

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Christopher Haymes	:	
	:	
v.	:	F-2023-3042824
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint of Christopher Haymes against Philadelphia Gas Works because he failed to appear for his hearing and prosecute his Complaint. The Decision also grants the Company’s request to bar the Complainant from filing any further informal or formal complaints related to his outstanding balance, until such time as that balance has been paid.

HISTORY OF THE PROCEEDING

On September 6, 2023, Christopher Haymes (Complainant or Mr. Haymes) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent or Company) with the Pennsylvania Public Utility Commission (Commission).¹ In the Complaint, the

¹ The Complaint is a timely appeal from the determination of the Commission’s Bureau of Consumer Services (BCS), at BCS No. 3907560, which dismissed Complainant’s informal complaint. A timely BCS appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

Complainant contends the Company is threatening to shut off his utility service and requests a payment arrangement.

On September 28, 2023,² Respondent filed an Answer denying the material allegations of the Complaint.

On November 3, 2023, the Commission issued an Initial Call-In Telephonic Hearing Notice, and the matter was scheduled for hearing on January 10, 2024, at 10:00 a.m. The case was assigned to me. The Hearing Notice contained the following information:

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 November 21, 2023. The Prehearing Order directed the parties to comply with various procedural requirements and indicated how to request a change in the hearing date. It also contained the same warning that was found in the Hearing Notice.³

The hearing proceeded as scheduled on January 10, 2024. The Complainant did not appear for the hearing. Respondent appeared and was represented by Graciela Christlieb, Esq., who presented the testimony of Patrica Bernard, a customer review officer. Respondent offered five exhibits, which were all entered into the record.

Counsel for PGW moved that the Complaint be dismissed for lack of prosecution pursuant to 52 Pa. Code § 5.245. PGW also requested that the Complainant be barred from filing

² The Formal Complaint was served on the Respondent by the Secretary's Bureau on September 8, 2023.

³ The Complainant indicated on the Formal Complaint that he agreed to receive email service of documents. There was no indication that the Hearing Notice or Prehearing Order were returned as undeliverable.

further informal and formal complaints until his current outstanding balance had been paid in full. In accordance with Commission policy, I am granting the Motion and also directing that the Complainant be barred from filing further informal and formal complaints on his current balance.

The hearing resulted in a 43-page transcript. The record closed on January 25, 2024, when I received the transcript of the hearing.

FINDINGS OF FACT

1. The Complainant in this case is Christopher Haymes who has PGW Account No. XXX0091.
2. The Respondent is Philadelphia Gas Works.
3. On September 6, 2023, Mr. Haymes filed a Complaint with the Commission against the Respondent.
4. On September 28, 2023, the Respondent filed an Answer to the Complaint.
5. On November 3, 2023, the Commission issued an Initial Call-In Telephonic Hearing Notice, and the matter was scheduled for hearing on January 10, 2024, at 10:00 a.m.
6. On November 21, 2023, a Prehearing Order was sent to all parties containing, *inter alia*, a warning of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing.
7. Both the Hearing Notice and Prehearing Order contained the warning that failing to appear at the hearing could result in the case being dismissed with prejudice.

8. Both the Hearing Notice and Prehearing Order were sent to the Complainant via email to the address he provided on the Formal Complaint form.
9. The Hearing Notice and Prehearing Order sent to the Complainant were not returned as being undeliverable.
10. The Complainant failed to appear at the January 10, 2024, hearing.
11. The Complainant did not settle or withdraw this Complaint prior to the scheduled hearing date or obtain a continuance.
12. The Complainant has not contacted the Commission to explain why his failure to appear at the hearing was unavoidable.
13. From November 1, 2019 to January 3, 2024, the Complainant made only three payments to his account. Tr. 11, 13; PGW Exh. 1.
14. The Complainant's current outstanding balance is \$1,461.00. Tr. 12; PGW Exh. 2.
15. The Complainant also has frozen Customer Responsibility Program (CRP) arrears in the amount of \$3,204.00. Tr. 12; PGW Exh. 2.
16. The Complainant has had an account with PGW since August 2013 and has only made 18 payments in total on his account. Tr. 13.
17. The Complainant has had four Company issued payment arrangements, all of which have been broken. Tr. 15; PGW Exh. 3.

