

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Michael Guagenti	:	
	:	F-2022-3032131
v.	:	
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Arlene Ashton  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Complaint of Michael Guagenti against Philadelphia Gas Works because he failed to appear for the scheduled hearing and prosecute his Complaint.

**HISTORY OF THE PROCEEDING**

On April 15, 2022, Michael Guagenti (the Complainant or Mr. Guagenti) filed a formal Complaint (Complaint) against Philadelphia Gas Works (PGW or the Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint,<sup>1</sup> the Complainant stated that he had submitted information to recertify his enrollment in PGW's Customer Responsibility Program (CRP) on a timely basis and that PGW never notified him that the recertification information had not been received. He also alleged that PGW had erroneously applied the credit

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<sup>1</sup> The Complaint is a timely appeal from a determination of the Commission's Bureau of Consumer Services (BCS) at BCS No. 3819743.

balance from a Low-Income Home Energy Assistance Program (LIHEAP) grant awarded to his PGW account.<sup>2</sup>

On May 16, 2022, the Respondent filed an Answer denying all material allegations of fact in the Complaint.

By Hearing Notice dated May 18, 2022, a call-in telephonic hearing was scheduled for June 21, 2022, at 10:00 a.m., and the matter was assigned to me. The Hearing Notice advised the parties of the date and time of the scheduled hearing as well as how to call in and warned of the following:

FAILURE TO APPEAR: You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised. Your case may be dismissed ‘with prejudice’ which means that you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.

I issued a Prehearing Order on June 15, 2022. The Prehearing Order also advised the parties of the date and time of the scheduled hearing as well as how to call in for the hearing. Additionally, the Prehearing Order directed the parties to comply with various procedural requirements and directed that a request to change the scheduled hearing should be sent to me at least five days prior to the hearing date, be in writing and state the agreement or opposition of the other party. It warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing. It also explained that the Complainant bears the burden of proof to establish that the Respondent violated its tariff, the Public Utility Code,<sup>3</sup> or a Commission Order or regulation, and that he is entitled to the relief requested in the Complaint.

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<sup>2</sup> The Complaint form filed by Mr. Guagenti included his address and two telephone numbers, one appearing to be a cell phone number. In the space provided on the Complaint form for an email address, he wrote “No email.” At no point did he indicate that he was available by email or that he accepts e-Service.

<sup>3</sup> Public Utility Code (Code), 66 Pa. C.S. § 101 *et seq.*

The hearing convened as scheduled on June 21, 2022. Counsel for PGW was present with a witness and was prepared to proceed. Mr. Guagenti was not present and had not contacted my office to indicate that he would or would not appear.

On June 24, 2022, Mr. Guagenti contacted my office via telephone and spoke to my legal assistant, informed her that he failed to appear at the hearing scheduled for June 21, 2022, due to illness and requested that the hearing be rescheduled so that he could participate in the hearing. The Complainant made no indication that PGW was aware of his request for a further hearing.

The Code provides that a party who fails to attend a scheduled conference and hearing “shall be deemed to have waived the opportunity to participate” and shall not be permitted to later reopen the matter. 66 Pa. C.S. § 332(f); 52 Pa. Code § 5.245. However, the non-attendance at a hearing may be excused where “... the presiding officer shall determine that failure to be represented was unavoidable and that the interests of the other parties and the public would not be prejudiced.” *Id.*

Mr. Guagenti’s verbal request for a further hearing failed to adhere to the instructions provided in the Hearing Notice and the Prehearing Order. Nevertheless, in light of Mr. Guagenti’s indication that he was unable to appear at the June 21, 2022, hearing due to illness, and as a courtesy to him, my legal assistant contacted counsel for PGW to communicate his request to PGW and to inquire as to whether PGW had any objection to the Mr. Guagenti’s request for a further hearing. Counsel for PGW promptly responded via email that the Respondent did not object to the request for a further hearing.

An Order Granting Continuance was issued on June 27, 2022, and indicated that the matter would be rescheduled, and a further hearing held on August 4, 2022.

On June 29, 2022, a Cancelled/Rescheduled Hearing Notice was issued to the parties informing them of the August 4, 2022, hearing.

