

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

Public Meeting held August 22, 2024

Commissioners Present:

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

Christopher Haymes

F-2023-3042824

v.

Philadelphia Gas Works

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions filed by Christopher Haymes (Complainant) on April 28, 2024, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Marta Guhl, issued on April 23, 2024. Also before the Commission are the Replies to Exceptions, which were timely filed by Philadelphia Gas Works (PGW or Company) on May 23, 2024. For the reasons stated below, we shall deny the Exceptions of the Complainant and dismiss the Formal Complaint (Complaint).

I. Background

On September 6, 2023, the Complainant filed the instant Complaint with the Commission against PGW. The Complainant alleged that PGW was threatening to shut off his gas service and requested a Commission-issued payment arrangement. Complaint at 2-3.

On September 28, 2023, PGW filed an Answer and New Matter which admitted the material allegations of the Complaint and denied the Complainant's requested relief. PGW averred that the Complainant has had multiple PGW issued payment arrangements and one Commission issued payment arrangement, all of which remain unsatisfied. Additionally, PGW argued that the Complainant abused the Commission's informal and formal complaint procedures to maintain gas service for over seven years despite making twelve payments during this timeframe. PGW requested that the Commission deny all relief requested in the Complaint, dismiss the Complaint, and grant any other relief in favor of PGW as deemed appropriate. Answer at 1-2.

On November 3, 2023, the Commission issued an Initial Telephonic Hearing Notice (Hearing Notice), which scheduled a call-in telephonic hearing on January 10, 2024, at 10 a.m. Additionally, the Hearing Notice warned:

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 2.

On November 21, 2023, the ALJ issued a Prehearing Order that directed the Complainant and PGW to comply with various procedural requirements and specified how to request a change in the hearing date. It also contained the same warning as above, found in the Hearing Notice. Prehearing Order at 1-2.

On January 10, 2024, a hearing was held in this matter (Hearing). The Complainant did not appear for the Hearing. PGW was represented by counsel, presented the testimony of one witness, and offered five exhibits which were admitted into the record. Tr. at 6.

On April 23, 2024, the Commission issued the Initial Decision of ALJ Guhl in which she recommended that the Commission dismiss the Formal Complaint of Christopher Haymes against PGW because he failed to appear for the Hearing and prosecute his Complaint. Moreover, ALJ Guhl recommended that the Commission grant the Company's request to bar the Complainant from filing any further informal or formal complaints related to his outstanding balance, until such time as that balance has been paid. I.D. at 1.

As noted, *supra*, the Complainant filed Exceptions on April 28, 2024. PGW filed its Reply to Exceptions on May 23, 2024.

II. Discussion

We note that any argument or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied 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. Cmwlt. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlt. 1984).

A. Legal Standards

1. General Burden of Proof in a Complaint Proceeding

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (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 PGW 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 (1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by PGW. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (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 (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 PGW. If the evidence presented by PGW is of co-equal weight, the Complainant has not satisfied his burden of proof. The Complainant now has to provide some additional evidence to rebut that of PGW. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (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).

2. Failure to Appear at Hearing

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). Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *See, Berkowitz v. Mayflower Securities, Inc.*, 317 A.2d 584 (Pa. 1974); *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944, 946 (Pa. Cmwlth. 1994), *appeal denied*, 539 Pa. 696, 653 A.2d 1234 (1994); *Geary v. Verizon Pennsylvania Inc.*, Docket No. C-2009-2118625 (Opinion and Order entered September 16, 2010).

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 or 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) (*Yomari Then*); *see also, Windell C. Wiggins v. PECO Energy Company*, Docket No. C-2010-2190335 (Opinion and Order entered October 27, 2011) (*Wiggins*).

B. Positions of the Parties

The Complainant alleged that PGW threatened to shut off his gas service and requested a Commission-issued payment arrangement. Complaint at 2-3. As noted, *supra*, the Complainant did not appear at the Hearing. Tr. at 6-7.

At the Hearing, PGW moved to dismiss the Complaint with prejudice for failure to appear to prosecute. Alleging abuse of the Commission's complaint process, PGW also moved to preclude the Complainant from filing any further formal or informal complaints against PGW until the balance of his PGW account is paid off. Tr. at 7-8.