18. The Complainant also had a Bureau of Consumer Services (BCS) issued payment arrangement at Case No. 3454128 on December 6, 2016, which was also broken. Tr. 15; PGW Exh. 3.

19. The Complainant was provided a medical certification which kept his service on from July 12, 2017 to August 11, 2017. Tr. 18; PGW Exh. 4.

20. On August 25, 2017, the Complainant filed an informal complaint with BCS at Case No. 3557110 requesting a payment arrangement. Tr. 19; PGW Exh. 4.

21. The BCS issued a decision in the case on December 18, 2017, denying the request. Tr. 19; PGW Exh. 4.

22. PGW could not shut off the Complainant's service after the decision due to the winter moratorium. Tr. 20; PGW Exh. 4.

23. On March 30, 2018, the Complainant filed two additional informal complaints at Case Nos. 3595941 and 3596046 requesting a payment arrangement. Tr. 20-21; PGW Exh. 4.

24. On April 11, 2018, BCS closed both informal complaints denying the payment arrangement requests. Tr. 21; PGW Exh. 4.

25. On May 6, 2018, the Complainant made a payment of \$996 to avoid shut off of his utility service, which was the payment arrangement catch up amount. Tr. 22-23; PGW Exh. 4.

26. On May 14, 2018, the payment was cancelled due to insufficient funds. Tr. 23; PGW Exh. 4.

27. On June 4, 2018, the Complainant filed an informal complaint at BCS Case No. 3620420, requesting a payment arrangement. Tr. 24; PGW Exh. 4.
28. On August 13, 2018, BCS issued a decision which denied the request. Tr. 24; PGW Exh. 4.
29. On August 24, 2018, the Complainant was placed on the Company's CRP for the first time. Tr. 24-25; PGW Exh. 4.
30. On April 8, 2019, the Complainant made a payment of \$455.00 to avoid shut off. Tr. 25-26; PGW Exh. 4.
31. On April 12, 2019, the payment was cancelled due to insufficient funds. Tr. 27; PGW Exh. 4.
32. On November 7, 2019, the Complainant called PGW about a shut off notice and was reinstated to the CRP program. Tr. 27-28; PGW Exh. 4.
33. On August 30, 2021, 2021, PGW issued a 10-day shut off notice on the Complainant's account for nonpayment. Tr. 28-29; PGW Exh. 4.
34. On September 13, 2021, the Complainant filed an informal complaint with BCS at Case No. 3803355 requesting a payment arrangement. Tr. 29; PGW Exh. 4.
35. On September 30, 2021, the BCS issued a decision which denied the Complainant's request. Tr. 29; PGW Exh. 4.
36. On the same date, the Complainant filed a formal complaint with the Commission at Docket No. C-2021-3028873. Tr. 30-31; PGW Exh. 4.

37. The formal complaint was settled, and the Complainant was placed back on CRP. Tr. 31; PGW Exh. 4.

38. On February 8, 2022, PGW issued a 10-day shut off notice. Tr. 32; PGW Exh. 4.

39. On March 31, 2022, the Complainant filed an informal complaint with the BCS at Case No. 3826182 requesting a payment arrangement. Tr. 32; PGW Exh. 4.

40. On April 5, 2022, the BCS issued a decision which denied the Complainant's request and indicated that the stay of termination would end on April 11, 2022. Tr. 33-34; PGW Exh. 4.

41. On April 6, 2022, the Complainant filed an informal complaint requesting a payment arrangement with BCS at Case No. 3827669. Tr. 34; PGW Exh. 4.

