

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Terrance Trowell	:	
	:	
v.	:	F-2024-3045509
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Decision dismisses the Formal Complaint of Terrance Trowell with prejudice for failure to appear for the hearing and prosecute the Complaint.

HISTORY OF THE PROCEEDING

On January 5, 2024, Terrance Trowell (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW) seeking his gas service reconnected.¹

On February 6, 2024, the Respondent filed an Answer in which it denied the material allegations of fact and conclusions of law in the Complaint. The Respondent admitted that the Complainant’s gas service was shut off on August 22, 2023 for non-payment. The Respondent requested that the Complaint be dismissed.

¹ The Complaint is a timely appeal from the determination of the Commission’s Bureau of Consumer Services (BCS), at BCS No. 3955228, which dismissed Complainant’s informal complaint. A timely BCS appeal is subject to de novo review. 52 Pa. Code § 56.173(a).

By Initial Call-In Telephonic Hearing Notice dated February 12, 2024, a telephonic hearing was scheduled for March 18, 2024, at 10:00 a.m., and the matter was assigned to me. 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).

A Prehearing Order was issued on February 16, 2024. 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.

The Hearing Notice and Prehearing Order were both emailed and sent via First-Class Mail to the Complainant in the ordinary course of the Commission’s business to the email and mailing address provided by the Complainant. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.

On March 18, 2024, the hearing convened as scheduled. Anita Murray, Esquire, appeared on behalf of PGW 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 reconvened at 10:10 a.m. 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.

At approximately 10:45 a.m., on March 18, 2024, the Complainant called the Philadelphia Office of the Administrative Law Judge (OALJ) and spoke with my legal assistant. The Complainant stated that he tried to call in to the hearing, but no one was present. OALJ telephone records indicate that the Complainant called in to the hearing at 10:24 a.m., which was after the hearing concluded. My legal assistant attempted to advise the Complainant that he would need to submit in writing why he missed the hearing if he wanted the hearing rescheduled. At this time, the Complainant became verbally abusive and began yelling and swearing. I instructed my legal assistant to hang up the phone. The Complainant then proceeded to call the Harrisburg OALJ. The staff at the Harrisburg OALJ answered the phone and also explained the procedure for requesting a rescheduled hearing and concluded the phone call. The Complainant then called the Harrisburg OALJ back multiple times, yelling and swearing at several staff members.

On March 19, 2024, the Complainant sent an email requesting his hearing to be rescheduled. Despite the Complainant's abusive behavior towards OALJ staff, out of an abundance of deference, I granted the Complainant's request for a rescheduled hearing.

By Call-In Telephonic Hearing Notice dated March 20, 2024, a further telephonic hearing was scheduled for May 16, 2024, at 10:00 a.m. Once again, the Hearing Notice provided the parties with the Toll-Free Bridge Number and the PIN to call and participate in the telephonic hearing, as well as warning that failure to appear may result in losing the case.

The March 20, 2024 Hearing Notice was emailed and sent via First-Class Mail to the Complainant in the ordinary course of the Commission's business to the email and mailing address provided by the Complainant. The March 20, 2024 Hearing Notice was not returned to the Commission as undeliverable.

On May 16, 2024, the further hearing convened as scheduled. Anita Murray, Esquire, appeared on behalf of PGW and was ready to proceed. Once again, the Complainant was not present to start the hearing. After a short recess to allow time for the Complainant to appear, the hearing reconvened at 10:10 a.m. 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.

The record closed on May 31, 2024, upon the filing of the transcript with the Commission.

FINDINGS OF FACT

1. The Complainant is Terrance Trowell.
2. The Respondent is Philadelphia Gas Works.
3. On January 5, 2024, the Complainant filed a Formal Complaint against the Respondent.
4. On February 6, 2024, the Respondent filed an Answer to the Complaint.
5. By Initial Call-In Telephonic Hearing Notice dated February 12, 2024, a telephonic hearing was scheduled for March 18, 2024, at 10:00 a.m.
6. On February 16, 2024, a Prehearing Order was issued that 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.

7. The Hearing Notice and Prehearing Order were emailed and sent via First-Class Mail to the Complainant in the ordinary course of the Commission's business to the email and mailing address provided by the Complainant.

8. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.

9. On March 18, 2024, the hearing convened as scheduled. Tr. 1-5.

10. Counsel for PGW called in to the March 18, 2024 hearing. Tr. 3-4.

11. The Complainant did not appear at the March 18, 2024 hearing. Tr. 3.

12. On March 19, 2024, the OALJ received an email from the Complainant requesting a rescheduled hearing.

13. By Call-In Telephonic Hearing Notice dated March 20, 2024, a further telephonic hearing was scheduled for May 16, 2024, at 10:00 a.m.

14. The March 20, 2024 Hearing Notice was emailed and sent via First-Class Mail to the Complainant at the Complainant's request and in the ordinary course of the Commission's business to the email and mailing address provided by the Complainant.

15. The March 20, 2024 Hearing Notice was not returned to the Commission as undeliverable.

16. The Complainant failed to appear and participate in the scheduled telephonic hearing on May 16, 2024. Tr. 8.

17. Counsel for the Respondent was present and prepared to proceed at the May 16, 2024, hearing. Tr. 8-9.

18. As of the close of the record, the Complainant has not contacted the Commission to explain why his failure to appear at the hearing was unavoidable.

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, the Complainant was served a Hearing Notice and a Prehearing Order for the original hearing on March 18, 2024. The Complainant attempted to call in to this hearing 24 minutes after the scheduled start, but the hearing had already concluded. Second, on March 20, 2024, the Complainant was served a Hearing Notice which advised the parties of the further hearing scheduled for May 16, 2024, and how to participate. Finally, both Hearing Notices and the Prehearing Order advised the Complainant that the case could be dismissed if the Complainant did not call in and participate in the hearing.

Both Hearing Notices and the Prehearing Order were emailed and sent via First-Class Mail to the Complainant at the email and mailing address provided by the Complainant. None were returned as undeliverable. Accordingly, I must presume that these documents, which were sent in the ordinary course of business, were received by the Complainant. *Skow v. Metro. Edison Co.*, Docket No. F-2023-3042228 (Final Order entered May 7, 2024); *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); *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).

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). 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 failed to appear for the original hearing despite receiving notice and despite the undersigned allowing additional time for the Complainant to appear. The Complainant was granted the benefit of the doubt over his abusive behavior towards OALJ staff and a second hearing was scheduled. Once again, the Complainant failed to appear despite receiving notice and despite the undersigned allowing additional time for the Complainant to appear. As of the close of the record, there has been no communication with the OALJ or me by, or on behalf of, the Complainant explaining why the Complainant's failure to appear at the hearing was unavoidable. Consequently, 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. Cmwlt. 1984).

3. Notice served to a party with no notification that service failed is presumed received. *Skow v. Metro. Edison Co.*, Docket No. F-2023-3042228 (Final Order entered May 7, 2024); *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); *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).

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. Cmwlt. 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 Terrance Trowell at Docket Number F-2024-3045509 is granted.

2. That the Formal Complaint filed by Terrance Trowell in Terrance Trowell v. Philadelphia Gas Works, Docket Number F-2024-3045509, is hereby dismissed with prejudice.

3. That Docket No. F-2024-3045509 be marked closed.

Date: August 28, 2024

/s/
F. Joseph Brady
Administrative Law Judge