

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Elizabeth Adams

v.

Philadelphia Gas Works

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C-2024-3049140

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Decision denies the Formal Complaint of Elizabeth Adams because the Complainant failed to appear at the scheduled hearing and prosecute her Complaint.

HISTORY OF THE PROCEEDING

On May 20, 2024, Elizabeth Adams (Complainant or Ms. Adams) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW, Respondent or Company) with the Pennsylvania Public Utility Commission (Commission). In her Complaint, Ms. Adams alleged that there are incorrect charges on her gas bill from PGW. As relief, the Complainant requested that \$541.84 of outstanding debt be removed from her account with PGW.

On June 10, 2024, the Respondent filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.

An Initial Call-in Telephonic Hearing Notice dated June 11, 2024, notified the parties that an initial call-in telephone hearing was scheduled on August 13, 2024, at 10:00 a.m., and that the matter was assigned to me. The Hearing Notice stated, “You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised.”

On July 17, 2024, I issued a Prehearing Order. The Prehearing Order directed the parties to comply with various procedural requirements, reminded them of the time and date of the hearing and provided instructions for calling in to the hearing. In addition, the Prehearing Order warned in bold type: **“You may lose the case if you do not take part in this hearing and present evidence on the issues raised.”** (Emphasis in the original).

The hearing convened as scheduled on August 13, 2024. Graciela Christlieb, Esq. appeared representing the Respondent. The Complainant failed to call in to the hearing. The Complainant was given an additional 10-15 minutes to call in but failed to do so.

At the hearing, counsel for PGW moved that the Complaint be dismissed for lack of prosecution pursuant to 52 Pa. Code § 5.245. The Motion was held in abeyance.

The record in this matter closed on September 6, 2024, upon receipt of the hearing transcript. To date, there has been no contact or communication from Ms. Adams with me or anyone else at the Commission regarding her failure to appear at the August 13, 2024 hearing.

FINDINGS OF FACT

1. The Complainant is Elizabeth Adams.
2. The Respondent is Philadelphia Gas Works
3. On May 20, 2024, Ms. Adams filed a Formal Complaint (Complaint) against PGW alleging that there are incorrect charges on her gas bills.
4. As relief, the Complainant requested that \$541.84 of outstanding debt be removed from her account with PGW.
5. On June 10, 2024, the Respondent filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.
6. An Initial Call-in Telephonic Hearing Notice dated June 11, 2024, notified the parties that an initial call-in telephone hearing was scheduled on August 13, 2024, at 10:00 a.m.
7. The Initial Call-In Hearing Notice stated, “You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised.” June 11, 2024, Initial Call-In Hearing Notice, p. 1.
8. A Prehearing Order dated July 17, 2024, directed the parties to comply with various procedural requirements, reminded them of the time and date of the hearing and provided instructions for calling in to the hearing.

9. The July 17, 2024 Prehearing Order warned in bold type: “**You may lose the case if you do not take part in this hearing and present evidence on the issues raised.**” July 17, 2024, Prehearing Order, ¶ 1 (emphasis in the original).

10. The Hearing Notice and the Prehearing Order were eServed upon the Complainant at the email address that she provided to and registered with the Commission. Complaint ¶ 9.

11. Neither the Hearing Notice nor the Prehearing Order were returned as undeliverable.

12. The Complainant failed to appear at the August 13, 2024, hearing.

13. The Complainant did not request a continuance, withdraw the Complaint, or otherwise notify the Commission to explain why her failure to appear at the August 13, 2024, hearing was unavoidable.

DISCUSSION

In her Complaint, Ms. Adams alleged that there are incorrect charges on her gas bill from PGW. As relief, the Complainant requested that \$541.84 of outstanding debt be removed from her account with PGW.

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

Administrative agencies, like the Public Utility Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard.

Schneider v. Pa. Pub. Util. Comm'n, 479 A.2d 10 (Pa. Cmwlth. 1984). Complainant selected to be served Commission documents via the Commission's eService program. Complaint ¶ 9. Both the Hearing Notice and Prehearing Order were eServed to the email address registered with the Commission by the Complainant. Neither was returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents sent to Complainant were received by Complainant. *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered Dec. 19, 2019) (*Hu*); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Apr. 7, 2017) (*Zirkel*); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 24, 2017) (*Morella*).

As the Commission noted in *Strydio v. PPL Electric Utilities Corp.*, Docket No. C-2017-2633043 at 6 (Opinion and Order entered July 18, 2018), "[o]nce 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." (citing *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered Jan. 24, 2002)); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993).

The Complainant was notified of the scheduled hearing and did not appear for the hearing. Additionally, the June 11, 2024 Hearing Notice, and the July 17, 2024 Prehearing Order advised the Complainant that the case could be dismissed for failure to call in and participate in the hearing. 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). Thus, the Complainant has waived the opportunity to participate in the hearing by failing to appear. 66 Pa.C.S. §

332(f); 52 Pa. Code § 5.245(a); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995).

Additionally, Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of any request for relief. By failing to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden. Consequently, the Complaint will be dismissed on this basis as well. *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); *El-Ayazra v. W. Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa. Code § 5.245.

Finally, the party who failed to appear at the hearing has the burden of explaining why 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). There are no facts on the record that suggest that Complainant's failure to appear was unavoidable. Therefore, the Complaint will be dismissed.

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 Complainant received notice of the hearing. *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).

3. The due process rights of the Complainant have been fully protected in this proceeding and Complainant's failure to appear was not unavoidable. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984); 52 Pa. Code § 5.245(a).

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

5. The Complainant did not participate in the hearing, failed to appear for the hearing, did not present any evidence and, therefore, failed to meet the Complainant's burden of proving eligibility for the relief sought from the Commission. 66 Pa.C.S. § 332(a).

6. 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); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