42. On May 24, 2022, BCS issued a decision which denied the Complainant's request. Tr. 34; PGW Exh. 4.

43. PGW issued a 10-day shut off notice which went into effect on June 13, 2022. Tr. 35; PGW Exh. 4.

44. The Complainant filed a formal complaint on June 2, 2022 at Docket No. C-2022-3032787. Tr. 35; PGW Exh. 4.

45. On January 12, 2023, the Commission issued an Opinion and Order which denied the Complainant's exceptions and upheld the Initial Decision of Administrative Law Judge Francis Brady, which denied and dismissed the Complainant's formal complaint. Tr. 36; PGW Exh. 4.

46. On April 27, 2023, PGW issued a 10-day shut off notice which became effective on May 9, 2023. Tr. 37; PGW Exh. 4.

47. On May 4, 2023, the Complainant filed an informal complaint with the BSC at Case No. 3907560 which requested a payment arrangement. Tr. 37; PGW Exh. 4.

48. On August 4, 2023, BCS issued a decision which denied the Complainant's request. Tr. 37; PGW Exh. 4.

49. On August 28, 2023, PGW issued another 10-day shut off notice which became effective on September 11, 2023.

50. On September 6, 2023, the Complainant filed this current Formal Complaint with the Commission. Tr. 38; PGW Exh. 4.

DISCUSSION

As the party seeking affirmative relief from the Commission, the burden of proof rests on the Complainant. 66 Pa.C.S. § 332(a). "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

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

The Commission served notice of the January 10, 2024, hearing in this case to the Complainant on November 3, 2023, via electronic mail to the address he listed on his Formal

Complaint form. The notice informed the parties of the date and time of the hearing, as well as how to call in for the hearing. The Hearing Notice was not returned as being undeliverable.

In addition, I issued a Prehearing Order dated November 21, 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 served on the Complainant via electronic mail at the same address on his Formal Complaint form, was never returned as undeliverable. The Prehearing Order also included the date, time and call-in instructions for the January 10, 2024 hearing. Accordingly, I must presume that the Hearing Notice and Prehearing Order, which was sent in the ordinary course of business, were received by the Complainant. *Fonzo v. PPL Elec. Utils. Corp.*, Docket No. F-2023-3041304 (Final Order entered Jan. 17, 2024); *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). Therefore, the Complainant is deemed to have received the documents and had sufficient notice of the day and time of the scheduled hearing. Neither the Complainant nor a representative licensed to practice law in this Commonwealth appeared at the hearing on his behalf. To date, there is no further information about the Complainant regarding this hearing. His 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). 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 the hearing 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.

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 he is entitled to his requested relief. The Complainant did not appear for the hearing scheduled for January 10, 2024. Thus, by his failure to appear, the Complainant did not meet his burden of proof.

Consequently, it is appropriate to grant PGW's Motion and to dismiss Mr. Haymes' Complaint with prejudice.

Moreover, PGW argues that Complainant is abusing the Commission's process and complaint procedures to avoid termination. The Commission has found an abuse of administrative due process in numerous other cases. In *Grossman v. Bell Telephone Co. of Pennsylvania*, 67 Pa.P.U.C. 714 (1988) (*Grossman*), the Commission stated that abuse of

administrative process is an exploitation of due process. The *Grossman* case involved a *pro se* litigant who abused the regulatory practice by frequently requesting continuances of hearings without showing good cause, and then not appearing for his scheduled hearings and not honoring a settlement with the utility. *Id.* Abuse of administrative process cases often involve Complainants filing consecutive pleadings, complaints and motions for continuance of hearings in order to avoid payment and termination of services. As the Commission stated in *Argento's Pizza v. Philadelphia Gas Works*, Docket No. C-2009-2138055 (Final Order entered Oct. 1, 2010), the factors to be considered include the following: 1) the number and nature of complaints; 2) the number of defaulted payments; 3) the use of tactics to avoid payments and service terminations that became due; and 4) the history of payments. Similarly, in *Mazza v. PECO Energy Co.*, Docket No. C-2012-2318472 (Opinion and Order entered Apr. 23, 2014), the Commission ultimately found an abuse of process and precluded the filing of future complaints until the arrearage on the account was satisfied.

