

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Renee Faust	:	
	:	
v.	:	F-2022-3035262
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Arlene Ashton
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint of Renee Faust against Philadelphia Gas Works because she failed to appear for the scheduled hearing and prosecute her Complaint.

HISTORY OF THE PROCEEDING

On September 14, 2022, Renee Faust (Complainant or Ms. Faust) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission).¹ In the Complaint, the Complainant indicated that PGW was threatening to shut off her service or had already done so, that there are incorrect charges on her bill, and that she wanted a payment agreement. As relief, she indicated that she wished to have her account checked for payments that she had made but for which PGW had no record. She also requested another payment arrangement.

¹ This is a timely appeal from the Bureau of Consumer Services determination at BCS No. 3839665.

On October 4, 2022, the Respondent filed an Answer (Answer) averring that there are no incorrect charges on the Complainant's bill for gas service. In the Answer PGW also averred that the Complainant had only made 8 payments since 2019.

By Hearing Notice dated October 12, 2022, a call-in telephonic hearing was scheduled for December 15, 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 October 12, 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. Paragraph 2 of the Prehearing Order 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.

Furthermore, the Prehearing Order 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 Code or a Commission Order or regulation, and that she is entitled to the relief requested in the Complaint.

In the ordinary course of the Commission's business, the Hearing Notice and Prehearing Order were mailed via U.S. mail to Complainant at the street address provided by her to the Commission. The Commission did not receive any return mail that the Hearing Notice or the Prehearing Order sent to the Complainant's address were undeliverable.

The hearing convened as scheduled on December 15, 2022, at 10:00 a.m. Counsel for PGW and a PGW witness called into the hearing and were prepared to proceed. Ms. Faust 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 she contacted my office to indicate that she would or would not appear. Ms. Faust has not contacted my office to explain her failure to appear 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 § 5.245.² In accordance with Commission policy, I am granting the Motion.

The record closed on December 15, 2022, at the conclusion of the hearing.

FINDINGS OF FACT

1. The Complainant is Renee Faust.
2. The Respondent is Philadelphia Gas Works.
3. On September 14, 2022, Renee Faust filed the Formal Complaint with the Commission against Philadelphia Gas Works.
4. On October 4, 2022, the Respondent filed the Answer.
5. By Initial Telephonic Hearing Notice dated October 12, 2022, a call-in telephonic hearing was scheduled for December 15, 2022, at 10:00 a.m.

² Tr. 7.

6. On October 12, 2022, I issued a Prehearing Order that also advised the parties of the date and time of the scheduled hearing.

7. The Hearing Notice and the Prehearing Order were served upon the Complainant via US Mail at the address she provided to the Commission.

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

9. On December 15, 2022, counsel for Philadelphia Gas Works and a witness appeared and were prepared to proceed with the scheduled hearing in this matter.

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

11. A recess was taken to allow Ms. Faust or a representative an opportunity to call-in.

12. Neither Ms. Faust nor a representative for her called into the hearing by the time the hearing adjourned at 10:19 a.m.

13. The Complainant has not contacted the Commission to explain her failure to appear at the hearing.

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 she failed to appear or explain why she could not attend the hearing at the scheduled time. Therefore, it is appropriate to dismiss the Complaint.

The Commission served notice of the December 15, 2022, hearing in this case to the Complainant on October 12, 2022, via US Mail, to the address she provided in her Complaint.³ 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 September 26, 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 via US Mail, was not returned as undeliverable. The Notice of Hearing and Prehearing Order were sent to the Complainant at the address she provided to the Commission. Accordingly, it may be presumed that these documents, which were sent in the ordinary course of business, were received by the Complainant. *See Berkowitz v. Mayflower Sec., Inc.*, 317 A.2d 584 (Pa. 1974); *Chartiers Indus. & Com. Dev. Auth. v. Allegheny Cnty. Bd. of Prop. Assessment Appeals & Rev.*, 645 A.2d 944 (Pa. Cmwlth. 1994), *appeal denied*, 653 A.2d 1234 (Pa. 1994); *Geary v. Verizon Pa. Inc.*, Docket No. C-2009-2118625 (Opinion and Order entered Sept. 16, 2010).

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. Util. 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 15, 2022.

Commission regulations address circumstances when a party fails to appear in a proceeding. Section 5.245 provides:

³ The Complainant did not provide an email address on the Formal Complaint form. All written communication concerning this matter was sent to the Complainant at the address she provided on the Formal Complaint form.

§ 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).

I deem Ms. Faust's failure to appear at the date and time of the December 15, 2022, scheduled hearing as evidence that she did not wish to participate in the hearing. Under the circumstances, the Complainant has 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 she is entitled to her requested relief. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The Complainant did not appear for the hearing scheduled for December 15, 2022. Thus, by her failure to appear and proffer any evidence to support her Complaint, Complainant did not meet her burden of proof. Consequently, it is appropriate to grant PGW's motion and dismiss Ms. Faust's Complaint.⁴

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

⁴ As noted above, PGW requested that the dismissal be with prejudice. Tr. 7.

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).

The Public Utility Code provides that a party who fails to attend a scheduled conference and hearing “shall be deemed to have waived the opportunity to participate” and shall not be permitted to later reopen the matter. 66 Pa. C.S. § 332(f); 52 Pa. Code § 5.245. However, the Commission may excuse non-attendance at a hearing where “the presiding officer shall determine that failure to be represented was unavoidable and that the interests of the other parties and the public would not be prejudiced.” 66 Pa. C.S. § 332(f); 52 Pa. Code § 5.245. Here, 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 Complaint may be dismissed, with prejudice. *Williams v. PECO Energy Co.*, Docket No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of the dispute. 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. "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. After being notified, a party who fails to appear at a scheduled conference or hearing in a proceeding shall be deemed to have waived the opportunity to participate in the conference or hearing, not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing, and not be permitted to recall excused witnesses. 52 Pa. Code § 5.245(a).

6. 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).

7. As the party seeking relief, Complainant bears the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a).

8. By failing to appear for the hearing and proffer any evidence to support the Complaint, the Complainant has failed to meet her burden of proving that she is entitled to the relief that she seeks from the Commission. 66 Pa.C.S. § 332(a).

9. The Respondent's Motion that the Complaint be dismissed, with prejudice, for lack of prosecution may be granted. 52 Pa. Code § 5.245. *Williams v. PECO Energy Co.*, Docket No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019)

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Philadelphia Gas Works to dismiss with prejudice the Complaint of Renee Faust at Docket No. F-2022-3035262 for lack of prosecution is granted.

2. That the Complaint filed by Renee Faust at Renee Faust v. PGW Energy Company, Docket F-2022-3035262, is dismissed with prejudice.

3. That the Secretary mark the proceeding at Docket No. F-2022-3035262 closed.

Date: February 7, 2023

_____/s/
Arlene Ashton
Administrative Law Judge