PGW's witness testified that on November 15, 2019, the Complainant was put on a Customer Responsibility Program (CRP)¹, at which time the Complainant had an

¹ PGW's CRP is a Customer Assistance Program (CAP). Tr. at 31-32. A CAP is an alternative collection method that provides payment assistance to low-income, payment troubled utility customers. CAP participants agree to make regular monthly payments that may be for an amount that is less than the current bill in exchange for continued provision of natural gas utility services. 52 Pa. Code § 62.2.

outstanding balance of \$2,954.66.² Upon the Complainant being placed on a CRP, PGW's witness testified the outstanding balance was placed into frozen arrears and all subsequent bills issued to the Complainant were CRP bills. As of the date of the Hearing, PGW's witness noted the Complainant's CRP balance was \$3,204, with an additional frozen arrears balance of \$1,400.61.³ Tr. at 11-12. From the date the Complainant was placed on the CRP, PGW's witness testified that he made three (3) payments. In addition, PGW's witness testified that from the time the Complainant opened his PGW account in August of 2013, until the time of the Hearing, he has only made eighteen (18) payments. Tr. at 12-13.

Next, PGW's witness testified that despite making only eighteen (18) payments over the life of the account, the Complainant has been able to maintain gas service. PGW's witness argued that the Complainant abuses the Commission's informal and formal complaint process to have holds placed on his account, preventing PGW from shutting off his gas service. Tr. at 14. In addition, PGW's witness testified that the Complainant defaulted on a Commission-issued payment arrangement, which was established in December 2016, as well as four prior PGW-issued payment arrangements, for non-payment. Tr. at 14-15, PGW Exh. 3. Finally, PGW's witness testified that from August 2017 to present, the Complainant filed eight (8) informal complaints and three (3) formal complaints. PGW's witness noted the complaints were filed after PGW issued shut-off notices to the Complainant. Based on the timing of the complaints, PGW's witness surmised the complaints were filed by the Complainant to avoid having PGW shut off his gas service. Tr. at 18-38, PGW Exh. 4.

² Page 11, line 23 of the Transcript states PGW's witness answered \$2,954.56. However, PGW Exhibit 1 shows the amount to be \$2,954.66.

³ Page 12, line 13 of the Transcript states PGW's witness answered \$1,461. However, PGW Exhibit 2 shows the amount to be \$1,400.61.

C. Initial Decision

The ALJ made fifty (50) Findings of Fact and reached nine (9) Conclusions of Law. I.D. at 3-8, 12-13. 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.

The ALJ stated that the Commission satisfies the requirement of affording a complainant with administrative due process, by providing timely notice of the hearing on the complaint and the opportunity to be heard. I.D. at 8, citing *Schneider v. Pa. PUC*, 479 A.2d 10 (Pa. Cmwlth. 1984). The ALJ noted that on November 3, 2023, the Hearing Notice was electronically served upon the Complainant at the email address he provided to the Commission. According to the ALJ, the Commission did not receive a return electronic message that delivery of the Hearing Notice to the Complainant's email address had failed. Therefore, the ALJ presumed that the Complainant received electronic notice of the hearing and elected not to participate in the hearing. I.D. at 8-9 (citing *Fonzo v. PPL Elec. Utils. Corp.*, Docket No. F-2023-3041304 (Final Order entered January 17, 2024); *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered December 19, 2019); *Zirkel v. Philadelphia Gas Works*, Docket No. C-2016-2561176 (Final Order entered April 7, 2017); *Morella v. PECO Energy Company*, Docket No. C-2016-2553416 (Final Order entered January 31, 2017)). Thus, the ALJ concluded that the Complainant had sufficient notice of the day and time of the Hearing and his failure to appear was not unavoidable. I.D. at 9.

The ALJ affirmed that 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. I.D. at 9 (citing *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993)). The ALJ further stated that Section 332(f) of the Code provides 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 9 (citing 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a)).

Finally, the ALJ stated when there are no facts in the record that the party's failure to appear was unavoidable, the complaint should be dismissed with prejudice. I.D. at 10 (citing *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered April 22, 2022); *Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F-2021- 3027107 (Opinion and Order entered February 7, 2022); *Williams v. PECO Energy Co.*, Docket No. C-2018-3000734 (Opinion and Order entered March 14, 2019); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995) (*Jefferson*); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a)).

