

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Delia Kent	:	
	:	
v.	:	F-2022-3036839
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Darlene Davis Heep
Administrative Law Judge

INTRODUCTION

The Complainant, Delia Kent, did not appear for the scheduled hearing and has not contacted the Commission to explain why her absence from the hearing was unavoidable. This Decision dismisses the Complaint for failure to prosecute.

HISTORY OF THE PROCEEDING

On November 16, 2022, Delia Kent (“Complainant” or “Ms. Kent”) filed a Formal Complaint (“Complaint”) with the Pennsylvania Public Utility Commission (“Commission”) against Philadelphia Gas Works (“PGW”). In the Complaint, Ms. Kent checked the box on the Complaint form indicating that the utility was threatening to shut off her service or had already shut it off. She also added under “Requested Relief” that she would like PGW to turn her gas service on and a reasonable payment agreement. Ms. Kent also stated on the Complaint form that she would like the Commission to figure out why her bill is so high given that she has received help with grants for 18 years. This is an appeal from a Commission Bureau of Consumer Services decision at BCS number 3873025.

On December 7, 2022, PGW filed an Answer to the Complaint. In the Answer, PGW stated that it established service for the Complainant at the service address in 2009 and that in May of 2022, PGW terminated the gas service to the service address due to non-payment.

On December 13, 2022, an Initial Call-In Telephonic Hearing Notice was issued, setting a hearing for February 3, 2023, beginning at 10:00 a.m. On December 16, 2022, a Prehearing Order was issued, which also contained the hearing date and time and how to participate in the February 3, 2023 hearing.

The Hearing Notice and Prehearing Order were electronically served to Complainant in the ordinary course of the Commission's business to the email address she provided to the Commission. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.¹

The hearing began on February 3, 2023, as scheduled. The attorney representing PGW, Anita J. Murray, Esq., and Ms. Kent were present. During the hearing, a recess was taken to allow the parties time to discuss resolving the matter. When the hearing resumed, counsel for PGW and Ms. Kent jointly requested that the hearing be continued to allow the parties time to determine whether the Complainant qualified for assistance programs. The request to continue the hearing was granted.

On February 7, 2023, a Further Call In Telephonic Hearing Notice was issued, setting a hearing for March 24, 2023 at 10:00 a.m. A Prehearing Order for the March 24, 2023 hearing was also issued on February 7, 2023.

¹ By Order entered September 15, 2021, the Commission used its general regulatory authority to waive the service requirements set forth in the Commission's regulations at 52 Pa. Code §§ 1.53 and 1.54, thereby permitting electronic service by the Commission on all parties, regardless of whether a particular party has agreed to electronic service. *See, Waiver of Regulations Regarding Service Requirements*, M-2021-3028321, at 7 (September 15, 2021). By Order entered March 10, 2022, the Commission extended the waiver of service requirements to October 1, 2022, then by Order entered September 15, 2022, extended the waiver again to April 3, 2023. *See, Waiver of Regulations Regarding Service Requirements*, M-2021-3028321 (Orders entered March 10, 2022, and September 15, 2022, respectively).

PGW received all documents by E-Service. Documents were sent to the Complainant via the email address that she provided on the Complaint form. The Hearing Notices and the Prehearing Order advised the Complainant that the PUC offers a free e-Filing Subscription Service and provided a link to sign up.

This Hearing Notice and Prehearing Order were also electronically served to Complainant in the ordinary course of the Commission's business to the email address she provided to the Commission.² Neither the February 7, 2023 Hearing Notice nor the February 7, 2023 Prehearing Order were returned to the Commission as undeliverable.

On March 22, 2023, PGW advised me by email, with a copy to the Complainant, that the matter had not settled, and that the hearing should go forward.

The hearing began as scheduled on March 24, 2023. Ms. Murray appeared on behalf of PGW. The Complainant was not present when the hearing began. A recess was taken to allow the Complainant time to call in.

When the hearing resumed at 10:16 a.m., the Complainant was not present. Counsel for PGW stated that the Complainant's balance was \$18,827.55 and moved that the Complaint be dismissed for failure to prosecute. Tr. 14-15. The Motion was taken under advisement. The Complainant had not called in when the hearing adjourned at 10:21 a.m.

The record was closed on March 28, 2023, the day the transcript was received.

FINDINGS OF FACT

1. On November 16, 2022, Delia Kent filed a Complaint with the Commission against PGW.
2. On December 7, 2022, PGW filed an Answer to the Complaint.
3. On December 13, 2022, an Initial Call-In Telephonic Hearing Notice was issued, setting a hearing for February 3, 2023, beginning at 10:00 a.m.

² The February 7, 2023 Hearing Notice and the February 7, 2023 Prehearing Order were emailed to the same email address at which Complainant received the December 13, 2022 Initial Call-In Telephonic Hearing Notice and the December 16, 2022 Prehearing Order.

4. The Hearing Notice contained the hearing date and time and provided instructions on how to call in to the hearing.

5. On December 16, 2022, a Prehearing Order was issued, which contained the hearing date and time, instructions on how to participate in the February 3, 2023 hearing as well as how to request a continuance.

6. The Hearing Notice and Prehearing Order stated:

FAILURE TO APPEAR: You may lose the case if you do not take part in this hearing and present evidence on the issues raised.

