

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

Public Meeting held November 21, 2024

Commissioners Present:

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

Nettie Lawrence

C-2023-3044246

v.

Philadelphia Gas Works

OPINION AND ORDER

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Initial Decision (Initial Decision or I.D.) of Administrative Law Judge (ALJ) F. Joseph Brady, issued on August 24, 2024, dismissing the Formal Complaint (Complaint) of Nettie Lawrence (Complainant) against Philadelphia Gas Works (PGW) for failure to appear and prosecute the Complaint. No Exceptions have been filed. However, we have exercised our right to review the Initial Decision pursuant to Section 332(h) of the Public Utility Code (Code), 66 Pa.C.S. § 332(h). For the reasons stated below, we shall vacate the Initial Decision and remand

the matter to the Office of Administrative Law Judge for further proceedings, as deemed necessary, consistent with this Opinion and Order.

I. History of the Proceeding

On November 16, 2023, the Complainant eFiled the Complaint with the Commission against PGW. In the Complaint, the Complainant alleged that PGW was threatening to, or already has, shut off service; that she would like a payment agreement; and that she is having a reliability, safety, or quality problem with her utility service. Complaint at 2.

On December 6, 2023, PGW filed an Answer in which it denied the material allegations in the Complaint and requested that the Complaint be dismissed. Answer at 2.

By a December 2, 2023 Initial Call-In Telephonic Hearing Notice, a telephonic hearing was scheduled for January 30, 2024, and the matter was assigned to ALJ Brady. The Notice, *inter alia*, advised that the Complainant could lose the case for failure to participate in the hearing or present facts on the issues raised. I.D. at 2.

On December 18, 2023, the Commission issued a Prehearing Order that, *inter alia*, reminded the Parties of the date and time of the hearing and directed the Parties to comply with various procedural requirements. I.D. at 2.

On January 23, 2024, PGW filed a Motion for Continuance and Prehearing Conference (Motion). In addition, Counsel for PGW represented that they reached out to the Complainant to schedule an evaluation of the service address, as requested in the Complaint, and to remove the Complainant's meter for testing, and that the Complainant stated that she needed an opportunity to speak to someone at the Commission before

determining how to proceed. Furthermore, Counsel for PGW also represented that the Complainant agreed to convert the hearing scheduled for January 30, 2024 into a prehearing conference and to reschedule the evidentiary hearing to a later date. Due to the timing of the filing of the Motion to the proximity of the hearing, the ALJ planned on addressing PGW's Motion at the outset of the January 30, 2024 hearing. On January 30, 2024, Counsel for PGW called in to the hearing and was prepared to go forward with a prehearing conference. However, the Complainant did not call in to the hearing. I.D. at 2.

On February 2, 2024, given the circumstances in this case, the ALJ granted PGW's Motion via an Order. I.D. at 2.

By Call-In Telephone Cancellation/Reschedule Hearing Notice dated February 2, 2024, a telephonic hearing was rescheduled for April 3, 2024. I.D. at 2.

On April 3, 2024, the hearing convened as scheduled. The Complainant appeared *pro se*. Anita Murray, Esquire appeared on behalf of PGW, along with a witness. The hearing was converted to a prehearing conference in order to establish dates to have the Complainant's meter tested by PGW and for the hearing to reconvene. The Parties agreed on the record to have the meter tested on April 9, 2024, and the hearing to reconvene on April 30, 2024, at 1:00 pm. I.D. at 3; Tr. at 3-4.

By Further Call-In Telephonic Hearing Notice dated April 3, 2024, a telephonic hearing was scheduled for April 30, 2024, at 1:00 pm. 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).

The April 3, 2024, Hearing Notice was eServed to the Complainant at the Complainant’s request, and in the ordinary course of the Commission’s business, to the email address provided by the Complainant. The Hearing Notice was not returned to the Commission as undeliverable. I.D. at 3.

On April 30, 2024, at 12:33 pm, the Complainant sent an email to Counsel for PGW, and to the ALJ’s legal assistant, stating she had an emergency at her son’s school and would not be able to attend the hearing. The ALJ instructed his legal assistant to inform all of the Parties that the hearing would go forward as scheduled and if the Complainant failed to appear, she could submit something in writing why she did not appear by 12:00 p.m. the next day. The Complainant was also instructed that she must include supporting documentation. I.D. at 3,4.

On April 30, 2024, the hearing convened as scheduled. Anita Murray, Esquire, appeared on behalf of PGW, along with a witness, 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 proceeded in the Complainant’s absence. No testimony was taken, and no exhibits were introduced into the record. At the hearing, PGW moved to dismiss the Complaint (Motion to Dismiss) for the

Complainant's failure to appear and prosecute and the ALJ took the Motion to Dismiss under advisement. I.D. at 4.

On May 1, 2024, the Complainant sent an email and attachment to Ms. Murray that reiterated she did not attend the hearing because of an issue at her son's school. Ms. Murray forwarded the email and attachment to the ALJ's legal assistant. Consequently, per the ALJ's instruction, his legal assistant advised the Complainant, via email, to provide a note (i.e. documentation) from an administrator at her son's school about the incident. The Complainant did not respond to the email and the Commission has not received any further contact from the Complainant. I.D. at 4.

The record closed on June 28, 2024, and no Exceptions have been filed. I.D. at 4.

II. Discussion

A. Legal Standards

1. Burden of Proof

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 Code, 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the Company 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*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that

presented by the Company. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Cmwlth. 1982). 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 (Pa. 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, also referred to as the burden of persuasion, to rebut the evidence of the customer shifts to the Company. If the evidence presented by the Company is of co-equal value or "weight," the burden of proof has not been satisfied. The Complainant now has to provide some additional evidence to rebut that of the Company. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 501 Pa. 433, 461 A.2d 1234 (1983).

