

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Timothy Kropp	:	
	:	
v.	:	C-2021-3024072
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Eranda Vero  
Administrative Law Judge

**INTRODUCTION**

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

**HISTORY OF THE PROCEEDING**

On January 15, 2021, Timothy Kropp (Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission) alleging that there are incorrect charges on his bill from PGW. As relief, the Complainant requested that the incorrect charges be removed from his account.

On March 11, 2021, PGW filed an Answer denying the material allegations of the Complaint.

By Initial Call-In Telephonic Hearing Notice dated March 16, 2021, a telephonic hearing was scheduled for April 28, 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 April 5, 2021, I issued a Prehearing Order. 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.**”

The initial hearing convened 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 15 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 upon receipt of the hearing transcript on May 10, 2021.

#### FINDINGS OF FACT

1. The Complainant is Timothy Kropp.
2. The Respondent is Philadelphia Gas Works.
3. On January 15, 2021, the Complainant filed a Complaint with the Commission against the Respondent.

4. On March 11, 2021, the Respondent filed an Answer to the Complaint.

5. By Initial Call-In Telephonic Hearing Notice dated March 16, 2021, a telephonic hearing was scheduled for April 28, 2021, at 10:00 a.m.

6. The Hearing Notice 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.**”

7. On April 5, 2021, I issued a Prehearing Order that directed the parties to comply with various procedural requirements.

8. 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.**”

9. The Hearing Notice 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.<sup>1</sup>

10. Neither the Hearing Notice nor the Prehearing Order was returned as undeliverable.

11. The Complainant failed to appear at the April 28, 2021, hearing.

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<sup>1</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).

## 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).

On March 16, 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 April 5, 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 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. 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).

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 April 28, 2021 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.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 Timothy Kropp at Docket No. C-2021-3024072 is granted.

2. That the formal Complaint of Timothy Kropp against Philadelphia Gas Works at Docket No. C-2021-3024072, is dismissed without prejudice.

