

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jeff Lavalliere	:	
	:	
v.	:	F-2020-3023489
	:	
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 December 3, 2020, Jeff Lavalliere (Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW, Respondent or Company) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, Mr. Lavalliere contests PGW denying him participation in the Customer Responsibility Program (CRP) for reduced rates.

On March 10, 2021, Respondent filed its Answer, denying the material averments of the Complaint and asserting that the application for CRP was properly rejected.

On March 16, 2021, a Hearing Notice was emailed to the Complainant and e-served to the Respondent, setting an Initial Call-In Telephonic Hearing for April 20, 2021, at 10:00 a.m.

On March 17, 2021, 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 e-served to the Respondent.

The telephonic hearing began as scheduled at 10:00 a.m. on April 20, 2021. Laureto Farinas, Esquire, appeared on behalf of PGW with one witness. The Complainant did not call in and appear for the hearing.

A short break was taken to allow the Complainant time to call in. At 10:17 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 May 10, 2021, upon receipt of the transcript. For the reasons set forth below, the Complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant is Jeff Lavalliere.
2. The Respondent is Philadelphia Gas Works.
3. On December 3, 2021, the Complainant filed this action against PGW.
4. The Respondent filed an Answer on March 10, 2021.

5. On March 16, 2021, a Telephonic Hearing Notice scheduling a hearing on April 20, 2021, was issued.

6. This Hearing Notice contained the date, time and dial-in number and code for participation in the hearing and also advised the Complainant that he may lose the hearing if he did not participate.

7. A Prehearing Order issued on March 17, 2021 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 he did not call in and participate.

8. The Hearing Notice and Prehearing Order were sent to the email address provided by the Complainant.

9. The hearing began as scheduled at 10:00 a.m. on April 20, 2021.

10. Attorney Laureto Farinas representing PGW called in to the hearing and was prepared to proceed with one witness.

11. The Complainant did not call in to the hearing.

12. The Complainant did not request a continuance or provide a statement of good cause for his absence on the scheduled hearing date.

13. None of the documents electronically served to the Complainant were 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. Phila. 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 April 20, 2021 hearing were sent to the Complainant at the email address that he 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 April 20, 2021 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 his case could be dismissed if he 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 he could lose his case if he 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. W. 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. & Commercial Dev. Auth. v. Allegheny Cnty. Bd. of Prop. Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 1994), *app. 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, he failed to meet his burden of proving that he 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 Jeff Lavalliere at Docket Number F-2020-3023489 is granted.
2. That the Complaint of Jeff Lavalliere against Philadelphia Gas Works at Docket Number F-2020-3023489 is dismissed.
3. That Docket Number F-2020-3023489 be marked closed.

Date: June 3, 2021

_____/s/
Darlene Davis Heep
Administrative Law Judge