

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Donald Spitler	:	
	:	
v.	:	C-2021-3027158
	:	
UGI Utilities, Inc.	:	

INITIAL DECISION

Before
John M. Coogan
Administrative Law Judge

INTRODUCTION

This Initial Decision grants a motion to dismiss for failure to prosecute because the Complainant failed to appear for the hearing at the designated date and time despite being given notice of the hearing.

HISTORY OF THE PROCEEDING

On July 8, 2021, Donald Spitler (Mr. Spitler or Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against UGI Utilities, Inc. (UGI), docket number C-2021-3027158. In his complaint, Mr. Spitler averred that UGI is threatening to shut off his service or has already shut off his service. Specifically, Mr. Spitler avers that all usage has been paid for, but approximately four years ago UGI was sent a check for multiple accounts and the check was not applied correctly. As relief, Mr. Spitler requests that multiple additional charges be removed.

On July 28, 2021, UGI filed an answer to Mr. Spitler's complaint.

On July 29, 2021, the Commission issued an initial telephonic hearing notice setting a formal call-in telephonic hearing for this matter for September 8, 2021 at 10:00 a.m. and assigned me as the presiding officer. In anticipation of that hearing, I issued a prehearing order on July 30, 2021 setting forth various rules that would govern that proceeding. At the request of the parties, on September 2, 2021, I issued a formal order, continuing the September 8, 2021 hearing to October 14, 2021. Also, a revised initial telephonic hearing notice was issued on September 2, 2021, canceling the September 8, 2021 hearing, and providing instructions to participate in the October 14, 2021 telephonic hearing.

The initial hearing convened on October 14, 2021, as scheduled. Larry Crayne, Esquire, appeared on behalf of UGI. No one appeared on behalf of Mr. Spitler.

The record in this case consists of the transcript of 11 pages. The record closed on November 5, 2021, upon my receipt of the hearing transcript. For the reasons discussed below, the complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant in this case is Donald Spitler.
2. The Respondent in this case is UGI Utilities, Inc.
3. The service address is 5430 Jonestown Road, Harrisburg, PA, 17112.
4. The July 29, 2021 hearing notice states that a party may lose the case if it does not take part in the hearing and present facts on the issues raised. Tr. 5.
5. The July 30, 2021 prehearing order states that a party may lose the case if it does not take part in the hearing and present facts on the issues raised. Tr. 6.

6. The September 2, 2021 revised hearing notice rescheduled the telephonic hearing for October 14, 2021, and states that a party may lose the case if it does not take part in the hearing and present facts on the issues raised. Tr. 6.

7. The rescheduled telephonic hearing convened on October 14, 2021, as scheduled. Tr. 1-11.

8. No one appeared on behalf of Mr. Spitler at the October 14, 2021 telephonic hearing. Tr. 1-11.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the complainant must show that the respondent public utility is responsible or accountable for the problem described in the complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990); *Feinstein v. Phila. 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 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). That is by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, based on a reading of his complaint, Mr. Spitler averred that UGI incorrectly applied a check to his account, and, as relief, Mr. Spitler requested that multiple additional charges be removed. As the party seeking relief, Mr. Spitler has the burden of proof in this proceeding.

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 when the parties are afforded notice and the opportunity to be heard. *Id.*

No one appeared on behalf of Mr. Spitler at the date and time set for his hearing in his case despite notice of the hearing having been provided to him. Commission regulations address circumstances where a party fails to appear in a proceeding. Section 5.245 provides:

§ 5.245. Failure to appear, proceed or maintain order in proceedings.

(a) After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will:

- (1) Be deemed to have waived the opportunity to participate in the conference or hearing.
- (2) Not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing.
- (3) Not be permitted to recall witnesses who were excused for further examination.

52 Pa. Code § 5.245(a).

The hearing notices and prehearing order were served upon Complainant by e-mail pursuant to the Commission's *Emergency Order re Suspension of Regulatory and Statutory deadlines, Modification to Filing and Service Requirements* at Docket No. M-2020-3019262, which provides that service by the Commission on parties will be exclusively electronic during the pendency of the Proclamation of Disaster Emergency. (Order entered March 20, 2020) (Emergency Order).¹ No correspondence was returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents sent to Mr. Spitler were received by Mr. Spitler and he had adequate notice of the hearing. *See Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Final Order entered December 19, 2019); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered April 7, 2017); and *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered January 31, 2017). Of note, the hearing

¹ Although the Proclamation of Disaster Emergency is no longer in effect, the notices and orders in this proceeding were properly served by e-mail at the time they were sent. *See Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements*, Docket No. M-2020-3019262 (Order entered July 15, 2021) (adopting September 30, 2021 as the expiration date for the Emergency Order).

notices and the prehearing order states that, if a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party.

No one appeared on behalf of Mr. Spitler at the time of the hearing, nor did anyone ever request a postponement or continuance of the October 14, 2021 hearing. As such, Mr. Spitler had notice and opportunity to be heard in this proceeding but chose not to appear. Therefore, Mr. Spitler's due process rights have been fully protected. *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered January 24, 2002).

During the hearing, counsel for UGI moved to have the complaint dismissed for lack of prosecution. Tr. 8. By failing to appear and present any evidence in support of his complaint, Mr. Spitler has failed to carry his burden. Thus, it is appropriate to dismiss the complaint. *See Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995). Accordingly, the merits of the complaint will not be addressed in this Initial Decision.

CONCLUSIONS OF LAW

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

2. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. To establish a sufficient case and satisfy the burden of proof, the complainant must show that the respondent public utility is responsible or accountable for the problem described in the complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976).

4. The degree of proof required to satisfy the burden of proof is a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992).

5. A preponderance of the evidence is established by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

6. 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 when the parties are afforded notice and the opportunity to be heard. *Id.*

7. After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will: 1) be deemed to have waived the opportunity to participate in the conference or hearing; 2) not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing; and 3) not be permitted to recall witnesses who were excused for further examination. 52 Pa. Code § 5.245(a).

8. Notice electronically served to a party with no notification that service failed is presumed received. *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Final Order entered December 19, 2019); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered April 7, 2017); and *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered January 31, 2017)

9. Once a hearing is scheduled and the parties are duly notified by the Commission, it is the responsibility of the parties to appear and participate in the hearing. *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered January 24, 2002).

10. Mr. Spitler has failed to carry his burden of proof in this proceeding. 66 Pa.C.S. § 332(a).

