

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Steve Burgerhoff	:	
	:	F-2023-3040250
v.	:	F-2023-3040251
	:	
Pennsylvania-American Water Company	:	

INITIAL DECISION

Before
John M. Coogan
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint of Steve Burgerhoff against Pennsylvania-American Water Company because Mr. Burgerhoff failed to appear for his hearing and prosecute his Complaint.

HISTORY OF THE PROCEEDING

On April 17, 2023, Steve Burgerhoff (Mr. Burgerhoff or Complainant) filed a Formal Complaint against Pennsylvania-American Water Company (PAWC), alleging there are incorrect charges on his bill.¹ Mr. Burgerhoff requests that his bill be adjusted to reflect actual amounts due. Mr. Burgerhoff also requests that actual readings be submitted, water pressure be adjusted to a reasonable pressure, and to be notified when the meter is going to be read. Mr. Burgerhoff indicated his Formal Complaint was regarding water, wastewater/sewer, and steam

¹ The Complaint is a timely appeal from the determination of the Commission's Bureau of Consumer Services (BCS), at BCS No. 3885519, which dismissed in part and granted in part Complainant's informal complaint. A timely BCS appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

heat service. Mr. Burgerhoff's Formal Complaint was assigned to separate dockets at F-2023-3040250 and F-2023-3040251.²

On May 18, 2023, PAWC filed an answer to the Formal Complaint at Docket Nos. F-2023-3040250 and F-2023-3040251. In its answer, PAWC admits it provides water and wastewater service to Complainant but denies that it provides steam heat service to Mr. Burgerhoff. PAWC also admits that it issued invoices to Mr. Burgerhoff based on estimated reads due to a malfunctioning meter. PAWC states the meter has been changed and denies that there have been any improper late charges or other expenses related to any overbilling. PAWC denies the water pressure at Complainant's property is too high.

On May 22, 2023, the Commission issued an initial telephonic hearing notice setting a formal call-in telephonic hearing of the Formal Complaint for July 7, 2023, at 10:00 a.m. and assigning me as the presiding officer. Also on May 22, 2023, I issued an order consolidating docket numbers F-2023-3040250 and F-2023-3040251 and setting forth various rules that would govern the evidentiary hearing on July 7, 2023.

On June 29, 2023, I received an e-mail from counsel for PAWC, requesting a postponement of the July 7, 2023 hearing so that Mr. Burgerhoff's Formal Complaint could be resolved informally. On June 30, 2023, Mr. Burgerhoff responded by e-mail and did not agree to a postponement. On June 30, 2023, I responded to the parties by e-mail, stating that the July 7, 2023 evidentiary hearing would be converted to a prehearing conference. On June 30, 2023, the Commission issued a notice that the July 7, 2023 hearing would be converted to a prehearing conference.

The prehearing conference convened on July 7, 2023, as scheduled. Michael Gruin, Esquire, appeared on behalf of PAWC. Mr. Burgerhoff also appeared. After off-the-record settlement discussions, Mr. Gruin indicated that he would withdraw his appearance as

² Docket No. F-2023-3040250 regards Mr. Burgerhoff's water service and Docket No. F-2023-3040251 regards Mr. Burgerhoff's wastewater service.

counsel for PAWC. I informed Complainant that I would contact him for next steps in the hearing process once a new attorney for PAWC entered his or her appearance.

On July 24, 2023, Donald Wagner, Esquire, entered his appearance on behalf of PAWC. On July 27, 2023, I asked parties by e-mail to let me know by August 18, 2023 the status of Mr. Burgerhoff's Formal Complaint and the need for further hearings.

On August 21, 2023, I received an e-mail from Mr. Wagner, providing an update regarding discussions with Mr. Burgerhoff, and noting that PAWC is not requesting the scheduling of further hearings. On August 30, 2023, I received an e-mail from Mr. Burgerhoff. Mr. Burgerhoff did not state his preference for further hearings, but he did state that he was unable to address the Formal Complaint from September 1, 2023 to October 1, 2023. On September 6, 2023, I responded to the parties by e-mail, stating that an evidentiary hearing would be held on October 18, 2023.

On September 8, 2023, the Commission issued a telephonic hearing notice setting a formal call-in telephonic hearing of the Formal Complaint for October 18, 2023, at 10:00 a.m. On September 11, 2023, I issued a prehearing order setting forth various rules that would govern the October 18, 2023 evidentiary hearing.

The initial hearing convened on October 18, 2023, as scheduled. Donald Wagner, Esquire, and Michael Gruin, Esquire, appeared on behalf of PAWC. Mr. Burgerhoff did not appear, and no one appeared on behalf of Mr. Burgerhoff.

The record in this case consists of the transcript of 24 pages. The record closed on November 2, 2023, upon my receipt of the hearing transcript. For the reasons discussed below, PAWC's motion to dismiss will be granted, and the Formal Complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant in this case is Steve Burgerhoff.

