

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Mark Washington	:	
	:	
v.	:	F-2023-3038394
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint of Mark Washington against Philadelphia Gas Works because he failed to appear for his hearing and prosecute his Complaint.

HISTORY OF THE PROCEEDING

On February 16, 2023, Mark Washington (Complainant or Mr. Washington) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent), indicating that the utility had shut off his service, and that he was accused of theft by the Company. The Complainant also requested that PGW remove the theft charges, accept a grant from LIHEAP, and a payment arrangement.

On March 13, 2023,¹ Respondent filed an Answer denying the material allegations of the Complaint.

On March 15, 2023, the Commission issued an Initial Call-In Telephonic Hearing Notice, and the matter was scheduled for hearing on April 24, 2023, at 10:00 a.m. The case was assigned to me. The Notice contained the following information:

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 April 24, 2023. The Prehearing Order directed the parties to comply with various procedural requirements and indicated how to request a change in the hearing date. It also contained the same Failure to Appear warning that was found in the Hearing Notice.

The hearing began on April 24, 2023, as scheduled. Counsel for PGW was present with a witness and was prepared to proceed. The Complainant failed to call into the hearing.

No witnesses were presented, and no exhibits were introduced into the record. Counsel for PGW 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.

The record closed on May 16, 2023, upon my receipt of the transcript.

¹ The Complaint was served on the Respondent by the Secretary’s Bureau on February 22, 2023.

FINDINGS OF FACT

1. The Complainant is Mark Washington.
2. The Respondent is Philadelphia Gas Works.
3. On February 16, 2023, Mr. Washington filed a Complaint with the Commission against the Respondent.
4. On March 13, 2023, the Respondent filed an Answer to the Complaint.
5. On March 15, 2023, the Commission issued an Initial Call-In Telephonic Hearing Notice, and the matter was scheduled for hearing on April 24, 2023, at 10:00 a.m.
6. On April 24, 2023, a Prehearing Order was sent to all parties containing, *inter alia*, a warning of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing.
7. Both the Hearing Notice and Prehearing Order contained the warning that failing to appear could result in the case being dismissed with prejudice.
8. Both the Hearing Notice and Prehearing Order were eServed on the Complainant to the email address provided and registered by Complainant with the Commission.
9. None of the documents sent to the Complainant were returned to the Commission as undeliverable.
10. The Complainant failed to appear at the April 24, 2023, hearing.
11. The Complainant did not settle or withdraw this Complaint prior to the scheduled hearing date or obtain a continuance.

12. The Complainant has not contacted the Commission to explain why his failure to appear at 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). "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).

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 April 24, 2023, hearing in this case to the Complainant on March 15, 2023, electronically, via eService, to the address he registered with the Commission. 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 was not returned as undeliverable.

In addition, I issued a Prehearing Order dated April 24, 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 via eService, was never returned as undeliverable. The Notice of Hearing and Prehearing Order were sent to the Complainant via eService and he indicated that he accepted eService. 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 Apr. 7, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017). Therefore, the Complainant was deemed to have received these documents and had sufficient notice of the day and time of

the scheduled hearing. 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). The Complainant waived the opportunity to participate in the hearing by failing to appear. 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).

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 24, 2023. Thus, by his failure to appear, the Complainant did not meet his burden of proof.

Consequently, it is appropriate to grant PGW's Motion and to dismiss Mr. Washington's Complaint, with prejudice. As the Commission has explained, where the complainant fails to appear for a scheduled hearing without good cause, the public interest is prejudiced by the wasteful use of the agency's and the respondent's time and resources. *See, e.g. Elliott v. Pa. Elec. Co.*, F-2018-3003502 (Opinion and Order entered Feb. 6, 2020).

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).

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. Notice eServed to a party's registered email address with no notification that service failed to be delivered to that email address 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 Apr. 7, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017).

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

7. 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).

8. After being notified, a party who fails to be represented at a scheduled hearing in a proceeding will: (1) Be deemed to have waived the opportunity to participate in the

hearing. (2) Not be permitted thereafter to reopen the disposition of a matter accomplished at the hearing. (3) Not be permitted to recall witnesses who were excused for further examination. 52 Pa. Code § 5.245(a).

9. The Respondent's Motion that the Complaint be dismissed with prejudice for lack of prosecution may be granted. *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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Philadelphia Gas Works to dismiss with prejudice the Formal Complaint filed by Mark Washington at Docket No. F-2023-3038394 is granted.
2. That the Formal Complaint of Mark Washington in *Mark Washington v. Philadelphia Gas Works* at Docket No. F-2023-3038394 is dismissed with prejudice.
3. That Docket No. F-2023-3038394 be marked closed.

Date: August 14, 2023

/s/
Marta Guhl
Administrative Law Judge