

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tymere Harris

v.

Philadelphia Gas Works

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C-2023-3039881

**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 the complaint.

**HISTORY OF THE PROCEEDING**

On April 10, 2023, Tymere Harris (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW, Company or Respondent). Complainant checked the boxes on the Complaint form stating that the utility is threatening to shut off Complainant's service or has already shut off Complainant's service and that Complainant would like a payment arrangement.

Complainant elected to receive all communications from the Commission via eService by registering with the Commission for an eFiling account.

On May 8, 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 May 10, 2023, a Call-In Telephone Hearing Notice was served on the parties scheduling an initial telephonic hearing on July 11, 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 July 6, 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 July 11, 2023, the hearing convened as scheduled. Anita Murray, 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 the Complaint. I took this motion under advisement.

Upon review of the record, I realized that a Prehearing Order was issued only five days prior to the scheduled hearing date. On October 10, 2023, I issued an Interim Order Reopening Record for Further Hearing, to allow for sufficient time from the service of the Prehearing Order to the hearing and to provide Complainant another opportunity to appear and prosecute the Complaint.

On October 12, 2023, a Further Telephonic Hearing Notice was issued scheduling a hearing on December 6, 2023. The notice was served on the Complainant via eService.

On December 6, 2023, the hearing convened as scheduled. Anita Murray, 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 for Complainant's failure to appear and prosecute the Complaint. I took this motion under advisement.

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

The record closed on December 27, 2023, when a copy of the 10-page transcript was filed with the Commission. This decision grants the Respondent's motion to dismiss the Complaint.

## FINDINGS OF FACT

1. The Complainant is Tymere Harris.
2. The Respondent is Philadelphia Gas Works.
3. On April 10, 2023, Complainant filed a Formal Complaint against Respondent.
4. On May 8, 2023, Respondent filed an Answer to the Complaint.
5. On May 10, 2023, a Call-In Telephone Hearing Notice was served on Complainant scheduling an initial telephonic hearing on July 11, 2023 at 10:00 a.m.
6. On July 6, 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 provided and registered by Complainant to 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 July 11, 2023.

11. The court reporter, counsel for Respondent and its witness were present and prepared to proceed at the July 11, 2023, hearing.

12. Complainant did not contact the Commission to explain why their failure to appear at the July 11, 2023, hearing was unavoidable.

13. On October 10, 2023, I issued an Interim Order Reopening Record for Further Hearing, to allow for sufficient time between the service of the Prehearing Order and the hearing and to provide Complainant another opportunity to appear and prosecute the Complaint.

14. On October 12, 2023, a Further Telephonic Hearing Notice was issued scheduling a hearing on December 6, 2023.

15. The Interim Order and the Further Telephonic Hearing Notice were served on the Complainant via eService.

16. Neither the Interim Order nor the Further Telephonic Hearing Notice were returned to the Commission as undeliverable.

17. Complainant failed to appear and participate in the scheduled telephonic hearing on December 6, 2023.

18. The court reporter, Counsel for Respondent and its witness were present and prepared to proceed at the December 6, 2023, hearing.

19. Complainant did not contact the Commission to explain why their failure to appear at the December 6, 2023, 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 May 10, 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 July 6, 2023, Complainant was served a Prehearing Order which reminded the parties of the date and time of the hearing, and how to participate. Further, both documents advised the parties, *inter alia*, how to request a continuance prior to the hearing if needed. Finally, both 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.

Further, the record in this matter was reopened via interim order on October 10, 2023, to allow for sufficient time between the service of the Prehearing Order and the hearing and to provide Complainant another opportunity to appear and prosecute the Complaint. A Further Telephonic Hearing Notice was issued on October 12, 2023, scheduling a hearing on December 6, 2023.

All hearing notices and orders were eServed to the Complainant at the email address they registered with the Commission. None of these documents were 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 their 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 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.

#### 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. By failing to participate in the hearing 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.

Respondent's motion to dismiss 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. *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 Philadelphia Gas Work's motion to dismiss the Formal Complaint of Tymere Harris at Docket Number C-2023-3039881 is granted.

2. That the Formal Complaint filed by Tymere Harris in Tymere Harris v. Philadelphia Gas Works, Docket Number C-2023-3039881, is hereby dismissed.

3. That the Secretary's Bureau shall mark Docket No. C-2023-3039881 as closed.

Date: March 22, 2024

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/s/  
Michael J. Mroczka  
Special Agent