

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17120**

Public Meeting held August 1, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair, Verbal Statement
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

Kaleel Vinson

C-2023-3043494

v.

UGI Utilities, Inc.

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Kaleel Vinson (Kaleel Vinson or Complainant) filed on May 29, 2024,¹ to the Initial Decision (I.D.) of Administrative

¹ Although the Complainant filed Exceptions with the Commission's Secretary's Bureau on May 29, 2024, the Exceptions did not contain a certificate of service or any other indication that the parties of record to the case were served. Because the Complainant is not represented by an attorney, the Commission's Secretary's Bureau served a copy of the Exceptions on UGI Utilities, Inc. (UGI or Respondent) on May 31, 2024. In order to avoid prejudice to either Party, pursuant to 52 Pa. Code § 5.535, UGI was given until June 10, 2024, to file Replies to Exceptions.

Law Judge (ALJ) Eranda Vero issued May 9, 2024, in the above-captioned proceeding. Replies to the Exceptions of the Complainant were received from the Respondent on June 4, 2024. For the reasons stated below, we shall deny the Exceptions of the Complainant and dismiss the Formal Complaint (Complaint).

I. History of the Proceeding

On September 29, 2023, the Complainant filed a Formal Complaint (Complaint)² against UGI Utilities, Inc. (UGI or the Company) with the Commission. In the Complaint, Kaleel Vinson indicated that UGI is threatening to shut off or had already shut off the electric service at the service address and the Complainant requested a payment arrangement on an arrearage of \$5,000. Complaint at 2-3.

UGI filed an Answer admitting that the Complainant's service was terminated on July 20, 2023 for "repeated and persistent failure to pay monthly bills in full and on a timely basis." Answer at 1. The Company averred that the Complainant's service was restored on July 24, 2023 with a third and final medical certification that expired on August 21, 2023. *Id.* UGI also averred that the Complainant was provided with two company payment arrangements and an appropriate payment arrangement by BCS³ that were not honored by the Complainant. In addition, UGI averred that the Complainant is required to pay the full account balance of \$5,778, plus a \$182.00 security deposit, and an additional \$20.00 in past due returned payment fees. Answer

² This Complaint arises from an untimely appeal of a Bureau of Consumer Services' (BCS) determination on August 16, 2023, in BCS Case No. 3925996, which determined that service was restored on July 24, 2023 with the submission of a medical certificate. Appeal of a BCS informal complaint decision is a *de novo* review conducted by either an ALJ or a special agent. 52 Pa. Code § 56.173(a).

³ UGI stated that the Commission-issued payment arrangement, issued through BCS, was based on the Complainant's reported income and appropriate guidelines and, therefore, under Section 1405(D) of Chapter 14, the Complainant should not be entitled to another payment arrangement. *See*, 66 Pa.C.S. § 1405(D).

at 1. UGI requested that any scheduled hearings in this proceeding be conducted electronically. *Id.* at 2.

By Hearing Notice dated November 3, 2023, an initial telephonic hearing was scheduled for January 10, 2024, at 10:00 a.m., and the matter was assigned to the ALJ. The Hearing Notice advised the Parties of the date, time, and dial-in number for the scheduled hearing and warned of the consequences of failing to appear, which includes the dismissal of the case if a Party is not present and prepared to go forward with the case when it is called. Hearing Notice at 1.

On December 11, 2023, the ALJ issued a Prehearing Order which reminded the Parties of the date, time, and dial-in number for the scheduled hearing and included instructions on how to call in for the hearing. Prehearing Order at 1. The Prehearing Order informed the Parties about the applicable procedural rules and guidelines for the proceeding, including the procedure to request a change of the scheduled hearing date. Furthermore, the Prehearing Order warned of the consequences of a Party failing to appear; specifically, that a Party may lose the case if it does not take part in the hearing and present evidence on the issue raised. Prehearing Order at 1.

The evidentiary hearing convened on January 10, 2024, as scheduled. Counsel for UGI was present along with one potential witness. The Complainant did not appear. Due to the Complainant's absence, the hearing was recessed for approximately fifteen minutes to allow the Complainant additional time to appear. I.D. at 2. The hearing reconvened at 10:16 a.m. and Kaleel Vinson had still not appeared or contacted the Office of Administrative Law Judge to indicate whether the Complainant would or would not appear. Counsel for UGI moved to dismiss the Complaint, with prejudice. Tr. at 5. The ALJ granted the Company's motion to dismiss the Complaint but did so, without prejudice. *Id.* at 6; I.D. at 7.