The ALJ acknowledged that the Complainant failed to appear for the Hearing despite receiving notice and allowing additional time for the Complainant to appear.⁴ Additionally, the ALJ stated the Complainant had not communicated with either the Office of Administrative Law Judge, or the ALJ, explaining why the Complainant's failure to appear at the hearing was unavoidable. I.D. at 10.

The ALJ also noted pursuant to Section 332(a) of the Code, 66 Pa.C.S. § 332(a), the burden of proof is on the proponent of a rule or order. According to the ALJ, in this proceeding, the Complainant as the proponent of a rule or order had the burden of proving he was entitled to the relief requested in his Complaint. The ALJ concluded that because the Complainant did not appear for the Hearing, he failed to meet his burden of proof. Accordingly, the ALJ recommended that the Commission grant PGW's motion and recommended that the Commission dismiss the Complaint, with prejudice. I.D. at 10.

⁴ The Hearing was scheduled to begin at 10:00 a.m. However, the ALJ recessed for fifteen minutes to allow the Complainant extra time to call in for the Hearing. At 10:18 a.m., the ALJ noted the Complainant had not called into the Hearing.

Finally, the ALJ recommended that the Commission grant PGW's motion to bar the Complainant from filing any further informal or formal complaints related to his current outstanding balance with PGW. The ALJ stated the Complainant filed nine (9) informal complaints and three (3) formal complaints, all requesting a payment arrangement. Of the four (4) PGW-issued payment agreements and one (1) BCS-issued payment agreement, the ALJ noted the Complainant broke each payment agreement. Further, the ALJ averred that the Complainant has a poor payment history with PGW. Based on the foregoing, the ALJ concluded that the Complainant abused the administrative process to avoid paying his bills and the shut off of his service. I.D. at 11.

D. Exceptions and Reply to Exceptions

The Complainant's Exceptions consist of a one-paragraph typewritten letter in which the Complainant takes exception to the ALJ's Initial Decision.⁵ The Complainant avers that he did not know the Hearing had been scheduled. He claims at the time of his Hearing he was focused on his hospitalized wife and fighting eviction in court. The Complainant contends that he is not responsible for a portion of his PGW bill; however he wishes to pay the portion he owes. Additionally, he states his wife has a medical condition wherein gas service is required to care for her. Finally, the Complainant states he is not trying to abuse the system and asks that he have a hearing or be put on a payment arrangement. Exc. at 1.

In its Reply to Exceptions, PGW submits that the Complainant's Exceptions failed to demonstrate that the Initial Decision is unsupported by substantial

⁵ We note that the format of the Exceptions does not strictly comply with Section 5.533(b) of our Regulations, which 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. 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.

evidence and failed to identify any error of law or fact contained in the Initial Decision. PGW argues that the record contains no evidence to indicate that the Complainant's failure to appear for the telephonic hearing was unavoidable. Finally, PGW argues that the Complainant's swift reaction to the Initial Decision preventing him from filing future complaints (the abuse of process that he has used to maintain gas service), while seemingly ignoring documentation regarding how to ask for a continuance, undercuts the Complainant's argument. For these reasons, PGW requests that the Commission deny the Exceptions and adopt the Initial Decision. R. Exc. at 2-3.

E. Disposition

Whether the complainant's failure to appear at the hearing was "unavoidable" is a fact-based question. Where a complainant's failure to appear at a scheduled hearing is unavoidable, the ALJ has the discretion to recognize that, and to reschedule the hearing. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a)-(b). However, if a complainant fails to bring the situation to the attention of the presiding officer prior to the issuance of the Initial Decision, the record closes and the presiding officer can no longer exercise that discretion. *See, e.g., Alice Anderson v. PECO Energy Company*, Docket No. F-2017-2614241 (Order entered July 18, 2018).

