

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jaycinah Simon

v.

Philadelphia Gas Works

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F-2023-3043721

INITIAL DECISION

Before
Arlene Ashton
Administrative Law Judge

INTRODUCTION

This decision dismisses the Formal Complaint of Jaycinah Simon, a gas service customer, for the failure of the customer to appear for the scheduled hearing and prosecute her complaint despite having notice and an opportunity to be heard.

HISTORY OF THE PROCEEDING

On October 11, 2023, Jaycinah Simon (Complainant or Ms. Simon) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW, Respondent or Company).¹ Ms. Simon alleged, *inter alia*, that there are incorrect charges on her bill. Complaint ¶ 5. As relief, Ms. Simon requested that PGW be ordered to “validate the alleged debt,” refrain from using non-affiliated

¹ The Complaint is a timely appeal from the determination of the Commission’s Bureau of Consumer Services (BCS), at BCS No. 3918057, which dismissed Complainant’s informal complaint. A timely BCS appeal is subject to de novo review. 52 Pa. Code § 56.173(a).

third parties to validate the debt, correct any billing errors, cease collection efforts and “provide written proof pursuant to FDCPA.”² She also requested a payment arrangement. Complaint ¶ 6.

On November 15, 2023, PGW timely filed an Answer with New Matter (Answer) denying the material allegations and conclusions of law in the Complaint.³ Further, PGW averred, *inter alia*, that the location associated with the Complainant’s account served by PGW (Service Location) is equipped with an automatic meter reading device and the bills are based on actual meter readings. PGW also asserted that the Complainant defaulted on two Commission payment arrangements granted in 2017 and 2018; that Complainant defaulted on multiple Company payment agreements. In New Matter, the Company argued that the accuracy of the Complainant’s account balance through May 6, 2022 had previously been litigated and adjudicated pursuant to a Formal Complaint docketed at *Simon v Philadelphia Gas Works*, Docket No. C-2022-3032428 (Final Order entered Feb. 21, 2023) (*2022 Billing Dispute*) and, therefore, was barred by the doctrine of collateral estoppel.

On December 19, 2023, PGW filed a Motion for Judgment on the Pleadings (Motion), wherein PGW requested that the Complainant be denied relief and the Complaint dismissed. PGW averred that because the Complainant never responded to PGW’s New Matter, the facts set forth in the November 15, 2023, New Matter should be deemed admitted. PGW also contended that the facts to be deemed admitted include the statement that the accuracy of the Complainant’s account balance up to May 6, 2022, had already been litigated in the *2022 Billing Dispute* and should be barred under the doctrine of collateral estoppel.

The Complainant did not file a response to the Motion.

² The Complainant did not provide a citation or otherwise explain the reference to FDCPA. As discussed below, based on prior filings by the Complainant with the Commission, it appears that the reference is to a federal statute known as the Fair Debt Collection Practices Act. 15 U.S.C. 1692–1692p.

³ The Complaint was served on PGW on October 23, 2023.

On December 18, 2023, an Initial Call-In Telephonic Hearing Notice (Hearing Notice) was served on the parties⁴ scheduling a call-in telephonic evidentiary hearing on February 1, 2024, at 10:00 a.m., and assigning me as the presiding officer. This Hearing Notice included the telephone number to call, and the passcode to enter, for the parties to participate in the hearing. In addition, the Hearing Notice included the following warning:

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.

On December 29, 2023, my Prehearing Order was served on both parties⁵ which, *inter alia*, reminded the parties of the hearing date and time, and the telephone number to call, and the passcode to enter, to participate in the hearing. Additionally, the Prehearing Order provided certain hearing information and rules that would govern the proceeding including how to request a continuance, if necessary, and the consequences of failing to appear at the hearing and present evidence including the dismissal of the complaint.

On January 17, 2024, I issued an Interim Order granting in part and denying in part the Motion for Judgement on the Pleadings. Under the Interim Order any issue and/or allegations raised by the Complainant in the Complaint relating to PGW billing on or prior to May 6, 2022 were stricken from the Complaint. The Motion was denied as to any claim by the Complainant of a billing dispute with PGW relating to the period after May 6, 2022, and any other claims presented in the Complaint.

None of the documents served on the Complainant via U.S. First-Class Mail were returned to the Commission as undeliverable.

⁴ Consistent with the method of service requested in the Complaint, the Notice of Hearing was served on the Complainant via U.S. First-Class Mail. It was served on PGW via eService.

⁵ The Prehearing Order was served on the Complainant via U.S. First-Class Mail and on PGW via eService.

On February 1, 2024, at 10:00 a.m., the hearing convened as scheduled. Ms. Graciela Christlieb, Esquire, appeared on behalf of PGW, along with a witness and an observer, and the Company was prepared to proceed. A court reporter was also present. Complainant did not appear. I recessed the hearing and convened it again approximately 12 minutes later in order to allow time for Complainant to appear. The Complainant did not appear after this recess and the hearing proceeded in her absence. No testimony was taken and no exhibits were introduced for the record.

During the hearing, the Company moved to dismiss the Complaint with prejudice (Motion) for the failure of Complainant to appear and prosecute the Complaint. Tr. 6. Attorney Christlieb noted that she and the Company's field service office had endeavored to contact the Complainant by telephone to discuss this matter; however, they received no response from the Complainant. Tr. 9-10. In addition, counsel to PGW indicated that PGW dispatched a field service representative to the Service Location to address the Complaint; however, the field representative was unable to make contact with the Complainant. Tr. 10.

