

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Sheila Easley	:	
	:	
v.	:	C-2024-3047770
	:	
Philadelphia Gas Works, MPower Energy, and	:	
Inspire Energy Holdings, LLC	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

The Complainant settled her Formal Complaints against Philadelphia Gas Works and Inspire Energy Holdings, LLC. The Complainant did not settle her Formal Complaint against MPower Energy. This Initial Decision dismisses the Formal Complaint of Sheila Easley against MPower Energy because she failed to appear and prosecute her Complaint against MPower Energy.

HISTORY OF THE PROCEEDING

On March 21, 2024, Sheila Easley (Complainant) eFiled¹ a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent 1), MPower Energy

¹ The Complainant utilized the Commission's eFiling service to electronically file the Formal Complaint. When the Complainant registered for an

LLC (MPower or Respondent 2), and Inspire Energy Holdings, LLC (Inspire or Respondent 3) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed a checkmark in the box marked “[o]ther” and offered the following explanation of her Complaint:

12/22/2022 I spoke to Alex & terminated the supplier, MPOWER ENERGY cancellation #7854GD. Even though I have requested several times to receive a paper bill from PGW, I still do not. On 2/21/2024, I had a reason to check my bill online and saw that MPOWER was still my supplier. I called to find out why. I spoke to Princesa & was told that “I reactivated the account. Then I was told that PGW reactivated the account and that I should call them, I did. PGW said that INSPIRE CLEAN ENERGY reactivated the account, which makes no sense that one energy company would enroll me in a totally different company! Further to the insult, I have a cancellation letter dated 12/26/2022 from Inspire. PGW is insisting that I had to have made the switch. I have a confirmation number for termination from MPOWER and letter of cancelation from INSPIRE. 3/21/2024 I called PGW back and the things Chantel is saying only proves that she isn’t listening to the problem. She has said that my service is still with MPOWER who assured me that my service with them is terminated. These alternate companies charge more as the supplier than PGW does and being that I have and continue to try and resolve this issues [sic], I feel I am owed money and someone needs to remove my service from the merry-go-round I have been placed on.

Compl. at 9. As relief, the Complainant requested the following:

I want the PUC to stop all of these companies from switching my service without my consent, in essence, I want them to not be able to steal my money! I want a refund of the difference in my bills if PGW were my supplier. I want my service to be removed from the merry-go-round I have been

eFiling account with the Commission, the Complainant also registered an email address in order to be served Commission documents via the Commission’s eService process.

placed on and the companies fined for unapproved swithing [sic] of my account.

Compl. ¶ 5.

On April 4, 2024, MPower filed an Answer to the Complaint. In the Answer, MPower stated that the Complainant initiated the process to discontinue MPower as her gas supplier by contacting her utility, PGW, on or about December 22, 2022, and that on or about that date, PGW submitted a Drop request to MPower with an effective date of February 16, 2023. MPower further stated that on or about December 26, 2022, PGW submitted a reinstatement request to MPower for Ms. Easley's gas account to be reinstated with MPower. As a result, the Complainant's account was reinstated after her Drop request was submitted by PGW because PGW subsequently reinstated her account with MPower on her behalf. MPower advised that, as a courtesy, it issued a \$250.00 refund to the Complainant as a result of the situation that appears to be outside of the Complainant's control.

On April 11, 2024, Inspire filed a Certificate of Satisfaction with the Commission's Secretary's Bureau. The Certificate of Satisfaction advised that the Complainant's Complaint against Inspire has been fully satisfied and the Complainant acknowledged to Inspire that she no longer wished to pursue her Complaint against Inspire. Inspire requested that the Commission mark this Complaint closed in accordance with 52 Pa. Code § 5.24(c) unless the Complainant objected within ten (10) days of filing. The Complainant did not object to Inspire's Certificate of Satisfaction.

On April 12, 2024, PGW filed an Answer to the Complaint. In the Answer, PGW denied that it enrolled the Complainant's gas service with any alternate suppliers or otherwise "switched" her gas service to or from PGW. PGW further denied that it is not sending the Complainant paper bills for her gas service at 1019 Wakeling Street, Philadelphia, PA (service address).

On April 17, 2024, Chief Administrative Law Judge Charles E. Rainey, Jr. issued an Interim Order Setting Resolution Conference.

