

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

McArthur Giles

v.

Philadelphia Gas Works

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F-2022-3036835

INITIAL DECISION

Before
Katrina L. Dunderdale
Administrative Law Judge

INTRODUCTION

The undersigned grants Respondent’s oral Motion to Dismiss with prejudice a Formal Complaint because Complainant failed to appear at the initial hearing and prosecute the case.

HISTORY OF THE PROCEEDING

On November 9, 2022, McArthur Giles (Mr. Giles or Complainant) filed the Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent), timely appealing a decision by the Commission’s Bureau of Consumer Services (BCS) on October 4, 2022, at BCS No. 3868356. Complainant alleged PGW had shut off natural gas service, and he wanted a payment arrangement he could afford because \$1,033 in monthly natural gas payments was too high.

On December 7, 2022, PGW filed its Answer. Respondent acknowledged it provided natural gas service at the service address until it terminated service on August 25, 2022.

Respondent averred it terminated service due to Complainant's failure to pay monthly bills in full.

By Call-In Telephone Hearing Notice dated December 13, 2022, the Office of Administrative Law Judge notified the parties an initial telephonic hearing was scheduled for February 17, 2023, at 10:00 a.m. On December 14, 2022, the presiding officer issued a Prehearing Order which, *inter alia*, advised the parties that continuances would only be granted if requested, the request must be received 5 business days prior to the hearing and requests would be granted only in situations where sufficient cause was shown to exist.

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

On February 17, 2023, the presiding officer convened the hearing at which time Complainant was not present or represented by counsel. Respondent was represented by Anita J. Murray, Esquire, who appeared with Jessica Antonetti, a Customer Review Officer at PGW. Due to Mr. Giles's failure to appear at the hearing, PGW made an oral Motion to Dismiss with prejudice for failure to appear and prosecute the Formal Complaint. Respondent's counsel averred natural gas service is currently on at the service address and the unpaid balance on Complainant's account was \$8,800.64, as of the date of the hearing. The hearing concluded at 10:23 a.m. The hearing record closed on February 17, 2023, upon the conclusion of the telephonic hearing, pursuant to 52 Pa. Code § 5.431(a).¹

FINDINGS OF FACT

1. Complainant is McArthur Giles, who resides at 2625 North Ninth Street, Philadelphia, Pennsylvania (service address).

¹ The regulation at 52 Pa. Code § 5.431(a) indicates the hearing record closes at the conclusion of a hearing unless otherwise directed by the presiding officer or the Commission.

2. Respondent is Philadelphia Gas Works, a natural gas distribution company which provides residential natural gas service at the service address.

3. As of the date of the initial telephonic hearing, the unpaid balance on the natural gas service account was \$8,800.64.

4. The hearing notice dated December 13, 2022, and the Prehearing Order dated December 14, 2022, were electronically served on Complainant at the email address provided by Complainant in the Formal Complaint and were not returned to the Commission as undeliverable.

5. Complainant was not present and did not participate in the hearing on February 17, 2023.

6. Complainant did not contact the Commission or the presiding officer to explain how his failure to appear at the hearing was unavoidable.

DISCUSSION

Pursuant to Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), the burden of proof is on the proponent of a rule or order. In this proceeding, Mr. Giles, as the complainant, is the proponent of a rule or order. Therefore, Complainant bears the burden of proving by a preponderance of the evidence that Respondent violated the Public Utility Code or a regulation or order of the Commission.² Mr. Giles must show the utility is responsible or accountable for the problem described in the Formal Complaint.³ Administrative agencies, like the Public Utility Commission, are required to provide due process to the parties appearing

² *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

³ *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976).

before them. This requirement is satisfied when the parties are provided with notice and the opportunity to appear and be heard.⁴

Dismissal of Formal Complaint for Failure to Appear and Prosecute

Mr. Giles did not appear at the time scheduled for the February 17, 2023, hearing and no one appeared to represent Mr. Giles at the hearing. The date, time and location of the hearing, as well as how to call into the telephonic hearing, was listed in the hearing notice, dated December 13, 2022, and in the Prehearing Order, dated December 14, 2022.