The record closed at the conclusion of the hearing on January 10, 2024.

On May 9, 2024, the Commission issued the Initial Decision of ALJ Vero, wherein she recommended that the Complaint be dismissed for failure of the Complainant to appear at the hearing and prosecute the Complaint. I.D. at 6, 7.

As noted, *supra*, the Complainant filed Exceptions on May 29, 2024. UGI filed its Reply Exceptions on June 4, 2024.

II. Discussion

A. Legal Standards

1. Due Process

As an administrative agency of the Commonwealth, the Commission is required to provide due process to the parties appearing before it. Due process is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. PUC*, 479 A.2d 10, 15 (Pa. Cmwlth. 1984) (*Schneider*). The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Montefiore Hospital Ass'n of Western Pennsylvania v. Pa. PUC*, 421 A.2d 481, 484 (Pa. Cmwlth. 1980).

The Commission is required to fix the time and place of a hearing in a complaint proceeding and to serve notice thereof upon the parties in interest. *See*, 66 Pa.C.S. § 703(a)-(b). Service on interested persons is sufficient to provide notice. 52 Pa. Code § 5.201(a).

Once a hearing is scheduled and duly notified by the Commission, it is the responsibility of the parties to appear and participate in the hearing. *Mumma v. PPL Electric Utilities Corporation*, Docket No. C-00014869 (Opinion and Order entered January 24, 2002); *Sentner v. Bell Tel. Co. of PA*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993).

A party to a proceeding has the right to request a continuance of the hearing, which may be considered and granted by the presiding officer “only for good cause shown.” *See*, 52 Pa. Code § 1.15(b). The party making the request must file a motion at least five days prior to the hearing date stating the facts on which the request is made, except that during a hearing, an oral request for hearing continuance may be made before the presiding officer in the hearing room. 52 Pa. Code § 1.15(b).

If a party fails to appear at a scheduled and duly notified hearing, the party will be deemed to have waived the opportunity to participate in a hearing in the matter. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a)-(b). This result is not applied to the party, however, if the presiding officer determines that the party’s failure to appear was “unavoidable” and the interests of the other party (or parties) and the public will not be “prejudiced” by permitting the reopening or further examination. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a)-(b). Also, this result may not be applied if the presiding officer of the Commission determines that the complainant demonstrated a good faith attempt to attend the hearing. *See, e.g., Yomari Then v. Philadelphia Gas Works*, Docket No. F-2012-2318264 (Opinion and Order entered June 13, 2013); *see also, Windell C. Wiggins v. PECO Energy Company*, Docket No. C-2010-2190335 (Opinion and Order entered October 27, 2011).

The public interest is prejudiced by the wasteful use of the agency’s and the respondent’s time and resources in addressing a complaint. *See, Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Opinion and Order entered

December 26, 1995); *see also, e.g., Charles Nichols III v. Bell-Atlantic-Pennsylvania*, Docket No. C-00956667 (Opinion and Order entered August 4, 1995).

2. Burden of Proof

As the party seeking affirmative relief from the Commission, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Code. 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant, as the party seeking relief, must show that UGI is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by UGI. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, to rebut the evidence of the Complainant, shifts to UGI. If the evidence presented by UGI is of co-equal weight, the Complainant has not satisfied the burden of proof. The Complainant now has to provide some additional evidence to rebut that of UGI. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the

party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

B. Initial Decision

The ALJ made twelve Findings of Fact and reached six Conclusions of Law. I.D. at 2-4; 6. We shall adopt and incorporate herein by reference the ALJ's Findings of Fact and Conclusions of Law, unless they are reversed or modified by this Opinion and Order, either expressly or by necessary implication.

In recommending that the Commission dismiss the Complaint, the ALJ found that Kaleel Vinson was unable to sustain the burden of proof because the Complainant failed to participate in the hearing. The ALJ stated that the Commission sent a Hearing Notice to the Complainant and the ALJ issued a Prehearing Order, both served on the Complainant by U.S. First-Class Mail at the address provided in the Complaint, but which were never returned as undeliverable. I.D. at 3. Therefore, the ALJ presumed that the documents were received by the Complainant and that Kaleel Vinson had notice of the date and time and participation information for the January 10, 2024 hearing. I.D. at 4 (citations omitted).