7. The December 7, 2022 Hearing Notice and the December 16, 2022 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.

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

9. The Complainant called into the hearing on February 3, 2023 at 10:00 a.m. as stated in the Call-In Telephone Hearing Notice and the Prehearing Order that were emailed to her.

10. During the hearing, a recess was taken to allow the parties time to discuss resolving the matter.

11. When the hearing resumed, counsel for PGW, Anita J. Murray, Esq., and Ms. Kent jointly requested that the hearing be continued to allow the parties time to resolve the matter and determine whether the Complainant qualified for assistance programs.

12. The joint request to continue the hearing was granted.

13. On February 7, 2023, a Further Call In Telephonic Hearing Notice was issued, setting a hearing for March 24, 2023 at 10:00 a.m.

14. A Prehearing Order for the March 24, 2023 hearing was also issued on February 7, 2023.

15. All Hearing Notices and Prehearing Orders were sent by e-service to PGW and by email to the Complainant at the email address that she provided on the Complaint,

16. On March 22, 2023, PGW advised by email, with a copy to the Complainant, that the matter had not settled, and that the hearing should go forward.

17. No hearing cancellation notice was issued in this matter.

18. The hearing began as scheduled on March 24, 2023 and Ms. Murray appeared on behalf of PGW.

19. The Complainant was not present when the hearing began on March 24, 2023.

20. A recess was taken to allow the Complainant time to call in.

21. When the hearing resumed at 10:16 a.m., the Complainant was not present.

22. Counsel for PGW moved that the Complaint be dismissed for failure to prosecute. Tr. 14-15.

23. When the hearing adjourned at 10:21 a.m., the Complainant had not called in.

24. None of the Hearing Notices or Prehearing Orders served on Complainant were returned as undeliverable.

25. The Complainant has not contacted the Commission since the March 24, 2023, hearing date.

26. The Complainant has not requested a continuance or provided a statement of "good cause" for her absence on the scheduled hearing date.

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). The essential elements of due process in an administrative proceeding are notice and an opportunity to be heard. *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (Pa. Cmwlth. 2016). Further, electronic service which is not indicated undeliverable is considered presumed to be received by the parties. *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 Jan. 27, 2017) (*Zirkel*); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Nov. 16, 2016) (*Morella*).

Prehearing Orders and the Hearing Notices issued contained information regarding the date, time and call-in information for both scheduled hearings. These documents were served upon the Complainant via the email address that she provided to the Commission. The Complainant appeared for the February 3, 2023 hearing after receiving the hearing notice and prehearing order via the email address that she provided to the Commission. The Complainant did not appear for the March 24, 2023 hearing. There is no indication in the record that the documents regarding the March 24, 2023 hearing, that were sent to the Complainant at the same email address where documents were sent for the first hearing, were undeliverable. It is therefore deemed that the Complainant received these documents and had notice of the date and time of the March 24, 2023 hearing. *Hu; Zirkel; Morella*.

As the Commission noted in *Strydio v. PPL Electric Utilities Corp.*, Docket No. C-2017-2633043, p. 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 further hearing and did not appear. To date, the Complainant has not contacted the Commission or the undersigned to explain why her failure to attend the further hearing was unavoidable. Therefore, the Complainant has waived the opportunity to participate in the hearing by failing to appear. 52 Pa. Code § 5.245(a); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995).

Further, 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). Notwithstanding the aforementioned and the *September 2022 Order*,³ on May 30, 2023, the Commission in *Everett v. Philadelphia Gas Works*, 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. Therefore, the Complaint will be dismissed, without prejudice. *Everett v. Phila. Gas Works*, Docket No. C-2022-3034443 (Opinion and Order entered May 30, 2023).

Additionally, 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 filing the

³ See, p.2 n.2.

Complaint, the Complainant bears the burden of proving by a preponderance of the evidence that it is entitled to relief. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). By failing to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden. Thus, it is appropriate to dismiss the complaint. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Williams v. PECO Energy Co.*, Docket No. C-2018-300734 (Opinion and Order entered Mar. 14, 2019) (citing *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995)). Accordingly, the merits of the complaint will not be addressed.

Respondent's motion to dismiss will be granted, but as discussed above, the complaint will be dismissed without prejudice *Everett v. Phila. Gas Works*, Docket No. C-2022-3034443 (Opinion and Order entered May 30, 2023).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 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 them. This due process requirement is satisfied when the parties are accorded notice and the opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

5. After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will: 1) be deemed to have waived the opportunity to participate in the conference or hearing; 2) not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing; and 3) not be permitted to recall witnesses who were excused for further examination. 52 Pa. Code § 5.245(a).

6. The Complainant's due process rights have been fully preserved. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Order entered Oct. 25, 1993).

7. The Complainant failed to appear and failed to carry her burden of proof in this proceeding. 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Philadelphia Gas Works Motion to Dismiss the Formal Complaint filed Delia Kent at Docket Number F-2022-3036839, is granted.
2. That the Formal Complaint filed by Delia Kent in Delia Kent v Philadelphia Gas Works, Docket Number F-2022-3036839, is dismissed, without prejudice.
3. That the Secretary's Bureau should mark this matter closed.

Date: June 21, 2023

/s/
Darlene Davis Heep
Administrative Law Judge