

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Irena Porter	:	
	:	
v.	:	C-2022-3031693
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Conrad A. Johnson
Administrative Law Judge

INTRODUCTION

This decision dismisses the Complaint filed in this matter for Complainant’s failure to appear for the hearing to prosecute the Complaint.

HISTORY OF THE PROCEEDING

Complaint

On March 28, 2022, Complainant Irena Porter (Complainant or Ms. Porter) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW). Ms. Porter alleged (1) there were incorrect charges on her bill and (2) there were false allegations on her account. Complaint ¶ 4. A PGW Hazard Warning directed to Ms. Porter and dated February 12, 2015, was attached to the Complaint. The Hazard Warning listed conditions that need to be corrected: (1) a fuel line leak and (2) a control valve bypass.

For relief, Ms. Porter requested that the Commission order PGW to fix her bill as soon as possible because she could not receive help from LIHEAP¹ with false allegations on her account. Complaint ¶ 5.

Answer, New Matter and Preliminary Objections

On April 20, 2022, PGW filed an Answer and New Matter and Preliminary Objections (POs). PGW denied that there were incorrect charges on Complainant's bill for gas service at 5351 Grays Avenue, Philadelphia, PA (Grays Avenue). PGW alleged that when Ms. Porter established gas service at Grays Avenue as of December 15, 2021, PGW transferred Complainant's theft balance from her account at 219 N. 53rd Street, Philadelphia, PA (53rd Street) to her account at the Grays Avenue.

In New Matter, PGW alleged that on February 12, 2015, PGW visited 53rd Street and discovered a tampered meter bypass. PGW further alleged that on March 2, 2015, PGW billed Ms. Porter \$2,477.59 in theft charges based on historical usage at 53rd Street. According to PGW, on March 2, 2015, Ms. Porter filed an informal complaint with the Commission's Bureau of Consumer Services (BCS) at BCS Docket No. 3322700 challenging the theft charges. PGW attached a copy of the informal complainant to its Answer as Exhibit A and attached as Exhibit B a copy of the BCS decision dismissing the informal complaint. PGW asserted that Ms. Porter did not appeal the decision at BCS Docket No. 3322700 or in any other way further contest the theft bill.

PGW further asserted that the statute of limitations of the Public Utility Code (Code) at 66 Pa.C.S. § 3314 provides that no action for recovery of penalties or forfeitures, or any prosecution, may be maintained unless brought within three years from the date the liability arose. Accordingly, PGW argued that the provisions of Section 3314 of the Code divested the Commission of jurisdiction over any theft charges levied against Complainant, which dated back to 2015. New Matter ¶¶ 15-16.

¹ Low Income Home Energy Assistance Program.

For relief, PGW requested that the Commission deny all relief requested in the Complaint, dismiss the Complaint, and grant any other relief in favor of PGW as deemed appropriate.

PGW's POs incorporated the averments of its New Matter, and PGW reiterated its jurisdictional argument that any claim of Complainant relating to the theft charges from 2015 were barred by the statute of limitations at Section 3314 of the Code. POs ¶¶ 9-12. For relief, PGW requested that the Commission (a) grant PGW's preliminary objections; (b) dismiss the Complaint; and (c) grant PGW any other relief deemed to be reasonable and appropriate.

PGW served Ms. Porter with a copy of the POs on April 20, 2022, together with a Notice to Plead to the POs within ten days of the date of service. Complainant did not file a response to the preliminary objections² or the new matter.³

By Notice dated May 25, 2022, the Parties were informed that this matter was assigned to me as the presiding officer.

By First Interim Order entered June 22, 2022, PGW's POs were sustained. However, the First Interim Order denied PGW's request to dismiss the Complaint. There were questions of fact as to Complainant's allegation that there were incorrect charges on her current bill. This allegation could not be resolved on a preliminary motion.

² An answer to a preliminary objection may be filed within 10 days of date of service. 52 Pa. Code § 5.101(f) (1).

³ Sections 5.63 (a) and (b) of the Commission's Rule of Practice and Procedure state:

(a) Unless otherwise ordered by the Commission, replies to answers seeking affirmative relief or to new matter shall be filed within 20 days of the date of service of the answer but not later than 5 days prior to the date set for the commencement of the hearing.