The Office of Administrative Law Judge electronically served the hearing notice and the Prehearing Order to Complainant at the email address Mr. Giles provided in the Formal Complaint. Accordingly, it must be presumed that these documents sent to Complainant were received by Complainant.⁵ Once notice of a hearing and the opportunity to be heard was provided, it was the responsibility of Mr. Giles to appear and participate in the hearing.⁶ If Mr. Giles could not appear, for any reason, then it was the responsibility of Mr. Giles to notify the presiding officer immediately about the impediment or dilemma.⁷

Section 332(f) of the Public Utility Code, 66 Pa.C.S. § 332(f), provides in pertinent part:

Any party who shall fail to be represented at a scheduled conference or hearing after being duly notified thereof, shall be deemed to have waived the opportunity to participate in such conference or hearing, and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat[.]

⁴ *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

⁵ *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).

⁶ *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993); *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Order entered Jan. 24, 2002).

⁷ *Williams v. PECO Energy Co.*, Docket No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019).

In this proceeding, Mr. Giles did not call into the telephonic hearing as specified in the hearing notice and in the Prehearing Order. The hearing notice clearly indicated Complainant was to call in to the hearing and provided Complainant with the Commission's toll-free conference bridge number and PIN number to do so. The hearing notice also provided an address and telephone number where Mr. Giles could reach the presiding officer if additional information was needed prior to the hearing.

Since Mr. Giles did not appear or participate in the hearing, despite receiving two written notices of the date and time of the hearing, the hearing was held in accordance with 66 Pa.C.S. § 332(f) and 52 Pa. Code § 5.245. Accordingly, Respondent's attorney moved to dismiss with prejudice the Formal Complaint for failure to appear.

The party who failed to appear at the hearing has the burden of explaining why his/her failure to appear was unavoidable.⁸ When there are no facts in the record that the party's failure to appear was unavoidable, the complaint should be dismissed with prejudice.⁹ To date, there has been no communication to the Office of Administrative Law Judge or myself by, or on behalf of, Complainant explaining why Complainant's failure to appear at the hearing was unavoidable.

Because Mr. Giles did not contact the presiding officer or the Office of Administrative Law Judge to explain his absence or to explain why he was unavailable, Complainant failed to take advantage of the opportunity provided in which to appear and prosecute the Formal Complaint against Respondent by presenting evidence to support the allegations. As a result, Complainant failed to sustain the burden of proof. Accordingly, Respondent's oral Motion to Dismiss with prejudice the Formal Complaint will be granted, and the Formal Complaint will be dismissed with prejudice in the Ordering Paragraphs below.

⁸ 66 Pa.C.S. § 332(a); *Herr v. West Penn Power Co.*, Docket No. C-2021-3028202 (Opinion and Order entered Sept. 15, 2022).

⁹ *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Volgstadt v. UGI Penn Natural Gas*, Docket No. F-02266429 (Opinion and Order entered Sept. 12, 2008) and *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); *El-Ayazra v. West Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter in this proceeding. 66 Pa.C.S. § 701.

2. The due process rights of Complainant have been fully protected in this proceeding. *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa. Code § 5.245(a).

3. Complainant, as the proponent of a rule or order, has the burden of proof in this matter pursuant to 66 Pa.C.S. § 332(a).

4. Complainant, by failing to appear at the scheduled hearing, waived the opportunity to participate in the hearing. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

5. Notice electronically served to a party with no notification that service failed is presumed received. *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); and *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017).

6. Once notice of a hearing and the opportunity to be heard has been provided, it is the responsibility of the parties to appear and participate in the hearing. *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993).

7. When a complainant fails to appear for a scheduled conference or hearing and a complainant's failure to appear does not appear to be avoidable, the complaint may be dismissed with prejudice. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892

(Opinion and Order entered Dec. 26, 1995); *El-Ayazra v. West Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa. Code § 5.245.

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

ORDER

THEREFORE,

IT IS ORDERED:

1. That the oral motion of Philadelphia Gas Works to dismiss with prejudice the Formal Complaint filed at *McArthur Giles v. Philadelphia Gas Works* at Docket No. F-2022-3036835, is granted.
2. That the Formal Complaint filed by *McArthur Giles* at *McArthur Giles v. Philadelphia Gas Works* at Docket No. F-2022-3036835, is dismissed with prejudice.
3. That the Secretary mark this case as closed.

Date: April 18, 2023

/s/
Katrina L. Dunderdale
Administrative Law Judge