

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Esther Lenzner	:	
	:	
v.	:	F-2020-3021820
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On July 25, 2020, Esther Lenzner (Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission) alleging that she is unable to pay her gas bills to PGW, that there are incorrect charges on her bill from PGW, and that she is having a reliability, safety, or quality problem with her gas service. As relief, the Complainant requested that the Commission review her gas bill from PGW for accuracy and establish a payment arrangement on her behalf.

On October 7, 2020, PGW filed an Answer¹ denying the material allegations of the Complaint.

By Initial Call-In Telephonic Hearing Notice dated October 15, 2020, a telephonic hearing was scheduled for November 17, 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.**”

The initial hearing convened as scheduled. Esther Lenzner failed to appear at the hearing. Counsel for Philadelphia Gas Works moved to dismiss the Complaint for failure to prosecute. The record closed on December 17, 2020.

A review of the record in this matter revealed that the parties were never served with a Prehearing Order in preparation for the November 17, 2020 hearing. On January 19, 2021, I issued an Order to reopen the record and schedule a new hearing date.

By Hearing Notice dated January 19, 2021, the Commission notified the parties in this matter that a further call-in telephonic hearing was scheduled for March 16, 2021, 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 March 1, 2021. The Prehearing Order directed the parties to comply with various procedural requirements and 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.**”

¹ The Complaint was served on the Respondent on September 9, 2020.

The further hearing began on March 16, 2021, 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. That Motion is granted pursuant to the ordering paragraphs below.

The record closed on March 17, 2021, after I confirmed that Ms. Lenzner had not contacted the Commission to provide good cause for failing to appear at the scheduled hearing.

FINDINGS OF FACT

1. The Complainant is Esther Lenzner.
2. The Respondent is Philadelphia Gas Works.
3. On July 25, 2020, the Complainant filed a Complaint with the Commission against the Respondent.
4. On October 7, 2020, the Respondent filed an Answer to the Complaint.
5. By Initial Call-In Telephonic Hearing Notice dated October 15, 2020, a telephonic hearing was scheduled for November 17, 2020, at 10:00 a.m.
6. Ms. Lenzner failed to appear at the November 17, 2020 hearing.
7. On January 19, 2021, I issued an Order to reopen the record and schedule a new hearing date.

8. By Hearing Notice dated January 19, 2021, the Commission notified the parties in this matter that a further call-in telephonic hearing was scheduled for March 16, 2021, at 10:00 a.m.

9. 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.**”

10. On March 1, 2021, I issued a Prehearing Order that directed the parties to comply with various procedural requirements.

11. 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.**”

12. 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 work from home orders related to the COVID-19 pandemic.²

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

14. The Complainant failed to appear at the March 16, 2021 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

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).

(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 January 19, 2021, the Commission sent notice of the 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 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.**” Similarly, the March 1, 2021 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.**”

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 March 16, 2021 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 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. 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).