(b) Failure to file a timely reply to new matter may be deemed in default, and relevant facts stated in the new matter may be deemed to be admitted.

52 Pa. Code §§ 5.63 (a) and (b).

The First Interim Order further stated in pertinent part as follows:

Complainant is cautioned that as the party seeking relief from the Commission, she has the burden of showing that the named utility is responsible or accountable for the problem described in the complaint to prevail on her Complaint. *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Company*, 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (1990), *alloc. den.*, 602 A.2d 863 (1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosier v. Marquies*, 70 A.2d 854 (1950).

The utility company's offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701. Complainant is responsible for proving that the utility has acted improperly, by providing testimony and documentary evidence, such as expert reports, photographs, and any other relevant materials necessary to support that finding, and that the Commission has the jurisdiction to provide the remedy.

Accordingly, this case will be scheduled for hearing on the issues of incorrect billing charges and reasonableness of service.

The parties are directed to attempt to resolve this matter themselves and are strongly encouraged to engage in settlement discussions. Settlement discussions are consistent with the Commission's regulations at 52 Pa. Code §§5.231.

First Interim Order at 8.

Accordingly, on June 24, 2022, a Call-In Telephone Hearing Notice was eServed upon the Parties, informing them that a call-in telephonic hearing on the Complaint and Answer would be convened by me from Pittsburgh, on July 21, 2022, at 10:00 a.m. The Hearing Notice provided the Parties with the Toll-Free Bridge Number and the PIN to dial on the morning of the hearing to participate in the telephonic hearing. The Hearing Notice further stated as follows:

FAILURE TO APPEAR: You may lose the case if you do not take part in this hearing and present evidence on the issue(s) 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.

CONTINUANCES. You may request a continuance of the hearing if you have a good reason. All continuances 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. Your motion should include: 1) The case name, number, and hearing date; 2) The reason for the request; and 3) Whether the other party agrees (or if you do not know).

REPRESENTATION. If you are an individual, you may represent yourself or you may have an attorney represent you. All others, including a partnership, corporation, trust, association, or governmental agency or subdivision, must be represented by an attorney licensed to practice law in Pennsylvania, or admitted *pro hac vice*. Only an attorney may represent someone else.

PRESENTING EXHIBITS. If you intend to present any documents or exhibits at the hearing, you must email one (1) copy to Legal Assistant, Nicholas Miskanic at nmiskanic@pa.gov and one (1) copy each must be sent to every other party. All copies must be received at least five (5) business days before the hearing. Proposed exhibits should be properly pre-marked for identification purposes.

(emphasis in original).

The Hearing Notice informing the Parties of the manner, date, and time of the hearing, was eServed upon the Parties in the ordinary course of the Commission’s business to the email address provided by them to the Commission. The Commission did not receive a return electronic message that delivery of the Hearing Notice to Ms. Porter’s email address had failed.

On July 14, 2022, PGW in accordance with the Hearing Notice emailed copies of its proposed exhibits to Ms. Porter and Legal Assistant Nicholas Miskanic.

On July 21, 2022, by 10:00 a.m., counsel for PGW, Graciela Christlieb, Esquire, together with her witness had dialed-in to participate in the telephonic proceeding. The court reporter was also present. However, Ms. Porter was not present when the hearing convened at 10:25 a.m.

I briefly recessed the hearing to permit additional time for Ms. Porter to appear or to contact the Office of Administrative Law Judge (OALJ) to explain her absence. The telephonic proceeding remained open with counsel for PGW and the court reporter in the telephonic hearing, and I waited for Ms. Porter to join the hearing. When the hearing reconvened, Ms. Porter had not dialed into the hearing nor contacted the OALJ to explain her absence.

Accordingly, the hearing proceeded in Ms. Porter's absence. As a result, counsel for PGW moved for dismissal of the Complaint with prejudice for lack of prosecution. I informed counsel that the motion would be taken under advisement and an Initial Decision would be issued. The record was closed, and the hearing adjourned at approximately 10:40 a.m. on July 21, 2022.

