

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kahn–Tineta Smith	:	
	:	
v.	:	C-2022-3036306
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This decision denies the Formal Complaint of Kahn–Tineta Smith because the Complainant failed to appear at the scheduled hearing and prosecute her Complaint.

HISTORY OF THE PROCEEDING

On October 21, 2022, Kahn–Tineta Smith (Ms. Smith or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW, Company, or Respondent) alleging that the Company is threatening to shut off her gas service or has already shut off her service and averring that she is unable to pay her utility bill to PGW. As relief, Ms. Smith requested that the Commission establish an affordable payment arrangement on her behalf.

On November 10, 2022, PGW filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.

A Hearing Notice dated November 16, 2022, notified the parties that an initial call-in telephonic hearing was scheduled for January 24, 2023, at 10:00 a.m. The Hearing Notice stated, “You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised.”

On December 7, 2022, I issued a Prehearing Order. The Prehearing Order directed the parties to comply with various procedural requirements and warned in bold type: **“You may lose the case if you do not take part in this hearing and present evidence on the issues raised.”**

The Hearing Notice and the Prehearing Order were served electronically (eService) upon the parties to the email address each provided to the Commission.¹ Neither the Hearing Notice nor the Prehearing Order were returned as undeliverable.

The hearing convened as scheduled on January 24, 2023. Anita Murray, Esq. appeared representing the Respondent. The Complainant failed to call-in. The Complainant was given an additional 15 minutes to call in but failed to do so.

At the hearing, counsel for PGW moved that the Complaint be dismissed with prejudice for lack of prosecution pursuant to 52 Pa. Code § 5.245. That Motion is granted pursuant to the ordering paragraphs below.

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

The record in this matter closed on February 2, 2023, upon receipt of the hearing transcript.

¹ The eService is pursuant to the Waiver of Section 702 program, under which the party waives the service requirements in 66 Pa.C.S. § 702.

FINDINGS OF FACT

1. The Complainant is Kahn–Tineta Smith.
2. The Respondent is Philadelphia Gas Works.
3. On October 21, 2022, Ms. Smith filed a Formal Complaint against PGW alleging that PGW is threatening to shut off her gas service or has already shut off her service, and averring that she is unable to pay her utility bill to PGW.
4. As relief, Ms. Smith requested that the Commission establish an affordable payment arrangement on her behalf.
5. On November 10, 2022, PGW filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.
6. A Hearing Notice dated November 16, 2022, informed the parties that an initial call-in telephonic hearing was scheduled in this matter on January 24, 2023, at 10:00 a.m.
7. The Hearing Notice stated, “You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised.”
8. A Prehearing Order issued on December 7, 2022, directed the parties to comply with various procedural requirements and warned in bold type: **“You may lose the case if you do not take part in this hearing and present evidence on the issues raised.”**
9. The Hearing Notice and the Prehearing Order were served electronically (eService) upon the Complainant at the email address she provided to the Commission.
10. Neither the Hearing Notice nor the Prehearing Order were returned as undeliverable.

11. The Complainant failed to appear at the January 24, 2023, hearing.

12. The Complainant did not request a continuance, withdraw the Complaint, or otherwise notify the Commission to explain why her failure to appear at the hearing was unavoidable.

DISCUSSION

In this Complaint, Ms. Smith alleged that PGW is threatening to shut off her gas service or has already shut off her service and averred that she is unable to pay her utility bill to PGW. As relief, Ms. Smith requested that the Commission establish an affordable payment arrangement on her behalf. 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). Notice eServed to a party's registered email address with no notification that service failed is presumed received. *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered Dec. 19, 2019) (*Hu*); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Apr. 7, 2017) (*Zirkel*); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 24, 2017) (*Morella*).

Both the Hearing Notice and the Prehearing Order were eServed to the Complainant using the email address provided in the Complaint. Neither was returned as undeliverable. It is therefore deemed that the Complainant had notice of the date and time and participation information for the January 24, 2023, hearing. *Hu*; *Zirkel*; *Morella*.

As the Commission noted in *Strydio v. PPL Electric Utilities Corp.*, Docket No. C-2017-2633043 at 6 (Opinion and Order entered July 18, 2018), "[o]nce notice of a hearing and the opportunity to be heard have been provided by the Commission, it is the responsibility of the

parties to appear and participate in the hearing." (*citing, Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered Jan. 24, 2002)); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993).

The Complainant was notified of the scheduled hearing and did not appear for the hearing. Additionally, the November 16, 2022, Hearing Notice and the December 7, 2022, Prehearing Order advised the Complainant that the case could be dismissed for failure to call-in and participate in the hearing. 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 and shall not be permitted to later reopen the matter or be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a). Thus, the Complainant has waived the opportunity to participate in the hearing by failing to appear. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995).

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. By failing to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden. Consequently, the Complaint will be dismissed on this basis as well. *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); *El-Ayazra v. W. Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa. Code § 5.245.

The party who failed to appear at the hearing has the burden of explaining why his/her failure to appear was unavoidable. 66 Pa.C.S. § 332(a); *Herr v. West Penn Power Co.*, Docket No. C-2021-3028202 (Opinion and Order entered Sept. 15, 2022). 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). There are no facts on the record that suggest that Complainant's failure to appear was unavoidable. Therefore, the Complaint will be dismissed with prejudice.

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 Complainant received notice of the hearing. *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).

3. The due process rights of the Complainant have been fully protected in this proceeding and Complainant's failure to appear was not unavoidable. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984); 52 Pa. Code § 5.245(a).

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

5. The Complainant did not participate in the hearing, failed to appear for the hearing, did not present any evidence and, therefore, failed to meet the Complainant's burden of proving eligibility for the relief sought from the Commission. 66 Pa.C.S. § 332(a).

6. If there are no facts in the record that a party's failure to appear at a hearing 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