On July 27, 2022, PGW filed a Motion for Continuance, which was served on Mr. Guagenti. PGW's Motion for continuance indicated that PGW had endeavored to communicate with the Complainant via telephone and email to discuss the request for a continuance, but he failed to respond to PGW's efforts to contact him. PGW's Motion for continuance was accompanied by a certificate of service indicating that Mr. Guagenti had been served with a copy of the Motion via email and regular mail.

On July 27, 2022, the Office of the Administrative Law Judge (OALJ) contacted Mr. Guagenti by telephone and informed him that the August 4, 2022, further hearing had been continued and that the further hearing would be re-scheduled and inquired as to the Complainant's availability for the rescheduled further hearing. He declined to provide any scheduling information. Mr. Guagenti did not respond to PGW's Motion in the manner prescribed in the notice of hearing or the Prehearing Order.

On July 28, 2022, a Cancelled/Rescheduled Hearing Notice was issued to the parties advising that the hearing had been re-scheduled for August 8, 2022. As a courtesy to Mr. Guagenti, on July 29, 2022, OALJ reached out to the Complainant by telephone to confirm his availability for the hearing; however, when informed that the caller was a representative of the Commission, the Complainant disconnected the call.

On August 4, 2022, the Complainant contacted OALJ by telephone to complain about the rescheduling of the further hearing. Mr. Guagenti failed to state any rationale for his complaint; however, it appeared that his primary issue was that the further hearing had been rescheduled based on a motion made by PGW. The Complainant asked that the hearing be delayed until August 15, 2022 but provided no reason for the request or that specific date.<sup>4</sup> OALJ informed Mr. Guagenti that any protest concerning the scheduling of the hearing could be made in writing

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<sup>4</sup> The Complaint was very agitated and argumentative during the telephone call. The scheduler was out of the office on August 5, 2022, when the Complainant called the scheduler and left a voicemail message reiterating his request that the hearing be postponed until August 15, 2022, again without providing a reason for the request. On the next business day, August 8, 2022 the scheduler endeavored to respond to the Complainant's voice mail message by contacting him via telephone using the two telephone numbers provided in the Complaint. The Complainant failed to answer either call from the scheduler.

and filed in accordance with the instructions provided in the Notice of Hearing and Prehearing Order.

On August 8, 2022, approximately ten minutes prior to the start of the rescheduled further hearing, the Complainant contacted OALJ to inquire if the rescheduled further hearing had been continued based on his August 4, 2022, telephone call. The Complainant was again advised by OALJ that: (a) the rescheduled further hearing could not be continued based on a telephone call; (b) as indicated in the Notice of Hearing and Prehearing Order and previously stated orally, all continuance requests must be in writing. Mr. Guagenti was also informed that if he was unable to prepare a continuance request, he could contact counsel for PGW to discuss the matter and enlist her assistance with his request; and (c) the rescheduled further hearing had not been continued and would proceed as scheduled.

The hearing convened as scheduled on August 8, 2022. Counsel for PGW was present with a witness and was prepared to proceed. Mr. Guagenti was not present and did not contact my office in the manner prescribed in the July 28, 2022, Cancelled/Rescheduled Hearing Notice or the Prehearing Order to indicate that he would be unable to appear.

No witnesses were presented, and no exhibits were introduced into the record. Respondent's counsel moved that the Complaint be dismissed for lack of prosecution pursuant to 52 Pa. Code § 5.245. In accordance with Commission policy, I am granting the Motion.

The record closed at the end of the hearing on August 8, 2022.

#### FINDINGS OF FACT

1. The Complainant is Michael Guagenti.
2. The Respondent is Philadelphia Gas Works.

3. By Initial Telephonic Hearing Notice dated May 18, 2022, a call-in telephonic hearing was scheduled for June 21, 2022, at 10:00 a.m.

4. On June 15, 2022, I issued a Prehearing Order that also advised the parties of the date and time of the scheduled hearing.

5. On June 21, 2022, counsel for PGW and a witness appeared and were prepared to proceed with the scheduled hearing in this matter.