As noted earlier, in her Initial Decision, ALJ Guhl acknowledged that on November 3, 2023, the Hearing Notice was electronically served upon the Complainant at the email address he provided to the Commission and the Commission did not receive a return electronic message that delivery of the Hearing Notice to the Complainant's email address had failed. In addition, the ALJ issued a Prehearing Order dated November 21, 2023, which warned both parties that the case may be dismissed, with prejudice, if they failed to appear and participate in the hearing. The Prehearing Order was also electronically served upon the Complainant at the email address he provided to the Commission and the Commission did not receive a return electronic message that

delivery of the Hearing Notice to the Complainant's email address had failed. Accordingly, the ALJ presumed that the Complainant received electronic notice of the hearing and elected not to participate in the hearing. In addition, as the proponent of a rule or order in this case, the Complainant bears the burden of proving he was entitled to the relief requested in his Complaint. However, the Complainant was not present for the hearing. I.D. at 9. Since the Complainant failed to appear and participate in the scheduled telephonic hearing, his Complaint may be dismissed with prejudice. *See Jefferson*; 52 Pa. Code § 5.245.

The Code provides that a party who fails to attend a scheduled conference and hearing "shall be deemed to have waived the opportunity to participate" and shall not be permitted to later reopen the matter. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245. As noted, the Commission may excuse non-attendance at a hearing where "... the presiding officer shall determine that failure to be represented was unavoidable and that the interests of the other parties and the public would not be prejudiced." *Id.* No determination was made that the non-attendance was unavoidable, and there are no facts in the record that would allow the Commission to reach this conclusion. Under the circumstances of this case, we find that the ALJ correctly dismissed the Complaint, with prejudice, because the Complainant failed to appear at the hearing and to present any evidence in support of his Complaint. Therefore, the Complainant waived all rights to present evidence on the Complaint and has failed to meet his burden of proof.

Next, we shall discuss the Complainant's Exception that he is not abusing the system. We note that the Complainant has filed nine (9) informal and three (3) formal complaints, all requesting relief in the form of a payment arrangement. The Complainant has received four (4) PGW-issued payment arrangements and one (1) Commission-issued payment arrangement, all of which the Complainant has broken due to non-payment. When looking at the Complainant's payment history, we find that he has made just eighteen (18) payments since opening his PGW account in August of 2013.

The Commission has held that when a complainant has used a variety of means to avoid termination and unnecessarily prolong the proceedings, the Commission must reach a point where it acts to protect the interest of the other ratepayers, who will otherwise ultimately bear the burden of that Complainant's growing arrearage. *See, Sherry Seidenstricker v Metropolitan Edison Company*, Docket No. F-2008-2019388 (Opinion and Order entered July 28, 2009).

We agree with the ALJ that PGW carried its burden of proof on this issue; it established *a prima facie* case that the Complainant has abused the Commission's process, and the Complainant has failed to rebut that case. The preponderance of the evidence clearly establishes that the Complainant has abused the Commission's administrative process to receive continuous gas service while his arrearage continues to increase. We conclude that the Complainant's Exception on this issue is without merit. For the above reasons, this Exception is denied. Accordingly, we shall adopt the Initial Decision of ALJ Guhl.

III. Conclusion

Based upon our review of the evidence and the applicable law, we shall take the following actions: (1) deny the Complainant's Exceptions; (2) adopt the ALJ's Initial Decision; and (3) dismiss the instant Complaint; consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions filed by Christopher Haymes on April 28, 2024, at Docket No. F-2023-3042824, to the Initial Decision of Administrative Law Judge Marta Guhl, are denied.

2. That the Initial Decision of Administrative Law Judge Marta Guhl, issued on December 30, 2013, is adopted.

3. That the Complaint of Christopher Haymes against Philadelphia Gas Works at Docket No. F-2023-3042824 is dismissed with prejudice.

4. That Commission staff (including but not limited to the Bureau of Consumer Services and the Secretary's Bureau) shall reject any formal or informal complaints that Christopher Haymes, or any member of his family, or any other person, may attempt to file with the Commission, pertaining to his Philadelphia Gas Works Account No. XXX0091, until the entire outstanding account balance is paid in full.

5. That Philadelphia Gas Works shall file a notice with the Commission, with a copy to all Parties to this proceeding, at Docket Number F-2023-3042824, within seven (7) days of the date that the outstanding account balance is paid in full.

6. That the failure of Christopher Haymes to pay the outstanding account balance be, and hereby is, deemed to be grounds for termination of service in accord with Chapters 56 and 64 of the Commission's rules of administrative practice and procedure.

7. That the case at Docket No. F-2023-3042824 shall 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 22, 2024

ORDER ENTERED: August 22, 2024