

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Frances Bolton Milton	:	
	:	
v.	:	F-2024-3048975
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Alphonso Arnold III
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint of Frances Bolton Milton against Philadelphia Gas Works due to her failure to appear for the telephonic evidentiary hearing to prosecute her Formal Complaint.

HISTORY OF THE PROCEEDINGS

On May 9, 2024, Frances Bolton Milton (“Ms. Milton” or “Complainant”) filed a Formal Complaint against Philadelphia Gas Works (“PGW” or “Respondent”) with the Pennsylvania Public Utility Commission (“Commission”).¹ As reason for her Complaint, Ms. Milton stated “no occupancy at this resident at this time.” Complaint ¶ 4.

¹ The Complaint is a timely appeal of a decision by the Commission’s Bureau of Consumer Services (BCS) at BCS No. 3967411. The timely appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

For requested relief, Ms. Milton stated “The resident does not have anyone living there for over a year. There is no activity or usage of the gas utility.” Complaint ¶ 5. The Complaint was served on PGW on May 13, 2024.

On paragraph 9 of the Complaint form titled “Three Options to Receive Documents – Choose One,” Ms. Milton checked the option indicating that she agreed to open and use an eFiling account and receive service of Commission documents electronically through eService. Complaint ¶ 9.

On June 3, 2024, PGW filed an Answer to the Complaint, admitting or denying the allegations of the Complaint, and requesting that the Commission dismiss the Complaint.

On June 4, 2024, the Commission issued an Initial Telephonic Hearing Notice, scheduling this matter for an evidentiary hearing on July 25, 2024, and assigning me as Presiding Officer.

On June 20, 2024, the Commission issued my Prehearing Order, establishing the procedural rules and guidelines that would govern the evidentiary hearing.

On July 23, 2024, I sent an email to the parties in this proceeding, informing the parties that the July 25, 2024, evidentiary hearing would need to be rescheduled due to a conflict in my schedule. In my email, I provided the parties with dates that I would be available for a rescheduled evidentiary hearing. Anita J. Murray, Esquire, representing PGW in this proceeding, indicated that PGW was available on August 2, 2024, for a rescheduled hearing.

Therefore, on July 23, 2024, the Commission issued a Cancellation Notice, cancelling the July 25, 2024, evidentiary hearing.

On July 24, 2024, I had a scheduler from the Office of Administrative Law Judge call Ms. Milton to ascertain her availability for a rescheduled hearing on August 2, 2024. The scheduler informed me that she was able to contact Ms. Milton, and that Ms. Milton indicated that she was available for an August 2, 2024, rescheduled hearing. Therefore, I informed the parties by email on this date that I would have the hearing rescheduled to August 2, 2024.

On July 24, 2024, the Commission issued a Rescheduled Initial Telephone Hearing Notice, rescheduling the evidentiary hearing to August 2, 2024.

On July 25, 2024, Ms. Milton replied to my July 24, 2024, email, confirming that she was aware of the rescheduled hearing date and asking if the conference and pin numbers for participation were the same. I replied, informing her that the conference and pin numbers for participation were the same and attached a copy of the Rescheduled Initial Telephone Hearing Notice to my email.

On August 2, 2024, the evidentiary hearing was held as scheduled. Attorney Murray appeared on behalf of PGW with a witness and was prepared to proceed. Ms. Milton did not appear for the hearing, even after the hearing was delayed until 10:15 a.m. Attorney Murray made a Motion to Dismiss the Complaint for failure of Ms. Milton to appear and prosecute her Complaint.

On August 15, 2024, a 7-page electronic transcript of the August 2, 2024, evidentiary hearing was filed with the Commission. The record in this matter was closed on this date.

For the reasons discussed below, the Complaint will be dismissed.

