

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kaleel Vinson	:	
	:	
v.	:	C-2023-3043494
	:	
UGI Utilities, Inc.	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This decision dismisses the Formal Complaint of Kaleel Vinson because he failed to appear at the scheduled hearing and prosecute his Complaint.

HISTORY OF THE PROCEEDING

On September 29, 2023, Kaleel Vinson (Mr. Vinson or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against UGI Utilities, Inc. (UGI, Company, or Respondent) alleging that UGI is threatening to shut off his utility services or has shut off the service, and that he is unable to pay his utility bills to UGI. As relief, the Complaint requests that the Commission establish a payment arrangement on his behalf.¹

On November 1, 2023, UGI filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.

¹ The Commission served the Complaint on the Respondent on October 12, 2023.

An Initial Call-in Telephone Hearing Notice dated November 3, 2023, notified the parties that an initial call-in telephone hearing was scheduled on January 10, 2024, at 10:00 a.m.

On December 12, 2023, I issued a Prehearing Order. The Prehearing Order directed the parties to comply with various procedural requirements, reminded them of the time and date of the hearing, provided instructions for calling in to the hearing, and warned in bold type: **“You may lose the case if you do not take part in this hearing and present evidence on the issues raised.”**

The Hearing Notice and the Prehearing Order were served by U.S. First-Class Mail upon the Complainant at the addresses that he provided to the Commission.² Neither the Hearing Notice nor the Prehearing Order were returned as undeliverable.

The hearing convened as scheduled on January 10, 2024. Larry C. Crayne, Esq. appeared representing the Respondent. The Complainant failed to call in. The Complainant was given an additional 15 minutes to call in but failed to do so.

At the hearing, counsel for UGI moved that the Complaint be dismissed for lack of prosecution pursuant to 52 Pa. Code § 5.245.

The record in this matter closed on February 14, 2024, upon receipt of the hearing transcript.

FINDINGS OF FACT

1. The Complainant is Kaleel Vinson.
2. The Respondent is UGI Utilities, Inc.

² In the Formal Complaint form, the Complainant agreed to receive all documents by First-Class Mail at the address he provided on the form.

3. On September 29, 2023, Mr. Vinson filed a Formal Complaint alleging that UGI is threatening to shut off his utility services or has shut off the service, and that he is unable to pay his utility bills to UGI.

4. As relief, the Complainant requests that the Commission establish a payment arrangement on his behalf.

5. On November 1, 2023, UGI filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.

6. An Initial Call-in Telephone Hearing Notice dated November 3, 2023, notified the parties that an initial call-in telephone hearing was scheduled on January 10, 2024, at 10:00 a.m.

7. The Hearing Notice stated, “You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised.”

8. A Prehearing Order dated December 12, 2023, directed the parties to comply with various procedural requirements, reminded them of the time and date of the hearing, provided instructions for calling in to the hearing, and warned in bold type: “**You may lose the case if you do not take part in this hearing and present evidence on the issues raised.**”

9. The Hearing Notice and the Prehearing Order were served by U.S. First-Class Mail upon the Complainant at the address that he provided to the Commission.

10. Neither the Hearing Notice nor the Prehearing Order were returned as undeliverable.

11. The Complainant failed to appear at the January 10, 2024, hearing.

12. The Complainant did not request a continuance of the January 10, 2024, hearing, withdraw the Complaint, or otherwise notify the Commission to explain why his failure to appear at the hearing was unavoidable.

DISCUSSION

In this Complaint, the Complainant alleges that UGI is threatening to shut off his utility services or has shut off the service, and that he is unable to pay his utility bills to UGI. As relief, the Complaint requests that the Commission establish a payment arrangement on his behalf. As the party seeking affirmative relief from the Commission, the burden of proof rests on the Complainant. 66 Pa.C.S. § 332(a).

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). Notice served to a party with no notification that service failed is presumed received. *Berkowitz v. Mayflower Sec., Inc.*, 317 A.2d 584 (Pa. 1974) (*Berkowitz*); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959) (*Meierdierck*); *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. 1997) (*Samaras*); *Judge v. Celina Mut. Ins. Co.*, 449 A.2d 658 (Pa. Super. 1982) (*Judge*).

The Hearing Notice and the Prehearing Order were served by U.S. First-Class Mail upon the Complainant at the addresses that he provided to the Commission. Neither one was returned as undeliverable. It is therefore deemed that the Complainant had notice of the date and time and participation information for the January 10, 2024, hearing. *Berkowitz*; *Meierdierck*; *Samaras*; *Judge*.

As the Commission noted in *Strydio v. PPL Electric Utilities Corp.*, Docket No. C-2017-2633043 at 6 (Opinion and Order entered July 18, 2018), "[o]nce notice of a hearing and the opportunity to be heard have been provided by the Commission, it is the responsibility of the parties to appear and participate in the hearing." (*citing, Mumma v. PPL Elec. Utils. Corp.*,

Docket No. C-00014869 (Opinion and Order entered Jan. 24, 2002)); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993).

The Complainant was notified of the schedule for the hearing and did not appear for the hearing. Additionally, the Hearing Notice and the Prehearing Order advised the Complainant that the case could be dismissed for failure to call-in and participate in the hearing. 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). Thus, the Complainant has waived the opportunity to participate in the hearing by failing to appear. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995).

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. By failing to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden. Consequently, the Complaint will be dismissed on this basis as well. *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); *El-Ayazra v. W. Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa. Code § 5.245.

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. Metro. Edison 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. Metro. Edison 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). Therefore, the Complaint will be dismissed.

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 Complainant received notice of the hearing. *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).

3. The due process rights of the Complainant have been fully protected in this proceeding and Complainant's failure to appear was not unavoidable. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984); 52 Pa. Code § 5.245(a).

4. As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).

5. The Complainant did not participate in the hearing, failed to appear for the hearing, did not present any evidence and, therefore, failed to meet the Complainant's burden of proving eligibility for the relief sought from the Commission. 66 Pa.C.S. § 332(a).

6. 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. Metro. Edison 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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of UGI Utilities, Inc. to dismiss the Formal Complaint filed by Kaleel Vinson at Docket No. C-2023-3043494 is granted.
2. That the Formal Complaint of Kaleel Vinson in Kaleel Vinson v. UGI Utilities, Inc. at Docket No. C-2023-3043494 is dismissed.
3. That Docket No. C-2023-3043494 is marked closed.

Date: May 9, 2024

_____/s/_____
Eranda Vero
Administrative Law Judge