

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Melissa Ross	:	
	:	
v.	:	F-2022-3036946
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

INTRODUCTION

The undersigned grants Respondent’s oral motion to dismiss a Formal Complaint because Complainant failed to appear at the initial hearing and prosecute the case.

HISTORY OF THE PROCEEDING

On November 17, 2022, Melissa Ross (Ms. Ross or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW, Company or Respondent).¹ Complainant alleged Respondent threatened to shut off electric service. Complainant requested an affordable payment arrangement.

On December 19, 2022, Respondent filed its Answer to the Complaint. Respondent acknowledged it provided electric service at the service address and that it sent a

¹ This Complaint is a timely appeal from a BCS determination at BCS No. 3864207.

termination notice to Complainant. Respondent denied the material allegations and asked the Commission to dismiss the Complaint and deny the relief sought by Complainant.

By Call-In Telephone Hearing Notice served December 14, 2022, the Office of Administrative Law Judge notified the Parties an initial telephonic hearing was scheduled for February 14, 2023. On December 29, 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 five business days prior to the hearing and requests would be granted only in rare situations where sufficient cause was shown to exist.

On February 14, 2023, the presiding officer convened the hearing at 1:30 p.m. as scheduled, at which time Complainant did not appear. Respondent was represented by Anita Murray, Esquire, who appeared with one witness for Respondent. An oral motion to dismiss was entertained at 1:46 p.m., as Complainant had not appeared to participate at the hearing. Respondent made an oral motion to dismiss the proceeding with prejudice for failure to appear and for failure to prosecute the Formal Complaint. The hearing concluded at 1:48 p.m.

The record closed on March 17, 2023, the date of receipt of the transcript by the presiding officer.

FINDINGS OF FACT

1. Complainant is Melissa Ross, who resides at 7514 Fayette Street, Philadelphia, Pennsylvania (service address).
2. Respondent is Philadelphia Gas Works, who provides residential gas service to Complainant at the service address.
3. The Prehearing Order dated December 29, 2022, and the hearing notice dated December 14, 2022, were served upon Complainant to the email address provided by Complainant in the Formal Complaint.

4. The hearing notice, dated December 14, 2022, warned Complainant the Formal Complaint might be dismissed if Complainant failed to appear at the telephonic hearing on February 14, 2023. The hearing notice was not returned as undeliverable.

5. The Prehearing Order dated December 29, 2022, also warned the Formal Complaint might be dismissed with prejudice if Complainant did not take part in the telephonic hearing on February 14, 2023. The Prehearing Order was not returned as undeliverable.

6. Complainant was not present, did not participate in the telephonic hearing on February 14, 2023, and did not contact the presiding officer or the Commission to explain her absence or to indicate she was unavailable at that time.

7. Respondent was ready to proceed with its witness at the date and time scheduled for the hearing.

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, Ms. Ross, as a 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. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). Ms. Ross must show the utility is responsible or accountable for the problem described in the Complaint. Administrative agencies, like the Public Utility Commission, are required to provide due process to the parties appearing before them. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993). This requirement is satisfied when the parties are provided with notice and the opportunity to appear and be heard. *Id.*

Ms. Ross did not appear at the time scheduled for the hearing on February 14, 2023, and no one appeared to represent Ms. Ross at the hearing. Information concerning the

date, time and the location of the hearing, as well as how to call into the telephonic hearing, was listed in the hearing notice, dated December 14, 2022, and in the Prehearing Order, dated December 29, 2022.

The Office of Administrative Law Judge electronically served the hearing notice and the Prehearing Order to Complainant at the email address Ms. Ross provided in her Formal Complaint.² Neither the hearing notice nor the Prehearing Order were returned as undeliverable. Accordingly, it must be presumed that these documents sent to Complainant were received by Complainant. *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).

Once notice of a hearing and the opportunity to be heard was provided, it was the responsibility of Ms. Ross to appear and participate in the hearing. *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered Jan. 24, 2002). If Ms. Ross could not appear or was unavailable, for any reason, then it was the responsibility of Ms. Ross to notify the presiding officer immediately about the impediment or dilemma. *Williams v. PECO Energy Co.*, Docket No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019).

Section 332(f) of the Public Utility Code 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[.]

66 Pa.C.S. § 332(f).

² Service was made in accordance with *Waiver of Regulations Regarding Service Requirements*, Docket No. M-2021-3028321 (Order entered Sept. 15, 2022) (This Order extended the waiver of service requirements first adopted in September 2021 and extended in March 2022. These Orders required electronic service by the Commission on all parties, regardless of whether a particular party had agreed to electronic service) (*September 2022 Order*); *See Waiver of Regulations Regarding Service Requirements*, M-2021-3028321 (Order entered Sept. 15, 2021); *See also Waiver of Regulations Regarding Service Requirements*, Docket No. M-2021-3028321 (Order entered March 10, 2021).

In this proceeding, Ms. Ross did not call into the telephonic hearing as specified in the hearing notice and the Prehearing Order. The hearing notice clearly indicated Complainant was to call and provided Complainant with the Commission's toll-free conference bridge number and PIN number. The hearing notice also provided an address and telephone number where Ms. Ross could reach the presiding officer if additional information was needed prior to the hearing. Since Ms. Ross did not appear or participate in the hearing, despite receiving at least two 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. Respondent's attorney moved to dismiss the Formal Complaint with prejudice for failure to appear.

Because Ms. Ross did not contact the presiding officer or the Office of Administrative Law Judge to explain her absence or to explain how she 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 the Formal Complaint will be granted, and the Formal Complaint will be dismissed in the Ordering Paragraphs below. However, on April 20, 2023, the Commission adopted an order that determined it is inconsistent with due process to dismiss a formal complaint with prejudice in which a *pro se* complainant fails to appear at a hearing when complainant has not affirmatively agreed to accept service via email. *Hoyt v. Columbia Gas of Pa., Inc.*, Docket No. F-2022-3032680 (Order adopted Apr. 20, 2023) (*Hoyt*). Therefore, the Complaint will be dismissed without prejudice.

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 preserved in this proceeding. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993).

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).

5. Notice served to a party's electronic mail address and not returned as undeliverable is presumed to have been 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 Jan. 27, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Nov. 16, 2016).

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. *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered Jan. 24, 2002).

7. By failing to appear for the hearing and proffer any evidence to support the formal complaint, Complainant failed to meet the burden of proving she is entitled to the relief she seeks from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the oral motion of Philadelphia Gas Works to dismiss, the Formal Complaint filed by Melissa Ross against Philadelphia Gas Works, at Docket No. F-2022-3036946, is granted.

2. That the Formal Complaint filed by Melissa Ross in Melissa Ross v. Philadelphia Gas Works, at Docket No. F-2022-3036946, is dismissed without prejudice.

3. That the Secretary mark this case as closed.

Date: June 13, 2023

/s/
Jeffrey A. Watson
Administrative Law Judge