

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|                        |   |                |
|------------------------|---|----------------|
| Nettie Lawrence        | : |                |
|                        | : |                |
| v.                     | : | C-2023-3044246 |
|                        | : |                |
| Philadelphia Gas Works | : |                |

**INITIAL DECISION**

Before  
F. Joseph Brady  
Administrative Law Judge

**INTRODUCTION**

This decision dismisses the Formal Complaint of Nettie Lawrence for failure to appear for the hearing and prosecute the Complaint.

**HISTORY OF THE PROCEEDING**

On November 16, 2023, Nettie Lawrence (Complainant) eFiled<sup>1</sup> a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW). In the Complaint, the Complainant placed a checkmark in the boxes indicating: “The utility is threatening to shut off my service or has already shut off my service”; “I would like a payment agreement”; and, “I am having a reliability, safety or quality problem with my utility service.”

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<sup>1</sup> The Complainant utilized the Commission’s eFile service to electronically file the Formal Complaint. When the Complainant registered for an eFile account with the Commission, the Complainant also registered an email address in order to be served Commission documents via the Commission’s eService process.

On December 6, 2023, the Respondent filed an Answer in which it denied the material allegations of fact and conclusions of law in the Complaint. The Respondent requested that the Complaint be dismissed.

By Initial Call-In Telephonic Hearing Notice dated December 7, 2023, a telephonic hearing was scheduled for January 30, 2024, and the matter was assigned to me. The Notice advised that the Complainant could lose the case for failure to participate in the hearing or present facts on the issues raised.

A Prehearing Order was issued on December 18, 2023. The Prehearing Order reminded the parties of the date and time of the hearing, directed the parties to comply with various procedural requirements, and advised that the Complainant could lose the case for failure to participate in the hearing or present facts on the issues raised.

On January 23, 2024, PGW filed a Motion for Continuance and Prehearing Conference (Motion). Counsel for PGW represented that they reached out to the Complainant to schedule an evaluation as requested in the Complaint and the Complainant stated that she needed an opportunity to speak to someone at the Commission before determining how to proceed. Counsel for PGW also represented that the Complainant agreed to convert the hearing scheduled for January 30, 2024, into a prehearing conference and reschedule the evidentiary hearing to a later date. Due to the proximity of the hearing, I planned on addressing PGW's Motion at the outset of the hearing on January 30, 2024. On January 30, 2024, Counsel for PGW called in to the hearing and was prepared to go forward with a prehearing conference. However, the Complainant did not call in to the hearing. Under these circumstances, I gave the Complainant the benefit of the doubt and granted PGW's Motion.

On February 2, 2024, I issued an Order formally granting PGW's Motion for Continuance.

By Call-In Telephone Cancellation/Reschedule Hearing Notice dated February 2, 2024, a telephonic hearing was rescheduled for April 3, 2024.

On April 3, 2024, the hearing convened as scheduled. The Complainant appeared *pro se*. Anita Murray, Esquire appeared on behalf of PGW, along with a witness. The hearing was converted to a prehearing conference in order to establish dates to have the Complainant's meter tested by PGW and for the hearing to reconvene. The parties agreed on the record to have the meter tested on April 9, 2024, and the hearing to reconvene on April 30, 2024, at 1:00 pm. Tr. 3-4.

By Further Call-In Telephonic Hearing Notice dated April 3, 2024, a telephonic hearing was scheduled for April 30, 2024, at 1:00 pm. The Hearing Notice provided the parties with the Toll-Free Bridge Number and the PIN to call and participate in the telephonic hearing. The Hearing Notice further stated as follows:

**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.

**CONTINUANCES.** You may request a continuance of the hearing if you have a good reason. All continuances will be granted only for good cause. To request a continuance, you must submit a written request (a "motion") at least five (5) days before the hearing. Your motion should include: 1) The case name, number, and hearing date; 2) The reason for the request; and 3) Whether the other party agrees (or if you do not know).

The April 3, 2024, Hearing Notice was eServed to the Complainant at the Complainant's request and in the ordinary course of the Commission's business to the email address provided by the Complainant. The Hearing Notice was not returned to the Commission as undeliverable.

On April 30, 2024, at 12:33 pm, the Complainant sent an email to Counsel for PGW and my legal assistant stating she had an emergency at her son's school and would not be able to attend the hearing. I instructed my legal assistant to inform all parties that the hearing

would go forward as scheduled and if the Complainant failed to appear, she could submit something in writing why she did not appear by 12:00 p.m. the next day. The Complainant was also instructed that she must include supporting documentation.

