

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Milton Brown	:	
	:	
v.	:	C-2023-3044085
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint of Milton Brown against Philadelphia Gas Works because he failed to appear for his hearing and prosecute his Complaint.

HISTORY OF THE PROCEEDING

On October 26, 2023, Milton Brown (Complainant or Mr. Brown) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (PGW or Respondent), indicating that there were incorrect charges on his bills and requesting a payment arrangement.

On November 27, 2023¹, Respondent filed an Answer denying the material allegations of the Complaint.

¹ The Complaint was served on the Respondent by the Secretary's Bureau on November 6, 2023.

On November 30, 2023, the Commission issued an Initial Call-In Telephonic Hearing Notice, and the matter was scheduled for hearing on January 22, 2024, at 10:00 a.m. The case was assigned to me. The 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 December 4, 2024.² 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

On January 16, 2024, PGW filed a Motion for Continuance requesting a continuance due to the fact that it was still in the process of investigating the Complainant’s Formal Complaint. I granted the request via Order dated January 18, 2024.

On January 22, 2024, a Hearing Cancellation/Reschedule Notice was issued which indicated that the matter was rescheduled for a new initial hearing date of March 4, 2024, at 10:00 a.m. The Notice again contained the same warning regarding failure to appear for the hearing.

On February 27, 2024, Counsel for PGW contacted my office via email and stated that the Complainant had reached out to them regarding his inability to make the March 4, 2024 hearing date. He indicated that he did not have email but wanted to request a continuance due to a medical appointment he had on the same date. Counsel for PGW indicated that they had no

² The December 4, 2024 Prehearing Order listed an incorrect hearing date. A Corrected Prehearing Order was issued on January 16, 2024, which corrected the hearing date. All other information was correct.

³ The Complainant accepts First-Class Mail delivery for service. There was no indication that the Hearing Notice or Prehearing Order were undeliverable.

objection to the Complainant's request. On March 1, 2024, I granted the request and had my office reach out to the parties to let them know as such.

On March 4, 2024, a second Hearing Cancellation/Reschedule Notice was issued which indicated that a new initial hearing would be held on April 1, 2024, at 10:00 a.m. Again, the Notice indicated the same warning regarding failure to appear for the hearing.

The hearing began on April 1, 2024, as scheduled. Counsel for PGW was present with a witness and was prepared to proceed. The Complainant failed to call into the hearing.

No witnesses were presented, and no exhibits were introduced into the record. Counsel for PGW moved that the Complaint be dismissed for lack of prosecution pursuant to 52 Pa. Code § 5.245. In accordance with Commission policy, I am granting the Motion.

The record closed on April 26, 2024, upon my receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is Milton Brown.
2. The Respondent is Philadelphia Gas Works.
3. On October 26, 2023, Mr. Brown filed a Complaint with the Commission against the Respondent.
4. On November 27, 2023, the Respondent filed an Answer to the Complaint.
5. On November 30, 2023, the Commission issued an Initial Call-In Telephonic Hearing Notice, and the matter was scheduled for hearing on January 22, 2024, at 10:00 a.m.

6. On December 4, 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. On January 16, 2024, PGW filed a Motion for Continuance requesting a continuance because it was still in the process of investigating the Complainant's Formal Complaint. I granted the request via Order dated January 18, 2024.

8. On January 22, 2024, a Hearing Cancellation/Reschedule Notice was issued which indicated that the matter was rescheduled for a new initial hearing date of March 4, 2024 at 10:00 a.m., which contained the same warning regarding failure to appear for the hearing.

9. On March 1, 2024, I granted the Complainant's request for a continuance of the hearing and had my office reach out to the parties to let them know as such.

10. On March 4, 2024, a second Hearing Cancellation/Reschedule Notice was issued that indicated that a new initial hearing would be held on April 1, 2024 at 10:00 a.m., which again contained the same warning regarding failure to appear for the hearing.

11. Both the Hearing Notices and Prehearing Order contained the warning that failing to appear at the hearing could result in the case being dismissed with prejudice.

12. The Hearing Notices and Prehearing Order were served on the Complainant via First-Class Mail as he requested on page 6 of his Complaint.

13. The Hearing Notices and Prehearing Order sent to the Complainant were not returned by the U.S. Postal Service as being undeliverable.

14. The Complainant failed to appear at the April 1, 2024, hearing.

15. The Complainant did not settle or withdraw this Complaint prior to the scheduled hearing date or obtain a continuance.

16. The Complainant has not contacted the Commission 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). “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. Cmwlt. 1984).

The Commission served notice of the April 1, 2024 hearing in this case to the Complainant on March 4, 2024, via First-Class Mail which the Complainant selected as his preferred method of service of documents from the Commission. 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 prior Prehearing Order dated December 4, 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 First-Class Mail, was never returned as undeliverable. The Prehearing Order also included the instructions for requesting a continuance or postponement of the hearing. Accordingly, I must presume that the Hearing Notice and

Prehearing Order, which were sent in the ordinary course of business, were received by the 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). 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). There is nothing in the record to indicate that the Hearing Notice and Prehearing Order were not received by the Complainant.

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).

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 April 1, 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. Brown's Complaint.

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 First-Class 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. *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).

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. 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).

8. 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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Philadelphia Gas Works to dismiss the Formal Complaint filed by Milton Brown at Docket No. C-2023-3044085 is granted.
2. That the Formal Complaint of Milton Brown in *Milton Brown v. Philadelphia Gas Works* at Docket No. C-2023-3044085 is dismissed without prejudice.
3. That Docket No. C-2023-3044085 be marked closed.

Date: July 24, 2024

_____/s/
Marta Guhl
Administrative Law Judge