

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Keith Marshall	:	
	:	
v.	:	F-2021-3028610
	:	
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 September 9, 2021, Keith Marshall (Mr. Marshall or Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent) alleging that there were incorrect charges on his gas bill. Specifically, Mr. Marshall argued that he has not lived at the service address in question since December 2017. Therefore, for relief, Mr. Marshall requested that all charges assessed for service provided to the service address since December 2017 be removed from his PGW account. Mr. Marshall also requested a payment arrangement.

The Complaint is a timely appeal of a determination made by the Commission’s Bureau of Consumer Services (BCS), at BCS No. 3791706.

On October 13, 2021, PGW filed an Answer to the Complaint, denying the material allegations of the Complaint and requesting that the Commission dismiss the Complaint.

On October 20, 2021, a Hearing Notice was served to the parties, scheduling this matter for a telephonic hearing on December 8, 2021, at 10:00 a.m. and assigning the case to me as presiding officer.

On November 18, 2021, a Prehearing Order containing the hearing date and procedural guidelines for the hearing was served to the parties.

Both the Notice and Order warned the parties that they may lose their case if they failed to appear for the hearing. Both the Notice and Order were served electronically to Mr. Marshall by email to the email address that Mr. Marshall listed on his Formal Complaint. Neither document was returned as undeliverable.

The hearing was held as scheduled on December 8, 2021. Mr. Marshall was not present on the hearing line at 10:00 a.m. PGW was present, represented by Laureto Farinas, Esquire. The start of the hearing was delayed to give Mr. Marshall additional time to call in. The hearing began at 10:15 a.m. without Mr. Marshall. No witnesses were presented, and no evidence was introduced into the record.

At the conclusion of the hearing, PGW made an oral Motion to Dismiss the Complaint for failure to prosecute. PGW was informed that the Motion would be taken under advisement. The hearing adjourned without Mr. Marshall having ever called in to participate.

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

## FINDINGS OF FACT

1. The Complainant is Keith Marshall.
2. The Respondent is Philadelphia Gas Works.
3. By Hearing Notice served to the parties on October 20, 2021, this matter was scheduled for a telephonic hearing on December 8, 2021, at 10:00 a.m.
4. By Prehearing Order served to the parties on November 18, 2021, the parties were reminded of the December 8, 2021, telephonic hearing date.
5. The Hearing Notice and Prehearing Order warned the parties that they may lose their case if they failed to appear for the hearing.
6. The Hearing Notice and Prehearing Order were electronically served to Mr. Marshall by email to the email address that Mr. Marshall listed on his Formal Complaint and were not returned as being undeliverable.
7. Mr. Marshall did not appear for the December 8, 2021 hearing.
8. The presiding officer has not received any communication from Mr. Marshall, or anyone on his behalf, explaining why he did not participate in the December 8, 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.

A telephonic hearing was held in this matter on December 8, 2021. The Complainant did not appear for the hearing. The Respondent made a Motion to Dismiss the Complaint for failure of the Complainant to appear and prosecute his Complaint.

The date and time of the December 8, 2021, hearing was provided in a Hearing Notice served to the parties on October 20, 2021, and a Prehearing Order served to the parties on November 18, 2021. The Hearing Notice and Prehearing Order were electronically served to the Complainant by email, to the email address that the Complainant listed on his Formal Complaint. Neither document was returned as undeliverable. Therefore, the Complainant was deemed to have received these documents and had sufficient notice of the day, date and time of the scheduled hearing. See Zirkel v. Phila. Gas Works, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017); Morella v. PECO Energy Co., Docket No. C-2016-2553416 (Final Order entered January 31, 2017). The Complainant had notice of the date and time of the scheduled hearing and did not contact the Commission to request a continuance of the hearing date or to otherwise indicate that he could not appear at the 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. As notice and an opportunity to be heard were provided to the Complainant, 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); 52 Pa. Code § 5.245(a).

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.

In summary, the due process rights of the Complainant have been protected because the Complainant had notice and opportunity to be heard. The Complainant failed to appear for the hearing to prosecute his Complaint. Due to this failure, the Complainant failed to meet his burden of proof. Therefore, the Respondent's Motion to Dismiss the Complaint for failure to prosecute will be granted.

### 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. A document electronically served to a party through email and not returned is presumed to be received by that party. Zirkel v. Phila. Gas Works, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017); Morella v. PECO Energy Co., Docket No. C-2016-2553416 (Final Order entered January 31, 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 Keith Marshall v. Philadelphia Gas Works, Docket No. F-2021-3028610, is granted.

2. That Keith Marshall's Complaint against Philadelphia Gas Works at Docket No. F-2021-3028610 is dismissed.

3. That the docket at Docket No. F-2021-3028610 is marked closed.

Date: January 7, 2022

\_\_\_\_\_/s/  
Alphonso Arnold III  
Special Agent