

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kerron Warrick	:	
	:	
v.	:	F-2021-3026593
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Alphonso Arnold III
Special Agent

INTRODUCTION

This Initial Decision dismisses a Formal Complaint due to the Complainant's failure to appear at the hearing and prosecute his Complaint.

HISTORY OF THE PROCEEDING

On June 7, 2021, Kerron Warrick (Mr. Warrick or Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW) alleging that there were incorrect charges on his bill. The Formal Complaint is a timely appeal from a decision made by the Commission's Bureau of Consumer Services at Case No. 3780614, which dismissed Mr. Warrick's Informal Complaint.

On July 9, 2021, PGW filed an Answer to the Complaint, denying that there were incorrect charges on Mr. Warrick's bill, and requesting that the Commission dismiss the Complaint.

On July 21, 2021, a Hearing Notice was served to the parties, scheduling this matter for a hearing on September 2, 2021 at 10:00 a.m.

On August 17, 2021, a Prehearing Order was served to the parties, reminding the parties of the date and time of the telephonic hearing and addressing, inter alia, the procedures applicable to the hearing and the method by which a party could request a change of the scheduled hearing date if the date was not convenient for them.

The Hearing Notice and Prehearing Order gave the following warning to the parties:

FAILURE TO APPEAR: You may lose the case if you do not take part in this hearing and present evidence on the issues raised. Your case may be dismissed “with prejudice” which means that you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.

The Hearing Notice and Prehearing Order were served to Mr. Warrick electronically to his email address on file with the Commission in compliance with the Commission’s March 26, 2020, Emergency Order. See, Emergency Order re Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements, M-2020-3019262 at 4 (Order entered March 26, 2020). The Emergency Order modified the Commission’s service requirements as to direct that service by the Commission be exclusively electronic.

The hearing began as scheduled on September 2, 2021, at 10:00 a.m. Attorney Graciela Christlieb was present for the hearing representing PGW. Mr. Warrick was not present for the hearing at 10:00 a.m.; therefore, the hearing was delayed to give Mr. Warrick additional time to appear. The hearing convened at 10:15 a.m., without the presence of Mr. Warrick. No witnesses were presented, and no evidence was provided for the record. PGW made a Motion to dismiss the Complaint with prejudice for failure to prosecute. PGW was informed that the Motion would be taken under advisement.

The record in this matter closed at the conclusion of the telephonic hearing. As of the date of this Initial Decision, I have not received any communication from Mr. Warrick or anyone on his behalf explaining his absence from the hearing and requesting a further hearing. For the reasons discussed below, PGW's Motion will be granted, and Mr. Warrick's Complaint will be dismissed with prejudice.

FINDINGS OF FACT

1. The Complainant is Kerron Warrick.
2. The Respondent is Philadelphia Gas Works.
3. By Hearing Notice served on the parties on July 21, 2021, the Commission scheduled this matter for a telephonic hearing on September 2, 2021, at 10:00 a.m.
4. By Prehearing Order served on August 17, 2021, the parties were reminded of the date and time of the hearing and were given procedural rules for the hearing, including how to request a continuance if the hearing date was not convenient for them.
5. The July 21, 2021 Hearing Notice and the August 17, 2021 Prehearing Order gave the following warning to the parties:

FAILURE TO APPEAR: You may lose the case if you do not take part in this hearing and present evidence on the issues raised. Your case may be dismissed "with prejudice" which means that you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.

6. The July 21, 2021 Hearing Notice and the August 17, 2021 Prehearing Order were served to Mr. Warrick electronically to his email address on file with the Commission.

7. The July 21, 2021 Hearing Notice and the August 17, 2021 Prehearing Order were not returned to the Commission as being undeliverable to Mr. Warrick's email address.

8. Mr. Warrick did not appear for the September 2, 2021 hearing.

9. The presiding officer has not received any communication from Mr. Warrick, or anyone on his behalf, explaining why he did not participate in the September 2, 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 (Pa.Cmwlth. 1984). This due process requirement is satisfied when the parties are provided with notice and an opportunity to be heard. Id.

This matter was scheduled for a telephonic hearing on September 2, 2021, at 10:00 a.m. The Complainant did not appear for the hearing. Due to the Complainant's failure to appear for the hearing and prosecute his Complaint, the Respondent made a Motion to dismiss the Complaint.

