

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Laddy Then	:	
	:	
v.	:	F-2023-3044004
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
Marta Guhl  
Administrative Law Judge

**INTRODUCTION**

This Decision dismisses the Formal Complaint for the failure of Complainant to appear for the hearing and prosecute the complaint.

**HISTORY OF THE PROCEEDING**

On October 12, 2023, Laddy Then (Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW).<sup>1</sup> The Complaint alleges that there were incorrect charges on her bill.

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<sup>1</sup> The Complaint is a timely appeal from the determination of the Commission's Bureau of Consumer Services (BCS), which dismissed the Complainant's informal complaint. The BCS number was redacted due to a Protection From Abuse Order. A timely BCS appeal is subject to de novo review. 52 Pa. Code § 56.173(a).

In her Complaint, the Complainant selected the option to receive all communications from the Commission via First-Class Mail at the address provided by the Complainant on the Complaint. Complaint ¶9.

On November 21, 2023, the Respondent filed an Answer in which it denied the material allegations of fact and conclusions of law in the Complaint. Respondent requested that the Complaint be dismissed.

On November 22, 2023, an Interim Order was issued which set the matter for settlement conference. The parties were unable to resolve the case via mediation.

On January 8, 2024, a Call-In Telephone Hearing Notice was served on the parties scheduling an initial telephonic hearing on February 16, 2024 at 10:00 a.m. and the case was assigned to me. 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 February 15, 2024, a Cancellation/Reschedule Notice was issued, and the matter was rescheduled for an Initial Call-In Telephonic Hearing on April 12, 2024, at 10:00 a.m. due to a conflict in the presiding officer's schedule.

On February 15, 2024, a Prehearing Order was served on the parties reminding them of the date and time of the hearing. The Prehearing Order also stated the potential consequences if a party failed to appear at the hearing. Additionally, the Prehearing Order informed the parties about the applicable procedural rules, and again included the procedure to follow for hearing continuances.

On April 12, 2024, the hearing convened as scheduled. Counsel for the Respondent was present as well as one potential witness. The Complainant was not present for the hearing.

After the hearing, the Complainant contacted my office to indicate that she was unavailable on the hearing date and requested a new hearing. The Complainant indicated that she was out of the country and would be until the fall of 2024.

On December 12, 2024, a Further Telephonic Hearing Notice was sent to the parties which indicated a further hearing on February 20, 2025, at 10:00 a.m.

In the ordinary course of the Commission's business, the Hearing Notice and Prehearing Order were served via U.S. First-Class Mail to the Complainant at the street address provided by her to the Commission. The Commission did not receive any return mail that the Hearing Notice or the Prehearing Order sent to Complainant's address were undeliverable.

On February 20, 2025, I convened the hearing as scheduled. Anita Murray, Esquire, appeared on behalf of Respondent along with one witness and was ready to

proceed. The court reporter was also present. The Complainant was not present at the start of the hearing. After a short recess to allow time for the Complainant to appear, the hearing proceeded in 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 her complaint. I took this motion under advisement.

The Complainant has not contacted the Commission to explain why her failure to appear at the hearing was unavoidable.

The record closed on March 13, 2025, when I received my copy of the further hearing transcript. This decision grants the Respondent's motion to dismiss the Complaint.

#### FINDINGS OF FACT

1. The Complainant is Laddy Then.
2. The Respondent is Philadelphia Gas Works.
3. On October 12, 2023, Complainant filed a Formal Complaint against Respondent.
4. On November 21, 2023, Respondent filed an Answer to the Complaint.
5. On January 8, 2024, a Call-In Telephone Hearing Notice was served on Complainant scheduling an initial telephonic hearing on February 16, 2024, at 10:00 a.m.

6. On February 15, 2024, a Cancellation/Reschedule Notice was issued, and the matter was rescheduled for an initial hearing on April 12, 2024, at 10:00 a.m. due to a conflict in the presiding officer's schedule.

7. On February 15, 2024, a Prehearing Order was served on Complainant providing additional information to the parties regarding the hearing.

8. The hearing convened as scheduled on April 12, 2024, for which the Complainant failed to appear.

9. After April 12, 2024, the Complainant contacted my office to indicate that she was unavailable on April 12, 2024 and requested a new hearing date. The Complainant indicated that she was out of the country until Fall of 2024.

10. By a Further Telephonic Hearing Notice dated December 12, 2024, a further telephonic hearing was scheduled for February 20, 2025, at 10:00 a.m.

11. Both the Hearing Notice and Prehearing Order were served on Complainant by U.S. First-Class Mail to the postal address Complainant provided to the Commission.

12. Both the Hearing Notice and Prehearing Order provided the Complainant 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.

13. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.

14. The Complainant failed to appear and participate in the scheduled telephonic hearing on February 20, 2025.

15. The court reporter, Counsel for Respondent and its witness were present and prepared to proceed at the February 20, 2025, hearing.

16. The Complainant has not contacted the Commission to explain why her failure to appear at the hearing was unavoidable.

## DISCUSSION

### Due Process and Notice

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. First, on January 8, 2024, the Commission served the Complainant a Hearing Notice which advised the parties of the date and time of the hearing, and how to participate. Next, the Commission served the Complainant with a Cancellation/Reschedule Notice on February 15, 2024, which rescheduled the matter for a hearing on April 12, 2024. Then, on February 15, 2024, the Commission served the Complainant a Prehearing Order which reminded the parties of the date and time of the hearing, and how to participate. Lastly, after the Complainant contacted my office to request a further hearing date, the Commission served a Further Telephonic Hearing Notice on December 12, 2024, which indicated a further hearing in the matter would be

held on February 20, 2025, at 10:00 a.m. All documents advised the parties, *inter alia*, how to request a continuance prior to the hearing if needed. Finally, the documents advised Complainant that failure to appear may result in the dismissal of the Complaint with prejudice, which means that Complainant would be barred from filing another complaint raising the same claim(s) and issues(s) presented in the dismissed complaint.

Both the Hearing Notice and Prehearing Order were served by U.S. First-Class Mail to the address provided on the Complaint. Neither document was returned as being undeliverable. Accordingly, it must be presumed that this mail was received by Complainant. *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 Complainant had notice of the hearing and an opportunity to be heard in this proceeding. Therefore, Complainant's due process rights have been fully protected. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993).

#### Failure to Appear, Waiver and the "Unavoidable" Standard

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 and despite the undersigned allowing additional time for Complainant to appear. To date, there has been no communication to 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 that 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.

#### Burden of Proof and Dismissal of Complaint

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, a 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, 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 merits of the Complaint will not be addressed.

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. Notice mailed via U.S. First-Class Mail to a party and not returned to the Commission as undeliverable is presumed received. *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).

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, 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 Laddy Then, at Docket Number F-2023-3044004, is granted.
2. That the Formal Complaint filed by Laddy Then in Laddy Then v. Philadelphia Gas Works, Docket Number F-2023-3044004, is hereby dismissed.
3. That the Secretary's Bureau shall mark Docket No. F-2023-3044004 as closed.

Date: June 3, 2025

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/s/  
Marta Guhl  
Administrative Law Judge