

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Melvin A. Roach, Jr.

v.

Philadelphia Gas Works

:  
:  
:  
:  
:  
:

C-2023-3043498

**INITIAL DECISION**

Before  
Darlene Davis Heep  
Administrative Law Judge

**INTRODUCTION**

This Decision grants the Respondent’s motion to dismiss because the Complainant failed to appear for the hearing.

**HISTORY OF THE PROCEEDING**

On October 12, 2023, Melvin A. Roach, Jr. (Mr. Roach or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission against Philadelphia Gas Works (PGW or Respondent). On the Formal Complaint form, Mr. Roach checked the box indicating that the utility was threatening or had already shut off his service. Under “Other,” Mr. Roach questioned the legality of financial transactions and obligations that transpired between him and PGW.

In his Complaint, Mr. Roach selected the option to receive all communications from the Commission via eService through an eFiling account he registered with the Commission.

On November 2, 2023, Respondent PGW filed its Answer, New Matter and a Preliminary Objection. In its Answer, PGW admitted that the Company issued a shut off notice for the service address. PGW also asserted that the bills issued were based on actual meter readings. In its New Matter, PGW argued that the Commission lacks jurisdiction over the Complaint because the allegations arise out of “the UCC and regulations pertaining to the FTC, CFPB and TILA,” federal matters. In its Preliminary Objection filed on November 2, 2023, PGW again asserted that the Commission lacks jurisdiction over federal claims.

On December 6, 2023, a Call-In Hearing Notice was issued to all parties, setting an Initial Telephonic Hearing for February 19, 2024. Due to a scheduling conflict, a Call-In Telephone Cancellation/Reschedule Hearing Notice was issued on December 29, 2023, which rescheduled the telephonic hearing for February 27, 2024. A Prehearing Order was issued dated January 22, 2024.

All Hearing Notices and Prehearing Orders were eServed to the Complainant at the email address that he registered with the Commission. No documents were returned to the Commission as undeliverable.

The hearing was held on February 27, 2024 as scheduled. Mr. Roach did not call in to the telephonic hearing. Anita Murray, Esquire, appeared on behalf of PGW with a witness prepared to proceed.

A short recess was taken to allow the Complainant time to call in to the hearing. When the hearing resumed at 10:15 a.m., the Complainant had not called in. Attorney Murray moved that the matter be dismissed for failure to prosecute, which was taken under advisement. The Complainant had not called in by the time the hearing ended at 10:20 a.m. To date, the Complainant has not contacted the Commission to explain why his failure to appear for the hearing was unavoidable.

The record closed on March 28, 2024 when the transcript was received.

## FINDINGS OF FACT

1. The Complainant is Melvin Roach, Jr., a Philadelphia Gas Works customer on Hunter Street in Philadelphia, Pennsylvania.
2. Philadelphia Gas Works is the Respondent.
3. On October 12, 2023, the Complainant filed a Formal Complaint.
4. On November 2, 2023, the Respondent filed an Answer, New Matter, and a Preliminary Objection.
5. On December 29, 2023, a Call-In Telephone Cancellation/Reschedule Hearing Notice was issued to all parties, setting a hearing for February 27, 2024, beginning at 10:00 a.m.
6. The Hearing Notice included the date and time of the telephonic hearing as well as dial in information and instructions.
7. The Hearing Notice advised all parties:

[y]ou 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.
8. A Prehearing Order dated January 22, 2024 was issued, which advised the Complainant of the procedures and stated the date and time of the hearing and dial in information.

9. The Prehearing Order also stated:

**FAILURE TO APPEAR:** You may lose the case if you do not take part in this hearing and present evidence on the issues 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.

10. The hearing began as scheduled on February 27, 2024.

11. Counsel for PGW dialed in for the February 27, 2024 hearing.

12. The Complainant was not present when the telephonic hearing began at 10:00 a.m. on February 27, 2024.

13. A recess was taken to allow the Complainant time to call in to the hearing.

14. The hearing resumed at 10:15 a.m. and the Complainant had not called in to the hearing.

15. Counsel for PGW made a motion to dismiss the Complaint for failure to prosecute, which was taken under advisement.

16. The Complainant had not called into the hearing when the hearing adjourned at 10:20 a.m.

17. On the Formal Complaint form, Mr. Roach selected to receive documents by eService.

18. Both the Hearing Notice and Prehearing Order were eServed on Complainant to the email address Complainant registered with the Commission.

19. None of the documents sent to the Complainant were returned to the Office of Administrative Law Judge (OALJ) as undeliverable.

20. Mr. Roach has not contacted the OALJ to explain why his failure to appear at the hearing was unavoidable.

### DISCUSSION

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 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). The essential elements of due process in an administrative proceeding are notice and an opportunity to be heard. *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (Pa. Cmwlth. 2016). Further, electronic service which is not indicated undeliverable is presumed to be received by the parties. *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) (*Morella*).

On the Complaint form, Mr. Roach selected eService as the method to receive all documents from the Commission. The Hearing Notice and the Prehearing Order were sent to the Complainant electronically to the email address that he registered with the Commission. Both documents contained the date, time, and call-in information for the hearing and advised the Complainant that he may lose the case if he did not take part in this hearing and present evidence on the issues raised. None of the documents were returned as undeliverable. It is therefore presumed that the Complainant received these documents and had notice of the date and time of the scheduled hearing. *Morella*. The Complainant did not request a continuance and has not contacted the OALJ L to explain why his failure to appear at the hearing was unavoidable.

As the Commission noted in *Strydio v. PPL Electric Utilities Corp.*, Docket No. C-2017-2633043, p. 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 scheduled hearing and did not appear. To date, the Complainant has not contacted the Commission or the undersigned to explain why his failure to appear at the hearing was unavoidable.<sup>1</sup> The Complainant has waived the opportunity to participate in the hearing by failing to appear. 52 Pa. Code § 5.245(a); *Jefferson v. UGI Utils., Inc.*, 1995 Pa.P.U.C. LEXIS 159 (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. As the party bringing this Complaint, the Complainant bears the burden of proving by a preponderance of the evidence that he is entitled to the relief requested. 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). By failing to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden. Therefore, the Complaint will be dismissed. *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.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.

---

<sup>1</sup> 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).

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

5. After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will be deemed to have waived the opportunity to participate in the conference or hearing. 52 Pa. Code § 5.245(a)(1).

6. The Complainant's due process rights have been fully protected. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993).

7. By failing to appear for the hearing, the Complainant failed to carry his 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 the Formal Complaint of Melvin A. Roach, Jr. at Docket No. C-2023-3043498 is granted.

2. That the Formal Complaint filed by Melvin A. Roach, Jr. in Melvin A. Roach, Jr. v. Philadelphia Gas works at Docket No. C-2023-3043498 is dismissed.

3. That the Secretary's Bureau should mark this matter closed.

Date: June 25, 2024

\_\_\_\_\_/s/  
Darlene Davis Heep  
Administrative Law Judge