

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Teron Marshall	:	
	:	
v.	:	C-2024-3049596
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint of Teron Marshall for failure to appear for the hearing and prosecute the Complaint.

HISTORY OF THE PROCEEDING

On June 18, 2024, Teron Marshall (Complainant) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed checkmarks in the boxes indicating “[t]he utility is threatening to shut off my service or has already shut off my service,” “I would like a payment agreement,” “[i]ncorrect charges are on my bill,” and “[o]ther.” As relief, the Complainant requested to have charges that he averred belong to another tenant removed from his account and to be placed on a payment agreement.

In the Complaint, Complainant selected the option to receive all communications from the Commission via email at the email address provided by Complainant on the Complaint. Complaint ¶ 9.

On July 8, 2024, the Respondent filed an Answer and New Matter to the Complaint. In its Answer, the Respondent admitted that it issued a 10-Day Shut Off Notice for the gas service to 854 Scattergood Street, Philadelphia, PA (service address) but denied that there are incorrect charges on the bill for the service at the service address.

As New Matter, the Respondent averred: that the Complainant and his family have occupied the service address since 2013; that on December 2, 2016, the Complainant contacted PGW to inquire about placing the gas service in his name and, upon running an Experian credit check, PGW determined that he was linked to the service address since August of 2013; that on February 21, 2020, the Complainant established gas service in his name at the service address; that on February 24, 2020, PGW transferred the previous occupant's balance to the Complainant's account due to his being linked to the property since 2013; that the statute of limitations at 66 Pa.C.S. § 3314 provides that no action for recovery of penalties or forfeitures, or any prosecution, may be maintained unless brought within three years from the date the liability arose; that the statute of limitations at 66 Pa.C.S. § 3314 divests the Commission of jurisdiction to hear an action brought more than three years from the date the liability arose; and that the Complainant did not bring a cause of action regarding the February 24, 2020 balance transfer at the informal level between February 24, 2020 and February 24, 2023. PGW requested that the Commission deny all relief requested in the Complaint, dismiss the Complaint, and grant any other relief in favor of PGW. PGW endorsed its New Matter with a Notice to Plead advising the Complainant that a responsive pleading was due within twenty days of service.

Also on July 8, 2024, the Respondent filed a Preliminary Objection to the Complaint. In the Preliminary Objection, the Respondent again averred that the balance

transfer falls outside the applicable statutory period of limitation and is barred under 66 Pa.C.S. § 3314.¹ The Respondent endorsed its Preliminary Objection with a Notice to Plead advising the Complainant that a responsive pleading was due within ten days of service.

The Complainant did not file a reply to either Respondent's New Matter or Preliminary Objection.

By Initial Call-In Telephonic Hearing Notice dated July 25, 2024, an initial call-in telephonic hearing was scheduled for September 18, 2024 at 10:00 a.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 July 31, 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

¹ I will note that, contrary to its New Matter in which the Respondent averred that the Complainant is challenging a balance transfer that occurred on February 24, 2020, the Respondent indicated in its Preliminary Objection that the Complainant is challenging a balance transfer that occurred on February 24, 2024.

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 he is entitled to the relief requested in the Complaint.

The hearing convened as scheduled on September 18, 2024. Counsel for PGW called in to the hearing with a witness and was prepared to proceed. Mr. Marshall did not call in for the hearing, nor did he contact my office to indicate that he 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 Mr. Marshall's failure to call in for the scheduled hearing as evidence that he did not wish to participate in the hearing.

At the hearing, no witnesses were presented and no exhibits were introduced into the record. Respondent's counsel moved that the Complaint be dismissed with prejudice for lack of prosecution pursuant to 52 Pa. Code § 5.245. In accordance with Commission policy, I am granting the Motion. However, the Complaint will be dismissed without prejudice.

The record closed on October 7, 2024, the date the transcript was filed with the Commission.

FINDINGS OF FACT

1. The Complainant is Teron Marshall.
2. The Respondent is Philadelphia Gas Works.

3. On June 18, 2024, the Complainant filed a Formal Complaint against Philadelphia Gas Works.

4. On July 8, 2024, the Respondent filed an Answer and New Matter to the Complaint.

5. By Initial Call-In Telephonic Hearing Notice dated July 25, 2024, an initial call-in telephonic hearing was scheduled for September 18, 2024 at 10:00 a.m.

6. On July 31, 2024, I issued a Prehearing Order that also advised the parties of the date and time of the scheduled hearing.

7. The Hearing Notice and Prehearing Order were emailed 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 on the Formal Complaint form.

8. Complainant selected the option to receive all communications from the Commission via email at the email address provided by Complainant on the Complaint. Complaint ¶ 9.

9. None of the documents emailed to the Complainant were returned as undeliverable.

10. The Complainant failed to call in for the September 18, 2024, hearing.

11. The Complainant has not contacted the Commission to explain why his failure to attend the September 18, 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 July 25, 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 July 31, 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 the Complainant did not call in and participate in the hearing.

The Hearing Notice and Prehearing Order were emailed 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. *Skow v. Metro. Edison Co.*, Docket No. F-2023-3042228 (Final Order entered May 7, 2024); *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).

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 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.

As the proponent of any request for relief, the Complainant bears the burden of proof. 66 Pa.C.S. § 332(a). 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 Respondent's motion to dismiss will be granted.²

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. The Complainant received notice of the hearing. *Skow v. Metro. Edison Co.*, Docket No. F-2023-3042228 (Final Order entered May 7, 2024); *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

² Since the Complainant is acting *pro se*, PGW's Motion to Dismiss will not be granted with prejudice.

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).

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).

