

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kyle Sampson	:	
	:	
v.	:	C-2024-3045991
	:	
Philadelphia Gas Works	:	

INITIAL DECISION

Before
Arlene Ashton
Administrative Law Judge

INTRODUCTION

This Decision dismisses the Formal Complaint of Kyle Sampson for failure to appear for the hearing and prosecute the Complaint.

HISTORY OF THE PROCEEDING

On February 1, 2024, Kyle Sampson (Complainant) eFiled¹ a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW) alleging incorrect charges on his electric bill.

¹ The Complainant utilized the Commission’s eFile service to electronically file the Formal Complaint. When the Complainant registered for an eFile account with the Commission, the Complainant also registered an email address in order to be served Commission documents via the Commission’s eService process.

On February 23, 2024, the Respondent filed an Answer in which it denied the material allegations of fact and conclusions of law in the Complaint. The Respondent requested that the Complaint be dismissed.

By Initial Call-In Telephonic Hearing Notice dated February 29, 2024, a telephonic hearing was scheduled for May 9, 2024, and the matter was assigned to Administrative Law Judge (ALJ) Darlene Heep. 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).

On March 12, 2024, a Prehearing Order was issued by ALJ Heep and served on the parties which reminded them of the date and time of the hearing. The Prehearing Order warned against possible dismissal for failure to appear. Additionally, the Prehearing Order informed the parties about the applicable procedural rules, and again included the procedure to follow for hearing continuances.

The Hearing Notice and Prehearing Order were eServed to the Complainant at the Complainant’s request and in the ordinary course of the Commission’s business to

the email address provided and registered with the Commission by the Complainant.² Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.

On April 25, 2024, a Cancelled/Rescheduled Hearing Notice was issued re-scheduling the May 9, 2024 hearing for June 5, 2024 before ALJ Heep.

On May 9, 2024, a Cancelled/Rescheduled Hearing Notice was issued re-scheduling the May 9, 2024 hearing for July 10, 2024 before ALJ Heep. Also on May 9, 2024, a Cancelled/Rescheduled Hearing Notice was issued re-scheduling the July 10, 2024 hearing for August 21, 2024 before ALJ Heep.

On August 7, 2024, a Judge Change Notice was issued informing the parties that the case had been assigned to me and that I would preside over the August 21, 2024 hearing. The Judge Change Notice also provided parties with updated telephone conference information i.e., the Toll-Free Bridge Number and the PIN to call to connect to and participate in the August 21, 2024 hearing.

On August 8, 2024, a Prehearing Order was issued by me and served on the parties which reminded them of the date and time of the hearing. The Prehearing Order also provided updated telephone conference information concerning how to connect to and participate in the August 21, 2024 hearing. The Prehearing Order warned against possible dismissal for failure to appear. Additionally, the Prehearing Order informed the parties about the applicable procedural rules, and again included the procedure to follow for hearing continuances.

² *Supra, n. 1.*

The Hearing Notice and Prehearing Order were eServed to the Complainant at the Complainant's request and in the ordinary course of the Commission's business to the email address provided and registered with the Commission by the Complainant.³ Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.

The hearing convened as scheduled on August 21, 2024. Although a court reporter appeared for the hearing, neither the Complainant nor counsel for the Respondent appeared for the hearing. After a brief recess to allow the parties to appear and a fire drill was conducted at the OALJ office, the hearing was resumed. However, neither party appeared for the hearing and it was adjourned at approximately 10:20 A.M.

Shortly after the hearing was adjourned, I received an email from counsel for the Respondent indicating that she and counsel for the Complainant endeavored to participate in the hearing and were unable to do so because they used conference information provided in Notices for a hearing before ALJ Heep rather than the conference information provided in the August 7, 2024 Notice of Hearing and August 8, 2024 Prehearing Order. In addition, counsel for the Respondent indicated that "opposing counsel was retained last night and has requested a continuance."⁴

In light of the information presented in the email from counsel to the Respondent, I instructed OALJ staff to schedule a further hearing in this matter. Accordingly, on August 27, 2024, a Further Telephonic Hearing Notice was issued informing the parties that a further telephonic hearing was scheduled for November 6,

³ *Supra, n. 1.*

⁴ Counsel for the Complainant was not identified by name in the email; however, the email indicated that it had been sent to the presiding officer and gossettllaw@msn.com. Commission records do not reflect an entry of appearance by counsel on behalf of the Complainant.

2024. The Hearing Notice provided the parties with the Toll-Free Bridge Number and the PIN to call and participate in the telephonic hearing.

The further hearing convened as scheduled on November 6, 2024. Anita Murray, Esquire, appeared on behalf of PGW 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, the Respondent moved to dismiss the Complaint for the Complainant's failure to appear and prosecute. I took this motion under advisement.

