

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

David E. Mensch-Edwin D. Mensch Agency	:	
	:	
v.	:	C-2023-3039128
	:	
UGI Utilities, Inc. - Gas Division	:	

INITIAL DECISION

Before
Gail M. Chiodo
Administrative Law Judge

INTRODUCTION

This decision dismisses the Formal Complaint of a gas service customer for the failure of the customer to appear for the scheduled hearing and prosecute his Complaint despite having notice and an opportunity to be heard.

HISTORY OF THE PROCEEDING

On March 20, 2023, David E. Mensch-Edwin D. Mensch Agency (“Complainant” or “Mr. Mensch”) filed a Formal Complaint (“Complaint”) with the Pennsylvania Public Utility Commission (“Commission”) against UGI Utilities, Inc. - Gas Division (“UGI,” “Respondent,” or “Company”). Mr. Mensch alleges that his gas bills increased 100% from January 2022 to January 2023. As relief, Mr. Mensch requested that the Commission stop UGI from this “price gouging.” (Complaint ¶¶ 4, 5).

On April 10, 2023, UGI timely filed an Answer denying the material allegations and conclusions of law in the Complaint. The Company averred, *inter alia*, that UGI properly

billed Complainant for accurately measured consumption in accordance with its duly filed and Commission approved tariff rates. (Answer ¶ 4).

On April 11, 2023, an Initial Call-In Telephonic Hearing Notice (“Hearing Notice”) was served on both parties scheduling a call-in telephonic evidentiary hearing on May 31, 2023, at 10:00 a.m., and assigning me as the presiding officer. This Hearing Notice included the telephone number to call, and the passcode to enter, for the parties to participate in the hearing.

On April 25, 2023, a Prehearing Order was served on both parties which, *inter alia*, reminded the parties of the hearing date and time, and the telephone number to call, and the passcode to enter, to participate in the hearing. Additionally, the Prehearing Order provided certain hearing information and rules that would govern the proceeding including how to request a continuance, if necessary, and the consequences of failing to appear at the hearing and present evidence including the dismissal of the Complaint.

Both the Hearing Notice and the Prehearing Order were served on the Complainant via first-class U.S. Postal Service at the mailing address he provided on his Formal Complaint. (See, Complaint ¶ 1). Neither document was returned to the Commission as undeliverable.

On May 31, 2023, at 10:00 a.m., the hearing convened as scheduled. Mr. Larry R. Crayne, Esquire, appeared on behalf of UGI, along with a witness, and the Company was prepared to proceed. A court reporter was also present. The Complainant did not appear. I recessed the hearing and convened it again approximately fifteen minutes later in order to allow time for Complainant to appear. Since the Complainant did not appear after this recess, the hearing proceeded in his absence. No testimony was taken, and no exhibits were introduced for the record.

During the hearing, the Company moved to dismiss the Complaint with prejudice (“Motion”) for the failure of the Complainant to appear and prosecute his Complaint.

I took UGI's Motion under advisement. The record closed at the conclusion of the hearing pursuant to 52 Pa. Code § 5.431(a) (providing that the record will be closed at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission).¹

To date, no communication has been received by the undersigned or the Office of Administrative Law Judge regarding the Complainant's absence from the hearing. This decision grants UGI's Motion.

FINDINGS OF FACT

1. The Complainant is David E. Mensch-Edwin D. Mensch Agency.
2. The Respondent is UGI Utilities, Inc. - Gas Division.
3. The Respondent provides gas service to the Complainant.
4. On March 20, 2023, Mr. Mensch filed a Formal Complaint against the Respondent.
5. On April 10, 2023, the Respondent timely filed an Answer to the Complaint.
6. On April 11, 2023, an Initial Call-In Telephonic Hearing Notice was served on both parties scheduling an initial telephonic hearing on May 31, 2023, at 10:00 a.m., and assigning me as the presiding officer.
7. On April 25, 2023, a Prehearing Order was served on both parties which, *inter alia*, reminded the parties of the date and time of the scheduled hearing and the telephone number to call, and the passcode to enter, to participate in the hearing.

¹ The six-page hearing transcript was filed on June 15, 2023.

8. Both the Hearing Notice and the Prehearing Order were served on the Complainant via first-class U.S. Postal Service at the mailing address he provided on his Formal Complaint. (See, Complaint ¶ 1). Neither document was returned to the Commission as undeliverable.

