

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Keishia Montague	:	
	:	
v.	:	C-2022-3033659
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
John M. Coogan
Administrative Law Judge

INTRODUCTION

This Initial Decision grants a motion to dismiss Complainant’s Formal Complaint with prejudice for lack of prosecution 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, 2022, Keishia Montague (Ms. Montague or Complainant) filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW). The Formal Complaint was served on PGW on July 12, 2022. In her Formal Complaint, Ms. Montague avers that the utility is threatening to shut off her service or has already shut off her service. Additionally, Ms. Montague avers she would like a payment arrangement, and states she has been asking for assistance with her bill since she took over the account when her grandmother passed away in 2017. As relief, Ms. Montague requests a “plan to handle [her] current bill and a way to resolve the balance from [a property at which she previously resided].” Complaint ¶ 5.

On August 2, 2022, PGW filed an answer to Ms. Montague's Formal Complaint. In its answer, PGW admits or denies the various averments in the Formal Complaint. In particular, PGW admits that on April 7, 2022, a 10-day shut off notice was issued for gas service at 1947 W. Pacific Street, Philadelphia, PA. PGW alleges that Ms. Montague has multiple unsatisfied PGW-issued payment agreements as well as at least one unsatisfied PUC-issued payment agreement.

On August 3, 2022, the Commission issued an initial telephonic hearing notice setting a formal call-in telephonic hearing for this matter for September 22, 2022, at 10:00 a.m. and assigning Administrative Law Judge Arlene Ashton as the presiding officer. Also on August 3, 2022, a presiding hearing officer change notice was issued, noting that the presiding officer would be changed from Administrative Law Judge Ashton to Special Agent Kailey Maguire. On September 12, 2022, Special Agent Maguire issued a prehearing order setting forth various rules that would govern the September 22, 2022, hearing.

On September 20, 2022, a telephonic hearing cancellation/reschedule notice was issued, rescheduling the September 22, 2022, hearing to November 9, 2022. On November 4, 2022, a judge change notice was issued to the parties, noting that the presiding officer for the November 9, 2022, hearing would be changed from Special Agent Maguire to myself.

The initial hearing convened on November 9, 2022, as scheduled. Graciela Christlieb, Esquire, appeared on behalf of PGW. The court reporter was also present. No one appeared on behalf of Ms. Montague. At the hearing, Counsel for PGW made an oral motion to dismiss the Formal Complaint with prejudice for lack of prosecution.

The record in this case consists of the transcript of nine pages. The record closed on November 21, 2022, upon my receipt of the hearing transcript. For the reasons discussed below, PGW's motion will be granted, and the Formal Complaint will be dismissed with prejudice for lack of prosecution.

FINDINGS OF FACT

1. The Complainant in this case is Keishia Montague.
2. The Respondent in this case is Philadelphia Gas Works.
3. On August 3, 2022, a hearing notice was served on the parties, and stated that a party may lose the case and the case may be dismissed with prejudice if they do not take part in the hearing and present facts on the issues raised. Tr. 3-4.
4. On September 12, 2022, a prehearing order was served on the parties, and stated that a party may lose the case and the case may be dismissed with prejudice if they do not take part in the hearing and present facts on the issues raised. Tr. 4.
5. On September 20, 2022, a hearing notice was served on the parties, and stated that a party may lose the case and the case may be dismissed with prejudice if they do not take part in the hearing and present facts on the issues raised. Tr. 4-5.
6. No electronic mail delivery failure notification was received by the Commission indicating that the documents served on Ms. Montague did not reach her. Tr. 5.
7. The telephonic hearing convened on November 9, 2022, as scheduled. Tr. 1-9.
8. PGW appeared at the November 9, 2022, hearing, ready and willing to proceed. Tr. 1-9.
9. No one appeared on behalf of Ms. Montague at the November 9, 2022, telephonic hearing. Tr. 1-9.

10. Complainant did not file a motion for continuance or otherwise notify the Office of Administrative Law Judge that she was unavailable for the October 12, 2022, hearing. Tr. 5-7.

11. During the November 9, 2022, hearing, PGW made an oral motion to dismiss Ms. Montague's Formal Complaint with prejudice for lack of prosecution. Tr. 7.

12. Complainant has not contacted the Commission to explain why her failure to appear at the hearing was unavoidable.

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.P.U.C. 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 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). 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). 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. Ms. Montague has the burden of proof in this proceeding as the party seeking relief.

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.*

The hearing notices and prehearing order were served upon Complainant and no correspondence was returned to the Commission as undeliverable. Tr. 3-5. Accordingly, it must be presumed that these documents sent to Ms. Montague were received by Ms. Montague and she had adequate notice of the hearing. *See 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 Apr. 7, 2017); and *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017). Of note, the hearing 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.

The November 9, 2022, hearing was scheduled to begin at 10:00 a.m., but Ms. Montague was not present at 10:00 a.m. To provide Ms. Montague additional time to appear, the hearing did not begin until 10:15 a.m. However, Ms. Montague was also not present at 10:15 a.m., and no one appeared on behalf of Ms. Montague at the time of the hearing. Tr. 1-9. Also, neither Ms. Montague nor anyone on her behalf ever requested a postponement or continuance of the November 9, 2022, hearing, despite notice of the hearing having been provided to Ms. Montague. Tr. 7. As such, Ms. Montague had notice and opportunity to be heard in this proceeding but chose not to appear. Therefore, Ms. Montague's due process rights have been fully protected. *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered Jan. 24, 2002).

During the hearing, counsel for PGW moved to have the Formal Complaint dismissed with prejudice for lack of prosecution. Tr. 7. By failing to appear and present any evidence in support of her complaint, Ms. Montague has failed to carry her burden. 66 Pa.C.S. § 332(a). Thus, it is appropriate to dismiss the Formal Complaint, and the merits of the Formal Complaint will not be addressed in this Initial Decision. *See Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995) (*Jefferson*).

Additionally, PGW's motion to dismiss included the request that Ms. Montague's Formal Complaint be dismissed with prejudice. Tr. 7. 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. If there are no facts in the record that a party's failure to appear at a hearing was unavoidable, the complaint should be dismissed with prejudice. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022); *Williams v. PECO Energy Co.*, Docket No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019); *Jefferson*.

Here, there are no facts in the record to show that Ms. Montague's failure to appear at the November 9, 2022, hearing was unavoidable. I have received no communications from Ms. Montague explaining why she did not appear at the November 9, 2022, hearing. Therefore, Ms. Montague's Formal Complaint will be dismissed with prejudice.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter in this proceeding. 66 Pa.C.S. § 701.
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.P.U.C. 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 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 Hosiere v. Margulies*, 70 A.2d 854 (Pa. 1950).

6. The Commission is required to provide due process to the parties appearing before them. This due process 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).

7. Notice electronically served to a party with no notification that service failed or was undeliverable is presumed received. *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 Apr. 7, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017)

8. 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 Jan. 24, 2002).

9. 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.

10. If there are no facts in the record that a party's failure to appear at a hearing was unavoidable, the complaint should be dismissed with prejudice. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Little v. Pittsburgh Water and Sewer Authority*, Docket No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022); *Williams v. PECO Energy Co.*, Docket No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019).

