

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Seville Vaughan	:	
	:	
v.	:	C-2019-3014255
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Kailey B. Maguire
Special Agent

INTRODUCTION

This decision grants a motion to dismiss for failure to prosecute the complaint of a natural gas service customer for the failure of the complainant to appear at the scheduled hearing at the designated date and time, despite being given notice of the hearing.

HISTORY OF THE PROCEEDING

On November 12, 2019, Seville Vaughan (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent) at Docket No. C-2019-3014255. In her complaint, Ms. Vaughan avers PGW is threatening to shut off her service or has already shut off her service. As relief, Complainant requests a payment arrangement.

On December 3, 2019, PGW filed an answer to the complaint averring, *inter alia*, it had issued a shut of notice for the service at 7317 Greenhill Road, Apt. C2, Philadelphia,

Pennsylvania (service address), and denied all other material allegations in the complaint. PGW concluded its answer by requesting dismissal of the complaint.

On December 5, 2019, the Commission issued a Call-In Telephonic Hearing Notice to the parties, establishing an initial telephonic hearing for January 28, 2020, at 10:00 a.m. and assigning the undersigned as Presiding Officer.¹ Of note, the Hearing Notice advised the parties: “*Attention: You may lose this case if you do not take part in this hearing and present facts on the issues raised.*” (emphasis in the original).

A Corrected Prehearing Order was served upon the parties on December 19, 2019.² The Prehearing Order reminded the parties of the date and time of the hearing and addressed, *inter alia*, the procedures applicable to the hearing including the method by which a party could request a change of the scheduled hearing date if the date was not convenient for them. Further, the Prehearing Order advised the parties:

If you fail to participate in the hearing on the scheduled day and time, the hearing will proceed in your absence. You will be deemed to have waived the opportunity to participate in the hearing. **The case may be dismissed ‘with prejudice,’ whereby, you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.**

(emphasis in the original).

Both the Hearing Notice and Prehearing Order were sent to Ms. Vaughan at the address provided in her complaint via regular, first-class mail. Neither document was returned by the postal authorities as undeliverable.

¹ 52 Pa. Code § 56.174 provides for review by a special agent of any case in which the issue is solely the ability to pay.

² An initial Prehearing Order was issued on December 5, 2019, indicating an incorrect date for the scheduled hearing. Upon notice by Ms. Vaughan about the date discrepancy a corrected order was issued stating the correct date for the hearing, Tuesday, January 28, 2020.

The hearing convened on January 28, 2020, at 10:00 a.m., as scheduled.³ Laureto Farinas, Esquire, appeared on behalf of Respondent and was ready to proceed with one witness. Complainant did not appear. After waiting approximately fifteen minutes for Complainant to appear and participate, the hearing proceeded in Complainant's absence. Respondent noted it had contact with Ms. Vaughan on the day prior, January 27, 2020, and there had been no indication from Complainant that she would not appear and participate in the scheduled hearing. Respondent made an oral motion to dismiss the complaint with prejudice for the failure of Complainant to appear and prosecute her complaint. I advised counsel I would take the motion under advisement.

The record closed on January 28, 2020, at the end of business. On January 29, 2020, Ms. Vaughan contacted the Office of Administrative Law Judge (OALJ) to explain her absence from the hearing, noting she had confused the hearing time. Ms. Vaughan was informed of the procedures to request a continuance and was directed to provide evidence of the reason for her absence from the January 28, 2020 hearing, in writing, within ten (10) days. As of the date of this decision there has been no further contact from Complainant regarding this matter. For the reasons discussed below, this decision grants Respondent's motion to dismiss the complaint with prejudice.

FINDINGS OF FACT

1. Complainant is Seville Vaughan.
2. Respondent is Philadelphia Gas Works.
3. The service address is 7317 Greenhill Road, Apt. C2, Philadelphia, Pennsylvania.
4. By Hearing Notice served upon the parties on December 5, 2019, the Commission scheduled this matter for a call-in telephonic hearing to be held on January 28, 2020.

³ Pursuant to 52 Pa. Code § 56.174(3), the hearing was tape recorded. No court reporter was present.

5. The Hearing Notice stated the following: *Attention: You may lose this case if you do not take part in this hearing and present facts on the issues raised.*” (emphasis in the original).

6. By Corrected Prehearing Order served upon the parties on December 19, 2019, the parties were informed of the date and time of the telephonic hearing and were provided with the method by which a party could request a continuance of the hearing date, if needed.

7. The Prehearing Order advised the parties: “If you fail to participate in the hearing on the scheduled day and time, the hearing will proceed in your absence. You will be deemed to have waived the opportunity to participate in the hearing. **The case may be dismissed ‘with prejudice,’ whereby, you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.**” (emphasis in the original).

8. The Hearing Notice and the Prehearing Order were sent to the address provided on the complaint via regular, first-class mail.

9. Neither the Hearing Notice nor the Prehearing Order served to Complainant were returned to the Commission as undeliverable by the postal authorities.

10. Complainant did not appear by phone to participate in the January 28, 2020 telephonic hearing.

11. On January 29, 2020, Ms. Vaughan contacted the Office of Administrative Law Judge to explain her absence from the hearing, noting she had confused the hearing time at which point Ms. Vaughan was informed of the procedures to request a continuance and was directed to provide evidence of the reason for her absence from the January 28, 2020 hearing in writing within ten (10) days.

12. As of the date of this decision there has been no further contact from Complainant regarding her absence from the hearing.

