

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

Steve Atuahene and Agnes Atuahene

Public Meeting September 19, 2019

3004665-OSA

v.

Docket No. F-2018-3004665

Philadelphia Gas Works

MOTION OF COMMISSIONER JOHN F. COLEMAN, JR.

Before the Commission for consideration are the Exceptions filed by Steve Atuahene and Agnes Atuahene to the ALJ's Initial Decision which dismissed, with prejudice, their Formal Complaint for their failure to appear at the hearing and prosecute the Complaint.

In their Complaint against Philadelphia Gas Works (PGW or Company), the Complainants alleged that there were incorrect charges on their bill. For relief, the Complainants requested that the Commission facilitate an independent investigation into the functionality of their meter and meter readings.

After this matter was scheduled for an initial hearing, the Complainants requested a continuance to conduct discovery. The ALJ granted the Complainants' continuance request. The Commission rescheduled this matter for an initial hearing on January 11, 2019, at 10:00 a.m. The Complainants did not appear for the hearing. PGW's counsel moved that the Complaint be dismissed with prejudice for lack of prosecution. The hearing was concluded at 10:24 a.m.

Mr. Atuahene later appeared for the hearing at around 12:00 p.m.¹ and spoke to Commission staff. In his conversation with staff, he explained his late-arrival and requested that another hearing be scheduled in this matter. On March 12, 2019, the Commission issued the ALJ's Initial Decision which, as previously stated, dismissed the Complaint, with prejudice, due to the Complainants' failure to appear and prosecute their Complaint.

Following the issuance of the Initial Decision, the Complainants requested an extension of time to file Exceptions. The Complainants alleged that, due to a family emergency, they were away from home and did not receive the ALJ's Initial Decision in a timely fashion. The Commission granted the Complainants' request for an extension of time to file Exceptions.

In their Exceptions, the Complainants offer various reasons for their late arrival at the hearing (i.e. family emergency which necessitated out-of-state travel, car trouble, traffic, difficulty finding parking, delay in accessing the hearing room). The Complainants challenge the finding that they failed to appear for the scheduled hearing and ask that the Initial Decision be overturned, set aside, or vacated.

¹ Mr. Atuahene asserts that he arrived for the hearing at 10:25 a.m. but Commission staff did not arrive to escort him from security to the hearing room for over an hour.

In their Exceptions, the Complainants also argue that no hearing should have been scheduled until the Commission ordered an independent investigation into the functionality of their gas meter and its readings, as requested in the Complaint.

Once a hearing is scheduled and duly notified by the Commission, it is the responsibility of the parties to appear and participate in the hearing.² A party to a proceeding may request a continuance of a hearing. A continuance request should be submitted in writing at least five days prior to the hearing date, except for oral requests which may be made in a hearing before the presiding officer.³ If a party fails to appear at a scheduled and duly notified hearing and that failure was not unavoidable, the party will be deemed to have waived the opportunity to participate in a hearing in the matter.⁴

Here, the Complainants waived the opportunity to participate in a hearing on their Complaint. The Complainants failed to appear at a scheduled and duly notified hearing, and that failure was not shown to be unavoidable. Whether Mr. Atuahene arrived at 10:25 a.m. or 12:00 p.m., he arrived late, and after the hearing was concluded.

The Complainants also failed to request a continuance. The Complainants did not submit a continuance request in writing five days before the hearing, nor were they present to request a continuance at the start of the hearing before the ALJ. Following the hearing, the Complainants made no attempt to contact the ALJ prior to the issuance of the Initial Decision, a time period of approximately two months.⁵ The Complainants had a responsibility to establish contact with the ALJ prior to the issuance of the Initial Decision, either by phone or written correspondence, to explain the reasons for failing to appear.⁶ The Complainants did not do so.

While the Commission has rescheduled hearings when a *pro se* complainant has demonstrated a “good faith attempt to attend the hearing,”⁷ such circumstances are not present in this case. First, the Complainants’ Exceptions make clear that they were aware of the family emergency days before the hearing. In a conversation the day before the hearing, Mr. Atuahene asked PGW’s counsel if the Company would agree to a second continuance, but Mr. Atuahene took no steps to notify the ALJ of his need for a continuance.⁸

² *Mumma v. PPL Electric Utilities Corporation*, Docket No. C-00014869 (Order entered January 24, 2002).

