

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Anthony B. Pruitt	:	
	:	
v.	:	C-2022-3036558
	:	C-2023-3038933
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Marta Guhl  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Formal Complaints of Anthony B. Pruitt against Philadelphia Gas Works because he failed to appear for his hearing and prosecute his Complaints.

**HISTORY OF THE PROCEEDING**

On November 4, 2022, Anthony B. Pruitt (Complainant or Mr. Pruitt) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent), requesting a payment arrangement.

On November 28, 2022<sup>1</sup>, Respondent filed an Answer denying the material allegations of the Complaint.

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<sup>1</sup> The Complaint was served on the Respondent by the Secretary's Bureau on November 7, 2022.

On December 5, 2022, the Commission issued an Initial Call-In Telephonic Hearing Notice, and the matter was scheduled for hearing on February 22, 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 December 13, 2022. 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 warning that was found in the Hearing Notice.

On February 15, 2023, PGW filed a Motion for Continuance, requesting that the hearing scheduled for February 22, 2023 be rescheduled due to the fact that the Complainant was pursuing another Complaint on related issues and the matter should be consolidated with the current Complaint.

I requested that the parties appear at the hearing on February 22, 2023 to discuss the Motion for Continuance. The hearing took place as scheduled on February 22, 2023 and counsel for PGW appeared. The Complainant did not appear for the hearing. After hearing additional information from PGW about the continuance request, I granted the request so that the Complainant could file a Formal Complaint in the other matter.

On March 13, 2023, the Complainant filed a second Formal Complaint at Docket No. C-2023-3038933 with the Commission against PGW which indicated that the utility was threatening to shut off his service and requesting a payment arrangement.

On March 21, 2023<sup>2</sup>, PGW filed an Answer to the material allegations of the Complaint.

On March 24, 2023, PGW filed a Motion to Consolidate the Formal Complaints filed by the Complainant at Docket No. C-2022-3036558 and Docket No. C-2023-3038933 because they are materially similar and relate to the same Complainant, Service Address and issues. I granted the Motion to Consolidate.

On May 9, 2023, a Further Call-In Telephonic Hearing Notice was issued which set a further hearing in the Complaints at Docket Nos. C-2022-3036558 and C-2023-3038933 on June 27, 2023 at 10:00 a.m. The Hearing Notice contained the same warning as the Initial Hearing Notice, which indicated that the Complaints could be dismissed if the Complainant failed to appear for the hearing.

On June 5, 2023, I issued a second Prehearing Order which again 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 warning that was found in the Hearing Notice.

The hearing began on June 27, 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 Complaints 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 August 2, 2023, upon my receipt of the transcript.

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<sup>2</sup> The Formal Complaint was served by the Secretary's Bureau on the Respondent on March 14, 2023.

## FINDINGS OF FACT

1. The Complainant is Anthony B. Pruitt.
2. The Respondent is Philadelphia Gas Works.
3. On November 4, 2022, Mr. Pruitt filed a Complaint with the Commission against the Respondent, which was docketed at Docket No. C-2022-3036558.
4. On November 28, 2022, the Respondent filed an Answer to the Complaint.
5. On December 5, 2022, the Commission issued an Initial Call-In Telephonic Hearing Notice, and the matter was scheduled for an initial hearing on February 22, 2023 at 10:00 a.m. and the matter was assigned to me.
6. On December 13, 2022, I issued a Prehearing Order that 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. On February 15, 2023, PGW filed a Motion for Continuance in this matter.

11. On February 22, 2023, I granted the continuance request.
12. On March 13, 2023, Mr. Pruitt filed a second Formal Complaint against the Respondent, which was docketed at Docket No. C-2023-3038933.
13. On March 21, 2023, PGW filed an Answer to the second Formal Complaint.
14. On March 24, 2023, PGW filed a Motion to Consolidate the Formal Complaints filed by the Complainant.
15. On May 9, 2023, the Commission issued a Further Call-In Telephonic Hearing Notice, and the matter was scheduled for hearing on June 27, 2023, at 10:00 a.m.
16. Both the Hearing Notice and Prehearing Order contained the warning that failing to appear could result in the case being dismissed with prejudice.
17. Both the Hearing Notice and Prehearing Order were eServed on the Complainant to the email address provided and registered by Complainant with the Commission.
18. None of the documents sent to the Complainant were returned to the Commission as undeliverable.
19. The Complainant failed to appear at the June 27, 2023, hearing.
20. The Complainant did not settle or withdraw this Complaint prior to the scheduled hearing date or obtain a continuance.
21. 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 June 27, 2023, hearing in this case to the Complainant on May 9, 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 June 5, 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 June 27, 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. Pruitt's Complaints, 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 the Formal Complaints filed by Anthony B. Pruitt at Docket Nos. C-2022-3036558 and C-2023-3038933 is granted.

2. That the Formal Complaint of Anthony B. Pruitt in Anthony B. Pruitt v. Philadelphia Gas Works at Docket No. C-2022-3036558 is dismissed with prejudice.

3. That the Formal Complaint of Anthony B. Pruitt in Anthony B. Pruitt v. Philadelphia Gas Works at Docket No. C-2023-3038933 is dismissed with prejudice.

4. That Docket No. C-2022-3036558 be marked closed.
5. That Docket No. C-2023-3038933 be marked closed.

Date: October 20, 2023

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Marta Guhl  
Administrative Law Judge