

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Timothy Long	:	
	:	
v.	:	C-2022-3035404
	:	
UGI Utilities, Inc.	:	

**INITIAL DECISION**

Before  
Steven K. Haas  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision grants a Motion to Dismiss a Formal Complaint, with prejudice, 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 and the opportunity to be heard.

**HISTORY OF THE PROCEEDING**

On September 20, 2022, the Complainant, Timothy Long, filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against UGI Utilities, Inc. (UGI). In his Formal Complaint, Mr. Long averred that certain UGI bills received by him were too high and he is seeking an affordable payment arrangement for his past due balance.

On October 11, 2022, UGI filed an Answer to Mr. Long's Formal Complaint. In its Answer, UGI denied that any of the Complainant's bills were incorrect and averred that he is not legally entitled to another Commission-ordered payment arrangement.

On October 13, 2022, the Commission issued a Call-In Telephonic Hearing Notice scheduling a call-in telephonic hearing on December 7, 2022, beginning at 10:00 a.m. and assigning me as the Presiding Officer. The Hearing Notice instructed the parties that they may lose their case if they did not take part in the hearing and present facts on the issues raised. The Hearing Notice was electronically Served to Mr. Long at the address provided by him on his Formal Complaint form. The Hearing Notice was not returned to the Commission as undeliverable.

The hearing was convened as scheduled on December 7, 2022. Larry Crayne, Esquire, appeared on behalf of UGI, along with three witnesses who were prepared to testify. No one appeared on behalf of the Complainant. The hearing was delayed until 10:10 a.m. to give the Complainant additional time to appear in case he was running late. Mr. Long never connected to the call to participate in the hearing. At the hearing attorney Crayne moved for dismissal of the Complaint, with prejudice, for failure of the Complainant to appear and prosecute his case.

The record in this case was closed on December 8, 2022 and consists of a brief hearing transcript. No exhibits were admitted into the record. This Initial Decision grants the Motion made by UGI to dismiss, with prejudice, Mr. Long's Formal Complaint due to his failure to appear and prosecute his Complaint.

#### FINDINGS OF FACT

1. The Complainant in this case is Timothy Long.
2. The Respondent in this case is UGI Utilities, Inc.

3. On September 20, 2022, Mr. Long filed a Formal Complaint with the Commission against UGI.
4. On October 11, 2022, UGI filed an Answer to Mr. Long's Complaint.
5. On October 13, 2022, a Call-In Telephonic Hearing Notice was issued scheduling an Initial Call-In Telephonic Hearing for December 7, 2022, beginning at 10:00 a.m.
6. The Hearing Notice instructed the parties that they may lose their case if they did not appear and take part in the hearing.
7. The Hearing Notice was electronically served on the Complainant at the email address provided by him on his Formal Complaint form.
8. The Hearing Notice served on the Complainant was not returned to the Commission as undeliverable.
9. On November 30, 2022, Counsel to UGI, Larry Crayne, sent to me and Mr. Long, via electronic mail, UGI's proposed hearing exhibits.
10. The cover letter attached to UGI's proposed hearing exhibits re-stated the time and date of the scheduled hearing.
11. UGI's cover letter and proposed exhibits were sent to Mr. Long to the electronic mail address provided by him on his Formal Complaint form.
12. The hearing convened as scheduled on December 7, 2022, beginning at 10:00 a.m.
13. The hearing was delayed 10 minutes to accommodate any delay in anyone appearing at the hearing on behalf of Mr. Long.

14. No one called in to the hearing on behalf of Mr. Long at the designated date and time as instructed on the Hearing Notice.

15. Counsel for UGI and three witnesses for UGI were present and prepared to proceed at the time of the December 7, 2022 hearing.

16. Complainant has not contacted the Commission to explain his failure to appear at the December 7, 2022 hearing.

### 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). “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). As a matter of law, a Complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa.P.U.C. 196 (1990). 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, Mr. Long questioned certain UGI bills received by him and is requesting that the Commission establish an affordable payment arrangement. Therefore, Mr. Long 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 provided notice of the hearing and the opportunity to be heard. Id., *see also*, J.P. v. Dep’t of Human Servs., 150 A.3d 173 (Pa. Cmwlth. 2016).

No one appeared on behalf of Mr. Long at the date and time set for the hearing in this case despite notice of the hearing having been provided to him. Commission regulations address circumstances when 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 Notice was electronically served to Mr. Long at the email address provided by him on his Formal Complaint form. The Hearing Notice was not returned to the Commission as undeliverable. Additionally, as noted, UGI's cover letter attached to its proposed hearing exhibits included the time and date of the hearing. UGI's proposed exhibits and cover letter were sent to Mr. Long, via electronic mail, at the address provided by him on his Formal Complaint form. Notice served to a party with no notification that service has failed is presumed received. Hu v. PECO Energy Co., Docket No. C-2019-3012075 (Final Order entered Dec. 19, 2019); Zirkel v. Phila. Gas Works, Docket No. C-2016-2561176 (Final Order entered Apr. 7, 2017). As noted above, the Hearing Notice instructed the parties that if they fail to participate in the hearing, the hearing may proceed without them, and a decision may be entered against the non-appearing party.

No one appeared on behalf of Mr. Long at the time of the hearing, nor did anyone on his behalf ever request a postponement or continuance of the hearing. As such, Mr. Long had notice of the hearing and an opportunity to be heard in this proceeding but chose not to appear. Therefore, Mr. Long's due process rights have been fully protected. Sentner v. Bell Tel. Co. of Pa., Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993).

During the hearing, counsel for UGI moved for dismissal, with prejudice, of the Complaint for lack of prosecution. By failing to appear and present any evidence in support of his Complaint, Mr. Long failed to carry his burden of proof. Once notice of a hearing and the opportunity to be heard have been provided by the Commission, it is the responsibility of parties to appear and participate in the hearing. Strydio v. PPL Elec. Utils. Corp., Docket No. C-2017-2633043 (Opinion and Order entered July 18, 2018).

There are no facts in the record that would allow the Commission to reach the conclusion that Complainant's failure to attend the hearing was unavoidable. Accordingly, the Formal Complaint will be dismissed with prejudice. 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. 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).

5. 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).

6. 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).

7. Mr. Long's due process rights have been fully protected. Sentner v. Bell Tel. Co. of Pa., Docket No. F-00161106 (Order entered Oct. 25, 1993); 52 Pa. Code § 5.245(a).

8. Mr. Long failed to carry his 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 UGI Utilities, Inc. to dismiss, with prejudice, the Formal Complaint of Timothy Long against UGI Utilities, Inc. at Docket No. C-2022-3035404 for failure to prosecute is granted.