Furthermore, the ALJ found that the Complainant did not appear for the hearing and had been advised, by the Hearing Notice and Prehearing Order, that the case could be dismissed for failure to call-in and participate in the Hearing. The ALJ noted that both the Pennsylvania Public Utility Code (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. I.D. at 5, 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a). The ALJ concluded that the Complainant, by failing to participate and proffer any evidence to support the Complaint, has failed to

meet the burden of proof. I.D. at 5. The ALJ ultimately granted UGI's motion to dismiss but determined that it be dismissed without prejudice. I.D. at 5-6.

C. Exceptions and Reply to Exceptions

The Complainant's Exceptions⁴ consist of a one sentence handwritten note appealing "this decision due to me not having a phone on the date of the hearing." Exc. at 1. The Complainant notes this on a copy of page 7 of the Initial Decision which sets forth the Ordering Paragraphs provided therein. The Exception was signed by the Complainant.

In its Reply Exceptions, UGI argues that the Complainant has failed to raise any new issues in the Exceptions to the Initial Decision. UGI states that the Complainant's failure to obtain access to a telephone on the scheduled and noticed date of the hearing is not a justification for scheduling another hearing in this matter. UGI notes that it was prepared and ready to go forward with the hearing on the scheduled date and the Complainant's Exception should not be a basis for an additional hearing. Rather, UGI requests that the Complainant's Exception be denied and that the Commission adopt, without modification, the Initial Decision of the ALJ in this proceeding. R. Exc. at 1.

D. Disposition

As a preliminary matter, we note that any argument or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied

⁵ Section 5.533(b) of our Regulations requires that each exception be numbered and identify the finding of fact and conclusion of law to which exception is taken and cite to the relevant pages of the Initial Decision. *See*, 52 Pa. Code § 5.533(b). Nevertheless, recognizing that the Complainant is appearing *pro se*, we will accept the Exceptions as filed, pursuant to Section 1.2(a) of our Regulations, and consider the merits.

without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

Where a party fails to appear at a hearing, the failure to appear is deemed to be a waiver of the right to present evidence to support claims in the complaint if the party was afforded due process, and the reason for failing to appear was not established as unavoidable. We also note that it is within the sound discretion of the ALJ to decide whether a complainant's failure to appear was unavoidable and whether permitting a hearing would prejudice the public interest or the interest of the other party. *See*, 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a), (b). Upon a complainant's failure to appear, it is for the ALJ to weigh whether that failure should be deemed the complainant's waiver of the opportunity to participate in a hearing in a complaint proceeding, pursuant to 66 Pa.C.S. § 331(d) (pertaining to authority of the ALJ as presiding officer). In so doing, the ALJ must, as a preliminary matter, ensure that the complainant has been afforded due process. The ALJ must ensure that notice and opportunity to be heard has been afforded, both in the proceeding in general and specifically, with respect to the hearing at which the Complainant has failed to appear. *See, Schneider, Montefiore*.

On this point, we agree with the ALJ that the Complainant's due process rights to notice and opportunity to be heard were accommodated and preserved throughout the underlying proceeding. The Hearing Notice dated November 3, 2023, advised the Parties of the date, time, and dial-in number for the scheduled hearing and warned of the consequences of failing to appear:

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.

Hearing Notice at 1 (emphasis in original).

In addition, the Prehearing Order issued by the ALJ on December 11, 2023, again reminded the Parties of the date, time, and dial-in number for the scheduled hearing. The Prehearing Order also gave a similar warning to the participants regarding the consequences of failing to appear. Finally, the Prehearing Order gave specific instructions on how to participate in the hearing:

To participate in the hearing, **you must dial the toll-free number listed below. You will be prompted to enter a PIN number, which is also listed below. You will be asked to speak your name, press the # key, and then the telephone system will connect you to the hearing.** If you have any witnesses you want to have present during the hearing who are participating from a separate phone, you must provide them with the telephone number and PIN Number.

Prehearing Order at 1 (emphasis added).

On review, we concur with the ALJ's finding that both the Hearing Notice and the Prehearing Order were served on the Complainant, and neither was returned as undeliverable. The Hearing Notice and Prehearing Order advised the Parties of the date, time, and the *dial-in number* for the scheduled hearing. Importantly, each of these documents also specified that the Complainant could lose the case through dismissal as a consequence of failing to appear.

