

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Selina Wilson

v.

Philadelphia Gas Works

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C-2022-3033472

**INITIAL DECISION**

Before  
Darlene Davis Heep  
Administrative Law Judge

**INTRODUCTION**

This decision grants the Respondent’s Motion to Dismiss for failure to prosecute because the Complainant failed to appear for the hearing.

**HISTORY OF THE PROCEEDING**

On June 29, 2022, Selina Wilson (Ms. Wilson or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent). On the Complaint form, Ms. Wilson states that she is a gas customer of PGW, that the utility is threatening to shut off her service, that she is challenging a bill from an address where she lived in 2014 and that she would like a payment agreement. Under Requested Relief she states that she wants the Commission to look over the bill and she does not want to be charged for service that she did not use.

On July 20, 2022, Respondent PGW filed its Answer and New Matter and a Preliminary Objection. In the Answer, PGW denied the material averments of the Complaint and

stated that the bills sent to the Complainant are based on actual meter readings. In the New Matter, PGW asserted that the Complainant is seeking relief from bills incurred in 2014 and 2015 and therefore the Complaint, filed in 2020, should be dismissed as beyond the statute of limitations set out in 66 Pa.C.S. § 3314, divesting the Commission of jurisdiction.

In the Preliminary Objection, PGW noted that the statute of limitations at 66 Pa.C.S. § 3314 provides that no action for recovery of penalties or forfeitures, or any prosecution, may be maintained unless brought within three years from the date the liability arose. PGW further asserted that the Commission lacks jurisdiction to hear the Complaint in this matter because the Complainant seeks relief from liabilities that she incurred more than three years prior to the filing of the Complaint.

On August 30, 2022, a Hearing Notice was served via email to all parties setting an Initial Telephonic Hearing for October 18, 2022. On September 9, 2022, a Pre-hearing Order was issued. The Pre-hearing Order advised the Complainant of the procedures and stated the date and time of the hearing. Both the Prehearing Order and the Hearing Notice advised the Complainant that failure to participate in the hearing or present evidence in support of her claims could result in dismissal of the Complaint.

On September 28, 2022, an Order was issued granting PGW's Preliminary Objection, dismissing the claims pertaining to the 2014 charges. The Order also stated that the hearing scheduled for October 18, 2022 would proceed on the remaining issue of a payment arrangement.

The hearing began as scheduled on October 18, 2022, at 10:00 a.m. Graciela Christlieb, Esquire, represented PGW. The Complainant did not call in for the hearing. A recess was taken to allow the Complainant time to call into the hearing.

The hearing resumed at 10:15 a.m. The Complainant had not called in. Counsel for PGW moved that the Complaint be dismissed for failure to prosecute. The matter was taken under advisement.

The record closed as of November 8, 2022, when the 7-page transcript was received.

### FINDINGS OF FACT

1. The Complainant is Selina Wilson, a Philadelphia Gas Works customer in Philadelphia, Pennsylvania.

2. Philadelphia Gas Works is the Respondent.

3. On June 29, 2022, the Complainant filed this action.

4. The Respondent filed an Answer and New Matter and Preliminary Objection on July 20, 2022.

5. On August 30, 2022, a Hearing Notice was emailed to all parties, setting an Initial Telephonic Hearing for October 18, 2022, beginning at 10:00 a.m.

6. The August 30, 2022 Hearing Notice advised all parties:

[y]ou 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.

7. On September 9, 2022, a Pre-hearing Order was issued, which advised the Complainant of the procedures and the date and time of the hearing and also stated:

**FAILURE TO APPEAR:** You may lose the case if you do not take part in this hearing and present evidence on the issues 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.

8. The Hearing Notice, Prehearing Order and September 28, 2022 Order were served electronically on the Complainant to the email address provided by the Complainant to the Commission.

9. None of the documents sent to the Complainant were returned to the Office of Administrative Law Judge as undeliverable.

10. On September 28, 2022, an Order was issued granting the PGW Preliminary Objection, dismissing the claims pertaining to the 2014 charges.

11. The September 28, 2022 Order also stated that the hearing scheduled for October 18, 2022 would proceed on the payment arrangement issue.

12. Counsel for PGW dialed in for the October 18, 2022 hearing at 10:00 a.m.

13. The Complainant was not present when the telephonic hearing began as scheduled at 10:00 a.m., October 18, 2022.

14. A ten-minute recess was taken to allow the Complainant time to call in to the hearing.

15. The hearing resumed at 10:15 a.m. and the Complainant had not called in to the hearing.

16. At the hearing, counsel for PGW made a motion to dismiss the Complaint for failure to prosecute, which was taken under advisement.

17. The Complainant had not called into the hearing when the hearing adjourned at 10:19 a.m.

18. The Complainant did not request a continuance or provide a statement of "good cause" for her absence on the scheduled hearing date or otherwise explain why her 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). The essential elements of due process in an administrative proceeding are notice and an opportunity to be heard. *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (Pa. Cmwlth. 2016). Further, electronic service which is not indicated undeliverable is considered presumed to be received by the parties. *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered Dec. 19, 2019) (*Hu*); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Jan. 27, 2017) (*Zirkel*); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Nov. 16, 2016) (*Morella*).

A Hearing Notice, a Prehearing Order and an Order on the Preliminary Objection filed by PGW were sent to the Complainant. The Prehearing Order and the Hearing Notice contained information regarding the date, time and call-in information for the hearing. These documents were served upon the Complainant at the email address she provided to the Commission and none of these documents were returned as undeliverable. It is therefore deemed that the Complainant received these documents and had notice of the date and time of the scheduled hearing. *Hu; Zirkel; Morella*.

As the Commission noted in *Strydio v. PPL Elec. Utils. Corp.*, Docket No. C-2017-2633043, p. 6 (Opinion and Order entered July 18, 2018), "[o]nce notice of a hearing and the opportunity to be heard have been provided by the Commission, it is the responsibility of the parties to appear and participate in the hearing," (citing *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered Jan. 24, 2002)); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993). The Complainant was notified of the scheduled hearing and did not appear. To date, the Complainant has not contacted

the Commission or the undersigned to explain why her failure to attend the hearing was unavoidable. The Complainant has waived the opportunity to participate in the hearing by failing to appear. 52 Pa. Code § 5.245(a); *Jefferson v. UGI Utils., Inc.*, 1995 Pa. PUC LEXIS 159 (Opinion and Order entered Dec. 26, 1995).

Additionally, 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 it is entitled to relief. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). By failing to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden. The Complaint will be dismissed. *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.

Finally, there are no facts in the record that would allow the Commission to reach the conclusion that the Complainant's failure to attend the hearing was unavoidable. Accordingly, the Complaint is dismissed, with prejudice. *Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022); *Williams v. PECO Energy Company*, Docket No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019).

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.
2. The party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

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

5. 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).

6. The Complainant's due process rights have been fully protected. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Order entered Oct. 25, 1993).

7. The Complainant failed to appear and failed to carry her burden of proof in this proceeding. 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Philadelphia Gas Works to dismiss the Formal Complaint of Selina Wilson at Docket No. C-2022-3033472 is granted.