The record closed on November 26, 2024, upon the filing of the transcript with the Commission.

FINDINGS OF FACT

1. The Complainant is Kyle Sampson.
2. The Respondent is Philadelphia Gas Works.
3. On February 1, 2024, the Complainant filed a Formal Complaint against the Respondent.
4. On February 23, 2024, the Respondent filed an Answer to the Complaint.
5. On February 29, 2024, a Call-In Telephone Hearing Notice was issued scheduling an initial telephonic hearing on May 9, 2024 at 10:00 a.m. before ALJ Heep.

6. On March 12, 2024, Judge Heep issued a Prehearing Order providing additional information to the parties regarding the May 9, 2024 hearing.

7. Both the February 29, 2024 Hearing Notice and March 12, 2024 Prehearing Order provided the parties with the toll-free bridge telephone number and PIN to call and participate in the hearing, and, *inter alia*, the procedure for requesting a continuance and the possible consequences of failing to appear at the hearing.

8. On April 25, 2024, a Cancelled/Rescheduled Hearing Notice was issued re-scheduling the May 9, 2024 hearing for June 5, 2024 before ALJ Heep.

9. On May 9, 2024, a Cancelled/Rescheduled Hearing Notice was issued re-scheduling the May 9, 2024 hearing for July 10, 2024 before ALJ Heep.

10. On May 9, 2024, a Cancelled/Rescheduled Hearing Notice was issued re-scheduling the July 10, 2024 hearing for August 21, 2024 before ALJ Heep.

11. On August 7, 2024, a Judge Change Notice was issued informing the parties that the case had been reassigned and that ALJ Ashton would preside over the August 21, 2024 hearing.

12. The August 7, 2024 Judge Change Notice provided the parties with updated telephone conference information i.e., the Toll-Free Bridge Number and the PIN to call to connect to and participate in the August 21, 2024 hearing.

13. On August 8, 2024, a Prehearing Order was issued and served on the parties which reminded them of the date and time of the hearing.

14. The August 8, 2024 Prehearing Order provided updated telephone conference information concerning how to connect to and participate in the August 21, 2024 hearing and warned against possible dismissal of the case for failure to appear.

15. The August 21, 2024 hearing was convened as scheduled; however, neither party appeared for the hearing.

16. On August 21, 2024, counsel for PGW contacted OALJ via email and advised that counsel for both parties had called into the hearing using the call-in information for the hearing scheduled by Judge Heep rather than the information on the August 7, 2024 Judge Change Notice and the August 8, 2024 Prehearing Order.

17. On August 27, 2024, a Further Telephonic Hearing Notice was issued informing the parties that a further telephonic hearing was scheduled for November 6, 2024.

18. The August 27, 2024 Further Telephonic Hearing Notice provided the parties with the Toll-Free Bridge Number and the PIN to call and participate in the November 6, 2024 telephonic hearing.

19. All Hearing Notices and Prehearing Orders issued in this matter were eServed to Complainant at the Complainant's request and in the ordinary course of the Commission's business to the email address provided and registered with the Commission by the Complainant.

20. None of the Hearing Notices or the Prehearing Orders issued to the Complainant were returned to the Commission as undeliverable.

21. The Complainant failed to appear and participate in the scheduled telephonic hearing on November 6, 2024. Tr. 8-9.

22. Counsel for the Respondent was present and prepared to proceed at the November 6, 2024 hearing. Tr. 7.

23. The Complainant did not request a continuance, withdraw the Complaint, or otherwise contact the Commission to explain why his failure to appear at the November 6, 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 the Complainant was provided notice and the opportunity to be heard. On August 7, 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 August 8, 2024, a Prehearing Order was issued providing additional information to the parties regarding the hearing. Both the August 7, 2024 Hearing Notice and the August 8, 2024 Prehearing Order advised the Complainant that the case could be dismissed if the Complainant did not call in and participate in the August 21, 2024 hearing. Although the Complainant was served with the appropriate call-in information for the August 21, 2024 hearing, he failed to do so. Again, on August 27, 2024, the Complainant was served a Further Telephonic Hearing Notice which advised the parties of the date and time of the hearing, and how to participate.

The Hearing Notices and Prehearing Orders were eServed on the Complainant at the email address that the Complainant provided and registered with the Commission. None 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 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 November 6, 2024 hearing despite receiving notice and despite the undersigned allowing additional time for the Complainant to appear. 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.

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 Respondent'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. 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).

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 the 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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That Philadelphia Gas Works' Motion to Dismiss the Formal Complaint of Kyle Sampson at Docket Number C-2024-3045991 is granted.