On April 30, 2024, the hearing convened as scheduled. Anita Murray, Esquire, appeared on behalf of PGW, along with a witness, and was ready to proceed. The Complainant was not present to start the hearing. After a short recess to allow time for the Complainant to appear, the hearing proceeded in the Complainant's absence. No testimony was taken, and no exhibits were introduced into the record. At the hearing, the Respondent moved to dismiss the Complaint for the Complainant's failure to appear and prosecute. I took this motion under advisement.

On May 1, 2024, the Complainant sent an email and attachment to Ms. Murray that reiterated she did not attend the hearing because of an issue with her son at school. Ms. Murray forwarded the email and attachment to my legal assistant. Consequently, per my instruction, my legal assistant advised the Complainant, via email, to provide a note (*i.e.* documentation) from an administrator at her son's school about the incident. The Complainant did not respond to the email and the Commission has not received any further contact by the Complainant.

The record closed on June 28, 2024, upon the filing of the transcript with the Commission.

#### FINDINGS OF FACT

1. The Complainant is Nettie Lawrence.
2. The Respondent is Philadelphia Gas Works.
3. On November 16, 2023, the Complainant filed a Formal Complaint against the Respondent.

4. On December 6, 2023, the Respondent filed an Answer to the Complaint.
5. On December 7, 2023, a Call-In Telephonic Hearing Notice was eServed on the parties scheduling an initial telephonic hearing on January 30, 2024.
6. On December 18, 2024, a Prehearing Order was eServed on the parties which reminded the parties of the date and time of the hearing.
7. On January 23, 2024, PGW filed a Motion for Continuance and Prehearing Conference.
8. On January 30, 2024, the hearing convened as scheduled.
9. Counsel for PGW called in to the January 30, 2024 hearing.
10. The Complainant did not appear at the January 30, 2024 hearing.
11. On February 2, 2024, an Order was issued granting PGW's Motion for Continuance.
12. On February 2, 2024, a Call-In Telephone Cancellation/Reschedule Hearing Notice was eServed on the parties scheduling an initial telephonic hearing on April 3, 2024.
13. On April 3, 2024, the hearing convened as scheduled and was converted to a prehearing conference wherein the parties agreed to have the meter tested on April 9, 2024, and the hearing reconvene on April 30, 2024 at 1:00 pm. Tr. 3-4.
14. On April 3, 2024, a Further Call-In Telephone Cancellation/Reschedule Hearing Notice was eServed on the parties scheduling a further hearing on April 30, 2024, at 1:00 p.m.

15. The April 3, 2024, Hearing Notice was eServed to the Complainant at the Complainant's request and in the ordinary course of the Commission's business to the email address provided by the Complainant.

16. The Hearing Notice was not returned to the Commission as undeliverable.

17. On April 30, 2024, at 12:33 pm, the Complainant sent an email to Counsel for PGW and my legal assistant stating that she had an emergency at her son's school and would not be able to attend the hearing.

18. On April 30, 2024, all parties were informed that the hearing would go forward and if the Complainant failed to appear, she could submit a reason why she failed to appear in writing with supporting documentation by 12:00 p.m. on May 1, 2024.

19. The Complainant failed to appear and participate in the scheduled telephonic hearing on April 30, 2024. Tr. 7-8.

20. Counsel for the Respondent, along with a witness, was present and prepared to proceed at the April 30, 2024, hearing. Tr. 8.

21. The Complainant has not submitted any evidence to support that there was an emergency at her son's school on April 30, 2024, that prevented her from attending the scheduled hearing.

### 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). This due process requirement is satisfied when the parties are provided notice and the opportunity to be heard. *Id.*

The record shows that Complainant was provided notice and the opportunity to be heard. First, at the April 3, 2024, prehearing conference, the Complainant agreed on the record to the hearing being reconvened on April 30, 2024 at 1:00 p.m. Second, on April 3, 2024, the Complainant was eServed a Hearing Notice which advised the parties of the date and time of the hearing, and how to participate. The Hearing Notice advised the Complainant that the case could be dismissed if the Complainant did not call in and participate in the hearing.

The Notice for the April 30, 2024 hearing was eServed and emailed to the Complainant at the email address provided by the Complainant. It was not returned as undeliverable. Accordingly, I must presume that this document, which was sent in the ordinary course of business, was received by the Complainant. *Hu v. PGW 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 Jan. 27, 2017); *Morella v. PGW Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Nov. 16, 2016).