In support of the Company's request for dismissal of the Complaint with prejudice, counsel to PGW observed that the Complainant's account balance was \$26,598.97 and the Complainant had made only four payments on her account since May 2019. Tr. 7. Counsel argued that the Complainant's repeated filing of informal and formal complaints demonstrated a pattern of action deliberately designed to delay or prevent termination of service. Tr. 7. Ms. Christlieb noted that the Complainant's current account was activated after a bankruptcy filing by the Complainant. Tr. 7. She also noted that although the Complainant's account was active for four years and nine months; however, as the result of the timing of multiple filings made by the Complainant, PGW was precluded from taking action to terminate the account for most of that time. Tr. 7-9.

The record closed on February 22, 2024, upon receipt of the transcript for the hearing. To date, no communication has been received by the undersigned or the Office of

Administrative Law Judge regarding Complainant's absence from the February 1, 2024 hearing. This decision grants PGW's Motion.

FINDINGS OF FACT

1. The Complainant is Jaycinah Simon.
2. The Respondent is Philadelphia Gas Works.
3. Respondent provided gas service to Complainant.
4. On October 11, 2023, Ms. Simon filed a Formal Complaint against Respondent.
5. On November 15, 2023, Respondent timely filed an Answer with New Matter to the Complaint.
6. On December 18, 2023, an Initial Call-In Telephonic Hearing Notice was served on the Complainant via U.S. First-Class Mail and eServed on the Company scheduling an initial telephonic hearing on February 1, 2024, at 10:00 a.m., and assigning me as the presiding officer.
7. On December 29, 2023, a Prehearing Order was served on the Complainant via U.S. First-Class Mail and eServed on the Company which, *inter alia*, reminded the parties of the date and time of the scheduled hearing and the telephone number to call, and the passcode to enter, to participate in the hearing.
8. Both the Hearing Notice and the Prehearing Order provided certain hearing information and rules that would govern the proceeding including how to request a continuance, if necessary, and warned of the consequences of failing to appear at the hearing and present evidence, including the dismissal of the Complaint.

9. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.

10. On February 1, 2024, the Complainant failed to appear and participate in the scheduled hearing.

11. To date, Complainant has not contacted the undersigned or the Office of Administrative Law Judge to explain why her failure to appear at the hearing was unavoidable.

DISCUSSION

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) (*Schneider*). This due process requirement is satisfied when the parties are provided notice and the opportunity to be heard. *Id.* As the proponent of any request for 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). Additionally, the Commission's decision must be supported by substantial evidence. 2 Pa.C.S. § 704.

The Commission is required to fix the time and place of a hearing in a complaint proceeding and serve notice thereof upon the parties in interest. 66 Pa.C.S. § 703(a)-(b). Service on interested persons is sufficient to provide notice. 52 Pa. Code § 5.61(a). As the Commission explained, “[i]t is well-established law that once timely notice of a hearing and the opportunity to be heard have been provided, it is the responsibility of the parties to be present and participate in the hearing.” *Mumma v. UGI Elec. Utils. Corp.*, No. C-00014869 at 3 (Opinion and Order entered Jan. 28, 2002) (citing *Schneider*).

In the instant case, the December 18, 2023, Hearing Notice scheduled a hearing on February 1, 2024, and included the telephone number to call, and the passcode to enter, for the parties to participate in the hearing. Further, a Prehearing Order dated December 29,

2023, was served on the Complainant which, *inter alia*, reminded the parties of the date and time of the scheduled hearing and the telephone number to call, and the passcode to enter, to participate in the hearing. Additionally, the Prehearing Order provided certain hearing information and rules that would govern the proceeding including how to request a continuance, if necessary, and the consequences of failing to appear at the hearing and present evidence including the dismissal of the complaint.

Both the Hearing Notice and Prehearing Order were served by U.S. First-Class Mail to the address provided by the Complainant on the complaint. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable. Accordingly, it must be presumed that this mail was received by Complainant. *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).

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, not be permitted thereafter to reopen the disposition of the matter accomplished at the hearing, and not be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f), 52 Pa. Code § 5.245(a). However, neither of these provisions apply if the presiding officer determines that the failure to appear 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).

To date, no communication has been received by the undersigned or the Office of Administrative Law Judge regarding Complainant's absence. Therefore, I find that Complainant waived the opportunity to participate in a hearing on the matters raised in the complaint and Complainant's absence was not unavoidable. Thus, by her failure to appear, Complainant did not meet her burden of proof.

Consequently, it is appropriate to dismiss Ms. Simon's Complaint. As the Commission has explained, where a complainant fails to appear for a scheduled hearing without good cause, the public interest is prejudiced by the wasteful use of the agency's and the respondent's time and resources. *See, e.g., Elliott v. Pa. Elec. Co.*, No. F-2018-3003502 (Opinion and Order entered Feb. 6, 2020) and the cases cited therein.

Accordingly, Respondent's Motion to dismiss the Complaint 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 mailed via U.S. First-Class Mail to a party and not returned to the Commission as undeliverable is presumed received. *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).

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, not be permitted thereafter to reopen the disposition of the matter accomplished at the hearing, and not be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f), 52 Pa. Code § 5.245(a).

5. If the presiding officer determines that the failure to be represented 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, the presiding officer may find that a party did not waive the opportunity to participate in the hearing. 66 Pa.C.S. § 332(f), 52 Pa. Code § 5.245(b).

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. The Complainant has failed to meet her burden of proof in this proceeding. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Philadelphia Gas Works to dismiss with prejudice the Formal Complaint of Jaycinah Simon at Docket No. F-2023-3043721 is granted.
2. That the Formal Complaint of Jaycinah Simon in Jaycinah Simon v. Philadelphia Gas Works at Docket No. F-2023-3043721 is dismissed with prejudice.
3. That the docket at Docket No. F-2023-3043721 be marked closed.

Date: May 21, 2024

_____/s/_____
Arlene Ashton
Administrative Law Judge