

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Your Life Your Choice LLC
c/o Nicole Joyner

v.

Philadelphia Gas Works

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C-2020-3021849

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complaint of Your Life Your Choice LLC against Philadelphia Gas Works because the Complainant failed to appear for the hearing and prosecute the Complaint and failed to comply with a Commission order to obtain representation by an attorney.

HISTORY OF THE PROCEEDING

On August 26, 2020, Nicole Joyner filed a Formal Complaint on behalf of Your Life Your Choice LLC (Complainant) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission) alleging that the utility is threatening to shut off its gas service and that there are incorrect charges on its bill from PGW. As relief, the Complainant requests that the Commission order PGW to refund the incorrectly billed charges to its account.

On October 6, 2020, PGW filed an Answer denying the material allegations of the Complaint.

By Initial Call-In Telephonic Hearing Notice dated October 8, 2020, a telephonic hearing was scheduled for December 2, 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 October 20, 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.**” In addition, the Prehearing Order specifically instructed the Complainant to obtain legal representation going forward. In bold and underline type, the Prehearing Order stated as follows,

YOUR LIFE YOUR CHOICE, LLC: As a limited liability company, you are required to have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, represent you in this proceeding. 52 Pa. Code §§ 1.8, 1.21-1.24. An attorney licensed to practice in the Commonwealth of Pennsylvania must enter his/her appearance on your behalf prior to November 20, 2020. Failure to comply may produce an unfavorable result for you, the Complainant.

No attorney entered his or her appearance on behalf of the Complainant by the November 20, 2020 deadline. Instead, by e-mail dated December 1, 2020, Nicole Joyner requested a continuance of the scheduled hearing on behalf of the Complainant, averring that she was out of state. Because it was not clear from Ms. Joyner’s e-mail whether she had contacted the Respondent with her request, I sent a copy of her request to PGW’s counsel in the matter. By e-mail dated December 2, 2020, PGW’s counsel informed me that the Respondent did not object to the requested continuance.

By Hearing Cancellation/Reschedule Notice dated December 2, 2020, the Commission notified the parties in this matter that the initial call-in telephonic hearing was rescheduled for January 27, 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 December 21, 2020, Respondent served the Complainant with a request for production of documents and interrogatories (Discovery Request).

Responses to discovery were due on January 11, 2021. Complainant failed to object or respond to PGW’s Discovery Request.

By e-mail dated January 27, 2021, Nicole Joyner requested a second continuance of the scheduled hearing on behalf of the Complainant. In her communication, Ms. Joyner averred that she was unprepared to testify at the scheduled hearing due to a recent death in her family. Due to the exigent circumstances of Ms. Joyner’s request, I cancelled the hearing, holding instead an informal telephonic conference with the parties wherein I explained to Ms. Joyner the need for the Complainant to obtain legal representation in this matter as well as its duty to object or respond to discovery requests propounded by the Respondent.

By Hearing Cancellation/Reschedule Notice dated January 27, 2021, the Commission notified the parties in this matter that the initial call-in telephonic hearing was rescheduled for March 18, 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 February 10, 2021, PGW filed a Motion to Compel Discovery Responses against Your Life Your Choice LLC. Pursuant to 52 Pa. Code §§ 5.342(g)(1) and 1.56(b), a response to the Motion was due on or before February 18, 2021. The Complainant did not file a

response to the Motion. By Order dated February 26, 2021, I sustained PGW's Motion and ordered the Complainant to respond to PGW's discovery request on or before March 8, 2021. I also reminded the Complainant that it needed to obtain legal representation if it wanted to continue to prosecute this Complaint.

This instruction was repeated again in my second Prehearing Order dated March 1, 2021. In bold and underline type, the second Prehearing Order stated as follows,

YOUR LIFE YOUR CHOICE, LLC: As a limited liability company, you are required to have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, represent you in this proceeding. 52 Pa. Code §§ 1.8, 1.21-1.24. An attorney licensed to practice in the Commonwealth of Pennsylvania must enter his/her appearance on your behalf prior to March 15, 2021. Failure to comply may produce an unfavorable result for you, the Complainant.

In addition, the second 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.”**

No attorney entered an appearance on behalf of the Complainant by the March 15, 2021 deadline.

The hearing convened as scheduled on March 18, 2021. Laureto Farinas, Esq., appeared representing PGW. Neither Nicole Joyner nor a counsel for the Complainant appeared at the hearing. The hearing reconvened at approximately 10:15 a.m., after I confirmed that no representative of the Complainant had called, or otherwise shown good cause not to appear at the scheduled hearing. 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 and for failure to comply with the orders of the presiding officer in this case. Tr. 9. That Motion is granted pursuant to the ordering paragraphs below.

The record was closed upon receipt of the hearing transcript on April 14, 2021.