In addition, the Complainant's Exception was written on page 7 of the Initial Decision further verifying that the Complainant was in receipt of the documents sent by the Commission in this matter. The Complainant also included a copy of the

priority mail envelope with the Exception verifying the Complainant's address that has been on file with the Commission during this proceeding. Exc. at 2.

We find that the Complainant received proper notice and was reminded of the scheduled hearing date and given the dial-in number with instruction on how to participate in the hearing as stated in the previously mentioned Hearing Notice and Prehearing Order. The Complainant failed to appear for the hearing and prosecute the Complaint, or to make any attempt to notify the ALJ of the inability to participate in the hearing on January 10, 2024. The Complainant also did not request a continuance from the ALJ knowing of the possible inability to access a phone on the prescribed date of the hearing. Thus, we concur with the ALJ that the Complainant's due process rights have been preserved and protected.

We further agree with the ALJs' finding that, having been provided notice and an opportunity to be heard but failing to appear and proffer any evidence to support the Complaint, the Complainant waived the right to present evidence in the proceeding and, therefore, failed to meet the required burden of proof. We agree with the ALJ's conclusion that the failure of the Complainant to appear at the scheduled hearing is unexcused, and that by failing to attend the hearing and present evidence on the issues raised, the Complainant failed to sustain the burden of proof.

For the reasons set forth above, we agree with the ALJ that the Complainant waived the opportunity to participate in the hearing by failing to appear. By failing to appear and offer evidence to support the Complaint, the Complainant has failed to meet the burden of proof that is placed on him/her under the Code to satisfy the request for relief. We further find that the Commission cannot grant a payment arrangement as requested by Kaleel Vinson because the Complainant failed to appear at the scheduled

hearing to present evidence whether an additional payment arrangement is permitted in this case.⁵

Consequently, the ALJ's recommendation to dismiss the Complaint, without prejudice,⁶ is affirmed. Accordingly, the Complainant's Exceptions shall be denied.

III. Conclusion

Upon review and consideration of the record in this proceeding, we shall deny the Exceptions of Kaleel Vinson and adopt the ALJ's Initial Decision that dismisses the Complaint for failure of the Complainant to appear for the hearing and prosecute the Complaint, consistent with this Opinion and Order; **THEREFORE,**

⁵ In accordance with Section 1405(d) of the Code, absent a change in income, the Commission shall not establish or order a public utility to establish a second or subsequent payment arrangement if a customer has defaulted on a previous arrangement established by a Commission order or decision. 66 Pa.C.S. § 1405(d).


⁶ On April 20, 2023, the Commission adopted an order that determined it is inconsistent with due process to dismiss a formal complaint, with prejudice, in which a *pro se* complainant fails to appear at a hearing when the complainant has not affirmatively agreed to accept service via email. In addition, the Commission's order noted that there is no need to close the door to this venue to *pro se* complainants unless record evidence shows that they are abusing the Commission's administrative process to avoid paying their utility bills. *See, Hoyt v. Columbia Gas of Pa., Inc.*, Docket No. F-2022-3032680 (Order entered April 20, 2023). We note that, in the present case, the Opinion and Order in *Hoyt* is distinguishable since the Complainant agreed to first class mail for the service of documents.

IT IS ORDERED:

1. That the Exceptions of Kaleel Vinson, filed on May 29, 2024, to the Initial Decision of Administrative Law Judge Eranda Vero are denied, consistent with this Opinion and Order.
2. That the Initial Decision of Administrative Law Judge Erando Vero, issued on May 9, 2024, is adopted, consistent with this Opinion and Order.
3. That, pursuant to 66 Pa.C.S. § 332(f) and 52 Pa. Code § 5.245, the Complainant, Kaleel Vinson, is deemed to have waived the opportunity to participate in a hearing regarding the Formal Complaint filed on September 29, 2023.
4. That the Formal Complaint filed by Kaleel Vinson on September 29, 2023, against UGI Utilities Inc. at Docket No. C-2023-3043494, is denied, and dismissed without prejudice, consistent with this Opinion and Order.

5. That this proceeding at Docket No. C-2023-3043494, be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is written in a cursive, flowing style.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: August 1, 2024

ORDER ENTERED: August 1, 2024