

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Damon Saleem	:	
	:	
v.	:	F-2024-3052162
	:	
Philadelphia Gas Works	:	

**INITIAL DECISION**

Before  
F. Joseph Brady  
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 November 13, 2024, Damon Saleem (Complainant or Mr. Saleem) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against Philadelphia Gas Works (Respondent or PGW).<sup>1</sup> The Complaint

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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), at BCS No. 4000771, which dismissed Complainant's informal complaint. A timely BCS appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

alleges that PGW changed Complainant's payment arrangement to the point where it is unaffordable.

In his Complaint, 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 December 9, 2024, Respondent filed an Answer in which it admitted to the claims raised in the Complaint but denied Complainant's request for relief. Respondent requested that the Complaint be dismissed.

By Corrected Initial Call-In Telephonic Hearing Notice dated December 20, 2024, a telephonic hearing was scheduled for March 18, 2025, and the matter was assigned to me.

On February 27, 2025, a Prehearing Order was 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.

On March 17, 2025, via email, Complainant requested a continuance of the scheduled hearing due to a death in the family. Complainant represented that Counsel for Respondent did not object to the request and the Motion for Continuance was granted.

By Rescheduled Initial Call-In Telephonic Hearing Notice dated March 17, 2025, the hearing was rescheduled for May 14, 2025.

The Rescheduled 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).

In the ordinary course of the Commission’s business, the Hearing Notices and Prehearing Order were served via U.S. First-Class Mail to Complainant at the street address provided by him to the Commission. Neither the Hearing Notices nor the Prehearing Order were returned to the Commission as undeliverable.

On May 14, 2025, the hearing convened as scheduled. Anita Murray, Esquire, appeared on behalf of Respondent and was ready to proceed. The court reporter was also present. Complainant was not present to start the hearing. After a short recess to allow time for 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, Respondent moved to dismiss the Complaint for Complainant’s failure to appear and prosecute his Complaint. I took this motion under advisement.

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

The record closed on June 4, 2025, upon the filing of the transcript with the Commission. This Decision grants the Respondent's motion to dismiss the Complaint.

### FINDINGS OF FACT

1. Complainant is Damon Saleem.
2. Respondent is Philadelphia Gas Works.
3. On November 13, 2024, Complainant filed a Formal Complaint against Respondent.
4. On December 9, 2024, Respondent filed an Answer to the Complaint.
5. On December 20, 2024, a Corrected Call-In Telephone Hearing Notice was served on Complainant scheduling an initial telephonic hearing on March 18, 2025.
6. On February 27, 2025, a Prehearing Order for Telephone Hearing was served on Complainant providing additional information to the parties regarding the hearing.
7. On March 17, 2025, an Order was issued granting Complainant's Motion for Continuance.

8. On March 17, 2025, a Rescheduled Hearing Notice was served on both parties rescheduling an initial telephonic hearing on May 14, 2025, at 10:00 a.m.

9. The Hearing Notices and Prehearing Order were served on Complainant by U.S. First-Class Mail to the postal address Complainant provided to the Commission.

10. The Hearing Notices 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.

11. Neither the Hearing Notices nor the Prehearing Order were returned to the Commission as undeliverable.

12. Complainant failed to appear and participate in the scheduled telephonic hearing on May 14, 2025.

13. The court reporter and Counsel for Respondent were present and prepared to proceed at the May 14, 2025 hearing.

14. Complainant has not contacted the Commission to explain why his 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 December 20, 2024 Complainant was served a Hearing Notice which advised the parties of the date and time of the hearing, and how to participate. Second, on February 27, 2025, Complainant was served a Prehearing Order which reminded the parties of the date and time of the hearing, and how to participate. Third, Complainant demonstrated that he received these documents by contacting this office and requesting a continuance. Fourth, after the continuance was granted, Complainant was served a Rescheduled Hearing Notice for May 14, 2025. Finally, both hearing notices and the prehearing order advised Complainant that failure to appear may result in dismissal with prejudice, which means that Complainant would be barred from filing another Complaint raising the same claim and issue presented in the dismissed Complaint.

The Hearing Notices and Prehearing Order were served by U.S. First-Class Mail to the address provided on the Complaint. None of the documents were 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).

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).

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, Complainant explaining why Complainant's failure to appear at the hearing was unavoidable.

Consequently, I find that Complainant waived the opportunity to participate in a hearing on the matters raised in the Complaint, 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, 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, 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.

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 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).

6. 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, 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 Damon Saleem at Docket No. F-2024-3052162 is granted.

