

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Munira Edens McClean	:	
	:	
v.	:	C-2023-3041762
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complaint of Munira Edens McClean against Philadelphia Gas Works because she failed to appear at the hearing and prosecute her Complaint.

HISTORY OF THE PROCEEDING

On July 17, 2023, Munira Edens McClean (Complainant) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission).¹ In the Complaint, the Complainant placed checkmarks in the boxes indicating that “[t]he utility is threatening to shut off my service or has already shut of my service,” and “[I] would like a payment agreement.” As relief, the Complainant asked for the Commission’s assistance in obtaining “a reasonable payment plan.”

¹ The Complainant utilized the Commission’s eFile service to electronically file the Formal Complaint. When the Complainant registered for an eFile account with the Commission, the Complainant also registered an email address in order to be served Commission documents via the Commission’s eService process.

On August 7, 2023, the Respondent filed an Answer admitting that it issued a shut off notice for the gas service at 807 W. Wellens Avenue, Philadelphia, PA (service address). The Respondent further answered that the Complainant has had multiple PGW-issued payment agreements that remain unsatisfied as well as a Commission-issued payment agreement that remains unsatisfied. The Respondent requested that the Commission deny all relief requested in the Complaint, and dismiss the Complaint.

By Hearing Notice dated August 9, 2023, an Initial Call-In Telephonic Hearing was scheduled for September 27, 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 rescheduled 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 August 17, 2023. The Prehearing Order again 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 she is entitled to the relief requested in the Complaint.

The Hearing Notice and the Prehearing Order were eServed to Complainant at her request and in the ordinary course of the Commission’s business to the email address she

provided and registered with the Commission. None of these documents were returned to the Commission as undeliverable.

On August 25, 2023, Anita Murray, Esquire entered her appearance in this matter on behalf of PGW.

In accordance with my August 27, 2023 Prehearing Order, on September 20, 2023, Ms. Murray emailed PGW's proposed exhibits for the evidentiary hearing to my legal assistant.

The hearing convened as scheduled on September 27, 2023. Neither the Complainant nor PGW called in for the scheduled hearing. No certificate of satisfaction was filed. To date, neither party has contacted my office to explain their failure to call in for the September 27, 2023, hearing.

The record closed on October 3, 2023, the date the transcript was filed with the Commission.

FINDINGS OF FACT

1. The Complainant is Munira Edens McClean.
2. The Respondent is Philadelphia Gas Works.
3. By Initial Call-In Telephonic Hearing Notice dated August 9, 2023, a call-in telephonic hearing was scheduled for September 27, 2023 at 10:00 a.m.
4. On August 17, 2023, I issued a Prehearing Order that also advised the parties of the date and time of the scheduled hearing.

5. The Hearing Notice and the Prehearing Order were both eServed upon the Complainant.
6. Neither the Hearing Notice nor the Prehearing Order, eServed upon the Complainant, were returned as undeliverable.
7. In accordance with my August 27, 2023 Prehearing Order, on September 20, 2023, counsel for PGW emailed PGW's proposed exhibits for the evidentiary hearing to my legal assistant.
8. The Complainant failed to call in for the September 27, 2023 hearing.
9. PGW failed to call in for the September 27, 2023 hearing.
10. The Complainant has not contacted the Commission to explain why her failure to appear for the scheduled hearing was unavoidable.
11. The Complainant did not settle or withdraw her Complaint.

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 she failed to call in for, or explain why she could not attend, the hearing at the scheduled time. Therefore, it is appropriate to dismiss the Complaint.

The Commission eServed notice of the September 27, 2023 scheduled hearing in this case to the Complainant on August 9, 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 the 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 August 17, 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 eServed on the Complainant, was never returned 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 her behalf. To date, there is no further information about the Complainant regarding this hearing. The Complainant's 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).

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 she is entitled to her requested relief. The Complainant did not appear for the hearing scheduled for September 27, 2023. Thus, by her failure to appear, the Complainant did not meet her 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 protected. *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 her burden of proving that she is entitled to the relief that she seeks from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Munira Edens McClean at Munira Edens McClean v. Philadelphia Gas Works, Docket No. C-2023-3041762, is dismissed.
2. That the Secretary mark this docket closed.

Date: December 19, 2023

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