

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Leschon Gonzales	:	
	:	
v.	:	C-2020-3022899
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On October 8, 2020, Leschon Gonzales (Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission) alleging that the utility is threatening to shut off his gas service, and that there are incorrect charges on his bill from PGW. In particular, Mr. Gonzales alleges that PGW improperly held him responsible for tampering with his meter. According to Mr. Gonzales, his meter suffered damages in the form of a crack in the display glass after a PGW worker dropped it while doing a safety check. As relief, the Complainant requests that the Commission order PGW to remove the unauthorized use charges from his bill and establish a payment arrangement on his behalf.

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

By Initial Call-In Telephonic Hearing Notice dated December 9, 2020, a telephonic hearing was scheduled for January 21, 2021, 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 December 16, 2020, I issued a Prehearing Order directing the parties to comply with various procedural requirements. 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.**”

Due to technical difficulties, the January 21, 2021 hearing was continued for a later date.

By Hearing Cancellation/Reschedule Notice dated February 4, 2021, the Commission notified the parties in this matter that the initial call-in telephonic hearing was rescheduled for March 23, 2021, at 10:00 a.m. The 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 March 2, 2021, I issued a second Prehearing Order directing the parties to comply with various procedural requirements. The Prehearing Order warned in bold and

¹ The Complaint was served on the Respondent on November 17, 2020.

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 initial hearing began on March 23, 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 24, 2021, after I confirmed that Mr. Gonzales had not contacted the Commission to provide good cause for failing to appear at the scheduled hearing.

FINDINGS OF FACT

1. The Complainant is Leschon Gonzales.
2. The Respondent is Philadelphia Gas Works.
3. On October 8, 2020, the Complainant filed a Complaint with the Commission against the Respondent.
4. On December 7, 2020, the Respondent filed an Answer to the Complaint.
5. By Initial Call-In Telephonic Hearing Notice dated December 9, 2020, a telephonic hearing was scheduled for January 21, 2021, at 10:00 a.m.

6. By Prehearing Order dated December 16, 2021, the parties were directed to comply with various procedural requirements.

7. Due to technical difficulties, the January 21, 2021 hearing was continued for a later date.

8. By Hearing Cancellation/Reschedule Notice dated February 4, 2021, the initial call-in telephonic hearing was rescheduled for March 23, 2021, at 10:00 a.m.

9. A second Prehearing Order dated March 2, 2020, directed the parties to comply with various procedural requirements.

10. The two Hearing Notices and the two Prehearing Orders 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. All the Hearing Notices and the Prehearing Orders 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

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

13. The Complainant failed to appear at the March 23, 2021 hearing.

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).

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).

An Initial Call-In Telephonic Hearing Notice dated December 9, 2020, informed the parties that a telephonic hearing was scheduled for January 21, 2021, at 10:00 a.m. By Prehearing Order dated December 16, 2021, the parties were directed to comply with various procedural requirements.

Due to technical difficulties, the January 21, 2021 hearing was continued for a later date. By Hearing Cancellation/Reschedule Notice dated February 4, 2021, the initial call-in telephonic hearing was rescheduled for March 23, 2021, at 10:00 a.m. A second Prehearing Order dated March 2, 2020, directed the parties to comply with various procedural requirements.

The two Hearing Notices and the two Prehearing Orders 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 notice 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).

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, 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 Leschon Gonzales at Docket No. C-2020-3022899 is granted.