DISCUSSION

Due Process

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

Complainant did not participate in the January 28, 2020 hearing. Ms. Vaughan had notice of the day, date, and time of the scheduled proceeding. The date and time of the hearing were provided in both the Hearing Notice and Prehearing Order served to Complainant. The Notice and Prehearing Order informed the parties of the date and time of the hearing and addressed, *inter alia*, how to request a continuance prior to the hearing, and that failure to appear for the hearing and present evidence on the issues raised in the complaint would result in dismissal of the complaint. Both documents were served separately, by regular, first-class mail to the address provided by Ms. Vaughan on the complaint. Neither document was returned to the Commission as undeliverable. Accordingly, it must be presumed these documents, which were sent to Complainant in the ordinary course of business, were received by Complainant. *Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 531, 317 A.2d 584 (1974); *Meierdierck v. Miller*, 394 Pa. 484, 147 A.2d 406 (1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. 1997); *Judge v. Celina Mutual Insurance Co.*, 303 Pa. Super. 221, 449 A.2d 658 (1982).

Additionally, Ms. Vaughan received notice of the day, date, and time of the scheduled proceeding as evidenced by her contact with the OALJ via telephone on January 29, 2020 at which time she admitted confusing the time of the proceeding and sought a hearing continuance. Complainant was directed to provide evidence of the reason for her absence from

the January 28, 2020 hearing in writing within ten (10) days. Ms. Vaughan did not provide such evidence.

Under these circumstances, Complainant had ample opportunity to appear and be heard in this proceeding but chose not to do so. Once notice of a hearing and the opportunity to be heard have been provided to the parties, it is the responsibility of both parties to appear and participate in the hearing. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984). Therefore, the due process rights of Complainant have been fully protected. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993).

Failure to appear, waiver and “unavoidable” standard

Both the Public Utility Code and the Commission's regulations provide that, after being notified, a party who fails to appear at a scheduled hearing shall be deemed to have waived the opportunity to participate in the hearing and shall not be permitted thereafter to reopen the disposition of the matter accomplished at the hearing, and not be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f); 52 Pa.Code § 5.245(a), respectively. However, these provisions in the Code and the regulations do not apply if the presiding officer determines that the failure to be represented was unavoidable and the interests of the other parties and the public would not be prejudiced by permitting the reopening or further examination. 66 Pa.C.S. § 332(f); 52 Pa.Code § 5.245(a).

Here, Complainant failed to appear for the hearing despite being given two written notices. Further, once the hearing began, the undersigned waited an additional fifteen minutes to allow Complainant time to appear. Moreover, on January 29, 2020, Complainant was directed to submit in writing evidence to support her reason for her absence from the January 28, 2020 hearing. To date, no further communication has been received by the OALJ by, or on behalf of, Complainant regarding whether Complainant's absence was unavoidable. Consequently, I find Complainant waived the opportunity to participate in a hearing on the issues raised in the complaint and Complainant's absence was not unavoidable.

Burden of proof and dismissal of complaint

Section 332(a) of the Public Utility Code provides that the proponent of any request for relief from the Commission bears the burden of proof. 66 Pa.C.S. § 332(a). To satisfy this burden, the complainant must show the named utility is responsible or accountable for the problem described in the complaint. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa. PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

Additionally, the Commission's decision must be supported by substantial evidence in the record. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

As the proponent of the request for relief from the Commission, Complainant bears the burden of proof. By failing to participate in the hearing and proffer any evidence to support the complaint, Complainant has failed to satisfy her burden. Therefore, it is appropriate to dismiss the complaint with prejudice. *Williams v. PECO Energy Co.*, Docket No. C-2018-300734 (Opinion and Order entered March 14, 2019), citing, *inter alia*, *Jefferson v. UGI Utilities*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995). Accordingly, the merits of the Complainant will not be addressed and the Complaint in this matter will be dismissed in its entirety with prejudice.

CONCLUSIONS OF LAW

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

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

3. 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 Telephone Co. of Pennsylvania*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993).

4. After being notified, a party who fails to appear at a scheduled hearing shall be deemed to have waived the opportunity to participate in the hearing, not be permitted thereafter to reopen the disposition of the matter accomplished at the hearing, and not be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f); 52 Pa.Code § 5.245(a).

5. If the presiding officer determines that the failure to be represented was unavoidable and that the interests of the other parties and of the public would not be prejudiced by permitted the reopening or further examination, the presiding officer may find that a party did not waive the opportunity to participate in the hearing. 66 Pa.C.S. § 332(f); 52 Pa.Code § 5.245(a).

6. Complainant's due process rights have been fully protected and Complainant's failure to appear was not unavoidable. *Sentner v. Bell Telephone Company of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

7. As the proponent of the request for relief, Complainant bears the burden of proof by a preponderance of the evidence standard. 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

8. By failing to appear and participate in the hearing and proffer any evidence in support of the complaint, Complainant has failed to satisfy her burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Philadelphia Gas Works to dismiss with prejudice the formal complaint of Seville Vaughan at Docket No. C-2019-3014255 is granted.

2. That the complaint of Seville Vaughan against Philadelphia Gas Works at Docket No. C-2019-3014255 is hereby dismissed with prejudice for failure to appear and prosecute the complaint.

3. That the Secretary's Bureau shall mark Docket No. C-2019-3014255 as closed.

Date: April 30, 2020

/s/
Kailey B. Maguire
Special Agent