

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Frances Mestichelli	:	
	:	
v.	:	C-2021-3030024
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On December 13, 2021, Frances Mestichelli (Complainant) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission) alleging that the utility is threatening to shut off her gas service. As relief, the Complainant requested assistance with lowering her outstanding balance and the issuance of a reasonable payment arrangement.¹

On January 5, 2022, PGW filed an Answer denying the material allegations of the Complaint.

¹ The Complaint contained a telephone number but no email address for the Complainant.

By Initial Call-In Telephonic Hearing Notice dated January 7, 2022, a telephonic hearing was scheduled for February 24, 2022, 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 them that they may lose the case if they do not take part in the hearing and present evidence on the issues raised.

On January 18, 2022, I issued a Prehearing Order. The Prehearing Order directed the parties to comply with various procedural requirements and warned in bold type: **“FAILURE TO APPEAR: You may lose the case if you do not take part in this hearing and present evidence on the issues raised.”** (Emphasis in the original). In addition, the Prehearing Order instructed the parties that, “[c]ontinuances will be granted only for good cause. To request a continuance, you must submit a written request (a “motion”) at least five (5) days before the hearing.”

The Hearing Notice and the Prehearing Order were served on the Complainant via regular first-class mail to the mailing address provided by the Complainant in her Complaint.

On February 21, 2022, the Complainant contacted the Commission leaving a voice message in which she requested that the February 24, 2022 hearing be continued due to health-related reasons. On February 22, 2022, I informed PGW’s counsel of the request. By email dated the same day, counsel for PGW informed me that Respondent did not object to the Complainant’s request for a continuance of the scheduled hearing. I granted the request and cancelled the February 24, 2022 hearing.

A Hearing Cancellation/Reschedule Notice, dated February 23, 2022, informed the parties that the initial telephonic hearing was rescheduled for April 7, 2022, at 10:00 a.m. The Hearing Cancellation/Reschedule Notice advised the parties of the location, date and time of the scheduled hearing and warned them again that they might lose the case if they did not take part in the hearing and present evidence on the issues raised. The Hearing Cancellation/Reschedule Notice was served on the Complainant via regular first-class mail.

On April 4, 2022, I received an email from a Donna Mestichelli informing me that “Frances Mestichelli is not going to be available for telephonic hearing on April 7th, 2022, at 10:00 a.m.” due to a doctor’s appointment that could not be rescheduled. The message requested that the hearing be rescheduled for the following month and was signed off as “Frances Mestichelli.” As there was no indication that the Complainant had informed the Respondent of her request, I forwarded the email to counsel for PGW. By email dated April 4, 2022, counsel for the Respondent objected to the Complainant’s request for another continuance of the hearing, noting that this was the second request for a continuance Complainant made without first contacting the Respondent and that PGW had made several attempts to contact the Complainant with no success.

On April 4, 2022, I forwarded PGW’s objection to the Complainant using Donna Mestichelli’s email address.

On the morning of April 6, 2022, I used Donna Mestichelli’s email address to inform the Complainant that her latest request for a continuance of the scheduled hearing would not be granted without documentation substantiating her claim of a medical appointment at the time of the scheduled hearing. I further instructed that, unless such documentation was produced, the hearing would proceed as scheduled on Thursday, April 7, 2022, at 10:00 a.m. I repeated the instructions for using the conference bridge system to dial into the hearing at the scheduled time and invited Frances Mestichelli to contact me on my direct line with any questions that she may have.

On the evening of April 6, 2022, I received an email from Donna Mestichelli’s email account in which the Complainant restated her request for continuance of the hearing but did not provide the documentation requested.

On the morning of April 7, 2022, I responded to Complainant’s latest email by reiterating my previous ruling but allowed for the submittal of a doctor’s note by 4:30 p.m. on that day, i.e., after the purported doctor’s visit.

The Complainant did not submit the requested documents.

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 with prejudice for lack of prosecution pursuant to 52 Pa. Code § 5.245. That Motion is granted pursuant to the ordering paragraphs below.

