

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ronald J. Galella

v.

UGI Utilities, Inc.

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C-2022-3034047

INITIAL DECISION

Before
Joel H. Cheskis
Deputy Chief Administrative Law Judge

INTRODUCTION

This decision grants a motion to dismiss for failure to prosecute because the complainant failed to appear for the hearing at the designated date and time despite being given notice of the hearing.

HISTORY OF THE PROCEEDING

On July 20, 2022, Ronald J. Galella (Mr. Galella or complainant) filed a Formal Complaint (complaint) with the Pennsylvania Public Utility Commission against UGI Utilities, Inc. (UGI). In his complaint, Mr. Galella complained that he is being denied enrollment in the company's customer assistance program (CAP) even though he is well within the income guidelines. Mr. Galella explained that he was told that he is not eligible for CAP because foreign load was found at the service address. Mr. Galella requested that "the PUC have the UGI Gas Company suspend this nonsense 'foreign load' Pish-Tosh." Complaint ¶ 5.

On August 1, 2022, UGI filed an answer to Mr. Galella's complaint. In its answer, UGI admitted or denied the various averments made by Mr. Galella. In particular, UGI admitted that Mr. Galella is not eligible for CAP or the Low Income Usage Reduction Program (LIURP) because foreign load situations prohibit participation in those programs.

On August 3, 2022, a telephonic hearing notice was issued establishing an initial call-in telephonic hearing for this matter for October 4, 2022 beginning at 10:00 a.m. and assigning me as the presiding officer. Also on August 3, 2022, a prehearing order was issued setting forth various rules that would govern the hearing. Of note, both the hearing notice and the prehearing order stated that a party may lose the case if it does not take part in the hearing and present facts on the issues raised. Both the hearing notice and the prehearing order were sent to Mr. Galella via the email address he provided on his complaint. Neither was returned as undeliverable.

The hearing convened on October 4, 2022, as scheduled. Larry Crayne, Esquire appeared on behalf of UGI. No one appeared on behalf of Mr. Galella.

The record in this case consists of the hearing transcript of 9 pages. The record closed in this proceeding when the transcript was filed with the Commission October 19, 2022. This Initial Decision grants the motion UGI made at the conclusion of the hearing to dismiss the complaint for failure to prosecute.

FINDINGS OF FACT

1. The Complainant in this case is Ronald J. Galella.
2. The Respondent in this case is UGI Utilities Inc.
3. On July 20, 2022, Mr. Galella filed a Formal Complaint with the Commission against UGI.

4. On August 1, 2022, UGI filed an answer to Mr. Galella's complaint.
5. On August 3, 2022, a telephonic hearing notice was issued establishing an initial call-in telephonic hearing for this case for October 4, 2022 beginning at 10:00 a.m. Tr. 4.
6. On August 3, 2022, a prehearing order was issued setting forth various rules that would govern the telephonic hearing. Tr. 5.
7. Both the hearing notice and the prehearing order indicated that a party may lose the case if they do not appear and take part in the hearing. Tr. 5.
8. Both the hearing notice and the prehearing order were served upon the parties at the email address provided by the parties to the Commission.
9. Neither the hearing notice nor the prehearing order served upon the complainant were returned to the Commission as undeliverable.
10. No one called in to the hearing on behalf of Mr. Galella at the designated date and time as instructed on the hearing notice. Tr. 4.
11. The hearing was delayed 10 minutes to accommodate any delay in anyone appearing at the hearing on behalf of Mr. Galella. Tr. 1.
12. Counsel for UGI indicated during the hearing the additional numerous efforts that the company took to also provide Mr. Galella with notice of the hearing. Tr. 5-6.

DISCUSSION

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). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem

described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa.P.U.C. 196 (1990). “Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950). The 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. In this proceeding, based on a reading of his complaint, Mr. Galella complained that UGI did not give him CAP benefits despite the fact that he was income eligible because foreign load was found at the service address. Mr. Galella asked that he be given the benefits. Mr. Galella, therefore, has the burden of proof in this proceeding.

