

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

James Starr

v.

Philadelphia Gas Works

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C-2024-3048960

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On May 10, 2024, James Starr (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 that “[t]he utility is threatening to shut off my service or has already shut off my service” and “I am having a reliability, safety or quality problem with my utility service.” Under the “requested relief” section of the Complaint form, the Complainant averred that since he opened his account with PGW his gas bills have been

approximately 300% higher than standard heating costs. The Complainant believes that the problem is some inefficiency or leak for which he should not be held responsible.

On May 30, 2024, the Respondent filed an Answer admitting that it issued a 10-day Shut Off Notice for the gas service at 2124 Walnut Street, 1R, Philadelphia, PA (service address). The Respondent further answered that the Complainant established gas service at the service address as of October 15, 2022, that the service address has gas heat, and that the bills are based on actual meter readings. The Respondent requested that the Commission deny all relief requested in the Complaint and dismiss the Complaint.

By Initial Call-In Telephonic Hearing Notice dated August 19, 2024, an initial call-in telephonic hearing was scheduled for October 16, 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 August 19, 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 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.

After the close of Commission business on October 15, 2024, the Complainant sent an email to Teri-Lee Rhoades, a mediator within the Office of Administrative Law Judge's Mediation Unit requesting a continuance of the October 16, 2024 hearing. The Complainant advised that he was away for work and that he would be in the middle of Lake Heron at the time of the hearing. Mediator Rhodes forwarded the Complainant's email to me just prior to the start of the hearing.

The hearing convened as scheduled on October 16, 2024. Graciela Christlieb, Esq., counsel for PGW, called in to the hearing with two witnesses and was prepared to proceed. Mr. Starr did not call in for the hearing. Following discussion with Ms. Christlieb, I advised that I would allow the Complainant until the close of business on October 17, 2024 to substantiate his late request for continuance, and that if the Complainant failed to establish good cause justifying his late request for a continuance, I would dismiss his Complaint.

On October 16, 2024, shortly after the hearing concluded, the Complainant emailed my legal assistant apologizing for the late request and explaining that he made the request due to a last-minute change to his work schedule. I decided to grant the Complainant's late request for a continuance and have the matter rescheduled for hearing.

By Rescheduled Initial Telephonic Hearing Notice dated October 25, 2024, the initial call-in telephonic hearing was rescheduled for November 22, 2024 at 10:00 a.m. The Rescheduled Hearing Notice advised the parties of the date and time of the rescheduled hearing as well as how to call in for the hearing and again 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.

The rescheduled hearing convened as scheduled on November 22, 2024. Ms. Christlieb called in to the hearing with two witnesses and was prepared to proceed. The Complainant did not call in for the hearing.

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. Starr’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 December 20, 2024, the date the transcript from the November 22, 2024 hearing was filed with the Commission.

FINDINGS OF FACT

1. The Complainant is James Starr.
2. The Respondent is Philadelphia Gas Works.

3. On May 10, 2024, the Complainant filed a Formal Complaint against Philadelphia Gas Works.

4. The Complainant selected eService for all documents from the Commission. Complaint ¶ 9.

5. On May 30, 2024, the Respondent filed an Answer to the Complaint.

6. By Initial Call-In Telephonic Hearing Notice dated August 19, 2024, an initial call-in telephonic hearing was scheduled for October 16, 2024 at 10:00 a.m.

7. On August 19, 2024, I issued a Prehearing Order that also advised the parties of the date and time of the scheduled hearing.

8. 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 by the Complainant on the Formal Complaint form and registered with the Commission.

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

10. On October 15, 2024, the Complainant submitted an email after the close of Commission business hours requesting a postponement of the October 16, 2024 hearing due to a work scheduling conflict.

11. The Complainant failed to call in for the October 16, 2024, hearing.

12. By Rescheduled Initial Telephonic Hearing Notice dated October 25, 2024, the initial call-in telephonic hearing was rescheduled for November 22, 2024 at 10:00 a.m.

13. The 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 on the Formal Complaint form and registered with the Commission.

14. The Complainant failed to call in for the November 22, 2024, hearing.

15. The Complainant has not contacted the Commission to explain why his failure to attend the November 22, 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 October 25, 2024, the Complainant was served a Hearing Notice which advised the parties of the date and time of the reschedule hearing in this matter, and how to participate. A Prehearing Order was issued on August 19, 2024, providing additional information to the parties regarding the hearing, including the procedure for requesting a postponement of a scheduled 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, Prehearing Order, and Rescheduled Hearing Notice were eServed to the Complainant at the email address provided by the Complainant. Neither the Hearing Notices nor the Prehearing Order 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 22, 2024 rescheduled 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. 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.¹

¹ Since the Complainant is acting *pro se*, PGW's Motion to Dismiss will not be granted with prejudice.

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 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 the Motion of Philadelphia Gas Works to dismiss the Formal Complaint of James Starr filed against Philadelphia Gas Works Company at Docket No. C-2024-3048960 is granted.

2. That the Formal Complaint filed at James Starr v. Philadelphia Gas Works at Docket No. C-2024-3048960 is dismissed without prejudice for failure to prosecute.

