

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Janay Jackson	:	
	:	
v.	:	C-2023-3041753
	:	
UGI Utilities, Inc. – Gas Division	:	

INITIAL DECISION

Before
Michael J. Mroczka
Special Agent

INTRODUCTION

This decision dismisses the Formal Complaint for the failure of Complainant to appear for the hearing and prosecute her complaint.

HISTORY OF THE PROCEEDING

On July 17, 2023, Janay Jackson (Complainant) filed a Formal Complaint (complaint) with the Pennsylvania Public Utility Commission (Commission) against UGI Utilities, Inc. – Gas Division (Respondent or UGI). The complaint alleges that UGI is threatening to shut off Complainant’s service or has already shut off her service. As relief, Complainant would like a payment arrangement.

In her complaint, Complainant selected the option to receive all communications from the Commission via eService through an eFiling account she registered with the Commission.

On July 26, 2023, the Respondent filed an answer in which it denied the material allegations of fact and conclusions of law in the complaint. Respondent requested that the complaint be dismissed.

On July 31, 2023, a Call-In Telephone Hearing Notice was served on the parties scheduling an initial telephonic hearing on September 18, 2023 at 10:00 a.m. and the case was assigned to me. The Hearing Notice provided the parties with the Toll-Free Bridge Number and the PIN to call and participate in the telephonic hearing. The Hearing Notice further stated as follows:

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.

CONTINUANCES. You may request a continuance of the hearing if you have a good reason. All continuances will be granted only for good cause. To request a continuance, you must submit a written request (a “motion”) at least five (5) days before the hearing. Your motion should include: 1) The case name, number, and hearing date; 2) The reason for the request; and 3) Whether the other party agrees (or if you do not know).

On August 29, 2023, a Prehearing Order was served on the parties which reminded the parties of the date and time of the hearing. The Prehearing Order again stated the failure to appear warning. Additionally, the Prehearing Order informed the parties about the applicable procedural rules, and again included the procedure to follow for hearing continuances.

The Hearing Notice and Prehearing Order were eServed to the Complainant in the ordinary course of the Commission’s business to the email address that was registered with the Commission by Complainant. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.

On September 18, 2023, the hearing convened as scheduled. Present for the hearing was UGI's witness, Ms. Amy Wynn, and the court reporter. Neither Complainant nor UGI's attorney were present for the hearing. Ms. Wynn informed me that UGI's attorney has asked her to request a continuance due to a medical emergency. I allowed time for Complainant to call in to give her a chance to object to the continuance request. Complainant did not call in by the time I went on the record at 10:11 a.m. Therefore, I granted UGI's continuance request.

On September 26, 2023, a Further Telephonic Hearing Notice was served on the parties scheduling an initial telephonic hearing on November 13, 2023 at 10:00 a.m. The Hearing Notice provided the parties with the Toll-Free Bridge Number and the PIN to call and participate in the telephonic hearing. It again provided the failure to appear information and the procedure to follow for hearing continuances.

On October 10, 2023, a second Prehearing Order was served on the parties which reminded the parties of the date and time of the hearing. The Prehearing Order again stated the failure to appear warning. Additionally, the Prehearing Order informed the parties about the applicable procedural rules, and again included the procedure to follow for hearing continuances.

On November 11, 2023, the hearing convened as scheduled. Larry Crayne, Esquire, appeared on behalf of Respondent along with one witness and was ready to proceed. The court reporter was also present. Complainant was not present to start the hearing. After a short recess to allow time for Complainant to appear, the hearing proceeded in Complainant's absence. No testimony was taken, and no exhibits were introduced into the record. At the hearing, Respondent moved to dismiss the complaint, with prejudice, for Complainant's failure to appear and prosecute her complaint. I took this motion under advisement.

Complainant has not contacted the Commission to explain why her failure to appear at the hearing was unavoidable.

The record closed on November 17, 2023, with the filing of the hearing transcript. This decision grants the Respondent's motion to dismiss the complaint with prejudice.

FINDINGS OF FACT

1. The Complainant is Janay Jackson.
2. The Respondent is UGI Utilities, Inc. – Gas Division.
3. On July 17, 2023, Complainant filed a Formal Complaint against Respondent.
4. On July 26, 2023, Respondent filed an answer to the complaint.
5. On July 31, 2023, a Call-In Telephone Hearing Notice was served on Complainant scheduling an initial telephonic hearing on September 18, 2023 at 10:00 a.m.
6. On August 29, 2023, a Prehearing Order for Telephone Hearing was served on Complainant providing additional information to the parties regarding the hearing.
7. Both the Hearing Notice and Prehearing Order were eServed on Complainant to the email address Complainant provided to and registered with the Commission.
8. Both the Hearing Notice and Prehearing Order provided the Complainant with the toll-free bridge telephone number and PIN to call and participate in the hearing, and, *inter alia*, the procedure for requesting a continuance and the possible consequences of failing to appear at the hearing.
9. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.
10. Complainant failed to appear and participate in the scheduled telephonic hearing on September 18, 2023.

