

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Robert Adams	:	
	:	
v.	:	C-2022-3035184
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On September 6, 2022, Robert Adams (Complainant or Mr. Adams) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent), requesting a payment arrangement.

On October 3, 2022¹, Respondent filed an Answer denying the material allegations of the Complaint.

¹ The Complaint was served on the Respondent by the Secretary's Bureau on September 13, 2022.

On October 7, 2022, the Commission issued an Initial Call-In Telephonic Hearing Notice and the matter was scheduled for hearing on December 14, 2022 at 10:00 a.m. The case was assigned to me. The Notice contained the following information:

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 21, 2022. 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 also contained the same failure to appear warning that was found in the Hearing Notice.

The Hearing Notice and Prehearing Order were electronically served to Complainant in the ordinary course of the Commission’s business to the email address Complainant provided to the Commission. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.

The hearing began on December 14, 2022, as scheduled. Counsel for PGW was present with a witness and was prepared to proceed. The Complainant failed to call in. The Complainant was given an additional eight minutes to call in but failed to do so.

No witnesses were presented, and no exhibits were introduced into the record. At the hearing, counsel for PGW moved that the Complaint be dismissed 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 January 24, 2023, upon my receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is Robert Adams.
2. The Respondent is Philadelphia Gas Works.
3. On September 6, 2022, Mr. Adams filed a Formal Complaint with the Commission against the Respondent.
4. On October 3, 2022, the Respondent filed an Answer to the Complaint.
5. On October 7, 2022, the Commission issued an Initial Call-In Telephonic Hearing Notice and the matter was scheduled for hearing on December 14, 2022 at 10:00 a.m.
6. On November 21, 2022, a Prehearing Order was sent to all parties containing, *inter alia*, a warning of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing.
7. Both the Hearing Notice and Prehearing Order contained the warning that failing to appear could result in the case being dismissed with prejudice.
8. Both the Hearing Notice and Prehearing Order were electronically served on Complainant to the email address provided by Complainant to the Commission.
9. None of the documents served on the Complainant were returned to the Commission as undeliverable.
10. The Complainant failed to appear at the December 14, 2022, hearing.
11. The Complainant did not settle or withdraw this Complaint prior to the scheduled hearing date or obtain a continuance.

12. The Complainant has not contacted the Commission to explain why his failure to appear at the hearing was unavoidable.

DISCUSSION

As the party seeking affirmative relief from the Commission, the burden of proof rests on the Complainant. 66 Pa.C.S. § 332(a).

Administrative agencies, like the Public Utility Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. Pub. Util. Comm'n.*, 479 A.2d 10 (Pa. Cmwlth. 1984).

The Commission served notice of the December 14, 2022, hearing in this case to the Complainant on October 7, 2022, 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. The notice was not returned as undeliverable.

In addition, I issued a Prehearing Order dated November 21, 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 never 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).

Although he was duly notified of the hearing, neither the Complainant nor a representative licensed to practice law in this Commonwealth appeared at the hearing on his

behalf. To date, there is no further information about the Complainant regarding this hearing. His failure to appear was not unavoidable.

Once notice of a hearing and the opportunity to be heard have been provided, it is the responsibility of the parties to appear and participate in the hearing. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993). The Complainant waived the opportunity to participate in the hearing by failing to appear. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245.

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 October 20, 2022. Thus, by his failure to appear, Complainant did not meet his burden of proof.

Consequently, it is appropriate to grant PGW's Motion and to dismiss Mr. Adams' Complaint, with prejudice. 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). 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).

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. 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).

7. 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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Philadelphia Gas Works to dismiss the Formal Complaint filed by Robert Adams at Docket No. C-2022-3035184 is granted.
2. That the Formal Complaint of Robert Adams in Robert Adams v. Philadelphia Gas Works at Docket No. C-2022-3035184 is dismissed with prejudice.
3. That Docket No. C-2022-3035184 be marked closed.

Date: April 11, 2023

_____/s/
Marta Guhl
Administrative Law Judge