

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Leonard Moore	:	
	:	
v.	:	C-2022-3034296
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Mary D. Long
Administrative Law Judge

INTRODUCTION

A Formal Complaint filed by a customer of a gas distribution company is dismissed because the complainant failed to appear for the hearing without good cause and did not provide evidence in support of his claim.

HISTORY OF THE PROCEEDINGS

On August 5, 2022, Leonard Moore (Complainant) filed a Formal Complaint (complaint) against Philadelphia Gas Works (PGW) requesting a payment arrangement. PGW filed an answer on August 24, 2022, which noted that Mr. Moore had broken company-issued payment arrangements and that a portion of Mr. Moore's arrearage included customer assistance program (CAP) arrearages which are not subject to payment arrangements.

On August 30, 2022, the Commission served a hearing notice which assigned the complaint to Special Agent Kailey Maguire and set the hearing for October 25, 2022. The hearing was cancelled on October 24, 2022.¹

On November 15, 2022, the Commission served a hearing notice which transferred the case to me and set a new hearing for December 13, 2022. I issued a prehearing order which explained the procedures for the hearing, including the procedure for requesting a continuance.

The December 13, 2022 hearing convened as scheduled. Anita Murray, Esquire appeared on behalf of PGW along with one witness. Mr. Moore did not call in to participate in the hearing. Ms. Murray made a motion to dismiss the complaint with prejudice because Mr. Moore failed to appear.

Shortly after the hearing concluded, Mr. Moore telephoned the Commission's Office of Administrative Law Judge in Harrisburg. He explained that he slept through the hearing because his cancer medicine caused him to oversleep and neither his wife nor his daughter woke him up in time. I contacted PGW. Ms. Murray stated that PGW would not object to rescheduling the hearing one more time, but would likely object to further continuances.

By notice dated December 13, 2022, the Commission rescheduled the hearing for January 4, 2023. Although not required by Commission procedure in place at the time, I directed my legal assistant to serve Mr. Moore by first-class mail, as well as by email to the address included on his complaint. She contacted Mr. Moore and confirmed both his mailing address and his email address. The OALJ Scheduling Unit also served a copy of the hearing notice by first-class mail and served the email address which was included on his complaint.

The January 4, 2023 hearing convened as scheduled. Mr. Moore and counsel for PGW, Anita Murray, Esquire, appeared. The parties agreed to permit me to serve as a settlement judge. The hearing was continued in order to permit Mr. Moore and PGW an opportunity to

¹ Commission records do not indicate a reason for the hearing cancellation.

resolve Mr. Moore's complaint. I scheduled a further hearing on February 14, 2023, in order to follow up with the parties on the progress of their settlement discussions.

The February 14, 2023 hearing convened and Mr. Moore appeared. Ms. Murray also appeared on behalf of PGW. The parties again permitted me to serve as a settlement judge. As a result of the settlement discussions, I directed PGW to continue to work with Mr. Moore. PGW agreed to work with him to complete the application for PGW's customer responsibility program (CRP). PGW also agreed to explore options to help Mr. Moore qualify to re-enroll in CRP. Mr. Moore agreed to continue making payments to his account and to complete the necessary PGW paperwork promptly.² By interim order that I issued later that day, I directed PGW to file a status report on or before March 1, 2023. That order further notified the parties that, provided that settlement discussions remain productive, a further continuance would be granted upon request. In the event that the parties believed that no further progress could be made, the status report could include a recommendation for further proceedings. The order was served on Mr. Moore by email and first-class mail.

PGW filed a status report on March 1, 2023 as directed. That report noted that Mr. Moore had received a LIHEAP grant which was posted to his account. However, according to PGW, Mr. Moore communicated that he did not want to accept the settlement options offered by PGW and requested that PGW counsel cease communicating with Mr. Moore and his family. PGW further noted that Mr. Moore had not completed an application for PGW's customer responsibility program. Accordingly, PGW requested that the matter be scheduled for hearing.

By notice dated March 2, 2023, the Commission scheduled a fourth hearing for April 18, 2023. I also issued a second prehearing order which reminded the parties of the procedures that would be followed for the hearing. Both the hearing notice and the prehearing order were served on Mr. Moore by email and by first-class mail.

PGW filed a further status report on March 9, 2023, describing PGW's efforts to assist Mr. Moore to complete the CRP application. PGW filed another status report on

² Tr. 24-26.

March 24, 2023, noting that Mr. Moore had not completed the CRP application process. That status report requested that the April 18, 2023 hearing convene as scheduled.

The hearing convened on April 18, 2023 as scheduled. Attorney Anita Murray appeared, along with one witness representing PGW. Mr. Moore did not call in to participate. Ms. Murray noted that PGW had spoken to Mr. Moore on April 14, 2023, and reviewed universal service and grant information with him.³ Ms. Murray made a motion to dismiss the complaint with prejudice due to Mr. Moore's failure to appear and prosecute.⁴ I took the motion under advisement.

After the end of the hearing, Ms. Murray notified me that Mr. Moore had contacted her colleague at PGW. She further noted that PGW would object to any further continuances of the hearing. She later copied me on an email that she wrote to Mr. Moore. She told Mr. Moore that he needed to contact my office regarding the April 18, 2023 hearing. I was later copied on an email from Regina James which claimed that Mr. Moore had attempted to call in to participate in the hearing, but that he was placed on hold. Mr. Moore did not contact my office himself to explain his failure to timely call in to the conference bridge and participate in the hearing.