While the burden of going forward with the evidence 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).

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 January 28, 2002). Both the 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 September 15, 2022) (*Herr*). 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 April 22, 2022); *Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F-2021-3027107 (Opinion and Order entered February 7, 2022); *Williams v. PGW Energy Co.*, Docket No. C-2018-3000734 (Opinion and Order entered March 14, 2019) (*Williams*); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

B. ALJ's Initial Decision

The ALJ made twenty-one (21) Findings of Fact and reached eight (8) Conclusions of Law. I.D. at 4-6, 10-11. 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 implications.

The ALJ explained that in this proceeding, the Complainant has failed to present evidence to explain why her failure to appear was unavoidable, despite being given ample opportunity to do so. The ALJ noted that the Complainant informed the Commission of her inability to participate in the hearing via an email sent a half hour before the scheduled hearing stating she was unable to appear for the hearing because of an emergency at her son's school. Due to the proximity to the scheduled hearing time, the hearing went forward, and the Complainant did not appear. Subsequently, the

Complainant was given the opportunity to submit in writing her reason for failing to appear with supporting documentation. However, the Complainant did not provide the supporting documentation. Rather, the ALJ noted, the only further communication received by the Complainant was a letter sent to, and forwarded by, Counsel for PGW, in which the Complainant again stated that she had an emergency at her son's school and could not attend the hearing but offered no corroborating documentation. I.D. at 8. The ALJ explained that as of the date of the Initial Decision, the Complainant did not submit any evidence to support her averment that the purported emergency at her son's school actually occurred. I.D. at 8 (citing 66 Pa.C.S. § 332(a); *Herr*).

In addition, the ALJ found that another continuance was not warranted. In this regard, the ALJ explained that on January 30, 2024, while Counsel for PGW appeared for the originally scheduled hearing and was prepared to proceed, the Complainant failed to appear. Regardless of the failure to appear, the Complainant was given the benefit of the doubt, and the hearing was rescheduled for April 3, 2024. On April 3, 2024, Counsel for PGW appeared for the hearing with a witness and was prepared to proceed. The Complainant, who also appeared, stated prior to going on the record that she could not go forward until her meter was tested. The ALJ noted that nonetheless, PGW and the Commission accommodated the Complainant and converted the hearing to a prehearing conference in order to establish dates to have the Complainant's meter tested by PGW and for the hearing to reconvene. The Parties agreed on the record to have the meter tested on April 9, 2024, and the Complainant agreed to reconvene the hearing for a third time on April 30, 2024. I.D. at 8 (citing Tr. at. 3-4).

The ALJ noted that on April 30, 2024, Counsel for PGW appeared for the hearing with a witness and was prepared to proceed but the Complainant failed to appear. However, the ALJ noted, to date, the Complainant has not provided a verified reason for failing to attend the hearing. I.D. at 8-9. For the foregoing reasons, the ALJ found:

(1) that granting another continuance to the Complainant would unduly prejudice PGW, which has already expended considerable time and resources necessary to prepare and attend the previous three hearings; and (2) that the continued expenditure of resources necessary to give the Complainant another opportunity to present her case is inimical to the interests of PGW, the Commission, and the public. *Id.* (citing 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(b); *Williams*, at 13-14).

Based on the foregoing, the ALJ found that 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. Accordingly, the ALJ granted PGW's Motion to Dismiss. I.D. at 9, 10.

E. Disposition

We note that any argument that we do not specifically address 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*, 625A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

Upon review of the pleadings and applicable law, we shall vacate the Initial Decision and remand the matter to the Office of Administrative Law Judge (OALJ) consistent with the following discussion.

The record in this case shows that the Complainant failed to appear at the originally scheduled hearing of January 30, 2024. The hearing was then rescheduled for April 3, 2024, and converted to a prehearing conference whereas the Complainant attended and an agreement was reached on the date and time for her meter to be tested.

The evidentiary hearing was then scheduled for April 30, 2024. On the day of that scheduled hearing, the Complainant sent an e-mail to Counsel for PGW and the Commission stating she had an emergency at her son's school and would not be able to attend. PGW filed a Motion to Dismiss for the Complainant's failure to appear. The Initial Decision, issued August 21, 2024, granted PGW's Motion to Dismiss and dismissed the Complaint.

Notwithstanding the above, given the nature of the correspondence provided by the Complainant, we believe it is prudent to permit one last opportunity for a hearing in this proceeding. We impress on the Complainant to make every reasonable effort to attend this hearing, as the Commission must balance the accommodation of these continuances with the resources and time expended by respondents and the Commission itself. Accordingly, we shall vacate the Initial Decision and remand this matter to the OALJ for such further proceedings, as deemed necessary.

III. Conclusion

Based on our review of the ALJ's Initial Decision, the pleadings, and the applicable law, we shall vacate the ALJ's Initial Decision and remand this matter to the OALJ, for such further proceedings as deemed necessary, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Initial Decision of Administrative Law Judge F. Joseph Brady, issued on August 24, 2024, is vacated, consistent with this Opinion and Order.

2. That this proceeding is remanded to the Office of Administrative Law Judge for such further proceedings, as deemed necessary, consistent with this Opinion and Order.

BY THE COMMISSION,

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is fluid and cursive, with the first name being more prominent.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: November 21, 2024

ORDER ENTERED: December 12, 2024