

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Marcus Culver	:	
	:	
v.	:	F-2022-3037377
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint of Marcus Culver against Philadelphia Gas Works because he failed to appear and prosecute his Complaint.

HISTORY OF THE PROCEEDING

On December 15, 2023, Marcus Culver (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 a checkmark in the box marked “[o]ther” and indicated that PGW shut off his gas, and that when he tried to have service reconnected, PGW advised him that he would have to pay \$9,300 because PGW discovered theft of service at his address. The Complainant maintained that he was unaware of any theft of service and was barely residing at the service address until August 2022. As relief, the Complainant requested that the Commission help him establish gas service with PGW.

On January 17, 2023, the Respondent filed an Answer admitting that it terminated the service at 2904 N. 25th Street in Philadelphia (service address). The Respondent explained: that on August 13, 2018, PGW terminated the gas service to the service address at the curb valve; that on April 19, 2022, a PGW technician visited the service address and found the gas service on at the curb valve; that PGW again terminated the gas service at the curb valve and installed an anti-theft device; that PGW was unable to gain access to the interior of the property; that on October 5, 2022, the Complainant contacted PGW to request gas service at the service address; that on October 10, 2022, a PGW technician visited the service address for a safety check/unbilled usage investigation and discovered evidence of theft; and that PGW is holding the Complainant responsible for the bypass charges at the service address.

By Initial Telephonic Hearing Notice dated January 19, 2023, an initial call-in telephonic hearing was scheduled for March 10, 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 20, 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 he 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 he provided to the Commission. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.

By Interim Order dated March 6, 2023, I denied, without prejudice, PGW's Motion to Continue filed on March 3, 2023.

By Interim Order dated March 7, 2023, I denied PGW's Amended Motion to Continue.

By Interim Order dated March 9, 2023, I granted PGW's Petition for Reconsideration and continued the hearing scheduled for March 10, 2023.

By Rescheduled Initial Call-In Telephone Hearing Notice dated March 24, 2023, the initial call-in telephonic hearing was rescheduled for April 17, 2023 at 10:00 a.m.

The hearing convened as scheduled on April 17, 2023. Counsel for PGW called in to the hearing with a witness and was prepared to proceed. Mr. Culver did not call in for the hearing, nor did he contact my office to indicate that he 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 Mr. Culver's failure to call in for the scheduled hearing as evidence that he 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 for lack of prosecution pursuant to 52 Pa. Code § 5.245. In accordance with Commission policy, I am granting the Motion.

The record closed on May 9, 2023, the date the transcript was filed with the Commission.

FINDINGS OF FACT

1. The Complainant is Marcus Culver.
2. The Respondent is Philadelphia Gas Works.
3. By Initial Telephonic Hearing Notice dated January 19, 2023, an initial call-in telephonic hearing was scheduled for March 10, 2023 at 10:00 a.m.
4. On January 20, 2023, I issued a Prehearing Order that also advised the parties of the date and time of the scheduled hearing.
5. By Rescheduled Initial Call-In Telephone Hearing Notice issued on March 24, 2023, a call-in telephonic hearing was scheduled for April 17, 2023, at 10:00 a.m.
6. Both the Hearing Notices and the Prehearing Order were electronically served on Complainant to the email address provided by the Complainant to the Commission.
7. Neither the Hearing Notice nor the Prehearing Order served upon the Complainant were returned as undeliverable.
8. The Complainant failed to call in for the April 17, 2023, hearing.
9. The Complainant has not contacted the Commission to explain why his 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, 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). However, this due process requirement is satisfied when the parties are provided notice and the opportunity to appear and be heard. *Id.* The Complainant had adequate notice of the time and date of the hearing, yet he failed to call in for, or explain why he could not attend, the hearing at the scheduled time. Therefore, it is appropriate to dismiss the Complaint.

The Commission electronically served notice of the April 17, 2023 rescheduled hearing in this case to the Complainant on March 24, 2023. This 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. In addition, I issued a prehearing order dated January 20, 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.

Both the Hearing Notice and Prehearing Order were electronically served to the email address provided by Complainant to the Commission. 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).

Neither document emailed to the Complainant was returned to the Commission as undeliverable. Accordingly, I must presume that these documents, which were sent in the ordinary course of business, were received by the 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 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 his behalf. To date, there is no further information about the Complainant regarding this hearing. His 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). . However, notwithstanding the aforementioned and the *September 2022 Order*, on April 20, 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. *Hoyt v. Columbia Gas of Pa., Inc.*, Docket No. F-2022-3032680 (Order adopted Apr. 20, 2023). Consequently, while PGW's motion to dismiss the Complaint will be granted, the Complaint will be dismissed without prejudice.

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 he is entitled to his requested relief. The Complainant did not appear for the hearing scheduled for April 17, 2023. Thus, by his failure to appear, Complainant did not meet his burden of proof.

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. 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).
4. 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).

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

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Philadelphia Gas Works to dismiss the Formal Complaint of Marcus Culver at docket number F-2022-3037377 is granted.
2. That the Formal Complaint of Marcus Culver at Marcus Culver v. Philadelphia Gas Works, Docket No. F-2022-3037377, is dismissed, without prejudice.
3. That the Secretary mark this docket closed.

Date: August 3, 2023

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