

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Chrystalyn White	:	
	:	C-2024-3046860
v.	:	
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Darlene Davis Heep
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On February 23, 2024, Chrystalyn White (Ms. White or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission against Philadelphia Gas Works (PGW or Respondent). On the Complaint form, Ms. White stated that there are incorrect charges on her bills and that she opposed a rate increase.

On March 18, 2024, Respondent PGW filed its Answer, denying that there are incorrect charges on the bills issued.

On March 26, 2024, a Hearing Notice was eServed to all parties, setting an Initial Telephonic Hearing for May 13, 2024, starting at 10:00 a.m.¹

On April 2, 2024, a Prehearing Order was issued. The Prehearing Order was eServed on the parties. The Prehearing Order advised the Complainant of the procedures, stated the date and time of the hearing, and gave specific dial-in instructions.

The hearing began as scheduled on May 13, 2024, at 10:00 a.m. Anita Murray, Esquire represented PGW. The Complainant did not call in for the hearing. A recess was taken to allow the Complainant time to call into the hearing.

The hearing resumed at 10:15 a.m. The Complainant had not called in. Counsel for PGW moved that the Complaint be dismissed for failure to prosecute. The matter was taken under advisement.

The record closed as of May 22, 2024, when the 7-page transcript was received.

FINDINGS OF FACT

1. The Complainant is Chrystalyn White, a PGW customer in Philadelphia, Pennsylvania.
2. Philadelphia Gas Works is the Respondent.
3. On February 23, 2024, the Complainant filed a Formal Complaint against PGW.
4. The Respondent filed an Answer on March 18, 2024.

¹ The Complainant selected eService as her preferred method of service for receiving documents from the Commission. Complaint, p. 6.

5. On the Complaint form, Ms. White selected eService/eFiling as the method by which she would receive all documents.

6. On March 26, 2024, a Hearing Notice was issued to all parties, setting an Initial Call-In Telephonic Hearing for May 13, 2024, beginning at 10:00 a.m.

7. The Hearing Notice advised all parties:

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.

8. On April 2, 2024, a Prehearing Order was issued, which advised the Complainant of the procedures and the date and time of the hearing and 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.

9. Counsel for PGW dialed in for the May 13, 2024 hearing at 10:00 a.m.

10. The Complainant was not present when the telephonic hearing began as scheduled on May 13, 2024.

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

12. The hearing resumed at 10:20 a.m. and the Complainant had not called in to the hearing.

13. Counsel for PGW moved to dismiss the Complaint for failure to prosecute.

14. The Complainant had not called into the hearing when the hearing adjourned at 10:21 a.m.

15. Both the Hearing Notice and Prehearing Order were eServed on the Complainant to the email address that Ms. White registered with the Commission.

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

17. Ms. White has not contacted the OALJ to explain why her 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. *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016) (*Morella*); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017).

A Hearing Notice and a Prehearing Order were sent to the Complainant. The Prehearing Order and the Hearing Notice contained information regarding the date, time and how to call in for the hearing. These documents were eServed upon the Complainant and none of these documents were returned as undeliverable. It is therefore deemed that the Complainant received these documents and had notice of the date and time of the scheduled hearing. *Morella*.

As the Commission noted in *Strydio v. PPL Elec. Utils. 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 January 24, 2002)); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 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 her failure to appear at the hearing was unavoidable.² 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). 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 entitlement to relief by a preponderance of the evidence. By failing to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden. 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.

² 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: 1) be deemed to have waived the opportunity to participate in the conference or hearing; 2) not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing; and 3) not be permitted to recall witnesses who were excused for further examination. 52 Pa. Code § 5.245(a).

6. The Complainant's due process rights have been fully protected. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Order entered Oct. 25, 1993); 52 Pa. Code § 5.245(a).

7. The Complainant failed to appear and failed to carry 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 the Formal Complaint of Chrystalyn White filed against Philadelphia Gas Works at Docket No. C-2024-3046860 is granted.

2. That the Formal Complaint filed by Chrystalyn White in Chrystalyn White v. Philadelphia Gas Works at Docket No. C-2024-3046860 is dismissed for failure to prosecute.

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

Date: August 19, 2024

_____/s/
Darlene Heep
Administrative Law Judge