

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kristen Flaherty	:	C-2022-3033548
	:	C-2022-3034018
v.	:	
	:	
Columbia Gas of Pennsylvania, Inc.	:	

INITIAL DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

INTRODUCTION

The undersigned grants Respondent’s oral motion to dismiss two formal complaints because Complainant failed to appear at the initial hearing and prosecute the two related cases.

HISTORY OF THE PROCEEDING

On July 5, 2022, Kristen Flaherty (Ms. Flaherty or Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Columbia Gas of Pennsylvania, Inc. (Columbia Gas or Respondent) at Docket No. C-2022-3033548 concerning gas service rendered at 3998 Millers Run Road, McDonald, Pennsylvania 15057. Complainant alleged Columbia Gas threatened to shut off natural gas service. Complainant requested an affordable payment arrangement.

On July 25, 2022, Kristen Flaherty (Ms. Flaherty or Complainant) filed another formal complaint with the Commission against Columbia Gas at Docket No. C-2022-3034018

concerning gas service rendered at 349 Old Gilkeson Road, Pittsburgh, Pennsylvania, 15228. Complainant alleged Columbia Gas threatened to shut off gas service. Complainant requested an affordable payment arrangement.

On July 25, 2022, Columbia Gas filed its Answer at Docket No. C-2022-3033548, and Respondent filed its Answer on August 2, 2022, at Docket No. C-2022-3034018. Columbia Gas averred Complainant received notice of pending terminations due to her repeated and persistent failure to pay her monthly bills in full and on time. Columbia Gas further averred she received three company payment arrangements and two Commission payment arrangements previously but failed to make a good faith effort to pay her monthly bills.

By Call-In Telephone Hearing Notice dated August 8, 2022, the Office of Administrative Law Judge notified the parties a further telephonic hearing was scheduled for September 20, 2022. On August 9, 2022, the presiding officer issued a Prehearing Order which, *inter alia*, advised the parties that continuances would only be granted if requested, the request must be received five business days prior to the hearing and requests would be granted only in rare situations where sufficient cause was shown to exist.

On September 20, 2022, the presiding officer convened the hearing as scheduled, at which time Complainant appeared and represented herself. Respondent was represented by Larry R. Crayne, Esquire, who appeared with Earlene Thomas, a Compliance Analyst for Columbia Gas. The parties participated in the settlement judge process and reached an agreement on how to settle the dispute between the parties. The parties agreed Respondent would file a Certificate of Satisfaction by October 15, 2022, if Complainant paid \$200 on both accounts by September 30, 2022.

Thereafter, on October 14, 2022, Respondent's attorney sent an email to the presiding officer, with a copy to Complainant, indicating Complainant had not made the agreed-upon payments and Respondent would not file a Certificate of Satisfaction. Respondent requested the presiding officer schedule a further hearing. Accordingly, by Call-In Telephone

Hearing Notice dated October 19, 2022, the Office of Administrative Law Judge notified the parties a further telephonic hearing was scheduled for December 20, 2022.

On December 20, 2022, the presiding officer convened the hearing as scheduled, at which time Complainant did not appear. Respondent was represented by Larry R. Crayne, Esquire, who appeared with Earlene Thomas, a Compliance Analyst for Columbia Gas. Ms. Thomas testified about the differences between the formal complaints, the two service addresses and the payment history for the two separate natural gas service accounts. Columbia Gas made an oral motion to dismiss the proceeding for failure of Complainant to appear and for failure to prosecute the two formal complaints. The hearing concluded at 10:21 a.m.

FINDINGS OF FACT

1. Complainant is Kristen Flaherty, who resides at 349 Old Gilkeson Road, Pittsburgh, Pennsylvania (service address) and has been the accountholder for the service address since April 2, 2019.
2. Respondent is Columbia Gas of Pennsylvania, Inc., a natural gas distribution company which provides natural gas service to Complainant as the accountholder at the service address.
3. In addition to her residence, Complainant is also the accountholder at 3998 Millers Run Road, McDonald, Pennsylvania (second service address) where natural gas service was established in her name on August 6, 2021.
4. On the natural gas service account for the service address, the unpaid balance, as of December 15, 2022, is \$1,217.07 and the last successful payment made by Complainant was in the amount of \$128.00 on September 8, 2021.

5. On the natural gas service account for the second service address, the unpaid balance, as of December 8, 2022, was \$2,149.18 and no successful payment was made by Complainant since the date service was established on August 6, 2021.

6. The Prehearing Order dated August 9, 2022, and the hearing notices dated August 8, 2022, and October 19, 2022, were sent to the email address provided by Complainant in the formal complaints and were not returned as undeliverable.

7. The hearing notices warned Complainant the formal complaints might be dismissed if Complainant failed to appear at the telephonic hearing.

8. The Prehearing Order dated August 9, 2022, was not returned as undeliverable and warned the formal complaints might be dismissed if Complainant did not take part in the hearing.

9. Complainant was present at the initial hearing on September 20, 2022, and she participated fully in the proceeding.

10. On December 20, 2022, Complainant was not present, and Respondent was ready to proceed with its witness at the date and time scheduled for the hearing.