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 accorded notice and the opportunity to be heard. Id., see also, J.P. v. Dep’t of Human Servs., 150 A.3d 173 (Pa. Cmwlth. 2016).

The prehearing order and hearing notice were both sent to Mr. Galella at the e-mail address provided by him and neither were returned to the Commission as undeliverable. Notice electronically served to a party with no notification that service has failed is presumed received. Hu v. PECO Energy Co., Docket No. C-2019-3012075 (Final Order entered Dec. 19, 2019); Zirkel v. Phila. Gas Works, Docket No. C-2016-2561176 (Final Order entered Apr. 7, 2017). Accordingly, it must be presumed that these documents sent to Mr. Galella in the ordinary course of business were received by him. Berkowitz v. Mayflower Securities, Inc., 317 A.2d 584 (Pa. 1974); Meierdierck v. Miller, 147 A.2d 406 (Pa. 1959); Samaras v. Hartwick, 698 A.2d 71 (Pa. Super. 1997); Judge v. Celina Mutual Ins. Co., 449 A.2d 658 (Pa. Super. 1982). Of note, the hearing notices and the prehearing order stated that, if a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party. Furthermore, counsel for UGI indicated during the hearing the additional numerous efforts that the company also took to provide Mr. Galella with notice of the hearing. Tr. 5-6.

No one appeared on behalf of Mr. Galella at the time of the hearing, nor did anyone ever request a postponement or continuance of the hearing. As such, Mr. Galella had notice and an opportunity to be heard in this proceeding but chose not to appear. Therefore, Mr. Galella's due process rights have been fully protected. Sentner v. Bell Tel. Co. of Pa., Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993); see also, 52 Pa.Code § 5.245(a).

During the hearing, counsel for UGI moved to have the complaint dismissed for lack of prosecution. Tr. 7. By failing to appear and present any evidence in support of his complaint, Mr. Galella has failed to carry his burden. Once 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. Strydio v. PPL Elec. Utils. Corp., Docket No. C-2017-2633043 (Opinion and Order entered July 18, 2018).

Commission regulations address circumstances when a party fails to appear in a proceeding. Section 5.245 provides:

§ 5.245. Failure to appear, proceed or maintain order in proceedings.

(a) After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will:

- (1) Be deemed to have waived the opportunity to participate in the conference or hearing.
- (2) Not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing.
- (3) Not be permitted to recall witnesses who were excused for further examination.

52 Pa. Code § 5.245(a).

Thus, it is appropriate to dismiss the complaint. Jefferson v. UGI Utils., Inc., Docket No. Z-00269892 (Order entered Dec. 26, 1995). Accordingly, the merits of the

complaint will not be addressed in this Initial Decision. Furthermore, there are no facts in the record that would allow the Commission to reach the conclusion that Complainant's failure to attend the hearing was unavoidable. Accordingly, the Complaint is dismissed, with prejudice. Little v. Pittsburgh Water & Sewer Auth., Docket No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022); Williams v. PECO Energy Company, Docket No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019).

CONCLUSIONS OF LAW

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

2. 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).

3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

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

5. After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will: 1) be deemed to have waived the opportunity to participate in the conference or hearing; 2) not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing; and 3) not be permitted to recall witnesses who were excused for further examination. 52 Pa. Code § 5.245(a).

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

7. Mr. Galella has failed to carry his burden of proof in this proceeding.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of UGI Utilities Inc. to dismiss the formal complaint of Ronald J. Galella at docket number C-2022-3034047 for failure to prosecute is granted.

2. That the formal complaint filed by Ronald J. Galella against UGI Utilities, Inc. at docket number C-2022-3034047 is hereby dismissed with prejudice.

3. That this matter be marked closed.

Date: November 17, 2022

_____/s/
Joel H. Cheskis
Deputy Chief Administrative Law Judge