By Initial Call-In Telephonic Hearing Notice dated May 15, 2024, an initial call-in telephonic hearing was scheduled for July 2, 2024 at 1:00 p.m., and the matter was assigned to me. The Hearing Notice advised the parties of the date and time of the scheduled hearing as well as how to call in for the hearing and warned of the following:

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.

I issued a Prehearing Order on May 21, 2024. The Prehearing Order also advised the parties of the date and time of the scheduled hearing as well as how to call in for the hearing. Additionally, the Prehearing Order directed the parties to comply with various procedural requirements and directed that a request to change the scheduled hearing should be sent to me at least five days prior to the hearing date, be in writing and state the agreement or opposition of the other party. It warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing. It also explained that the Complainant bears the burden of proof to establish that the respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that she is entitled to the relief requested in the Complaint.

On June 24, 2024, PGW filed a Certificate of Satisfaction with the Commission’s Secretary’s Bureau. The Certificate of Satisfaction advised that pursuant to 52 Pa. Code § 5.24(b), PGW certifies that it has satisfied the Complainant’s Complaint and no further Commission action is necessary. PGW further notified the Complainant of her

right to object to PGW's Certificate of Satisfaction within ten (10) days of the date of the certificate. The Complainant did not object to PGW's Certificate of Satisfaction.

PGW's Certificate of Satisfaction left MPower as the lone Respondent in this proceeding.

The hearing convened as scheduled on July 2, 2024. Counsel for MPower called in to the hearing and was prepared to proceed. Additionally, Counsel for Inspire called in for the hearing. Ms. Easley did not call in for the hearing, nor did she contact my office to indicate that she would or would not appear.

Because a customer who files a complaint before the Commission has an affirmative duty to make himself or herself available to participate in hearings on the complaint, I deemed Ms. Easley's failure to call in for the scheduled hearing as evidence that she did not wish to participate in the hearing.

At the hearing, no witnesses were presented and no exhibits were introduced into the record. MPower's counsel moved that the Complaint be dismissed for lack of prosecution. In accordance with Commission policy, I am granting the Motion.

The record closed on July 15, 2024, the date the transcript was filed with the Commission.

FINDINGS OF FACT

1. The Complainant is Sheila Easley.
2. The Respondents are Philadelphia Gas Works, MPower Energy, and Inspire Clean Energy.

3. On March 21, 2024, the Complainant filed a Formal Complaint against Philadelphia Gas Works, MPower Energy, and Inspire Clean Energy.
4. On April 4, 2024, MPower filed an Answer to the Complaint.
5. On April 11, 2024, Inspire filed a Certificate of Satisfaction with the Commission's Secretary's Bureau.
6. On April 12, 2024, PGW filed an Answer to the Complaint.
7. By Initial Call-In Telephonic Hearing Notice dated May 15, 2024, an initial call-in telephonic hearing was scheduled for July 2, 2024 at 1:00 p.m.
8. On May 21, 2024, I issued a Prehearing Order that also advised the parties of the date and time of the scheduled hearing.
9. The Hearing Notices and the Prehearing Order were all eServed upon the Complainant to the email address she provided on her Formal Complaint form.
10. None of the documents eServed upon the Complainant were returned as undeliverable.
11. On June 24, 2024, PGW filed a Certificate of Satisfaction with the Commission's Secretary's Bureau.
12. The Complainant failed to call in for the July 2, 2024, hearing.

13. The Complainant has not contacted the Commission to explain why her failure to attend the July 2, 2024 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. On May 15, 2024, the Complainant was served a Hearing Notice which advised the parties of the date and time of the hearing, and how to participate. On May 21, 2024, a Prehearing Order was issued providing additional information to the parties regarding the hearing. Both the Hearing Notice and the Prehearing Order advised the Complainant that the case could be dismissed if she did not call in and participate in the hearing.

The Notice for the July 2, 2024 hearing, and the Prehearing Order were eServed to the Complainant at the email address provided by the Complainant. Neither 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. *Hu v. PECO 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. PECO 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). 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); *Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022); *Williams v. PECO 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).

The Complainant failed to appear for the hearing despite receiving notice. To date, there has been no communication with the Office of Administrative Law Judge (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.

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. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Williams v. PECO 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 MPower'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. PECO 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. PECO 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. PECO 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. PECO 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).