DISCUSSION

Pursuant to Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), the burden of proof is on the proponent of a rule or order. In this proceeding, Ms. Flaherty, as a complainant, is the proponent of a rule or order. Therefore, Complainant bears the burden of proving by a preponderance of the evidence that Respondent violated the Public Utility Code or a regulation or order of the Commission.¹ Ms. Flaherty must show the utility is responsible or accountable for the problem described in the formal complaints.² Administrative agencies, like

¹ *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

² *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976).

the Public Utility Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are provided with notice and the opportunity to appear and be heard.³

Ms. Flaherty did not appear at the time scheduled for the hearing on December 20, 2022, and no one appeared to represent Ms. Flaherty at the hearing. Information concerning the date, time and the location of the hearing, as well as how to call into the telephonic hearing, was listed in the hearing notice, dated October 19, 2022, and in the Prehearing Order, dated August 9, 2022.

The Office of Administrative Law Judge electronically mailed both hearing notices and the Prehearing Order to Complainant at the email address Ms. Flaherty provided in her formal complaints. Neither the hearing notices nor the Prehearing Order were returned as undeliverable and are presumed to have been received by Complainant⁴ Once notice of a hearing and the opportunity to be heard was provided, it was the responsibility of Ms. Flaherty to appear and participate in the hearing.⁵ If Ms. Flaherty could not appear or was unavailable, for any reason, then it was the responsibility of Ms. Flaherty to notify the presiding officer immediately about the impediment or dilemma.

Section 332(f) of the Public Utility Code 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

³ *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

⁴ *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered Dec. 19, 2019); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Jan. 27, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Nov. 16, 2016).

⁵ *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993); *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered Jan. 24, 2002).

thereafter to reopen the disposition of any matter accomplished thereat[.]

66 Pa.C.S. § 332(f).

In this proceeding, Ms. Flaherty did not call into the telephonic hearing as specified in the October 19, 2022, hearing notice. The October 19, 2022, hearing notice clearly indicated Complainant was to call and provided Complainant with the Commission's toll-free conference bridge number and PIN number. The hearing notice also provided an address and telephone number where Ms. Flaherty could reach the presiding officer if additional information was needed prior to the hearing or to explain if an impediment existed which would prevent her from participating in the hearing. Since Ms. Flaherty did not appear or participate in the hearing, despite receiving notice of the date and time of the hearing, the hearing was held in accordance with 66 Pa.C.S. § 332(f) and 52 Pa. Code § 5.245. Respondent's attorney moved to dismiss the formal complaint for failure of Complainant to appear and failure to prosecute her two formal complaints.

Because Ms. Flaherty did not contact the presiding officer or the Office of Administrative Law Judge to explain her absence or to explain why she was unavailable, Complainant failed to take advantage of the opportunity provided in which to appear and prosecute the formal complaints against Respondent by presenting evidence to support the allegations. As a result, Complainant failed to sustain the burden of proof. Accordingly, Respondent's oral motion to dismiss the formal complaints will be granted, and the formal complaints will be dismissed in the Ordering Paragraphs below.⁶

CONCLUSIONS OF LAW

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

⁶ *Little v. Pittsburgh Water & Sewer Auth.*, F-2021-3027107 (Opinion and Order entered Feb. 7, 2022); *Volgstadt v. UGI Penn Nat. Gas*, Docket No. F-02266429 (Opinion and Order entered Sept. 12, 2008); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); *El-Ayazra v. W. Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016).

2. The due process rights of Complainant have been fully protected in this proceeding. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993).

3. Complainant, as the proponent of a rule or order, has the burden of proof in this matter pursuant to 66 Pa.C.S. § 332(a).

4. Complainant, by failing to appear at the scheduled hearing, waived the opportunity to participate in the hearing. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

5. Notice served to a party's electronic mail address and not returned as undeliverable is presumed to have been received. *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered Dec. 19, 2019); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Jan. 27, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Nov. 16, 2016).

6. 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. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993).

7. When a complainant fails to appear for a scheduled conference or hearing, the complaint may be dismissed with prejudice. *Little v. Pittsburgh Water & Sewer Auth.*, F-2021-3027107 (Opinion and Order entered Feb. 7, 2022); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 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.

8. By failing to appear for the hearing and proffer any evidence to support the formal complaint, Complainant failed to meet the burden of proving she is entitled to the relief she seeks from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the oral motion of Columbia Gas of Pennsylvania, Inc. to dismiss the two formal complaints filed by Kristen Flaherty against Columbia Gas of Pennsylvania, Inc., at Docket Nos. C-2022-3033548 and C-2022-3034018, is granted.

2. That the Formal Complaint filed in Kristen Flaherty v. Columbia Gas of Pennsylvania, Inc., at Docket No. C-2022-3033548 is dismissed with prejudice.

3. That the Formal Complaint filed in Kristen Flaherty v. Columbia Gas of Pennsylvania, Inc., at Docket No. C-2022-3034018, is dismissed with prejudice.

4. That the Secretary mark the cases as closed.

Date: February 3, 2023

/s/
Katrina L. Dunderdale
Administrative Law Judge