

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Delaina Hutson

v.

Philadelphia Gas Works

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F-2022-3037399

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses, without prejudice, the Complaint of Delaina Hutson against Philadelphia Gas Works because she failed to appear and prosecute her Complaint.

HISTORY OF THE PROCEEDING

On December 14, 2023, Delaina Hutson (Complainant) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed “x” marks near the boxes indicating “[i]ncorrect charges are on my bill,” and “[o]ther.” Under the “requested relief” section of the Complaint, the Complainant indicated “I moved August 2021 and provided my new lease but still being billed. I was also on Liheap [sic] and budget billing. Liheap [sic] paid the bill.”

On January 18, 2023, the Respondent filed an Answer denying that there are incorrect charges on the bill for service at 11871b Academy Road, Philadelphia, PA (service address). The Respondent further indicated: that the Complainant established service at the service

address beginning February 7, 2019; that on April 7, 2022, the Complainant called PGW to advise that she moved out of the service address in August of 2021; that there is no record of the Complainant contacting the company to cancel service, and that the gas service at the service address was taken out of the Complainant's name as of April 7, 2022.

By Initial Telephonic Hearing Notice dated January 20, 2023, an initial call-in telephonic hearing was scheduled for March 16, 2023 at 10:00 a.m., and the matter was assigned to me. The Hearing Notice advised the parties of the date and time of the scheduled hearing as well as how to call in for the hearing and warned of the following:

FAILURE TO APPEAR: You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised. Your case may be dismissed 'with prejudice' which means that you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.

I issued a Prehearing Order on January 23, 2023. The Prehearing Order also advised the parties of the date and time of the scheduled hearing as well as how to call in for the hearing. Additionally, the Prehearing Order directed the parties to comply with various procedural requirements and directed that a request to change the scheduled hearing should be sent to me at least five days prior to the hearing date, be in writing and state the agreement or opposition of the other party. It warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing. It also explained that the Complainant bears the burden of proof to establish that the respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that she is entitled to the relief requested in the Complaint.

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

The hearing convened as scheduled on March 16, 2023. Counsel for PGW called in to the hearing with a witness and was prepared to proceed. Ms. Hutson did not call in for the hearing, nor did she contact my office to indicate that she would or would not appear.

Because a customer who files a complaint before the Commission has an affirmative duty to make himself or herself available to participate in hearings on the complaint, I deemed Ms. Hutson's failure to call in for the scheduled hearing as evidence that she did not wish to participate in the hearing.

At the hearing, no witnesses were presented and no exhibits were introduced into the record. Respondent's counsel moved that the Complaint be dismissed with prejudice for lack of prosecution pursuant to 52 Pa. Code § 5.245. In accordance with Commission policy, I am granting the Motion. However, the Complaint will be dismissed without prejudice.

The record closed on March 28, 2023, the date the transcript was filed with the Commission.

FINDINGS OF FACT

1. The Complainant is Delaina Hutson.
2. The Respondent is Philadelphia Gas Works.
3. By Initial Telephonic Hearing Notice issued on January 20, 2023, a call-in telephonic hearing was scheduled for March 16, 2023, at 10:00 a.m.
4. On January 23, 2023, I issued a Prehearing Order that also advised the parties of the date and time of the scheduled hearing.
5. The Hearing Notice and the Prehearing Order were served upon the Complainant at the email address she provided on her Formal Complaint.

6. Neither the Hearing Notice nor the Prehearing Order served upon the Complainant were returned as undeliverable.

7. The Complainant failed to call in for the March 16, 2023, hearing.

8. The Complainant has not contacted the Commission to explain why her failure to attend the hearing was unavoidable.

DISCUSSION

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).

The Commission served notice of the March 16, 2023, hearing in this case on the Complainant on January 20, 2023, electronically, to the email address she provided in her Complaint.¹ The notice informed the parties of the date and time of the hearing, as well as how to call in for the hearing. The notice also advised Complainant that failure to appear may result in dismissal with prejudice which means that Complainant would be barred from filing another complaint raising the same claim(s) and issues(s) presented in the dismissed complaint. The notice was not returned as undeliverable.

¹ 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 permitted 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 addition, I issued a Prehearing Order dated January 23, 2023, which, *inter alia*, warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to appear and participate in the hearing. The Prehearing Order, which was also served on the Complainant electronically, was never returned as undeliverable. The Notice of Hearing and Prehearing Order were sent to the Complainant at the email address provided by her. Accordingly, I must presume that these documents, which were sent in the ordinary course of business, were received by the Complainant. *See 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).

Neither the Complainant nor a representative licensed to practice law in this Commonwealth appeared at the hearing on her behalf. To date, there is no further information about the Complainant regarding this hearing. Her failure to appear was not unavoidable.

Once notice of a hearing and the opportunity to be heard have been provided, it is the responsibility of the parties to appear and participate in the hearing. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a). The Complainant waived the opportunity to participate in the hearing by failing to appear.

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).²

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. As the party bringing this Complaint, the Complainant bears the burden of proving by a preponderance of the evidence that she is entitled to her requested relief. The Complainant did not appear for the hearing scheduled for January 17, 2023. Thus, by her failure to appear, Complainant did not meet her burden of proof.

Consequently, while PGW's Motion to Dismiss Ms. Hutson's Complaint will be granted, the Complaint will be dismissed without prejudice. *See, Baxter v. West Penn Power Co.*, Docket No. C-2022-3032225 (Opinion and Order entered May 30, 2023); *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 parties and subject matter of the dispute. 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).

² Notwithstanding the aforementioned, on May 30, 2023 the Commission entered 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. *Baxter v. West Penn Power Co.*, Docket No. C-2022-3032225 (Opinion and Order entered May 30, 2023).

4. The Commission is required to provide due process to the parties appearing before it. 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).

5. The due process rights of the Complainant have been fully preserved. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

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

7. 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. *Baxter v. West Penn Power Co.*, Docket No. C-2022-3032225 (Opinion and Order entered May 30, 2023); *Everett v. Phila. Gas Works*, Docket No. C-2022-3034443 (Opinion and Order entered May 30, 2023).

8. The Respondent's Motion that the Complaint be dismissed for lack of prosecution may be granted. *See Elliott v. Pa. Elec. Co.*, F-2018-3003502 (Opinion and Order entered Feb. 6, 2020).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Philadelphia Gas Works to dismiss the Formal Complaint of Delaina Hutson at docket number F-2022-3037399 is granted.

2. That the Formal Complaint of Delaina Hutson at Delaina Hutson v. Philadelphia Gas Works, Docket No. F-2022-3037399, is dismissed, without prejudice.

3. That the Secretary mark this docket closed.

Date: June 21, 2023

_____/s/
Christopher P. Pell
Deputy Chief Administrative Law Judge