

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Theresa Gardner	:	
	:	
v.	:	F-2020-3018999
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
F. Joseph Brady  
Administrative Law Judge

**INTRODUCTION**

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

**HISTORY OF THE PROCEEDING**

On February 19, 2020, Theresa Gardner (Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant disputed charges arising from alleged theft of services at the service address.<sup>1</sup>

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<sup>1</sup> This Complaint is a timely appeal from a decision of the Bureau of Consumer Services (BCS) at BCS No. 3756232 dated February 3, 2020, which dismissed Complainant's informal complaint.

On June 1, 2020, PGW filed an Answer to the Complaint. In its Answer, PGW either admitted or denied the various averments of the Complaint and requested that the Complaint be dismissed.

By Initial Call-In Telephonic Hearing Notice dated June 4, 2020, a telephonic hearing was scheduled for August 4, 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 July 28, 2020, I issued an Order granting the Respondent’s uncontested Motion for a Continuance due to the unavailability of a necessary witness.

By Hearing Cancellation/Reschedule Notice dated July 28, 2020, a telephonic hearing was rescheduled for October 14, 2020, at 10:00 a.m. 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.**”

I issued a Prehearing Order on July 29, 2020. The Prehearing Order directed the parties to comply with various procedural requirements and also warned in bold and underlined type: “**You must call into the hearing on the scheduled day and time. If you fail to do so, your case may be dismissed. You will NOT be called by the Administrative Law Judge.**”

The hearing began on October 14, 2020, as scheduled. Counsel for the Respondent called-in with a witness available to testify. The Complainant failed to call-in. The Complainant was given an additional ten 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 October 26, 2020, upon my receipt of the transcript.

### FINDINGS OF FACT

1. The Complainant is Theresa Gardner.
2. The Respondent is Philadelphia Gas Works.
3. On February 19, 2020, the Complainant filed a Complaint with the Commission against the Respondent.
4. On June 1, 2020, the Respondent filed an Answer to the Complaint.
5. By Initial Call-In Telephonic Hearing Notice dated June 4, 2020, a telephonic hearing was scheduled for August 19, 2020, at 10:00 a.m.
6. On July 28, 2020, I issued an Order granting the Respondent's uncontested Motion for a Continuance.
7. By Hearing Cancellation/Reschedule Notice dated July 28, 2020, a telephonic hearing was rescheduled for October 14, 2020, at 10:00 a.m.
8. Both Hearing Notices warned in bold and underlined type: "**You must call into the hearing on the scheduled day and time. If you fail to do so, your case may be dismissed. You will NOT be called by the Presiding Officer.**"

9. On July 29, 2020, I issued a Prehearing Order that directed the parties to comply with various procedural requirements.

10. The Prehearing Order warned in bold and underlined type: “**You must call into the hearing on the scheduled day and time. If you fail to do so, your case may be dismissed. You will NOT be called by the Administrative Law Judge.**”

11. Both Hearing Notices and the Prehearing Order were sent to the Complainant by electronic mail at the email address listed in the Complaint, pursuant to Commission orders related to the COVID-19 pandemic.<sup>2</sup>

12. Neither the Hearing Notices nor the Prehearing Order were returned as undeliverable.

13. The Complainant failed to appear at the October 14, 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.Cmwlt. 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.Cmwlt. 2016).

On July 28, 2020, the Commission sent notice of the Initial Call-In Telephonic Hearing to the Complainant via electronic mail to the email address listed in the Complaint. The Hearing Notice advised the parties of the location, date and time of the scheduled hearing and

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<sup>2</sup> 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).

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.**”

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 October 14, 2020 hearing. *Zirkel; Morella*.

As the Commission noted in *Strydio v. PPL Elec. Utils. 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 and Prehearing Order 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. 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. W. 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. & Commercial Dev. Auth. v. Allegheny Cnty. Bd. of Prop. Assessment Appeals & Review*, 645 A.2d 944 (Pa.Cmwlt. 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. Cmwlt. 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, failed to meet the Complainant's burden of proving eligibility 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 Theresa Gardner at Docket No. F-2020-3018999 is granted.

2. That the formal Complaint of Theresa Gardner against Philadelphia Gas Works at Docket No. F-2020-3018999, is dismissed; and

3. That Docket No. F-2020-3018999, be marked closed.

Date: December 11, 2020

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/s/  
F. Joseph Brady  
Administrative Law Judge