11. UGI's attorney also was not present for the hearing on September 18, 2023. UGI's witness informed me that the attorney asked her to request a continuance due to a medical emergency.

12. The request for continuance was granted. Tr. 4.

13. On September 21, 2023, a Further Call-In Telephonic Hearing Notice was served on Complainant scheduling a telephonic hearing on November 13, 2023 at 10:00 a.m.

14. On October 10, 2023, a second Prehearing Order for Telephone Hearing was served on Complainant providing additional information to the parties regarding the hearing.

15. The Further Hearing Notice and second Prehearing Order were also eServed on Complainant to the email address Complainant provided to and registered with the Commission.

16. Neither the Further Hearing Notice nor the second Prehearing Order were returned to the Commission as undeliverable.

17. Complainant failed to appear and participate in the scheduled telephonic hearing on November 13, 2023.

18. The court reporter, Counsel for Respondent and its witness were present and prepared to proceed at the November 13, 2023 hearing.

19. Complainant has not contacted the Commission to explain why her failure to appear at the hearing was unavoidable.

DISCUSSION

Due Process and Notice

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 provided notice and the opportunity to be heard. *Id.*

The record shows that Complainant was provided notice and the opportunity to be heard. First, on July 31, 2023, Complainant was served a Hearing Notice which advised the parties of the date and time of the hearing, and how to participate. Second, on August 29, 2023, Complainant was served a Prehearing Order which reminded the parties of the date and time of the hearing, and how to participate. Further, after a continuance, on September 21, 2023, Complainant was served a Further Hearing Notice which advised the parties of the date and time of the hearing, and how to participate. Complainant was then served a second Prehearing Order on October 10, 2023. All of the above documents advised the parties, *inter alia*, how to request a continuance prior to the hearing if needed. Finally, the documents advised Complainant that failure to appear may result in dismissal with prejudice, explaining that Complainant would be barred from filing another complaint raising the same claim(s) and issues(s) presented in the dismissed complaint.

The Hearing Notices and Prehearing Orders were eServed to the Complainant at the email address she registered with the Commission. Neither was returned to the Commission as undeliverable. Notice eServed to a party's registered email address with no notification that service failed 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).

Failure to Appear, Waiver and the “Unavoidable” Standard

Once a hearing is scheduled and the parties are duly notified by the Commission, it is the responsibility of the parties to appear and participate in the hearing. *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered Jan. 24, 2002). 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 and shall not be permitted to later reopen the matter or be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a). However, these provisions in the Code and in the Commission’s regulations do not apply if the presiding officer determines that the party’s failure to appear at the hearing 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). 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).

Complainant failed to appear for two scheduled hearings, despite receiving notice and despite the undersigned allowing additional time for Complainant to appear. To date, there has been no communication to the Office of Administrative Law Judge or me by, or on behalf of, Complainant explaining why Complainant’s failure to appear at the hearing was unavoidable.

Consequently, I find that Complainant waived the opportunity to participate in a hearing on the matters raised in the complaint, Complainant's absence was not unavoidable, and the complaint should be dismissed with prejudice.

Burden of Proof and Dismissal of Complaint

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).

As the proponent of any request for relief, Complainant bears the burden of proof. 66 Pa.C.S. § 332(a). 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 with prejudice. *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.

Respondent's motion to dismiss 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. 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).

4. 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 and shall not be permitted to later reopen the matter or be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

5. If there are no facts in the record that a party's failure to appear at a hearing 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).

6. Complainant's due process rights have been fully protected and 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, 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. By failing to participate in the hearing and proffer any evidence to support the complaint, Complainant has failed to meet the burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That UGI Utilities Inc. – Gas Division’s motion to dismiss the Formal Complaint of Janay Jackson at Docket Number C-2023-3041753 is granted.

2. That the Formal Complaint filed by Janay Jackson in *Janay Jackson v. UGI Utilities Inc. – Gas Division*, Docket Number C-2023-3041753, is hereby dismissed with prejudice.

3. That the Secretary’s Bureau shall mark Docket No. C-2023-3041753 as closed.

Date: February 6, 2024

/s/
Michael J. Mrocza
Special Agent