

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

George H. Whaley, Jr	:	
	:	
v.	:	C-2024-3051003
	:	
UGI Utilities, Inc. – Gas Division	:	

INITIAL DECISION

Before
John M. Coogan
Administrative Law Judge

INTRODUCTION

This decision dismisses the Formal Complaint of George H. Whaley, Jr. against UGI Utilities, Inc. – Gas Division with prejudice because Mr. Whaley failed to appear for his hearing and prosecute his Formal Complaint.

HISTORY OF THE PROCEEDING

On September 2, 2024, George H. Whaley, Jr. (Mr. Whaley or Complainant) filed a Formal Complaint against UGI Utilities, Inc. – Gas Division (UGI Gas or Company). The Formal Complaint was served on UGI Gas on September 4, 2024. In his Complaint, Mr. Whaley states that UGI Gas shut off his gas over the Labor Day holiday although they had previously been given a doctor’s note stating a medical condition. As relief, Mr. Whaley requests that UGI Gas turn on his gas service.

On September 24, 2024, UGI Gas filed an answer to Mr. Whaley's Formal Complaint. In its answer, UGI Gas admits it terminated service, but denies that service was terminated over the Labor Day holiday weekend. UGI Gas avers that service was terminated on August 28, 2024, due to nonpayment on the account. UGI Gas denies that termination of gas service violated the Public Utility Code, the Commission's orders or regulations, or the Company's Commission-approved tariff. Regarding a medical certification, UGI Gas avers that, prior to the issuance of the August 13, 2024, termination notice, UGI Gas most recently received a medical certification on April 12, 2024, which expired after 30 days. UGI Gas also avers that, after terminating service, service was restored pursuant to a medical certification on September 3, 2024.

On October 2, 2024, the Commission issued an initial telephonic hearing notice setting a call-in telephonic hearing for this matter for December 9, 2024, at 10:00 a.m. In anticipation of that hearing, I issued a prehearing order on October 2, 2024, setting forth various rules that would govern the December 9, 2024, hearing.

On November 22, 2024, counsel for UGI Gas informally requested by e-mail that the December 9, 2024 hearing be continued. Counsel for UGI Gas stated that UGI Gas had been unable to reach Complainant and was unaware of whether Mr. Whaley agreed to a continuance. On November 25, 2024, I responded to counsel for UGI Gas and Complainant by e-mail,¹ stating that a motion should be filed if UGI Gas would like to request the December 9, 2024 hearing be continued. I further stated that unless I granted the motion, the December 9, 2024 hearing would be held as scheduled. On November 27, 2024, UGI Gas filed a Motion for Continuance. Complainant did not file a response to the Motion for Continuance or respond to my email regarding UGI's motion.

¹ The e-mail was sent to Complainant at the e-mail address listed on his Formal Complaint.

The initial hearing convened on December 9, 2024, as scheduled. Alice Wade, Esquire, appeared on behalf of UGI Gas along with one witness. Complainant did not appear, and no one appeared on behalf of Complainant. At the hearing, UGI Gas withdrew its Motion for Continuance. Also, counsel for UGI Gas made an oral motion to dismiss the Formal Complaint with prejudice.

The record in this case consists of the transcript of 12 pages. The record closed on December 26, 2024, upon my receipt of the hearing transcript. For the reasons discussed below, UGI Gas's motion will be granted, and the Formal Complaint will be dismissed with prejudice.

FINDINGS OF FACT

1. The Complainant in this case is George H. Whaley, Jr.
2. The Respondent in this case is UGI Utilities, Inc. – Gas Division.
3. Mr. Whaley elected to be served by First-Class Mail and also registered for eService in this proceeding. Complaint ¶ 9.
4. The October 2, 2024 hearing notice was served by First-Class Mail and eService on Complainant.
5. The October 2, 2024 hearing notice states that a party may lose the case if they do not take part in the hearing and present facts on the issues raised.
6. The October 2, 2024 prehearing order was served by First-Class Mail and eService on Complainant.

7. The October 2, 2024, prehearing order indicated what needed to be done to request a continuance of a hearing and stated that a party may lose the case if they do not take part in the hearing and present facts on the issues raised.

8. No returned mail or electronic mail delivery failure notification was received by the Commission indicating that the documents served on Mr. Whaley did not reach him.

9. The telephonic hearing convened on December 9, 2024, as scheduled. Tr. 1-12.

10. UGI Gas appeared at the December 9, 2024, hearing. Tr. 1-12.

11. No one appeared on behalf of Mr. Whaley at the December 9, 2024, telephonic hearing. Tr. 1-12.

12. Complainant did not file a motion for continuance or otherwise notify the Office of Administrative Law Judge that he was unavailable for the December 9, 2024 hearing.

13. Complainant did not contact the Office of Administrative Law Judge to explain why his failure to attend the December 9, 2024, hearing was unavoidable.

14. During the December 9, 2024, hearing, counsel for UGI Gas made an oral motion to dismiss Mr. Whaley's Formal Complaint with prejudice. Tr. 7.

DISCUSSION

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). The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701. Complainant has the burden of proof in this proceeding as the party seeking relief.

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 afforded notice and the opportunity to be heard. *Id.*

Mr. Whaley affirmatively signed up to receive service by both First-Class Mail and eService in this proceeding. While Complainant selected First-Class Mail as his preferred method of service at paragraph 9 on his Formal Complaint form, he also registered with the Commission's eService service program, in which he also selected to be served all documents from the Commission, including all hearing notices, orders and related documents, by eService. The hearing notice and prehearing order were served on

Complainant by First-Class Mail and eService.² No correspondence was returned to the Commission 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); *Berkowitz v. Mayflower Sec., Inc.*, 317 A.2d 584 (Pa. 1974); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. 1997); *Judge v. Celina Mut. Ins. Co.*, 449 A.2d 658 (Pa. Super. 1982).

The hearing notice and the prehearing order served on the parties to this proceeding state that, if a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party. Mr. Whaley did not appear at the December 9, 2024, hearing. Once notice of a hearing and the opportunity to be heard have been provided, it is the responsibility of the parties to appear and participate in the hearing. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993); 66 Pa.C.S. § 332(f). During the hearing, counsel for UGI Gas moved to have the Formal Complaint dismissed with prejudice because Mr. Whaley did not appear. Tr. 7. Additionally, although UGI Gas requested a continuance of the December 9, 2024 hearing, I instructed both parties that the hearing would be held unless I granted a motion for continuance.

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).

² During the December 9, 2024, hearing, I only indicated that Mr. Whaley had received service by eService. Tr. 5. However, the initial call-in hearing notice and prehearing order, as well as internal Commission records, also indicate that Mr. Whaley was served by First-Class Mail.

The Commission has held that when there are no facts in the record that the party's failure to appear was unavoidable, the complaint should be dismissed with prejudice. *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).

Mr. Whaley did not appear for the evidentiary hearing, despite receiving proper service, and there are no facts in the record to find his failure to appear was unavoidable. Consequently, UGI Gas's motion to dismiss Mr. Whaley's Formal Complaint will be granted, and the Formal Complaint will be dismissed with prejudice.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter in this proceeding. 66 Pa.C.S. § 701.

2. The party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. 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).

4. The degree of proof required to satisfy the burden of proof is a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

5. 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).

6. Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. This due process requirement is satisfied when the parties are afforded notice and the opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

7. Complainant's due process rights have been fully protected. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

8. By failing to participate in the hearing and proffer any evidence to support the complaint, Mr. Whaley has failed to carry his burden of proof in this proceeding. 66 Pa.C.S. § 332(a).