³ 52 Pa. Code § 1.15(b).

⁴ 66 Pa. C.S. § 332(f); 52 Pa. Code §5.245.

⁵ Mr. Atuahene’s verbal remarks to Commission staff on the day of the hearing do not constitute a continuance request and the explanation he offered that day is not properly before the Commission. Mr. Atuahene’s explanation, as conveyed to the ALJ by staff, was not offered as testimony, and not otherwise entered into the official record of the proceeding as evidence. The parties were neither notified of the conversation between staff and the ALJ, nor provided an opportunity to participate or respond. Any due process concerns could have been alleviated if the Complainants had provided a written statement of the reasons for their failure to appear. The ALJ could then have decided if the Complainants’ failure to appear was unavoidable and if the record should be reopened.

⁶ *Shenik Harvey v. PECO Energy Co.*, Docket No. C-2018-3002514 (Order entered December 20, 2018).

⁷ *Yomari Then v. Philadelphia Gas Works*, Docket No. F-2012-2318264 (Order entered June 13, 2013); *Windell C. Wiggins v. PECO Energy Company*, Docket No. C-2010-2190335 (Order entered October 27, 2011).

⁸ Exceptions 1-2, 4.

Second, the Complainants previously received a continuance in this matter and followed the proper procedure to do so, indicating that they were aware of the requirements for requesting a continuance.

Third, the first continuance was granted so that the Complainants could conduct discovery. However, the Complainants made no attempt to conduct discovery of an informal or formal nature.⁹

Finally, the Complainants have a history of similar behavior before this Commission. In a 2013 Formal Complaint against PGW, Mr. Atuahene received one continuance to conduct discovery. After failing to conduct any discovery, Mr. Atuahene requested a second continuance the day before the hearing. The second continuance request was denied, and Mr. Atuahene failed to appear for the hearing. After providing Mr. Atuahene with an extension of time to file Exceptions, the Commission adopted the ALJ's Initial Decision which dismissed the Complaint, with prejudice, and precluded Mr. Atuahene from filing any complaints regarding the same subject matter until he paid his balance with PGW due to an abuse of process. The ALJ's Initial Decision referenced several other complaint cases involving the Complainants and noted that the Complainants were similarly precluded from filing complaints against PECO Energy Company and their telephone utility for abuse of process.¹⁰

For the reasons cited above, the Complainants' Exceptions related to their failure to appear and to prosecute their Complaint will be denied.

Turning to the Complainants' Exceptions regarding an investigation into the functionality of their gas meter and its readings. The Public Utility Code places the burden of proof upon the proponent of a rule or order.¹¹ As the proponent of a rule or order, the Complainants have the burden of proof in this matter. To establish a sufficient case and satisfy the burden of proof, the Complainants must show that the respondent public utility is responsible or accountable for the problem described in the Complaint.¹²

By not appearing for the scheduled hearing, the Complainants obviously failed to bear their burden of proof. Furthermore, PGW attempted to coordinate a meter test with the Complainants throughout the proceeding and the Complainants failed to respond until such time as the hearing would have been delayed. The Complainants' Exceptions related to the testing of their meter will be denied as well.

THEREFORE, I MOVE THAT:

1. The Exceptions of Steve Atuahene and Agnes Atuahene are denied.
2. The ALJ's Initial Decision is modified consistent with this Motion.

⁹ Tr. 6. Exceptions 9.

¹⁰ *Steve Atuahene v. Philadelphia Gas Works*, Docket No. F-2013-2389261 (Final Order entered January 14, 2015).

¹¹ 66 Pa.C.S. § 332(a).

¹² *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa. PUC 196 (1990), *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. PUC 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992).

3. The Formal Complaint of Steve Atuahene and Agnes Atuahene is dismissed with prejudice.
4. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

Date: September 19, 2019



JOHN F. COLEMAN, JR.
COMMISSIONER