FINDINGS OF FACT

1. Complainant is Frances Bolton Milton.
2. Respondent is Philadelphia Gas Works.
3. On May 9, 2024, Complainant filed a Complaint with the Commission against Respondent.
4. On June 3, 2024, Respondent filed an Answer to the Complaint.
5. On June 4, 2024, the Commission issued an Initial Telephonic Hearing Notice to the parties, scheduling a telephonic evidentiary hearing in this matter for July 25, 2024, at 10:00 a.m. and assigning this matter to the undersigned.
6. On July 23, 2024, the Commission issued a Cancellation Notice, cancelling the July 25, 2024, evidentiary hearing.
7. On July 24, 2024, the Commission issued a Rescheduled Initial Telephonic Hearing Notice, scheduling the evidentiary hearing for August 2, 2024.
8. The July 25, 2024, hearing was rescheduled to August 2, 2024, due to a conflict in the undersigned's schedule. Both parties agreed to and were aware of the rescheduled August 2, 2024, hearing date. Tr. 3-5.
9. The Rescheduled Initial Telephonic Hearing Notice provided the Parties with the conference and PIN numbers for participation in the August 2, 2024, hearing and warned the Parties that they may lose their case if they do not participate in the hearing and present evidence on the issues raised.

10. All Commission documents, including the Rescheduled Initial Telephonic Hearing Notice, in this matter were eServed to the Parties, as both Parties affirmatively agreed to receive eService of Commission documents by registering with the Commission's electronic filing system.

11. The Commission's internal electronic activity indicates that the Rescheduled Initial Telephonic Hearing Notice was successfully eServed to Complainant.

12. Neither the Hearing Notices nor the Prehearing Order were returned to the Commission as undeliverable.

13. Complainant failed to appear and participate in the August 2, 2024, evidentiary hearing.

14. The court reporter, Counsel for Respondent and its witness(es) were present and prepared to proceed at the August 2, 2024 hearing.

15. Complainant has not contacted the Commission to explain why her failure to appear at the hearing was unavoidable.

DISCUSSION

Legal Standards

Due Process and Notice

As an administrative agency of the Commonwealth, the Commission is required to provide due process to the parties appearing before it. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984) ("*Schneider*") (citing *Fusaro v. Pa. Pub.*

Util. Comm'n, 382 A.2d 794 (Pa. Cmwlth. 1978)). Due process is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider*.

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). Further, electronic service which is not indicated as undeliverable is presumed to be received by the parties. *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Order entered Jan. 27, 2017) (“*Zirkel*”); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Order entered Nov. 16, 2016) (“*Morella*”).

Failure to appear for a hearing

Once 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. *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered Jan. 24, 2002) (“*Mumma*”).

If a party fails to attend a scheduled hearing, such failure to appear will be deemed a waiver of the party’s opportunity to participate in a hearing, unless the presiding officer determines that such failure was unavoidable and that the interests of the other parties and of the public would not be prejudiced by permitting such reopening or further examination. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a)-(b).

Moreover, the Commission will exercise its discretion and excuse a complainant’s failure to appear at a hearing if the complainant demonstrates that he/she made a good faith attempt to attend the hearing. *See, e.g., Then v. Phila. Gas Works*, Docket No. F-2012-2318264 (Opinion and Order entered June 13, 2013) (vacating ALJ’s decision to dismiss complaint with prejudice and remanded for hearing because

complainant attempted to attend the scheduled hearing, and appeared in the correct building, but was unable to locate the hearing room in the building due to language challenges).

However, if a complainant's failure to appear was not unavoidable, or if the complainant did not make a good faith attempt to attend the duly scheduled hearing, the Commission has recognized that any further procedural activity in the docket would prejudice the public interest due to the wasteful use of the agency's and the respondent's time and resources in addressing the complaint. *See Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892, at 5 (Order entered Dec. 26, 1995) (“*Jefferson*”). In such instances, to preserve judicial economy, the Commission typically will dismiss a complaint, *with prejudice*, barring the complainant from filing another complaint raising the same claims and issues presented in the dismissed complaint. *Id.*