In this matter, the Complainant has filed numerous informal and formal complaint related to his account with PGW. The Complainant has filed nine informal complaints and three formal complaints, all requesting a payment arrangement. The Complainant has also made two payments to prevent the shut off of his service which were later cancelled due to insufficient funds. The Complainant has also had four PGW-issued payment arrangements and one BCS payment arrangement, which have all been broken. Further, the Complainant has a poor payment history with PGW. The Complainant only made three payments on his account between November 1, 2019 and January 3, 2024. Overall, since the Complainant has had an account with PGW starting in August 2013, he has only made 18 payments to his account. It is clear from the evidence that was presented that the Complainant is abusing the administrative process in order to avoid paying his bills and the shut off of his service. As such, I will grant PGW's request to bar the Complainant from filing any further informal or formal complaints related to his current outstanding balance with PGW.

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. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).
4. 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).
5. Notice sent via electronic mail to a party's registered address with no notification that service failed to be delivered to that address is presumed to have been received. *Fonzo v. PPL Elec. Utils. Corp.*, Docket No. F-2023-3041304 (Final Order entered Jan. 17, 2024); *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).
6. 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).
7. By failing to appear for the hearing and proffer any evidence to support the Complaint, the Complainant has failed to meet his burden of proving that he is entitled to the relief that he seeks from the Commission. 66 Pa.C.S. § 332(a).

8. The Commission may preclude a party from filing further informal or formal complaints when the party has abused the Commission's complaint procedures in order to avoid the termination of his or her service. *Argento's Pizza v. Phila. Gas Works*, Docket No. C-2009-2138055 (Final Order entered Oct. 1, 2010).

9. The Complainant has abused the administrative due process by filing multiple similar complaints, incurring a substantial outstanding balance, and evidencing a poor payment history, in an attempt to avoid termination and payment for services.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Philadelphia Gas Works to dismiss the Formal Complaint filed by Christopher Haymes at Docket No. F-2023-3042824 is granted.

2. That the Formal Complaint of Christopher Haymes in *Christopher Haymes v. Philadelphia Gas Works* at Docket No. F-2023-3042824 is dismissed with prejudice.

3. That Christopher Haymes be, and hereby is, precluded from filing further Complaints with the Pennsylvania Public Utility Commission, whether of an informal or formal nature, regarding the arrearages on Account Number XXX0091 for gas service provided by the Philadelphia Gas Works, until such time as the entire outstanding account balance is paid in full, and that, further, the filing of any complaint pertaining to the arrearages which are the subject of this proceeding shall be dismissed without further proceedings.

4. That Commission staff (including but not limited to the Bureau of Consumer Services and the Secretary's Bureau) shall reject any formal or informal complaints

that Christopher Haymes, or any person acting on his behalf, may attempt to file with the Commission, pertaining to the Philadelphia Gas Works Account No. XXX0091, until the entire outstanding account balance is paid in full.

5. That the filing of any other pleading in this case, concerning the same subject matter be, and hereby is, deemed not to stay implementation of this Order.

6. That Philadelphia Gas Works shall file a notice with the Commission, with a copy to all Parties to this proceeding, at Docket Number F-2023-3042824, within seven (7) days of the date that Mr. Haymes' outstanding account balance is paid in full.

7. That the failure of Christopher Haymes to pay all arrearages on his account identified in this proceeding shall be, and hereby is, deemed to be grounds for termination of service in accordance with Chapters 56 and 64 of the Commission's rules of administrative practice and procedure.

8. That a copy of this decision shall be served to the Bureau of Consumer Services and the Secretary's Bureau.

9. That Docket No. F-2023-3042824 be marked closed.

Date: April 23, 2024

/s/
Marta Guhl
Administrative Law Judge