

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Richard Wright Jr.	:	
	:	
v.	:	F-2022-3034723
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Arlene Ashton  
Administrative Law Judge

**INTRODUCTION**

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

**HISTORY OF THE PROCEEDING**

On August 26, 2022, Richard Wright Jr. (the Complainant or Mr. Wright) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW or the Respondent) with the Pennsylvania Public Utility Commission (Commission). On the Complaint form, the Complainant checked the box indicating that there were incorrect charges on his bill. As requested, relief, Mr. Wright indicated that he wished to have his bill for the past 5 years “looked at” and to have a PGW representative visit his home to verify that his meter is working properly.

On September 19, 2022, the Respondent filed an Answer denying all material allegations of fact in the Complaint. PGW denied that there were any incorrect charges on the Complainant's account.

By Hearing Notice dated September 22, 2022, a call-in telephonic hearing was scheduled for November 23, 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 September 26, 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>1</sup> or a Commission Order or regulation, and that he is entitled to the relief requested in the Complaint.

On November 14, 2022, PGW filed a motion to continue the hearing due to counsel's inability to attend the hearing scheduled for November 23, 2022. In the motion, PGW indicated that Mr. Wright did not oppose the request for continuance. On November 14, 2022, I issued an Interim Order Granting Respondent's Motion for Continuance. On November 15, 2022, a Telephonic Hearing Cancellation/Reschedule Notice was issued advising the parties that

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<sup>1</sup> Public Utility Code (Code), 66 Pa.C.S. §§ 101-3316.

the hearing scheduled for November 23, 2022, had been cancelled and had been rescheduled as a call-in telephonic hearing for January 3, 2023, at 10:00 a.m. The Telephonic Hearing Cancellation/Reschedule Notice reiterated the information provided in the Hearing Notice concerning how to request a continuance and the possible consequences of failure to appear for the hearing.

The hearing convened as scheduled on January 3, 2023. Counsel for PGW was present with a witness and was prepared to proceed. Mr. Wright was not present. In light of the Complainant's absence, the hearing was recessed for approximately 12 minutes to allow the Complainant additional time to appear. When the hearing 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. Respondent's counsel moved that the Complaint be dismissed with prejudice for lack of prosecution pursuant to 52 Pa. Code § 5.245. The Complainant has not contacted the Commission to explain why his failure to appear at the hearing was unavoidable. In accordance with Commission policy, I am granting Respondent's Motion.

The record closed on January 3, 2023, after the conclusion of the hearing.

#### FINDINGS OF FACT

1. The Complainant is Richard Wright Jr.
2. The Respondent is Philadelphia Gas Works.
3. On August 26, 2022, Mr. Wright filed a Complaint with the Commission against Philadelphia Gas Works.

4. On September 19, 2022, Respondent timely filed an Answer to the Complaint.
5. By Telephonic Hearing Notice dated September 22, 2022, a call-in telephonic hearing was scheduled for November 23, 2022, at 10:00 a.m.
6. On September 26, 2022, I issued a Prehearing Order that also advised the parties of the date and time of the scheduled hearing.
7. On November 14, 2022, the Respondent filed a motion to continue the hearing due to counsel's inability to attend the hearing scheduled for November 23, 2022.
8. An Interim Order Granting Respondent's Motion for Continuance was issued on November 14, 2022.
9. On November 15, 2022, a Telephonic Hearing Cancellation/Reschedule Notice was issued advising the parties that the hearing scheduled for November 23, 2022, had been cancelled and had been rescheduled as a call-in telephonic hearing for January 3, 2023, at 10:00 a.m.
10. The Hearing Notice, the Prehearing Order and the Hearing Cancellation/Reschedule Notice were electronically served upon the Complainant.
11. The Hearing Notice, the Prehearing Order and the Hearing Cancellation/Reschedule Notice served on the Complainant were not returned to the Commission as undeliverable.
12. On November 10, 2022, counsel for the Respondent and a witness appeared and were prepared to proceed with the scheduled hearing in this matter.

13. The Complainant did not call in to the hearing at the designated date and time as instructed on the Hearing Cancellation/Reschedule Notice.

14. A recess was taken to allow the Complainant or a representative on behalf of the Complainant an opportunity to call-in.

15. The hearing was reconvened at 10:15 a.m., however, neither the Complainant nor his representative called into the hearing by the time the hearing concluded at 10:25 a.m.

16. 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.

The Commission served notice of the November 23, 2022, hearing and the rescheduled January 3, 2023, hearing to the Complainant electronically 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. Neither notice was 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 electronically served on the Complainant via e-mail, was never returned as

undeliverable. The Notice of Hearing, Cancellation/Reschedule Notice and Order were sent to the Complainant at the same email address; therefore, it can reasonably be inferred that he received the Notice of Hearing, Cancellation/Reschedule Notice and Order sent to him in the same manner. 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); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Apr. 7, 2017).

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 January 3, 2023.

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).

I deem Mr. Wright's failure to appear at the date and time of the January 3, 2023, scheduled hearing as evidence that he did not wish to participate in the hearing. The

Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. *Sentner v. Bell Tel. Co. of Pa.* Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993); 52 Pa. Code § 5.245(a). Therefore, 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).

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. The Complainant did not appear for the hearing scheduled for January 3, 2023. Thus, by failing to participate and proffer any evidence to support his Complaint, the Complainant has failed to meet his burden.

Consequently, it is appropriate to grant Respondent's motion to dismiss Mr. Wright's Complaint. 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-2018-3003502 (Opinion and Order entered Feb. 6, 2020).

The Code and regulations provide 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 must 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 Company*, 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 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).

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 his burden of proving that he is entitled to the relief that he seeks from the Commission. 66 Pa.C.S. § 332(a).

9. The Respondent's Motion that the Complaint be dismissed 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 the Complaint of Richard Wright Jr. at Docket No. F-2022-3034723 for lack of prosecution with prejudice is granted.

2. That the Complaint of Richard Wright Jr. at Richard Wright Jr v. Philadelphia Gas Works at Docket No. F-2022-3034723, is dismissed, with prejudice.

3. That the Secretary mark the proceeding at Docket No. F-2022-3034723 closed.

Date: April 4, 2023

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