9. Both the Hearing Notice and the Prehearing Order provided certain hearing information and rules that would govern the proceeding including how to request a continuance, if necessary, and the consequences of failing to appear at the hearing and present evidence including the dismissal of the Complaint.

10. On May 31, 2023, the Complainant failed to appear and participate in the scheduled hearing.

11. To date, the Complainant has not contacted the undersigned or the Office of Administrative Law Judge to explain why his failure to appear at the hearing was unavoidable.

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) (*Schneider*). This due process requirement is satisfied when the parties are provided notice and the opportunity to be heard. *Id.* As the proponent of any request for relief, the complainant bears the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, the Commission's decision must be supported by substantial evidence. 2 Pa.C.S. § 704.

The Commission is required to fix the time and place of a hearing in a complaint proceeding and serve notice thereof upon the parties in interest. 66 Pa.C.S. § 703(a)-(b). Service on interested persons is sufficient to provide notice. 52 Pa. Code § 5.61(a). As the Commission explained, “[i]t is well-established law that once timely notice of a hearing and the opportunity to be heard have been provided, it is the responsibility of the parties to be present and participate in

the hearing.” *Mumma v. UGI Elec. Utils. Corp.*, No. C-00014869 at 3 (Opinion and Order entered Jan. 28, 2002) (citing *Schneider*).

In the instant case, the Hearing Notice scheduled a hearing on May 31, 2023, at 10:00 a.m., and included the telephone number to call, and the passcode to enter, for the parties to participate in the hearing. Further, a Prehearing Order was served on both parties which, *inter alia*, reminded the parties of the hearing date and time, and the telephone number, and passcode to enter, to participate in the hearing. Additionally, the Prehearing Order provided certain hearing information and rules that would govern the proceeding including how to request a continuance, if necessary, and the consequences of failing to appear at the hearing and present evidence including the dismissal of the Complaint.

Both the Hearing Notice and the Prehearing Order were served on the Complainant via first-class U.S. Postal Service at the mailing address he provided on his Formal Complaint. (*See*, Complaint ¶ 1). Neither document was returned to the Commission as undeliverable. Accordingly, it must be presumed that this mail was received by Complainant. *Berkowitz v. Mayflower Sec., Inc.*, 317 A.2d 584 (Pa. 1974); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. 1997); *Judge v. Celina Mut. Ins. Co.*, 449 A.2d 658 (Pa. Super. 1982).

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 participate in the hearing, not be permitted thereafter to reopen the disposition of the matter accomplished at the hearing, and not be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f), 52 Pa. Code § 5.245(a). However, neither of these provisions apply if the presiding officer determines that the failure to be represented 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. 66 Pa.C.S. § 332(f), 52 Pa. Code § 5.245(b). 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).

In the instant case, to date, no communication has been received by the undersigned or the Office of Administrative Law Judge regarding the Complainant's absence. Therefore, I find that the Complainant waived the opportunity to participate in a hearing on the matters raised in the Complaint and the Complainant's absence was not unavoidable. Thus, by his failure to appear, the Complainant did not meet his burden of proof.

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). Consequently, it is appropriate to dismiss Mr. Mensch's Complaint with prejudice. As the Commission has explained, where a 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.*, No. F-2018-3003502 (Opinion and Order entered Feb. 6, 2020).

Accordingly, Respondent's Motion to dismiss the Formal Complaint with prejudice will be granted.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa.C.S. § 701.
2. The Commission is required to provide due process to the parties appearing before them; 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).

3. After being notified, a party who fails to appear at a scheduled hearing shall be deemed to have waived the opportunity to participate in the hearing, not be permitted thereafter to reopen the disposition of the matter accomplished at the hearing, and not be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f), 52 Pa. Code § 5.245(a).

4. The party who fails 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).

5. 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).

6. The Complainant's due process rights have been fully protected and the Complainant's failure to appear was not unavoidable. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

7. As the party seeking relief, the Complainant bears the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a), *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

8. The Complainant has failed to meet his burden of proof in this proceeding.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of UGI Utilities, Inc. - Gas Division to dismiss with prejudice the Formal Complaint of David E. Mensch-Edwin D. Mensch Agency, at Docket No. C-2023-3039128 is granted.

2. That the Formal Complaint of David E. Mensch-Edwin D. Mensch Agency filed against UGI Utilities, Inc. - Gas Division, at Docket No. C-2023-3039128, is dismissed with prejudice.

3. That the docket at Docket No. C-2023-3039128 be marked closed.

Date: August 24, 2023

_____/s/
Gail M. Chiodo
Administrative Law Judge