FINDINGS OF FACT

1. The Complainant is Your Life Your Choice LLC.
2. The Respondent is Philadelphia Gas Works.
3. On August 26, 2020, the Complainant filed a Complaint with the Commission against the Respondent.
4. On October 6, 2020, the Respondent filed an Answer to the Complaint.
5. By Initial Call-In Telephonic Hearing Notice dated October 8, 2020, a telephonic hearing was scheduled for December 2, 2020, at 10:00 a.m.
6. By Prehearing Order dated October 20, 2020, the parties were directed to comply with various procedural requirements.
7. On December 2, 2020 Complainant requested a continuance of the scheduled hearing, which was granted for good cause shown.
8. By Hearing Cancellation/Reschedule Notice dated December 2, 2020, the initial call-in telephonic hearing was rescheduled for January 27, 2021, at 10:00 a.m.
9. On January 27, 2021, Complainant requested a continuance of the scheduled hearing, which was granted for good cause shown.

10. By Hearing Cancellation/Reschedule Notice dated January 27, 2021, the Commission notified the parties in this matter that the initial call-in telephonic hearing was rescheduled for March 18, 2021, at 10:00 a.m.

11. A second Prehearing Order dated March 1, 2021, directed the parties to comply with various procedural requirements.

12. The three 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.”**

13. The two Prehearing Orders instructed the Complainant in bold type to **“have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, represent [the Complainant] in this proceeding.”**

14. 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.¹

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

16. No attorney entered an appearance on behalf of the Complainant in this proceeding.

17. The Complainant failed to appear at the March 18, 2021 hearing.

¹ 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).

18. The Complainant did not settle, obtain a continuance or withdraw this Complaint prior to the scheduled hearing date.

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).

By Initial Call-In Telephonic Hearing Notice dated October 8, 2020, a telephonic hearing was scheduled for December 2, 2020, at 10:00 a.m. By Prehearing Order dated October 20, 2020, the parties were directed to comply with various procedural requirements.

On December 2, 2020 Complainant requested and was granted a continuance of the scheduled hearing. By Hearing Cancellation/Reschedule Notice dated December 2, 2020, the initial call-in telephonic hearing was rescheduled for January 27, 2021, at 10:00 a.m.

On January 27, 2021, Complainant requested and was granted a second continuance of the scheduled hearing. A Hearing Cancellation/Reschedule Notice dated January 27, 2021, notified the parties in this matter that the initial call-in telephonic hearing was rescheduled for March 18, 2021, at 10:00 a.m. A second Prehearing Order dated March 1, 2021, directed the parties to comply with various procedural requirements.

The three 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 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 March 18, 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 Notices and Prehearing Orders 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).

Next, 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.

Additionally, Complainant failed to comply with a Commission order to obtain a licensed attorney. Complainant did not dispute that the entity at issue in the Complaint was a limited liability company. Pursuant to 52 Pa.Code § 1.21(a) and (b),

§ 1.21. Appearance.

(a) Individuals may represent themselves.

(b) Except as provided in subsection (a), persons in adversarial proceedings shall be represented in accordance with § 1.22 (relating to appearance by attorneys and legal intern). For purposes of this section, any request for a general rate increase under § 1307(f) or § 1308(d) of the act (relating to sliding scale of rates; adjustments; and voluntary changes in rates) shall be considered to be an adversarial proceeding.

Pursuant to 52 Pa.Code § 1.8, an adversarial proceeding is defined as “A proceeding initiated by a person to seek authority, approvals, tariff changes, enforcement, fines, remedies or other relief from the Commission which is contested by one or more other persons and which will be decided on the basis of a formal record.” Based on this definition, when PGW filed its answer in opposition to the Complaint, this proceeding became adversarial. To date, Complainant has failed to file a notice of appearance by a licensed attorney on behalf of Your Life Your Choice, LLC, as directed by the October 20, 2020, and the March 1, 2021 Prehearing Orders.

Failure to comply with a presiding officer's order directing an action to be taken can warrant the dismissal of a formal complaint. *Snyderville Cmty. Dev. Corp. v. Phila. Gas*

Works, Docket No. C-20055032 (Opinion and Order entered July 31, 2006) at 10. "An ALJ's Orders must be complied with, and such a lack of compliance presents a sufficient basis to dismiss the Complaint without a hearing." *Id.*, citing, *Treffinger v. PPL Elec. Utils. Corp.*, C-2027978, 2003 Pa. PUC LEXIS 3 (March 3, 2003), see also, *Application of Black Diamond Cab Co.*, Docket No. A-00122566 (Order entered December 1, 1966).

The failure to comply with the undersigned ALJ's Order is not reasonable or excused. Failed compliance with a Commission Order is sufficient basis to dismiss the Complaint without a hearing.

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).

