**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kevin Maromonte :

:

v. : C-2015-2468911

:

Peoples Natural Gas Company LLC :

Equitable Division :

**INITIAL DECISION**

Before

David A. Salapa

Administrative Law Judge

This decision dismisses a complaint for failure to appear and prosecute. On February 25, 2015, Kevin Maromonte (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against Peoples Natural Gas Company LLC-Equitable Division (Respondent). The complaint alleges that the Respondent improperly shut off natural gas service to a rental property owned by Complainant.

The complaint alleges that on January 9, 2015, the Complainant received a telephone call from a tenant occupying half of a duplex rental property owned by Complainant at 675 Sixth Street, Oakmont, PA 15139. The tenant notified the Complainant that the tenant’s portion of the duplex was being flooded by water coming from the unoccupied portion of the duplex above. The complaint alleges that the Complainant dispatched a plumber to shut off the water and mitigate damages.

The plumber allegedly told the Complainant that the water pipes in the bathroom of the unoccupied property had frozen and burst, causing a collapsed ceiling, badly warped wooden floors, and flooding. The plumber informed the Complainant that the furnace in the unoccupied property was not functioning because the natural gas service to the unoccupied property had been shut off. According to the complaint, this was the first time the Complainant became aware that the Respondent had shut off the gas service to the unoccupied property.

The complaint states that the Complainant owns multiple rental properties which all receive gas service from the Respondent. According to the complaint, the Complainant has an agreement with the Respondent to have gas service automatically transferred to his name when a tenant cancels service for one of his rental properties to ensure that there is no disruption in service.

The complaint claims that one of the Respondent’s customer service representatives confirmed during a telephone conversation that the Complainant had a valid transfer-of-service agreement with the Respondent in place at the time the damage occurred and that the Respondent should not have shut off natural gas service to the unoccupied property. The Complainant filed a damage claim with the Respondent but the Respondent denied his claim.

The complaint requests that the Commission order the Respondent to pay the Complainant a total of $6,303.28 to compensate the Complainant for the expense of repairing damage to the unoccupied property.

On March 16, 2015, the Respondent filed an answer and preliminary objections. The answer denies that the Respondent is responsible for the damage to Complainant’s property. According to the answer, the Respondent conducted an investigation and informed the Complainant that it believes it is not responsible for the damage. The answer asserts that the Complainant seeks monetary damages, which the Commission lacks the authority to order.

The answer also states that the Respondent did not shut off gas service to the Complainant’s property improperly and notes that the Complainant failed to notice that gas service to the unoccupied property was shut off for a period of seven months. The answer requests that the Commission dismiss the Complainant’s complaint.

The preliminary objections alleged that the Commission lacks jurisdiction to award monetary damages. The preliminary objections requested the Commission strike the Respondent’s request for damages.

On March 26, 2015, the Complainant filed a response to the Respondent’s preliminary objections. The response reiterated the assertions in the complaint that the Complainant had an agreement with the Respondent to have gas service automatically transferred to his name and that the Respondent should not have shut off natural gas service to the unoccupied property.

By notice dated March 23, 2015, the Commission notified the parties that it had assigned the case to me as motion judge. By order dated March 31, 2015, I sustained the Respondent’s preliminary objections, struck the Complainant’s request for monetary damages and directed that the remaining issues set forth in the complaint be scheduled for hearing.

By notice dated April 1, 2015, the Commission scheduled this matter for an initial telephonic hearing on May 12, 2015 at 10:00 a.m. and assigned the case to me. I issued a prehearing order dated April 3, 2015, addressing, inter alia, requests for continuance, subpoena procedures, attorney representation and the Commission’s policy encouraging settlements.

I conducted a telephonic hearing on May 12, 2015, at 10:00 a.m. as scheduled. The Complainant failed to appear for that hearing. I attempted to call the Complainant at approximately 10:00 a.m. at the telephone number shown on the April 1, 2015, hearing notice. I received a voice mail message indicating that the Complainant was not available. I left a message on the Complainant’s voice mail, identifying myself and the purpose of my call. I indicated that I would call the Complainant again in approximately ten minutes.