Burden of Proof

Section 332(a) of the Code provides that a complainant, as the party seeking affirmative relief from the Commission, has the burden of proof. 66 Pa.C.S. § 332(a). The evidentiary burden of proof is the “preponderance of the evidence” standard. *Suber v. Pa. Comm’n on Crime and Delinquency*, 885 A.2d 678 (Pa. Cmwlth. 2005); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600 (Pa. Cmwlth. 1990). To establish a fact or claim by a preponderance of the evidence means to offer evidence that is more convincing than, by even the smallest amount, the probative value of the evidence presented by the other party. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

As a matter of law, to establish a legally sufficient claim, a complainant must show that the named utility is responsible or accountable for the problem described in the Complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196

(1990). The offense must be a violation of the Code, a Commission Regulation or Order, or a Commission-approved tariff. 66 Pa.C.S. § 701.

Analysis

Complainant received notice and the opportunity to be heard in this proceeding. Complainant agreed to receive service of Commission documents in this proceeding through eService when she agreed to open and use an electronic filing account through the Commission's website. On July 24, 2024, the Commission eServed the Rescheduled Initial Telephonic Hearing Notice to Complainant via the email address that she provided to the Commission when opening her electronic filing account. The Commission's internal electronic activity indicates that the document was successfully eServed to Complainant. Therefore, Complainant is presumed to have received the Notice. *Zirkel; Morella*. Furthermore, it is clear that Complainant had notice of the August 2, 2024, hearing due to the email exchanges between the Parties and myself wherein the parties confirmed the rescheduling of the hearing date from July 25, 2024, to August 2, 2024. Tr. 3-5.

The Notice contained the date and time of the August 2, 2024, evidentiary hearing; therefore, Complainant had notice of the date and time of the August 2, 2024, evidentiary hearing. Notably, the Notice indicated that the hearing would take place telephonically, that the Parties would need to call a conference line and then enter a PIN number to participate in the hearing, and that the Complainant would lose her case if she failed to appear for the hearing and present evidence on the issues raised.

As Complainant was provided notice and the opportunity to be heard, it was her responsibility to appear and participate in the hearing. *Mumma*. Complainant failed to appear for the August 2, 2024, evidentiary hearing. To date, Complainant has not contacted the Office of Administrative Law Judge or me to explain her absence from

the hearing. Therefore, Complainant's absence from the hearing was not unavoidable, nor can a finding be made that Complainant made a good faith effort to participate in the hearing.

Complainant, as the party with the burden of proof, failed to meet her burden because she failed to participate in the hearing to proffer evidence in support of her Complaint. Thus, it is appropriate to dismiss the Complaint. *Jefferson*. Respondent's Motion to Dismiss will be granted in the Ordering paragraphs below.

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 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) (citing *Fusaro v. Pa. Pub. Util. Comm'n*, 382 A.2d 794 (Pa. Cmwlth. 1978)).

3. A Notice eServed to a party's registered email address with no notification that service failed to be delivered to that email address is presumed to have been received. *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Order entered Apr. 7, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Order entered Jan. 31, 2017).

4. If a party fails to attend a scheduled hearing, such failure to appear will be deemed a waiver of the party's opportunity to participate in a hearing, unless the presiding officer determines that such failure was "unavoidable" and that the interests of

the other parties and of the public would not be “prejudiced” by permitting such reopening or further examination. 66 Pa. C.S. § 332(f); 52 Pa. Code § 5.245(a)-(b).

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. *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995).

6. As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).

7. By failing to appear for the hearing and proffer any evidence to support the Complaint, Complainant has failed to meet her burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Formal Complaint of Francis Bolton Milton in the matter of Francis Bolton Milton v. Philadelphia Gas Works, Docket No. F-2024-3048975, is dismissed.

2. That the Secretary's Bureau shall mark Docket No. F-2024-3048975 as closed.

Date: November 4, 2024

/s/
Alphonso Arnold III
Administrative Law Judge