2. The Respondent in this case is Pennsylvania-American Water Company.
3. The September 8, 2023 hearing notice was mailed to Complainant by U.S. First-Class Mail. Tr. 20.
4. The September 8, 2023 hearing notice explained how to request a continuance.
5. The September 8, 2023 hearing notice states that a party may lose the case if they do not take part in the hearing and present facts on the issues raised. Tr. 20.
6. The September 11, 2023 prehearing order was mailed to Complainant by U.S. First-Class Mail. Tr. 20.
7. The September 11, 2023 prehearing order explained how to request a continuance.
8. The September 11, 2023 prehearing order states that a party may lose the case if they do not take part in the hearing and present facts on the issues raised. Tr. 20.
9. No mail delivery failure notification was received by the Commission indicating that the documents served on Mr. Burgerhoff did not reach him. Tr. 20.
10. The telephonic hearing convened on October 18, 2023, as scheduled. Tr. 14-24.
11. PAWC appeared at the October 18, 2023 hearing. Tr. 14-24.
12. Mr. Burgerhoff did not appear during the October 18, 2023 hearing. Tr. 14-24.

13. No one appeared on behalf of Mr. Burgerhoff at the October 18, 2023 hearing. Tr. 14-24.

14. During the October 18, 2023 hearing, counsel for PAWC made an oral motion to dismiss Mr. Burgerhoff's Formal Complaint. Tr. 22.

15. Complainant did not request a continuance or otherwise notify the Office of Administrative Law Judge to explain why his failure to appear at the October 18, 2023 hearing was unavoidable.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the complainant must show that the respondent public utility is responsible or accountable for the problem described in the complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is established by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701. Mr. Burgerhoff has the burden of proof in this proceeding as the party seeking relief.

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). This due process requirement is satisfied when the parties are afforded notice and the opportunity to be heard. *Id.*

In accordance with 52 Pa. Code § 1.53(b)(1), the September 8, 2023 hearing notice and September 11, 2023 prehearing order were sent to Complainant by U.S. First-Class

Mail to the address he provided to the Commission. Tr. 20. The hearing notice and the prehearing order served on the parties to this proceeding state that, if a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party. The hearing notice and prehearing order also explained how to request a continuance. No correspondence was returned to the Commission as undeliverable. Tr. 6. Accordingly, I must presume that these documents, which were sent in the ordinary course of business, were received by the 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).

The October 18, 2023 hearing was scheduled to begin at 10:00 a.m., but Mr. Burgerhoff was not present at 10:00 a.m. To provide Mr. Burgerhoff additional time to appear, the hearing did not begin until 10:15 a.m. However, Mr. Burgerhoff was also not present at 10:15 a.m., and no one appeared on behalf of Mr. Burgerhoff at the time of the hearing. Tr. 14-24. Also, neither Mr. Burgerhoff nor anyone on his behalf ever requested a postponement or continuance of the October 18, 2023 hearing, despite notice of the hearing having been provided to Mr. Burgerhoff. 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). During the hearing, counsel for PAWC moved to have the Formal Complaint dismissed because Mr. Burgerhoff did not appear. Tr. 22.

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. *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).

In this case, pursuant to 52 Pa. Code § 1.53(b)(1), Mr. Burgerhoff appropriately received notice by first class mail of the October 18, 2023 evidentiary hearing. Despite receiving appropriate service, Mr. Burgerhoff did not appear for the evidentiary hearing, request a continuance, or otherwise notify the Office of Administrative Law Judge to explain why his failure to appear at the October 18, 2023 hearing was unavoidable.

Further, as the proponent of any request for relief, Complainant bears the burden of proof. By failing to participate and proffer any evidence to support the complaint, Complainant has failed to meet this burden. Thus, it is appropriate to dismiss the complaint. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Williams v. PECO Energy Co.*, Docket No. C-2018-300734 (Opinion and Order entered Mar. 14, 2019) (citing *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995)). Accordingly, the merits of the complaint will not be addressed. Therefore, PAWC's motion to dismiss Mr. Burgerhoff's Formal Complaint will be granted.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter in this proceeding. 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. To establish a sufficient case and satisfy the burden of proof, the complainant must show that the respondent public utility is responsible or accountable for the problem described in the complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976).

4. The degree of proof required to satisfy the burden of proof is a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

5. A preponderance of the evidence is established by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

6. Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. This due process requirement is satisfied when the parties are afforded notice and the opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

7. The Commission may make service on a person by U.S. First-Class Mail. 52 Pa. Code § 1.53(b)(1).

8. 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).

9. When there are no facts in the record that the party's failure to appear was unavoidable, the complaint should be dismissed. *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).

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

11. By failing to participate in the hearing and proffer any evidence to support the complaint, Mr. Burgerhoff has failed to carry his burden of proof in this proceeding. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Pennsylvania-American Water Company to dismiss the Formal Complaint filed by Steve Burgerhoff at Docket Nos. F-2023-3040250 and F-2023-3040251 is granted.

2. That the Formal Complaint of Steve Burgerhoff in Steve Burgerhoff v. Pennsylvania-American Water Company at Docket Nos. F-2023-3040250 and F-2023-3040251 are dismissed.

3. That Docket Nos. F-2023-3040250 and F-2023-3040251 be marked closed.

Date: January 29, 2024

/s/
John M. Coogan
Administrative Law Judge