

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

James Doyle	:	
	:	
v.	:	C-2022-3037415
	:	
UGI Utilities, Inc. - Gas Division	:	

**INITIAL DECISION**

Before  
Gail M. Chiodo  
Administrative Law Judge

**INTRODUCTION**

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

**HISTORY OF THE PROCEEDING**

On December 29, 2022, James Doyle (“Complainant”) filed a Formal Complaint (“Complaint”) with the Pennsylvania Public Utility Commission (“Commission”) against UGI Utilities, Inc. - Gas Division (“UGI,” “Respondent,” or “Company”). Mr. Doyle alleged, *inter alia*, that UGI accused him of tampering with the gas meter, and that he did not receive 10-day shut off notices before his gas was terminated on two separate occasions in 2022. (Complaint ¶5). As relief, Mr. Doyle requested a Commission payment arrangement to have his gas service restored. (Complaint ¶¶ 4, 5).

On January 19, 2023, UGI timely filed an Answer denying the material allegations and conclusions of law in the Complaint. Further, UGI averred, *inter alia*, that

proper termination notices were sent to Complainant; that Complainant defaulted on two Commission payment arrangements granted in 2017 and 2018; that Complainant defaulted on two Company payment agreements UGI entered into with Complainant in 2019 and 2021; and that Complainant has a balance in arrears of \$6,088.39.

On January 20, 2023, an Initial Call-In Telephonic Hearing Notice (“Hearing Notice”) was eServed on both parties scheduling a call-in telephonic evidentiary hearing on March 9, 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 February 24, 2023, my Prehearing Order was eServed 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 March 9, 2023, at 10:00 a.m., the hearing convened as scheduled. Ms. Megan E. Rulli, Esquire, appeared on behalf of UGI, along with a witness, and the Company was prepared to proceed. A court reporter was also present. 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 his 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 his Complaint. At this time,

Attorney Rulli noted that, on March 2, 2023, she served UGI's eleven proposed hearing exhibits, which also included the date and time of the hearing. Further, Attorney Rulli stated that on March 2, 2023, she personally talked with the Complainant to discuss this matter, and the Complainant was aware of the date and time of the hearing. (Tr. at 6).

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 that the record will be closed at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission). On March 31, 2023, the eight-page hearing transcript was filed with the Commission.

To date, no communication has been received by the undersigned or the Office of Administrative Law Judge regarding Complainant's absence. This decision grants UGI's Motion.

#### FINDINGS OF FACT

1. The Complainant is James Doyle.
2. The Respondent is UGI Utilities, Inc. - Gas Division.
3. Respondent provided gas service to Complainant.
4. On December 29, 2022, Mr. Doyle filed a Formal Complaint against Respondent.
5. On January 19, 2023, Respondent timely filed an Answer to the Complaint.
6. On January 20, 2023, an Initial Call-In Telephonic Hearing Notice was eServed on both parties scheduling an initial telephonic hearing on March 9, 2023, at 10:00 a.m., and assigning me as the presiding officer.

7. On February 24, 2023, a Prehearing Order was eServed 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 March 9, 2023, Complainant failed to appear and participate in the scheduled hearing.

11. To date, no communication has been received by the undersigned or the Office of Administrative Law Judge regarding Complainant's absence.

### 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 March 9, 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 eServed 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.

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

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 his failure to appear, Complainant did not meet his burden of proof.

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). Consequently, it is appropriate to dismiss Mr. Doyle's Complaint with prejudice. 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).

Accordingly, Respondent's Motion to dismiss the Formal 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. 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).

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 his burden of proof in this proceeding.

#### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of UGI Utilities, Inc. - Gas Division to dismiss with prejudice the Formal Complaint of James Doyle at Docket No. C-2022-3037415 is granted.

2. That the Formal Complaint of James Doyle against UGI Utilities, Inc. - Gas Division, at Docket No. C-2022-3037415, is dismissed with prejudice.

3. That the docket at Docket No. C-2022-3037415 be marked closed.

Date: May 31, 2023

\_\_\_\_\_/s/\_\_\_\_\_  
Gail M. Chiodo  
Administrative Law Judge