

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Reginald Whitaker

v.

Philadelphia Gas Works

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C-2024-3051595

**INITIAL DECISION**

Before  
Alphonso Arnold III  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Formal Complaint of Reginald Whitaker against Philadelphia Gas Works due to his failure to appear for the telephonic evidentiary hearing to prosecute his Formal Complaint.

**HISTORY OF THE PROCEEDING**

On October 10, 2024, Reginald Whitaker (“Complainant”) filed a Formal Complaint against Philadelphia Gas Works (“Respondent”) with the Pennsylvania Public Utility Commission (“Commission”), requesting a payment arrangement.

On November 7, 2024, Respondent filed an Answer to the Complaint, wherein it admitted or denied the assertions in the Complaint.

On November 14, 2024, the Commission issued an Initial Telephonic Hearing Notice scheduling an evidentiary hearing to be held in this matter for January 21, 2025, and assigning the undersigned as Presiding Officer to this proceeding.

On December 2, 2024, the Commission issued my Prehearing Order, which reminded the parties of the date and time of the hearing and set forth the procedural rules that would govern the hearing.

On January 21, 2025, the evidentiary hearing was held as scheduled. Graciela Christlieb, Esquire, appeared on behalf of Respondent with a witness and was prepared to proceed. Complainant did not appear for the hearing, even after the hearing was delayed until 10:10 a.m. Attorney Christlieb made a Motion to Dismiss the Complaint for failure of Complainant to appear and prosecute his Complaint.

On February 7, 2025, a 6-page electronic transcript of the January 21, 2025 evidentiary hearing was filed with the Commission. The record in this matter was closed on this date.

For the reasons discussed below, the Complaint will be dismissed.

#### FINDINGS OF FACT

1. The Complainant is Reginald Whitaker.
2. The Respondent is Philadelphia Gas Works.
3. On October 10, 2024, Complainant filed a Formal Complaint with the Commission against Respondent.

4. On November 7, 2024, Respondent filed an Answer to the Complaint.
5. On November 14, 2024, the Commission issued an Initial Telephonic Hearing Notice scheduling an evidentiary hearing to be held in this matter for January 21, 2025, and assigning the undersigned as Presiding Officer to this proceeding.
6. On December 2, 2024, the Commission issued my Prehearing Order, which reminded the parties of the date and time of the hearing and set forth the procedural rules that would govern the hearing.
7. Complainant elected to receive all Commission documents via eService. Complaint ¶ 9.
8. The Commission's internal electronic activity indicates that the November 14, 2024 Hearing Notice and the December 2, 2024 Prehearing Order were successfully eServed to Complainant.
9. On January 21, 2025, the evidentiary hearing was held as scheduled, and Graciela Christlieb, Esquire, appeared on behalf of Respondent with a witness and was prepared to proceed.
10. Complainant failed to appear and participate in the January 21, 2025, evidentiary hearing.
11. Complainant did not contact the Office of Administrative Law Judge to explain why his failure to attend the January 21, 2025 hearing was unavoidable.

## DISCUSSION

### *Legal Standards*

#### *Due Process and Notice*

As an administrative agency of the Commonwealth, the Commission is required to provide due process to the parties appearing before it. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984) (citing *Fusaro v. Pa. Pub. Util. Comm'n*, 382 A.2d 794 (Pa. Cmwlth. 1978)). Due process is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Id.*

The Commission is required to fix the time and place of a hearing in a complaint proceeding and to serve notice thereof upon the parties in interest. *See* 66 Pa.C.S. § 703(a)-(b). Service on interested persons is sufficient to provide notice. 52 Pa. Code § 5.201(a). Further, eService, which is not indicated as undeliverable, is presumed to be received by the parties. *Hu v. PECO Energy Co.*, Docket No. C 2019-3012075 (Order entered Dec. 19, 2019) (“*Hu*”); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Order entered Apr. 7, 2017) (“*Zirkel*”); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Order entered Jan. 31, 2017) (“*Morella*”).

#### *Failure to appear for a hearing*

Once notice of a hearing and the opportunity to be heard have been provided 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) (“*Mumma*”).

If a party fails to attend a scheduled hearing, such failure to appear will be deemed a waiver of the party's opportunity to participate in a hearing, unless the presiding officer determines that such failure was "unavoidable" and that the interests of the other parties and of the public would not be "prejudiced" by permitting such reopening or further examination. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a)-(b).