After the transcript was filed with the Commission, I issued an order closing the record on May 4, 2023. This order was served on Mr. Moore by email and first-class mail. As of the writing of this decision, Mr. Moore has not contacted the Commission regarding his failure to appear at the April 18, 2023 hearing. Therefore, this matter is ripe for decision.

FINDINGS OF FACT

1. The Complainant is Leonard Moore who receives gas service from PGW at 5759 Kemble Avenue, Philadelphia Pennsylvania.

³ Tr. 34.

⁴ Tr. 35-36.

2. The Respondent is PGW, a jurisdictional public utility.
3. The Complainant did not call the conference number at 10:00 a.m. on April 18, 2023.
4. The Complainant did not contact the Commission after the April 18, 2023 hearing to explain why he did not appear.
5. A March 2, 2023 Hearing Notice which scheduled the April 18, 2023 hearing was served on the Complainant by email and by first-class mail.
6. Commission records do not indicate that the March 2, 2023 Hearing Notice was returned as undeliverable.
7. A March 2, 2023 Prehearing Order which also indicated the date and time of the hearing was served on the Complainant by email and by first-class mail.
8. Commission records do not indicate that the March 2, 2023 Prehearing Order was returned as undeliverable.
9. The Complainant has not contacted the Commission to explain why his failure to appear at the April 18, 2023 hearing was unavoidable.

DISCUSSION

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them.⁵ However, this due process requirement is satisfied when the parties are provided notice and the opportunity to appear and be heard.⁶ The

⁵ *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

⁶ *Id.*

Complainant had adequate notice of the time and date of the hearing, yet he failed to appear or explain why he could not attend his hearing at the scheduled time. Therefore, it is appropriate to dismiss his complaint.

A hearing notice and prehearing order were sent to the Complainant. Both the March 2, 2023 Hearing Notice and the March 2, 2023 Prehearing Order informed the Complainant that if he failed to appear for the hearing, he could lose his case. Both the hearing notice and the prehearing order provided instructions for contacting the Commission to request a change of the scheduled hearing date. A copy of both the prehearing order and the hearing notice were mailed to the address provided by the Complainant and were not subsequently returned as undeliverable by the U.S. Postal Service.⁷ Notice mailed to a party's last known address and not returned by the post office is presumed to have been received.⁸ Therefore, the Complainant is deemed to have received these documents and had sufficient notice of the Commission's procedures and notice of the date and time of the scheduled hearing.

Section 332(a) of the Public Utility Code places the burden of proof upon the proponent of a rule or order.⁹ As the proponent of a rule or order, the Complainant has the burden of demonstrating that the facts alleged in his complaint are true and that he is entitled to the relief that he requested. By not appearing for the scheduled hearing to present evidence, the Complainant failed to meet his burden of proof. Consequently, the complaint must be dismissed.

Once a hearing is scheduled and the parties are duly notified by the Commission, it is the responsibility of the parties to appear and participate in the hearing.¹⁰ 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

⁷ Nor were any of the emails which served the documents returned as undeliverable.

⁸ *Berkowitz v. Mayflower Securities, Inc.*, 317 A.2d 584 (Pa. 1974); *Chartiers Indus. and Com. Dev. Auth. v. Allegheny Cnty. Bd. of Prop. Assessment Appeals and Rev.*, 645 A.2d 944 (Pa. Cmwlth. 1994); *Geary v. Verizon Pa. Inc.*, Docket No. C-2009-2118625 (Opinion and Order entered Sept. 16, 2010).

⁹ 66 Pa.C.S. § 332(a).

¹⁰ *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered Jan. 24, 2002).

participate in the hearing and shall not be permitted to later reopen the matter or be permitted to recall excused witnesses.¹¹ However, these provisions in the Code and in the Commission's regulations do not apply if the presiding officer determines that the party's failure to appear at the hearing 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.¹²

The Complainant was notified of the scheduled hearing date and time, as well as how to contact the Office of Administrative Law Judge, but failed to appear without explanation. Indeed, the Complainant contacted the Commission promptly when he did not appear for the December 13, 2022 hearing. Although he apparently contacted PGW claiming that he had attempted to call into the hearing, he was instructed to contact the Commission. He did not do so. Substantial resources over several months have been invested by both PGW and the Commission to attempt to resolve Mr. Moore's complaint. Under these circumstances, he had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. The due process rights of the Complainant have been fully protected. The motion to dismiss of the Company is granted, and the complaint is dismissed.¹³

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of the dispute. 66 Pa.C.S. § 701.

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

¹¹ 66 Pa.C.S. § 332(f).

¹² 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(b).

¹³ 66 Pa.C.S. § 332(f).

3. By failing to appear at his scheduled hearing, the Complainant has waived his claims and has failed to sustain his burden of proof. 66 Pa.C.S. § 332; 52 Pa. Code § 5.245(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Philadelphia Gas Works to dismiss the complaint of Leonard Moore at Docket C-2022-3034296, is granted.
2. That the Formal Complaint of Leonard Moore in Leonard Moore v. Philadelphia Gas Works at Docket C-2022-3034296, is dismissed.
3. That this docket be marked closed.

Date: July 27, 2023

_____/s/
Mary D. Long
Administrative Law Judge