

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Robert Green	:	
	:	
v.	:	C-2022-3033307
	:	
UGI Utilities, Inc. (Gas Division)	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complaint of Robert Green against UGI Utilities, Inc. with prejudice because he failed to appear and prosecute his Complaint.

HISTORY OF THE PROCEEDING

On June 13, 2022, Robert Green (Complainant) filed a formal Complaint (Complaint) against UGI Utilities, Inc. (Gas Division) (UGI or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed a checkmark in the box marked “[o]ther” and wrote in “[c]ontractor caused damage to curb while changing out gas lines.” Under the “requested relief” section of the Complaint, the Complainant wrote, in pertinent part, that “[d]amage to my curb was caused by contractors that UGI hired. All I’m asking for is for someone to correctly patch up the damage that was caused by one or both of these contractors.”

On July 18, 2022, UGI filed an Answer and New Matter to the Complaint. In the Answer, UGI denied that its contractors caused damage to the Complainant's curb. As New Matter, UGI maintained that the Complainant's request for repairs to his curb constitutes a request for damages. UGI argued that any claim for an award of damages is beyond the Commission's jurisdiction. UGI requested that the Complainant's formal Complaint be dismissed for lack of jurisdiction and legal insufficiency.

Also on July 18, 2022, UGI filed its Preliminary Objections to the Complaint. In its Preliminary Objections, similar to its New Matter, UGI maintained that the Complainant's request for repairs to his curb constitute a request for damages, which is beyond the Commission's jurisdiction. UGI requested that the Complainant's formal Complaint be dismissed for lack of jurisdiction and legal insufficiency. UGI endorsed its Preliminary Objections with a Notice to Plead advising the Complainant that he had ten days to file a written answer to the Objections or a judgment may be entered against him. The Complainant did not file a response to UGI's Preliminary Objection.

By Initial Telephonic Hearing Notice dated September 6, 2022, an initial call-in telephonic hearing was scheduled for October 13, 2022 at 10:00 a.m., and the matter, including the outstanding Preliminary Objections, 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 for the hearing 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 September 9, 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, or a Commission Order or regulation, and that he is entitled to the relief requested in the Complaint.

On October 7, 2022, I issued my Interim Order Granting in Part and Denying in Part Respondent's Preliminary Objections.

The hearing convened as scheduled on October 13, 2022. Counsel for UGI called in to the hearing with a witness and was prepared to proceed. Mr. Green did not call in for the hearing, nor did he contact my office to indicate that he would or would not appear.

Because 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, I deemed Mr. Green's failure to call in for the scheduled hearing as evidence that he did not wish to participate in the hearing.

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

The record closed on October 31, 2022, the date the transcript was filed with the Commission.

FINDINGS OF FACT

1. The Complainant is Robert Green.

2. The Respondent is UGI Utilities, Inc. (Gas Division).

3. By Initial Telephonic Hearing Notice issued on September 6, 2022, a call-in telephonic hearing was scheduled for October 13, 2022, at 10:00 a.m.

4. On September 9, 2022, I issued a Prehearing Order that also advised the parties of the date and time of the scheduled hearing.

5. The Hearing Notice and the Prehearing Order were served upon the Complainant at the email address he provided on his formal Complaint.

6. Neither the Hearing Notice nor the Prehearing Order served upon the Complainant were returned as undeliverable.

7. The Complainant failed to call in for the October 13, 2022 hearing.

8. The Complainant has not contacted the Commission to explain why his failure to attend the hearing was unavoidable.

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 call in for, or explain why he could not attend, the hearing at the scheduled time. Therefore, it is appropriate to dismiss the Complaint.

Utilizing the email address provided by the Complainant, the Commission emailed notice of the October 13, 2022 hearing in this case to the Complainant on September 6, 2022. This notice informed the parties of the date and time of the hearing, as well as how to call in for the

hearing. To my knowledge, this notice was never returned to the sender or the scheduling staff for the Office of Administrative Law Judge (OALJ).

In addition, I issued a prehearing order dated September 9, 2022, 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 emailed to the Complainant at the email address he provided to the Commission, was never returned as undeliverable. Accordingly, I must presume that this mail, which was sent in the ordinary course of business, was received by the Complainant. *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered Dec. 19, 2019); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Jan. 27, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Nov. 16, 2016);

The Complainant did not call in for the scheduled 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. A party who fails to attend a scheduled hearing has waived the opportunity to participate in that hearing and shall not be permitted to later reopen the matter. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245. By failing to participate and proffer any evidence to support his Complaint, the Complainant has failed to meet his burden. Under these circumstances, the Complaint should be dismissed with prejudice. *Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022); *El-Ayazra v. W. Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); 52 Pa. Code § 5.245; 66 Pa.C.S. § 332.

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. Cmwlth. 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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of UGI Utilities, Inc. (Gas Division) to dismiss the formal Complaint of Robert Green at docket number C-2022-3033307 is granted.

2. That the Complaint of Robert Green at Robert Green v. UGI Utilities, Inc. (Gas Division), Docket No. C-2022-3033307, is dismissed with prejudice.

3. That the Secretary mark this docket closed.

Date: January 10, 2023

/s/
Christopher P. Pell
Deputy Chief Administrative Law Judge