Once a hearing is scheduled and the parties are duly notified by the Commission, it is the responsibility of the parties to appear and participate in the hearing. *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered Jan. 28, 2002). 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 and shall not be permitted to later reopen the matter or be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a). However, these provisions in the Code and in the Commission's regulations do not apply if the presiding officer determines that the party's failure to appear at the hearing 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) (*Herr*). When there are no facts in the record that the party's failure to appear was unavoidable, the complaint should

be dismissed. *Brown v. PGW 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. PGW 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).

In this case, the Complainant has failed to present evidence why her failure to appear was unavoidable despite being given ample opportunity to do so. The Complainant sent an email a half hour before the scheduled hearing stating she was unable to appear for the hearing because of an emergency at her son's school. Due to the proximity to the scheduled hearing time, the hearing went forward, and the Complainant did not appear. However, the Complainant was given the opportunity to submit in writing her reason for failing to appear with supporting documentation. The Complainant never provided the supporting documentation. The only further communication received by the Complainant was a letter sent to, and forwarded by, Counsel for PGW, wherein the Complainant again stated that she had an emergency at her son's school and could not attend the hearing but offered no corroborating documentation. To this date, the Complainant has not submitted any evidence to support her averment that the purported emergency at her son's school actually occurred. 66 Pa.C.S. § 332(a); *Herr*.

Further, I find another continuance is not warranted in this case. On January 30, 2024, Counsel for PGW appeared for the originally scheduled hearing and was prepared to proceed. However, the Complainant failed to appear. Nevertheless, the Complainant was given the benefit of the doubt, and the hearing was rescheduled for April 3, 2024. On April 3, 2024, Counsel for PGW appeared for the hearing with a witness and was prepared to proceed. This time the Complainant appeared, but prior to going on the record, she stated that she could not go forward until her meter was tested. Once again, PGW and the Commission accommodated the Complainant and converted the hearing to a prehearing conference in order to establish dates to have the Complainant's meter tested by PGW and for the hearing to reconvene. The parties agreed on the record to have the meter tested on April 9, 2024, and the Complainant agreed to reconvene the hearing for a third time on April 30, 2024. Tr. pp. 3-4. On April 30, 2024,

Counsel for PGW appeared for the hearing with a witness and was prepared to proceed but the Complainant failed to appear. To this date, the Complainant has not provided a verified reason for failing to attend the hearing. For these reasons, I find that granting another continuance to the Complainant would unduly prejudice PGW, which has already expended considerable time and resources necessary to prepare and attend the previous three hearings. I also find that the continued expenditure of resources necessary to give the Complainant another opportunity to present her case is inimical to the interests of PGW, the Commission, and the public. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(b); *Williams*, pp. 13-14.

Based on the foregoing, I find the Complainant waived the opportunity to participate in a hearing on the matters raised in the Complaint, the Complainant's absence was not unavoidable, and the Complaint should be dismissed.

Finally, Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the complainant must show that the respondent public utility is responsible or accountable for the problem described in the complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). 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).

As the proponent of any request for relief, the Complainant bears the burden of proof. By failing to participate and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden. Thus, it is appropriate to dismiss the Complaint. *Brown v. PGW Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Williams v. PGW Energy Co.*, Docket No. C-2018-300734 (Opinion and Order entered Mar. 14, 2019) (citing *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995)).

Accordingly, the Respondent's motion to dismiss 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 electronically served to a party with no notification that service failed is presumed received. *Hu v. PGW 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. PGW Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017).

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 and shall not be permitted to later reopen the matter or be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

5. If there are no facts in the record that a party's failure to appear at a hearing was unavoidable, the complaint should be dismissed. *Brown v. PGW 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. PGW 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).

6. The 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, 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).

8. By failing to participate in the hearing and proffer any evidence to support the complaint, the Complainant has failed to meet the burden of proof. 66 Pa.C.S. § 332(a).

### ORDER

THEREFORE,

IT IS ORDERED:

1. That Philadelphia Gas Works' Motion to Dismiss the Formal Complaint of Nettie Lawrence at Docket Number C-2023-3044246 is granted.

2. That the Formal Complaint filed by Nettie Lawrence in Nettie Lawrence v. Philadelphia Gas Works, Docket Number C-2023-3044246, is hereby dismissed.

3. That Docket No. C-2023-3044246 be marked closed.

Date: August 21, 2024

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/s/  
F. Joseph Brady  
Administrative Law Judge