing were sent to the Complainant at the email address that she provided. The Notice and Order were not returned as undeliverable. It is therefore deemed that the Complainant had notice of the date and time of the scheduled August 11, 2020, hearing. *Zirkel, Morella*.

As the Commission noted in *Strydio v. PPL Elec. Utils. 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 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 and Prehearing Order advised the Complainant that her case could be dismissed if she 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 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 and the Prehearing Order that she could lose her case if she 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 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. Therefore, the Motion of Philadelphia Gas Works to dismiss the matter for failure to prosecute will be granted.

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. *Chartiers Indus. and Commercial Dev. Auth. v. Allegheny Cnty. Bd. of Prop. Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 1994), *appeal denied*, 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 Complaint filed by Lavender Anderson at Docket Number F-2020-3020253 is granted.
2. That the Complaint of Lavender Anderson against Philadelphia Gas Works at Docket Number F-2020-3020253 is dismissed.
3. That Docket Number F-2020-3020253 be marked closed.

Date: November 3, 2020

_____/s/
Darlene Davis Heep
Administrative Law Judge