

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Barbara Bigio

v.

UGI Utilities, Inc.

:  
:  
:  
:  
:

C-2022-3036351

**INITIAL DECISION**

Before  
Gail M. Chiodo  
Administrative Law Judge

**INTRODUCTION**

This decision dismisses the formal complaint of a gas service customer for failure of the customer to appear for the scheduled hearing and prosecute her complaint despite having notice and an opportunity to be heard.

**HISTORY OF THE PROCEEDING**

On October 24, 2022, Barbara Bigio (“Complainant”) filed a formal complaint with the Pennsylvania Public Utility Commission (“Commission”) against UGI Utilities, Inc. (“UGI” or “Company”) in which she averred that her gas service was off due to nonpayment. As relief, Ms. Bigio requested a Commission payment arrangement to have her service turned back on.

On November 14, 2022, UGI timely filed an answer. In its answer, UGI denied the material allegations of the complaint. UGI averred that Complainant’s service was terminated on October 19, 2022, for nonpayment; that for the restoration of service, Complainant needed to pay her arrearage of \$929.78 and a reconnection fee of \$73; and after reconnection, Complainant would be billed a security deposit of \$54 payable in three monthly installments.

On November 23, 2022, an Initial Call-In Telephonic Hearing Notice (“Hearing Notice”) was e-served on both parties scheduling a call-in telephonic evidentiary hearing on February 2, 2023, at 10:00 a.m., and assigning me as the presiding officer. This Hearing Notice included the telephone number to call, and the passcode to enter, for the parties to participate in the hearing.

Also on December 9, 2022, I issued a Prehearing Order which was e-served on both parties which, *inter alia*, reminded the parties of the hearing date and time, and the telephone number to call, and the passcode to enter, to participate in the hearing. Additionally, the Prehearing Order provided certain hearing information and rules that would govern the proceeding including how to request a continuance, if necessary, and the consequences of failing to appear at the hearing and present evidence including the dismissal of the complaint.

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

On February 2, 2023, the hearing convened as scheduled. Mr. Larry R. Crayne, Esquire, appeared on behalf of UGI, along with a witness, and the Company was prepared to proceed. Complainant did not appear. I recessed the hearing and convened it again approximately ten minutes later in order to allow time for Complainant to appear. Since Complainant did not appear after this recess, the hearing proceeded in her absence. No testimony was taken and no exhibits were introduced for the record.

During the hearing, the Company moved to dismiss the complaint with prejudice (“Motion”) for the failure of Complainant to appear and prosecute her complaint. Prior to UGI’s motion, Attorney Crayne noted that Complainant’s service was turned back on in November 2022 after a substantial payment was made to her account. In fact, Attorney Crayne noted that the Complainant currently had a credit balance. (Tr. 5).<sup>1</sup>

---

<sup>1</sup> A six-page hearing transcript was filed with the Commission’s Secretary’s Bureau on February 6, 2023.

I took UGI's Motion under advisement. The record closed at the conclusion of the hearing pursuant to 52 Pa. Code § 5.431(a) (providing for closure of the record at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission).

To date, Complainant has not communicated with the undersigned or the Office of Administrative Law Judge to explain why her failure to appear at the hearing was unavoidable. For the reasons discussed below, this decision grants UGI's Motion.

#### FINDINGS OF FACT

1. The Complainant is Barbara Bigio.
2. The Respondent is UGI Utilities, Inc.
3. Respondent provides gas service to Complainant.
4. On October 24, 2022, Ms. Bigio filed a formal complaint against Respondent.
5. On November 14, 2022, Respondent timely filed an answer to the complaint.
6. On November 23, 2022, an Initial Call-In Telephonic Hearing Notice was e-served on both parties scheduling an initial telephonic hearing on February 2, 2023, at 10:00 a.m., and assigning me as the presiding officer.
7. Also on December 9, 2022, a Prehearing Order was e-served on both parties which, *inter alia*, reminded the parties of the date and time of the scheduled hearing and the telephone number to call, and the passcode to enter, to participate in the hearing.