Moreover, the Commission will exercise its discretion and excuse a complainant's failure to appear at a hearing if the complainant demonstrates that he/she made a good faith attempt to attend the hearing. *See, e.g., Then v. Phila. Gas Works*, Docket No. F-2012-2318264 (Opinion and Order entered June 13, 2013) (vacating ALJ's decision to dismiss complaint with prejudice and remanded for hearing because complainant attempted to attend the scheduled hearing, and appeared in the correct building, but was unable to locate the hearing room in the building due to language challenges).

However, if a complainant's failure to appear was not unavoidable, or if the complainant did not make a good faith attempt to attend the duly scheduled hearing, the Commission has recognized that any further procedural activity in the docket would prejudice the public interest due to the wasteful use of the agency's and the respondent's time and resources in addressing the complaint. *See Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892, at 5 (Opinion and Order entered Dec. 26, 1995) ("*Jefferson*"). In such instances, to preserve judicial economy, the Commission typically will dismiss a complaint, *with prejudice*, barring the complainant from filing another complaint raising the same claims and issues presented in the dismissed complaint. *Id.*

### *Burden of Proof*

Section 332(a) of the Code provides that a complainant, as the party seeking affirmative relief from the Commission, has the burden of proof. 66 Pa.C.S.

§ 332(a). The evidentiary burden of proof is the “preponderance of the evidence” standard. *Suber v. Pa. Comm’n on Crime and Delinq.*, 885 A.2d 678 (Pa. Cmwlth. 2005); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600 (Pa. Cmwlth. 1990). To establish a fact or claim by a preponderance of the evidence means to offer evidence that is more convincing, by even the smallest amount, than the probative value of the evidence presented by the other party. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

As a matter of law, to establish a legally sufficient claim, a complainant must show that the named utility is responsible or accountable for the problem described in the Complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990). The offense must be a violation of the Code, a Commission Regulation or Order, or a Commission-approved tariff. 66 Pa.C.S. § 701.

### *Analysis*

Complainant received notice and the opportunity to be heard in this proceeding. Complainant elected to enroll in eService and therefore affirmatively consented to receive documents electronically. Complaint ¶ 9. On November 14, 2024, the Commission eServed an Initial Telephonic Hearing Notice (“Notice”) to Complainant via the email address that he provided to the Commission when opening his eService account. On December 2, 2024, the Commission eServed a Prehearing Order (“Order”) to Complainant via the email address that he provided to the Commission when opening his eService account. The Commission’s internal electronic activity indicates that these documents were successfully eServed to Complainant. Therefore, Complainant is presumed to have received the Notice and Order. *Hu; Zirkel; Morella*.

The Notice and Order contained the date and time of the January 21, 2025 evidentiary hearing; therefore, Complainant had notice of the date and time of the

January 21, 2025 evidentiary hearing. Notably, the Notice and Order indicated that the hearing would take place telephonically, that the parties would need to call a conference line and then enter a PIN number to participate in the hearing, and that Complainant would lose his case if they failed to appear for the hearing and present evidence on the issues raised.

As Complainant was provided notice and the opportunity to be heard, it was his responsibility to appear and participate in the hearing. *Mumma*. Complainant failed to appear for the January 21, 2025 evidentiary hearing. To date, Complainant has not contacted the Office of Administrative Law Judge or me to explain his absence from the hearing. Complainant's absence from the hearing was not unavoidable, nor can a finding be made that Complainant made a good faith effort to participate in the hearing.

Complainant, as the party with the burden of proof, failed to meet his burden because he failed to participate in the hearing to proffer evidence in support of his Complaint. Thus, it is appropriate to dismiss the Complaint. *Jefferson*. Respondent's Motion to Dismiss will be granted in the Ordering paragraphs below.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter 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) (citing *Fusaro v. Pa. Pub. Util. Comm'n*, 382 A.2d 794 (Pa. Cmwlth. 1978)).

3. A Notice eServed to a party's registered email address with no notification that service failed to be delivered to that email address is presumed to have been received. *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 (Order entered Apr. 7, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Order entered Jan. 31, 2017).

4. If a party fails to attend a scheduled hearing, such failure to appear will be deemed a waiver of the party's opportunity to participate in a hearing, unless the presiding officer determines that such failure was "unavoidable" and that the interests of the other parties and of the public would not be "prejudiced" by permitting such reopening or further examination. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a)-(b).

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. *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995).

6. As the party seeking affirmative relief from the Commission, Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).

7. By failing to appear for the hearing and proffer any evidence to support the Complaint, Complainant has failed to meet his burden of proof. 66 Pa.C.S. § 332(a).