I then verified with the support staff for the Office of Administrative Law Judge in Harrisburg that the Complainant had not contacted that office to indicate that he would be unable to participate in the telephonic hearing. My voice mail and email had no messages from the Complainant stating that he would be unable to participate in the hearing.

After verifying that the Complainant had not contacted the Office of Administrative Law Judge in Harrisburg, I attempted to call the Complainant a second time at approximately 10:10 a.m. at the same telephone number I previously called. Again, I received a voice mail message indicating that the Complainant was not available. I left a message on the Complainant’s voice mail, identifying myself and indicating that the hearing would proceed without the Complainant.

Upon commencement of the hearing, Jennifer L. Petrisek, Esquire, representing the Respondent, moved to dismiss the complaint for failure to appear and prosecute. N.T. 7. I advised the Respondent that I would take its motion under advisement. N.T. 7.

The record closed on May 14, 2015, the date the transcript was filed with the Secretary’s Bureau. This decision grants the Respondent’s motion to dismiss the complaint.

FINDINGS OF FACT

1. The Complainant in this case is Kevin Maromonte.
2. The Respondent in this case is Peoples Natural Gas Company LLC-Equitable Division.
3. On February 25, 2015, the Complainant filed a complaint with the Commission against the Respondent.
4. The Respondent filed an answer on March 16, 2015.
5. By notice dated April 1, 2015, the Commission scheduled this matter for an initial telephonic hearing on May 12, 2015 at 10:00 a.m.
6. The Commission sent notice of the telephonic hearing in this case to the Complainant by regular first-class mail to the address stated on the complaint.
7. The Commission’s hearing notice was never returned to the sender.

8. The Complainant failed to appear at the May 12, 2015 telephonic 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.

The Commission sent notice of the telephonic hearing in this case to the Complainant on April 1, 2015, by regular first-class mail to the address stated on the complaint. To my knowledge this piece of mail was never returned to the sender, the scheduling staff for the Office of Administrative Law Judge in Harrisburg.

In addition, I issued a prehearing order dated April 3, 2015, which, inter alia, reminded the parties of the hearing date and time. This prehearing order also directed the parties to notify me if the telephone numbers where they could be reached at the time of the hearing changed. This order, which was also mailed to the Complainant at the address stated on the complaint, was never returned. Accordingly, I must presume that this mail, which was sent in the ordinary course of business, was received by the Complainant. 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 Insurance Co., 444 A.2d 658 (Pa. Super. 1982).

The Complainant did not appear for the scheduled hearing because he was not available at the telephone number listed on the telephonic hearing notice. The Complainant never notified me of another telephone number where he could be contacted for the hearing. Under these circumstances, it appears the Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. Therefore, the due process rights of the Complainant have been fully protected. Sentner v. Bell Telephone Co. of Pa., Docket No. F‑00161106 (Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

Finally, Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of any request for relief. As the party bringing this complaint, the Complainant bears the burden of proving by a preponderance of the evidence that he is entitled to relief. By failing to appear and proffer any evidence to support his complaint, the Complainant has failed to meet this burden. Under these circumstances, the complaint must be dismissed with prejudice. Jefferson v. UGI Utilities, Inc., Docket No. Z‑00269892 (Order entered December 26, 1995); 52 Pa.Code § 5.245.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa.C.S. § 701.
2. The due process rights of the Complainant have been fully protected in this proceeding. Sentner v. Bell Telephone Co. of Pa., Docket No. F‑00161106 (Order entered October 25, 1993); 52 Pa.Code § 5.245(a).
3. By failing to appear and proffer any evidence to support his complaint, the Complainant has failed to meet his burden of proving that he is entitled to the relief that he seeks from the Commission. Jefferson v. UGI Utilities, Inc., Docket No. Z‑00269892 (Order entered December 26, 1995); 52 Pa.Code § 5.245.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Peoples Natural Gas Company LLC-Equitable Division to dismiss the complaint filed by Kevin Maromonte at Docket No. C-2015-2468911 is granted.

2. That the complaint of Kevin Maromonte against Peoples Natural Gas Company LLC-Equitable Division at Docket No. C-2015-2468911 is dismissed with prejudice for failure to appear and prosecute.

3. That the docket at Docket No. C-2015-2468911 is marked closed.

Date: May 22, 2015 /s/

David A. Salapa

Administrative Law Judge