To date, there has been no further information from the Complainant regarding this hearing. The record closed on May 6, 2022, 30 days from the date of the hearing.

FINDINGS OF FACT

1. The Complainant is Frances Mestichelli.
2. The Respondent is Philadelphia Gas Works.
3. On December 13, 2021, the Complainant filed a Complaint with the Commission against the Respondent.
4. On January 5, 2022, the Respondent filed an Answer to the Complaint.
5. By Initial Call-In Telephonic Hearing Notice dated January 7, 2022, a telephonic hearing was scheduled for February 24, 2022, at 10:00 a.m.
6. The January 7, 2022, Hearing Notice warned the parties that they may lose the case if they do not take part in the hearing and present evidence on the issues raised.

7. On January 18, 2022, I issued a Prehearing Order that directed the parties to comply with various procedural requirements.

8. The Prehearing Order warned in bold type: **“You may lose the case if you do not take part in this hearing and present evidence on the issues raised.”**

9. On February 21, 2022, the Complainant contacted the Commission requesting that the February 24, 2022, hearing be continued due to health-related reasons.

10. On February 22, 2022, I informed PGW’s counsel of the request.

11. Respondent did not object to the Complainant’s request for a continuance of the February 24, 2022, hearing.

12. A Hearing Cancellation/Reschedule Notice, dated February 23, 2022, was issued, and informed the parties that the initial telephonic hearing was rescheduled for April 7, 2022, at 10:00 a.m.

13. The Hearing Cancellation/Reschedule Notice advised the parties of the location, date and time of the scheduled hearing and warned them again that they might lose the case if they did not take part in the hearing and present evidence on the issues raised.

14. The January 7, 2022 Hearing Notice, the January 18, 2022 Prehearing Order and the February 23, 2022 Hearing Cancellation/Reschedule Notice were served on the Complainant via regular first-class mail to the address provided by the Complainant in her Complaint.

15. Neither the January 7, 2022 Hearing Notice, nor the January 18, 2022 Prehearing Order, nor the February 23, 2022 Hearing Cancellation/Reschedule Notice was returned as undeliverable.

16. Using an email account unconnected to her, on April 4, 2022, the Complainant requested a second continuance of the scheduled hearing, citing a medical appointment that could not be rescheduled.

17. By email dated April 4, 2022, counsel for the Respondent objected to the Complainant's request for another continuance of the hearing.

18. As reasons for the objection, counsel for PGW cited Complainant's repeated failure to inform the Respondent of the request for continuance as well as her failure to respond to PGW's attempts to contact her.

19. By email dated April 6, 2022, I informed the parties that the Complainant's second request for a continuance of the scheduled hearing would be granted only if the Complainant submitted documentation evidencing her doctor's appointment on the date of the hearing.

20. By email dated April 6, 2022, Complainant reiterated her request for the continuance of the April 7, 2022, hearing but did not provide the documentation requested.

21. By email dated April 7, 2022, I reiterated my previous ruling to the parties but allowed for the submittal of a doctor's note by 4:30 p.m. on that day, i.e., after the purported doctor's visit.

22. The Complainant did not submit the requested documents.

23. The Complainant failed to appear at the April 7, 2022, hearing.

24. Respondent was present at the April 7, 2022 hearing represented by counsel and a witness available to testify.

25. To date, there has been no contact or communication received from the Complainant regarding the 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, 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). Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *Berkowitz v. Mayflower Sec., Inc.*, 317 A.2d 584 (Pa. 1974) (*Mayflower*); *Chartiers Indus. & Com. Dev. Auth. v. Allegheny Cnty. Bd. of Prop. Assessment Appeals & Review*, 645 A.2d 944 (Pa. Cmwlth. 1994); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993).