8. Both the Hearing Notice and the Prehearing Order provided certain hearing information and rules that would govern the proceeding including how to request a continuance, if necessary, and the consequences of failing to appear at the hearing and present evidence including the dismissal of the complaint.

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

10. On February 2, 2023, Complainant failed to appear and participate in the scheduled hearing.

11. To date, Complainant has not communicated with the undersigned or the Office of Administrative Law Judge to explain why her 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) (*Schneider*). This due process requirement is satisfied when the parties are provided notice and the opportunity to be heard. *Id.* As the proponent of any request for relief, the complainant bears the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, the Commission's decision must be supported by substantial evidence. 2 Pa.C.S. § 704.

The Commission is required to fix the time and place of a hearing in a complaint proceeding and serve notice thereof upon the parties in interest. 66 Pa.C.S. § 703(a)-(b). Service on interested persons is sufficient to provide notice. 52 Pa. Code § 5.61(a). As the Commission explained, “[i]t is well-established law that once timely notice of a hearing and the opportunity to be heard have been provided, it is the responsibility of the parties to be present and participate in

the hearing.” *Mumma v. UGI Elec. Utils. Corp.*, No. C-00014869 at 3 (Opinion and Order entered Jan. 28, 2002) (citing *Schneider*).

In the instant case, the Hearing Notice scheduled a hearing on February 2, 2023, and included the telephone number to call, and the passcode to enter, for the parties to participate in the hearing. Further, a Prehearing Order was served on both parties which, *inter alia*, reminded the parties of the hearing date and time, and the telephone number, and passcode to enter, to participate in the hearing. Additionally, the Prehearing Order provided certain hearing information and rules that would govern the proceeding including how to request a continuance, if necessary, and the consequences of failing to appear at the hearing and present evidence including the dismissal of the complaint.

Both the Hearing Notice and Prehearing Order were e-served on the Complainant. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents sent to the Complainant were received by her. *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).

Both the Public Utility Code and the Commission’s regulations provide that, after being notified, a party who fails to appear at a scheduled 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). However, neither of these provisions apply if the presiding officer determines that the failure to be represented was unavoidable and that the interests of the other parties and of the public would not be prejudiced by permitting the reopening or further examination. 66 Pa.C.S. § 332(f), 52 Pa. Code § 5.245(b).

In the instant case, to date, no communication has been received by the undersigned or the Office of Administrative Law Judge regarding Complainant’s absence.

Therefore, I find that Complainant waived the opportunity to participate in a hearing on the matters raised in the complaint and Complainant's absence was not unavoidable. Thus, by her failure to appear, Complainant did not meet her burden of proof.

Consequently, it is appropriate to dismiss Ms. Bigio's complaint. As the Commission has explained, where a 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.*, No. F-2018-3003502 (Opinion and Order entered Feb. 6, 2020) and the cases cited therein.

When there are no facts in the record that the party's failure to appear 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 v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

Accordingly, Respondent's Motion to dismiss the complaint with prejudice will be granted.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa.C.S. § 701.
2. The Commission is required to provide due process to the parties appearing before them; 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).

3. After being notified, a party who fails to appear at a scheduled 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).

4. If the presiding officer determines that the failure to be represented was unavoidable and that the interests of the other parties and of the public would not be prejudiced by permitting the reopening or further examination, the presiding officer may find that a party did not waive the opportunity to participate in the hearing. 66 Pa.C.S. § 332(f), 52 Pa. Code § 5.245(b).

5. Complainant's due process rights have been fully protected and Complainant's failure to appear was not unavoidable. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

6. As the party seeking relief, Complainant bears the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a), *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

7. The Complainant has failed to meet her burden of proof in this proceeding.

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of UGI Utilities, Inc. to dismiss with prejudice the Formal Complaint of Barbara Bigio at Docket No. C-2022-3036351 is granted.