6. The Complainant failed to appear for the June 21, 2022, hearing and failed to notify the presiding officer that he would be unable to appear for the scheduled hearing.

7. On June 24, 2022, the Complainant contacted OALJ via telephone, indicated that he missed the June 21, 2022, hearing due to illness, and requested that a further hearing be scheduled so that he could participate in the hearing.

8. Counsel for PGW did not object to the Complainant's request for a further hearing.

9. On June 29, 2022, a Cancelled/Rescheduled Hearing Notice was issued to the parties informing them of the August 4, 2022, scheduled hearing.

10. On July 27, 2022, PGW submitted a Motion to continue the August 4, 2022, further hearing due to unavailability of PGW's counsel.

11. PGW's Motion for continuance indicated that PGW had endeavored to communicate with the Complainant via telephone and email to discuss PGW's request for a continuance in this matter, but he failed to respond to PGW's efforts to contact him.

12. PGW's Motion for continuance was accompanied by a certificate of service indicating that Mr. Guagenti had been served with a copy of the Motion via email and regular mail.

13. On July 27, 2022, OALJ contacted the Complainant by telephone and informed him that the August 4, 2022, further hearing had been continued and that the further hearing would be re-scheduled.

14. On July 27, 2022, OALJ inquired as to the Complainant's availability for the rescheduled further hearing.

15. The Complainant declined to provide any scheduling information.

16. On July 28, 2022, a Cancelled/Rescheduled Hearing Notice was issued to the parties advising that the further hearing had been re-scheduled for August 8, 2022.

17. On July 29, 2022, OALJ reached the Complainant by telephone to reiterate that the further hearing had been re-scheduled for August 8, 2022 and inform him that a Cancelled/Rescheduled Hearing Notice was issued to the parties on July 28, 2022; however, when OALJ indicated that it was the Commission calling, the Complainant disconnected the call.

18. On August 4, 2022, the Complainant contacted OALJ by telephone to vociferously complain about the rescheduling of the further hearing based on PGW's Motion.

19. On August 4, 2022, the Complainant was informed by OALJ that any protest concerning the scheduling of the hearing could be made in writing and filed in accordance with the instructions provided in the Notice of Hearing and Prehearing Order.

20. On August 8, 2022, minutes prior to the start of the rescheduled further hearing, the Complainant telephoned OALJ to inquire if the rescheduled further hearing had been continued based on his August 4, 2022, telephone call.

21. During that August 8, 2022 telephone call, the Complainant was again advised by OALJ that: (a) the rescheduled further hearing could not be continued based on a telephone call; (b) as indicated in the Notice of Hearing and Prehearing Order and previously stated

orally, all continuance requests must be in writing; and (c) the rescheduled further hearing had not been continued and would proceed as scheduled.

22. On August 8, 2022, the Complainant was informed by OALJ that if he was unable to prepare a continuance request, he could contact counsel for PGW to discuss the matter and enlist her assistance with his request.

23. The Complainant failed to appear for the August 8, 2022, hearing.

24. The Complainant did not contact OALJ in the manner prescribed in the July 28, 2022, Cancelled/Rescheduled Hearing Notice or the Prehearing Order to request a continuance of the August 8, 2022, hearing.

25. The Complainant did not inform OALJ of the reason for his oral request for a continuance of the August 8, 2022, further hearing.

26. All Hearing Notices and the Prehearing Order were sent to the Complainant via first-class mail, through the U.S. Postal Service, at the address he provided on his formal Complaint.

27. Neither the Hearing Notices nor the Prehearing Order mailed to the Complainant were returned to the Commission as undeliverable.

28. The Complainant did not provide an email address when filing the Complaint and does not accept e-Service.

### 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). However, this due process requirement is satisfied when the parties are provided notice and the opportunity to appear and be heard. *Id.* The Complainant had adequate

notice of the time and date of the hearing, yet he failed to appear or explain why he could not attend the hearing at the scheduled time. Therefore, it is appropriate to dismiss the Complaint.