FINDINGS OF FACT

1. Complainant in this proceeding is Irena Porter.
2. Respondent Philadelphia Gas Works is a jurisdictional public utility providing gas service to Pennsylvania customers.
3. On March 28, 2022, Ms. Porter filed a Complaint against Respondent with the Commission.
4. On April 20, 2022, PGW filed an Answer and New Matter to the Complaint.

5. By Call-In Telephone Hearing Notice dated June 24, 2022, the Parties were informed that a call-in telephonic hearing in this proceeding would convene on July 21, 2022, at 10:00 a.m.

6. The Hearing Notice provided the Parties with the Toll-Free Bridge Number and the PIN to dial on the morning of the hearing to participate in the telephonic hearing.

7. The Hearing Notice informed the Parties that failure to participate in the hearing would result in dismissal of their case with prejudice.

8. The Hearing Notice was eServed upon Ms. Porter at the email address provided by her to the Commission.

9. There is no indication in the record that there was an electronic failure in the delivery of the Hearing Notice to Ms. Porter.

10. Respondent's counsel and witness were present by 10:00 a.m. on July 21, 2022, for the telephonic hearing.

11. By approximately 10:39 a.m. on July 21, 2022, Ms. Porter had not appeared for the telephonic hearing.

12. There is nothing in the record to indicate that Ms. Porter's failure to appear for the telephonic hearing was unavoidable.

13. When Ms. Porter did not appear for the telephonic hearing, Respondent's counsel moved for dismissal of the Complaint with prejudice for lack of prosecution.

DISCUSSION

Due Process

The Commission satisfies the requirement of affording a complainant with administrative due process, by providing timely notice of the hearing on the complaint and the opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

On June 24, 2022, the Call-In Telephone Hearing Notice was eServed upon Complainant at the email address she provided to the Commission. The Commission did not receive a return electronic message that delivery of the Hearing Notice to Ms. Porter's email address had failed. Accordingly, there is a presumption that Ms. Porter received electronic notice of the hearing and elected not to participate in the hearing. *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). Therefore, Complainant's due process rights have been fully protected.

Burden of Proof

Pursuant to Section 332(a) of the Code, 66 Pa.C.S. § 332(a), the burden of proof is on the proponent of a rule or order. In this proceeding, Complainant is the proponent of a rule or order. Therefore, Ms. Porter had the burden of proving she was entitled to the relief requested in her Complaint. PGW was present for the hearing through its attorney and witness. However, Ms. Porter was not present for the hearing.

Section 332(f) of the Code, 66 Pa.C.S. § 332(f), provides in pertinent part:

Any party who shall fail to be represented at a scheduled conference or hearing after being duly notified thereof, shall be deemed to have waived the opportunity to participate in such conference or hearing, and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat,

Since Ms. Porter failed to appear and participate in the scheduled hearing by telephone, her Complaint may be dismissed with prejudice. *See Little v. PWSA*, Docket No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022); *Jefferson v. UGI Utils., 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. There is nothing in the record to indicate that Ms. Porter's failure to appear for the telephonic hearing was unavoidable. Accordingly, in the ordering paragraphs below the Complaint will be dismissed with prejudice. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered April 22, 2022).

CONCLUSIONS OF LAW

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

2. Complainant as the proponent of a rule or order has the burden of proof. 66 Pa.C.S. § 332(a).

3. When a complainant fails to appear for a scheduled conference or hearing and there is no indication in the record that complainant's failure to appear for the hearing was unavoidable, the complaint shall be dismissed with prejudice. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered April 22, 2022); 52 Pa. Code § 5.245.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Philadelphia Gas Works, to dismiss the Complaint of Irena Porter for failure to prosecute her Complaint is granted consistent with this decision.

2. That the Complaint of Irena Porter against Philadelphia Gas Works at Docket No. C-2022-3031693 is dismissed with prejudice, for the failure of Complainant Irena Porter to prosecute her Complaint.

3. That the Secretary's Bureau shall mark Docket No. C-2022-3031693 closed.

Date: August 12, 2022

_____/s/
Conrad A. Johnson
Administrative Law Judge