

PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17105-3265

Clem Marable

Public Meeting held July 12, 2018
2609460-OSA

v.

Philadelphia Gas Works

Docket No. C-2017-2609460

STATEMENT OF CHAIRMAN GLADYS M. BROWN

On June 14, 2017, Clem Marable filed a Complaint alleging that PGW improperly placed the Complainant's gas service in another person's name and that there were incorrect charges on his bill. The Complainant requested that the Commission order PGW to place the account for gas utility service into his name and to provide him with a payment arrangement.

By notice dated July 12, 2017 (Hearing Notice), the Commission scheduled this matter for a telephonic hearing on August 14, 2017 and assigned the case to ALJ Myers. ALJ Myers issued a Prehearing Order dated July 19, 2017 (Prehearing Order), addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements. The Complainant filed his exhibits as directed.

On August 14, 2017, ALJ Myers convened the telephonic hearing as scheduled. The Complainant failed to appear for that hearing. On September 18, 2017, the ALJ received a one-page facsimile from the Complainant requesting that the hearing be rescheduled as soon as possible. This correspondence provided no additional information or explanation. ALJ Myers dismissed the Complaint, with prejudice, for failure to prosecute.¹

In his Exceptions that are now before us for consideration, the Complainant claims that he missed the August 14, 2017 hearing due to hospitalization. If the Complainant's claim is true, then his failure to appear at hearing was unavoidable. When a party fails to attend a scheduled hearing, such failure to appear will be deemed a waiver of the party's opportunity to participate in a hearing, unless that failure was "unavoidable." 66 Pa. C.S. § 332(f); 52 Pa. Code § 5.245(a)-(b). I believe that this Complainant should be given ten days to submit proof of his claim that he missed the hearing because he was hospitalized. If the claim is substantiated, the matter should be set for hearing, if not, then the matter should be dismissed.

¹ I have previously expressed concern regarding the Commission's practice of dismissing *pro se* complaints, with prejudice, as being inconsistent with Section 1.2 of our Regulations, 52 Pa. Code § 1.2, and the Commission's own case precedent regarding due process. In cases where there is no reason to suspect that the Commission's administrative process is being abused, dismissing without prejudice protects the Complainant's right to due process while respecting the Commission's administrative process.

I do not agree that this case should be dismissed without allowing the Complainant an opportunity to support his claim. Therefore, I dissent.

July 12, 2018
Date


Gladys M. Brown, Chairman