The Commission served notice of the June 21, 2022, hearing in this case to the Complainant on May 18, 2022, via first-class U.S. mail, to the address he provided in his Complaint.<sup>5</sup> The same procedure was followed with the notices of the August 4, 2022 and August 8, 2022 hearings. Each of the notices informed the parties of the date and time of the hearing, as well as how to call in for the hearing. To my knowledge, none of the notices were ever returned to the sender, the scheduling staff for OALJ.

In addition, I issued a Prehearing Order dated June 15, 2021, which, *inter alia*, warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to appear and participate in the hearing. The Prehearing Order, which was also served on the Complainant via the U.S. mail, was never returned as undeliverable. Mr. Guagenti's request for a continuance of the June 21, 2022, hearing clearly demonstrates that he received the Notice of Hearing. All Notices of Hearing and Orders were sent to the Complainant at the same address; therefore, it can reasonably be inferred that he received all Notices of Hearing and Orders sent to him in the same manner. Accordingly, I must presume that these documents, which were sent in the ordinary course of business, were received by the Complainant. *See Berkowitz v. Mayflower Sec., Inc.*, 317 A.2d 584 (Pa. 1974); *Chartiers Indus. & Com. Dev. Auth. v. Allegheny Cnty. Bd. of Prop. Assessment Appeals & Review*, 645 A.2d 944 (Pa.Cmwth. 1994), *appeal denied*, 653 A.2d 1234 (Pa. 1994); *Geary v. Verizon Pa. Inc.*, Docket No. C-2009-2118625 (Opinion and Order entered Sept. 16, 2010).

A customer who files a complaint before the Commission has an affirmative duty to make himself or herself available to participate in hearings on the complaint. *Mumma v. PPL Electric Utilities Corporation*, Docket No. C-00014869 (Opinion and Order entered Jan. 28, 2002); *SentnerF v. Bell Tel. Co. of PA*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993). The Complainant did not call in for the scheduled hearing on

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<sup>5</sup> In his Complaint, the Complainant indicated that he did not have email; therefore, the Hearing Notice and Prehearing Order could not be served via e-service or email. In this instance, documents were served on the Complainant via US mail to the Complainant and e-served on the Respondent.

June 21, 2022, nor did he call in for the scheduled hearing on August 8, 2022. I note that Mr. Guagenti repeatedly failed to adhere to the procedures set forth in the Prehearing Order concerning appearance at the hearing, communication with the presiding officer and the Respondent, and continuances. Following the issuance of the July 28, 2022, Cancelled/ Rescheduled Hearing Notice, Mr. Guagenti contacted my office via telephone concerning the rescheduled hearing date. He was repeatedly advised that any request to continue the further hearing could be made in accordance with the Notice and the Prehearing Order issued in this matter. Mr. Guagenti made no such request.

By failing to participate and proffer any evidence to support his Complaint, the Complainant has failed to meet his burden. In addition, I deem Mr. Guagenti's failure to appear at the date and time of the August 8, 2022 scheduled further hearing as evidence that he did not wish to participate in the hearing. Under the 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 Tel. Co. of Pa.* Docket No. F-00161106 (Opinion and Order entered Oct. 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 his requested relief. The Complainant did not appear for the further hearing scheduled for August 8, 2022. There are no facts in the record that indicate that his non-attendance was unavoidable. Under these circumstances, the Complaint should be dismissed with prejudice. *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); *El-Ayazra v. W. Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa. Code § 5.245.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of the dispute. 66 Pa.C.S. § 701.

2. The due process rights of the Complainant have been fully protected. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlt. 1984).

3. By failing to appear for the hearing and proffer any evidence to support the Complaint, the Complainant has failed to meet his burden of proving that he is entitled to the relief that he seeks from the Commission. 66 Pa.C.S. § 332(a).

4. The Respondent's Motion that the Complaint be dismissed for lack of prosecution is granted. 52 Pa. Code § 5.245

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Respondent's Motion that the Complaint be dismissed for lack of prosecution is granted;

2. That the Complaint of Michael Guagenti at Michael Guagenti v. Philadelphia Gas Works at Docket F-2022-3032131, is dismissed with prejudice; and

3. That the Secretary mark this docket closed.

Date: October 11, 2022

\_\_\_\_\_/s/  
Arlene Ashton  
Administrative Law Judge