By Initial Call-In Telephonic Hearing Notice dated January 7, 2022, the Commission informed the parties that a telephonic hearing was scheduled in this matter for February 24, 2022, at 10:00 a.m. The January 7, 2022 Hearing Notice warned the parties that they may lose the case if they do not take part in the hearing and present evidence on the issues raised. On January 18, 2022, I issued a Prehearing Order that directed the parties to comply with various procedural requirements. The Prehearing Order warned in bold type: **“You may lose the case if you do not take part in this hearing and present evidence on the issues raised.”**

On February 21, 2022, the Complainant contacted the Commission requesting that the February 24, 2022 hearing be continued due to health-related reasons. Respondent did not object to the Complainant's request, and by Hearing Cancellation/Reschedule Notice dated February 23, 2022, the initial telephonic hearing was rescheduled for April 7, 2022, at 10:00 a.m.

Like the January 7, 2022 Hearing Notice and the January 18, 2022 Prehearing Order, the February 23, 2022 Hearing Cancellation/Reschedule Notice advised the parties of the location, date and time of the scheduled hearing and warned them again that they might lose the

case if they did not take part in the hearing and present evidence on the issues raised. All three documents were served on the Complainant via regular first-class mail. None of these documents was returned as undeliverable by the United States Postal Service and are presumed to have been received by the Complainant. *See Mayflower*. In the present case, the Complainant also had actual notice of the hearings as evidenced by her February 21, 2022, request for the continuance of the February 24, 2022, hearing, and her April 4, 2022, request for the continuance of the April 7, 2022, hearing.

In addition to having sufficient notice of the day, date and time of the scheduled hearings, the Complainant was also provided with opportunity to be heard. Not only was her first request for continuance of the hearing granted, but the Complainant was provided with ample opportunity to show the good cause she claimed existed for the second continuance. In accordance with the provision of Section 1.15(b) of the Commission's Rules of Practice and Procedure any requests for continuance of a hearing are to be considered only for "good cause shown." 52 Pa. Code § 1.15(b). Despite PGW's objection to the second continuance request, it was not rejected outright. Instead, the Complainant was instructed twice to submit documentation evidencing the doctor's appointment that she claimed conflicted with the scheduled hearing. Each communication explained that, absent such documentation, the hearing would proceed as scheduled and no new hearing date would be set.

The Complainant did not submit the documentation requested. Neither the Complainant nor a representative licensed to practice law in this Commonwealth appeared at the April 7, 2022 hearing on her behalf. To date, there has been no further information from the Complainant regarding this hearing. Therefore, her failure to appear is unexcused.

Once notice of a hearing and the opportunity to be heard have been provided, it is the responsibility of the parties to appear and participate in the hearing. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993). The Complainant waived the opportunity to participate in the hearing by failing to appear. Frances Mestichelli's Complaint against PGW will be dismissed with prejudice. 52 Pa. Code § 5.245(a); *Jefferson v. UGI Utils., Inc.*, 1995 Pa. PUC LEXIS 159.

CONCLUSIONS OF LAW

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

2. As the Complainant, Frances Mestichelli had the burden of proof and failed to carry that burden. 66 Pa.C.S. § 332(a).

3. Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *Berkowitz v. Mayflower Sec., Inc.*, 317 A.2d 584 (Pa. 1974) (*Mayflower*); *Chartiers Indus. & Com. Dev. Auth. v. Allegheny Cnty. Bd. of Prop. Assessment Appeals & Review*, 645 A.2d 944 (Pa. Cmwlth. 1994).

4. By failing to appear and be heard on this Complaint, Complainant waived the opportunity to participate in the hearing. 52 Pa.Code § 5.245(a); *Jefferson v. UGI Utils., Inc.*, 1995 Pa. PUC LEXIS 159.

5. Frances Mestichelli has failed to meet her burden of proving that she is entitled to 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 of Frances Mestichelli at Docket No. C-2021-3030024 is granted.

2. That the formal Complaint filed by Frances Mesticelli against Philadelphia Gas Works at Docket No. C-2021-3030024 is dismissed with prejudice for failure to prosecute.

3. That the Secretary's Bureau should mark this matter closed.

Date: July 25, 2022

_____/s/_____
Eranda Vero
Administrative Law Judge