

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Marvin Pierre	:	
	:	
v.	:	C-2023-3042294
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This decision dismisses the Formal Complaint of Marvin Pierre for failure to appear for the hearing and prosecute the Complaint.

HISTORY OF THE PROCEEDING

On August 17, 2023, Marvin Pierre (Complainant) eFiled¹ a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW) requesting a payment arrangement.

On September 6, 2023, the Respondent filed an Answer in which it denied the material allegations of fact and conclusions of law in the Complaint. The Respondent requested that the Complaint be dismissed.

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 September 12, 2023, a Call-In Telephone Hearing Notice was eServed on the parties scheduling an initial telephonic hearing on October 27, 2023, at 10:00 a.m. and the case was assigned to me.

On October 6, 2023, a Prehearing Order was eServed on the parties which reminded the parties of the date and time of the hearing. The Prehearing Order warned against possible dismissal for failure to appear. Additionally, the Prehearing Order informed the parties about the applicable procedural rules, and again included the procedure to follow for hearing continuances.

On October 27, 2023, the hearing convened as scheduled. The Complainant appeared *pro se*. Anita Murray, Esquire, appeared on behalf of PGW. At the outset of the hearing, both parties agreed to continue the matter in order to give the Complainant the opportunity to apply for PGW's Customer Assistance Program (CAP). Tr. 4. It was also discussed that the named person on the account is Luna Ritchie (phonetic), and that Ms. Ritchie would need to be present for any further hearings because Mr. Pierre is not named on the account and not an attorney. *Id.* Accordingly, on this same date, I issued an Order granting a continuance.

Also on October 27, 2023, a Call-In Telephone Hearing Notice was eServed on the parties scheduling a further telephonic hearing on January 11, 2024, 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. 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).

The Hearing Notices and Prehearing Order were eServed to Complainant at the Complainant’s request and in the ordinary course of the Commission’s business to the email address provided and registered with the Commission by the Complainant.² Neither the Hearing Notices nor the Prehearing Order were returned to the Commission as undeliverable.

On January 11, 2024, the hearing convened as scheduled. Anita Murray, Esquire, appeared on behalf of PGW and was ready to proceed. The Complainant was not present to start the hearing. After a short recess to allow time for the Complainant to appear, the hearing proceeded in the Complainant’s absence. No testimony was taken, and no exhibits were introduced into the record. At the hearing, the Respondent moved to dismiss the Complaint for the Complainant’s failure to appear and prosecute. I took this motion under advisement.

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

The record closed on January 16, 2024, upon the filing of the transcript with the Commission.

FINDINGS OF FACT

1. The Complainant is Marvin Pierre.
2. The Respondent is Philadelphia Gas Works.
3. On August 17, 2023, the Complainant eFiled a Formal Complaint against the Respondent.

² *Supra, n. 1.*

4. On September 6, 2023, the Respondent filed an Answer to the Complaint.
5. On September 12, 2023, a Call-In Telephone Hearing Notice was issued scheduling an initial telephonic hearing on October 27, 2023, at 10:00 a.m.
6. On October 6, 2024, a Prehearing Order was issued providing additional information to the parties regarding the hearing.
7. On October 27, 2023, the hearing convened as scheduled.
8. At the outset of the hearing on October 27, 2023, both parties agreed to continue the matter in order to give the Complainant the opportunity to apply for PGW's CAP.
Tr. 4.
9. On October 27, 2023, a Call-In Telephone Hearing Notice was eServed on the parties scheduling a further telephonic hearing on January 11, 2024, at 10:00 a.m.
10. Both the Hearing Notices and Prehearing Order were eServed upon the Complainant to the email address provided and registered with the Commission by the Complainant.
11. Both the Hearing Notices and Prehearing Order provided the parties 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.
12. Neither the Hearing Notices nor the Prehearing Order were returned to the Commission as undeliverable.

13. The Complainant failed to appear and participate in the scheduled telephonic hearing on January 11, 2024. Tr. 11.

14. Counsel for the Respondent was present and prepared to proceed at the January 11, 2024, hearing.

15. The Complainant has not contacted the Commission to explain why his 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, the Complainant was eServed a Hearing Notice and Prehearing Order for the original hearing on October 27, 2023, for which he appeared. Second, during the October 27, 2023 hearing, the Complainant was advised that another hearing would be scheduled per his and the Respondent's agreement to a continuance. Further, on October 27, 2023, the Complainant was eServed a Hearing Notice which advised the parties of the date and time of the further hearing, and how to participate. Finally, both Hearing Notices and the Prehearing Order advised the Complainant that the case could be dismissed if the Complainant did not call in and participate in the hearing.

The notices for the October 27, 2023, and January 11, 2024 hearings were eServed on the Complainant at the email address that the Complainant provided and registered with the Commission. The Prehearing Order was also eServed to the Complainant. None were

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).

Failure to appear, waiver and “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. 28, 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. *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).

The Complainant failed to appear for the hearing despite receiving notice and despite the undersigned allowing additional time for the Complainant to appear. To date, there has been no communication with the Office of Administrative Law Judge or me by, or on behalf of, the Complainant explaining why the Complainant's failure to appear at the hearing was unavoidable. Consequently, I find the Complainant waived the opportunity to participate in a hearing on the matters raised in the Complaint, the 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, the Complainant bears the burden of proof. By failing to participate and proffer any evidence to support the Complaint, the 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 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 electronically served to a party with no notification that service failed is presumed 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. The 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, the 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, the 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 Marvin Pierre at Docket Number C-2023-3042294 is granted.

2. That the Formal Complaint filed by Marvin Pierre in Marvin Pierre v. Philadelphia Gas Works, Docket Number C-2023-3042294, is hereby dismissed.

3. That Docket No. C-2023-3042294 be marked closed.

Date: April 11, 2024

_____/s/
F. Joseph Brady
Administrative Law Judge