The date and time of the September 2, 2021 hearing was provided in the July 21, 2021 Hearing Notice and the August 17, 2021 Prehearing Order which were timely served to the parties. The Notice and Order were served to the Complainant to his email on record with the Commission. The Notice and Order were not returned to the Commission as being undeliverable to the Complainant's email. Therefore, it is presumed that the Notice and Order were received by him. Morella v. PECO Energy Co., Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016); Zirkel v. Phila. Gas Works, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017). The Complainant had sufficient notice of the day, date, and time of the scheduled hearing.

Once notice of a hearing and the opportunity to be heard have been provided to the parties, it is the responsibility of both parties to appear and participate in the hearing. Schneider v. Pa. Pub. Util. Comm'n, 479 A.2d 10 (Pa.Cmwlth. 1984). In this matter, the Complainant had ample opportunity to appear and be heard in this proceeding but chose not to do so. Therefore, the due process rights of the Complainant have been fully protected. Sentner v. Bell Tel. Co. of Pa., Docket No. F-00161106 (Opinion and Order entered October 25, 1993).

Both the Pennsylvania Public Utility Code and the Commission's regulations provide that, after being notified, a party who fails to appear at a scheduled hearing shall be deemed to have waived the opportunity to participate in the hearing and shall not be permitted thereafter to reopen the disposition of the matter accomplished at the hearing, and not be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f); 52 Pa.Code § 5.245(a)-(b). However, these provisions do not apply if the presiding officer determines that the failure to be represented was unavoidable and that the interests of the other parties and the public would not be prejudiced by permitting the reopening or further examination, 66 Pa.C.S. § 332(f); 52 Pa.Code § 5.245(a)-(b), or if the presiding officer determines that the complainant demonstrated a good faith attempt to attend the hearing. See, e.g., Then v. Phila. Gas Works, Docket No. F-2012-2318264 (Order entered June 13, 2013); see also, Wiggins v. PECO Energy Co., Docket No. C-2010-2190335 (Order entered October 27, 2011). The presiding officer has not received any communication from the Complainant, or anyone on his behalf, explaining the Complainant's absence from the hearing; therefore, his absence is unexcused.

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must show that the named utility is responsible or accountable for the problem described in the Complaint. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990); Feinstein v. Phila. Suburban Water Co., 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa.Cmwlth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992); Se-Ling Hosiery v.

Margulies, 70 A.2d 854 (Pa. 1950). By choosing not to participate in the hearing and proffer any evidence to support his Complaint, the Complainant failed to meet his burden of proof.

The due process rights of the Complainant have been protected. The Complainant had notice of the scheduled hearing and failed to appear to prosecute his Complaint. Therefore, the Respondent's Motion to dismiss the Complaint will be granted, and the Complaint will be dismissed with prejudice.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. § 701.

2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).

3. Administrative agencies are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. Schneider v. Pa. Pub. Util. Comm'n, 479 A.2d 10 (Pa.Cmwlth. 1984).

4. Notice electronically served to a party and not returned as undeliverable is presumed to have been received by that party. Morella v. PECO Energy Co., Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016); Zirkel v. Phila. Gas Works, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017).

5. Once notice of a hearing and the opportunity to be heard has been provided, it is the responsibility of the parties to appear and participate in the hearing. Schneider v. Pa. Pub. Util. Comm'n, 479 A.2d 10 (Pa.Cmwlth. 1984).

6. The Complainant's due process rights have been fully protected. Sentner v. Bell Tel. Co. of Pa., Docket No. F-00161106 (Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

7. By failing to appear and proffer any evidence in support of the Complaint, the Complainant has failed to meet the burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That Philadelphia Gas Works' Motion to dismiss the Complaint in the matter of Kerron Warrick v. Philadelphia Gas Works, Docket No. F-2021-3026593, is granted.

2. That Kerron Warrick's Complaint against Philadelphia Gas Works at Docket No. F-2021-3026593 is dismissed with prejudice.

3. That the docket at Docket No. F-2021-3026593 is marked closed.

Date: September 9, 2021

/s/
Alphonso Arnold III
Special Agent