

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jerrod Miner	:	
	:	
v.	:	F-2022-3035563
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Arlene Ashton  
Administrative Law Judge

**INTRODUCTION**

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

**HISTORY OF THE PROCEEDING**

On September 22, 2022, Jerrod Miner (the Complainant or Mr. Miner) 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 indicated that the utility had shut off his gas service, that he wished to have service restored and that he wanted a payment arrangement.

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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. 3851250. The Complaint was served on PGW on September 26, 2022.

On October 17, 2022, the Respondent filed an Answer denying all material allegations of fact in the Complaint. PGW averred that the Complainant's service was terminated on May 10, 2022, for non-payment. PGW further averred that on June 21, 2022, during an unbilled usage investigation, a PGW technician found the gas on and shut it off again, leaving a post termination notice for the Complainant. Additionally, PGW requested that the Complaint be dismissed.

By Hearing Notice dated November 2, 2022, a call-in telephonic hearing was scheduled for December 20, 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 November 8, 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>2</sup> or a Commission Order or regulation, and that he is entitled to the relief requested in the Complaint.

The Hearing Notice and Prehearing Order were electronically served to Complainant in the ordinary course of the Commission's business to the email address he

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<sup>2</sup> Public Utility Code (Code), 66 Pa. C.S. §§ 101-3316.

provided to the Commission. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.

The hearing convened as scheduled on December 20, 2022. Counsel for PGW was present with a witness and was prepared to proceed. Mr. Miner was not present. In light of the Complainant's absence, the hearing was recessed for 10 minutes to allow the Complainant additional time to appear. When the hearing was reconvened at 10:15 a.m., the Complainant still had not appeared for the hearing nor had he contacted my office to indicate that he would or would not appear.

No witnesses were presented, and no exhibits were introduced into the record. At the hearing, 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 December 20, 2022, after the hearing was held.

#### FINDINGS OF FACT

1. The Complainant is Jerrod Miner.
2. The Respondent is Philadelphia Gas Works.
3. On September 22, 2022, Mr. Miner filed the Formal Complaint with the Commission against Philadelphia Gas Works.
4. On October 17, 2022, Respondent timely filed the Answer to the Complaint.
5. By Initial Telephonic Hearing Notice dated November 2, 2022, a call-in telephonic hearing was scheduled for December 20, 2022, at 10:00 a.m.

6. On November 8, 2022, I issued a Prehearing Order that also advised the parties of the date and time of the scheduled hearing.

7. Both the Hearing Notice and the Prehearing Order were electronically served on the Complainant at the email address provided by him to the Commission.

8. Neither the Hearing Notice nor the Prehearing Order served on the Complainant were returned to the Commission as undeliverable.

9. On December 20, 2022, counsel for PGW and a witness appeared and were prepared to proceed with the scheduled hearing in this matter at 10:00 a.m.

10. The Complainant did not call in to the hearing at 10:00 a.m., the designated date and time as instructed on the Hearing Notice and the Prehearing Order.

11. A recess was taken to allow Mr. Miner or his representative an opportunity to call-in.

12. The hearing was reconvened at 10:15 a.m., however, neither he nor his representative called into the hearing by the time the hearing adjourned at 10:18 a.m.

13. The Complainant has not contacted the Commission to explain why his failure to appear at 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 appear or explain why he could not attend the hearing at the scheduled time. Therefore, it is appropriate to dismiss the Complaint.

On November 22, 2022, the Commission electronically served notice of the December 20, 2022, hearing in this case to the Complainant to the email address he provided in his Complaint. The notice informed the parties of the date and time of the hearing, as well as how to call in for the hearing. The notice was not returned as undeliverable.

In addition, I issued a Prehearing Order dated November 8, 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 served on the Complainant electronically, was not returned as undeliverable. The Notice of Hearing and Prehearing Order were sent to the Complainant at the email address provided by him. Accordingly, I must presume that these documents, which were sent in the ordinary course of business, were received by the Complainant. *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 Jan. 27, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Nov. 16, 2016).

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 Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered Jan. 28, 2002); *Sentner 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 December 20, 2022.

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). 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).

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. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The Complainant did not appear for the hearing scheduled for October 20, 2022. Thus, by his failure to appear, Complainant did not meet his burden of proof.

As the Commission has explained, where the complainant fails to appear for a scheduled hearing without good cause, the public interest is prejudiced by the wasteful use of the agency's and the respondent's time and resources. *See, e.g., Elliott v. Pa. Elec. Co.*, F-618-3003502 (Opinion and Order entered Feb. 6, 2020). Consequently, it is appropriate to grant PGW's Motion and to dismiss Mr. Miner's Complaint, with prejudice. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Williams v. PECO Energy Co.*, Docket No. C-2018-300734 (Opinion and Order entered Mar. 14, 2019) (citing *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995)).

## CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of the dispute. 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 it. This due process requirement is satisfied when the parties are provided notice and the opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

5. 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).

6. After being notified, a party who fails to appear at a scheduled conference or hearing shall be deemed to have waived the opportunity to participate in the hearing, not be permitted thereafter to reopen the disposition of the matter accomplished at the hearing, and not be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

7. 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).

8. The Respondent's Motion that the Complaint be dismissed with prejudice for lack of prosecution may be granted. 52 Pa. Code § 5.245

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Philadelphia Gas Works to dismiss, with prejudice, the Complaint of Jerrod Miner at Docket No. F-2022-3035563 for lack of prosecution is granted.

2. That the Complaint of Jerrod Miner at Jerrod Miner v. Philadelphia Gas Works at Docket F-2022-3035563, is dismissed with prejudice.

3. That the Secretary mark the proceeding at Docket No. F-2022-3035563 closed.

Date: February 7, 2023

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