

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Howard Smith

v.

Philadelphia Gas Works

:
:
:
:
:

C-2025-3054418

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses, with prejudice, the Formal Complaint of Howard Smith against Philadelphia Gas Works because he failed to appear for his hearing and prosecute his Complaint. This Decision also bars Complainant from filing any further informal or formal complaints related to his outstanding balance, until such time as that balance has been paid in full, due to his abuse of the administrative process.

HISTORY OF THE PROCEEDING

On April 4, 2025, Howard Smith (Complainant or Mr. Smith) filed a Formal Complaint (Complaint) against Philadelphia Gas Works (PGW or Respondent or Company)

with the Pennsylvania Public Utility Commission (Commission).¹ In the Complaint, Complainant placed checkmarks in the boxes indicating: “The 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.” Complainant requested an affordable payment arrangement as relief.

In his Complaint, Complainant selected the option to receive all communications from the Commission via eService through an eFiling account he registered with the Commission at the email address provided by Complainant on the Complaint. Complaint ¶ 9.

On April 24, 2025, 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 April 30, 2025, a Call-In Telephone Hearing Notice was served on the parties scheduling an initial telephonic hearing on June 23, 2025, at 10:00 a.m., and the matter 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.

¹ The Complaint is a timely appeal from the determination of the Commission’s Bureau of Consumer Services (BCS), at BCS No. 4048784, which dismissed Complainant’s informal complaint. A timely BCS appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

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 May 5, 2025, 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.

The Hearing Notice and Prehearing Order were eServed to Complainant in the ordinary course of the Commission’s business to the email address that was registered with the Commission by Complainant. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.

On June 23, 2025, the hearing convened as scheduled. Complainant was not present at the start of the hearing. After a short recess to allow time for Complainant to appear, the hearing proceeded in Complainant’s absence. Graciela Christlieb, Esquire, appeared on behalf of PGW and presented the testimony of Jessica Antonetti, a Senior Customer Review Officer at PGW. Respondent offered two exhibits, which were entered into the record.

Counsel for PGW moved that the Complaint be dismissed with prejudice for lack of prosecution pursuant to 52 Pa. Code § 5.245. Tr. 6. PGW also requested that the Complainant be barred from filing further informal and formal complaints until his current outstanding balance had been paid in full. Tr. 6-7. In accordance with

Commission policy, I am granting the Motion and also directing that the Complainant be barred from filing further informal and formal complaints on his current balance.

The record closed on July 10, 2025, upon the filing of the transcript with the Commission.

FINDINGS OF FACT

1. Complainant is Howard Smith.
2. Respondent is Philadelphia Gas Works.
3. On April 6, 2015, Complainant filed an informal complaint with the Bureau of Consumer Services (BCS) at Case No. 3330986, pursuant to his service being shut off. Tr. 9; PGW Exh. 3, p. 2.
4. On April 7, 2015, BCS dismissed the complaint upon Complainant agreeing to pay a reduced restoration amount of \$249.26. Tr. 10; PGW Exh. 3, p. 3.
5. On April 9, 2015, Complainant's service was restored. Tr. 10; PGW Exh. 3, p. 6.
6. On August 5, 2015, Complainant filed an informal complaint with BCS at Case No. 3371712, seeking a payment arrangement. Tr. 10; PGW Exh. 3, p. 9.
7. On November 18, 2015, BCS dismissed the informal complaint pursuant to 66 Pa.C.S. § 1405(c). Tr. 11; PGW Exh. 3, p. 10.

8. On April 8, 2016, Complainant filed an informal complaint with BCS at Case No. 3424842, regarding the customer assistance program (CAP). Tr. 10; PGW Exh. 3, p. 11.

9. On August 6, 2016, BCS dismissed the informal complaint pursuant to 66 Pa.C.S. § 1405(c). Tr. 11; PGW Exh. 3, p. 12.

10. On September 30, 2016, Complainant filed a Formal Complaint with the Commission at Docket No. C-2016-2569010, alleging that PGW was threatening to terminate, or had already terminated, his service and requesting a payment arrangement. Tr. 12; PGW Exh. 3, pp. 13-19.

11. A hearing in C-2016-2569010 was originally scheduled for December 6, 2016; however, a request for continuance by the Complainant was granted and the hearing was rescheduled for January 17, 2017. Tr. 12; PGW Exh. 3, p. 20.

12. Complainant failed to appear for the hearing on January 17, 2017. Tr. 12; PGW Exh. 3, p. 21.

13. On April 14, 2017, the Commission issued a Final Order dismissing the Formal Complaint filed by Complainant at Docket Number C-2016-2569010 for failure to appear and prosecute. Tr. 12; PGW Exh. 3, p. 29.

14. On June 8, 2017, Complainant filed a Formal Complaint with the Commission at Docket No. C-2017-2608475, alleging that PGW was threatening to terminate, or had already terminated, his service and that he missed the hearing for his previous complaint because he was hospitalized. Tr. 13; PGW Exh. 3, pp. 30-37.

15. A hearing in C-2017-2608475 was scheduled for August 9, 2017. Tr. 13; PGW Exh. 3, p. 38.
16. Complainant failed to appear for the hearing on August 9, 2017. Tr. 13; PGW Exh. 3, p. 38.
17. On August 14, 2017, the Commission issued a Final Order dismissing the Formal Complaint filed by Complainant at Docket Number C-2017-2608475 in its entirety with prejudice. Tr. 13; PGW Exh. 3, p. 53.
18. On March 30, 2018, Complainant submitted a check to PGW for \$7,800. Tr. 13; PGW Exh. 3, p. 54.
19. On April 4, 2018, Complainant's check for \$7,800 was returned for non-sufficient funds. Tr. 13-14; PGW Exh. 3, pp. 54-55.
20. On April 20, 2018, Complainant submitted a check to PGW for \$7,300. Tr. 14; PGW Exh. 3, p. 56.
21. On April 26, 2018, Complainant's check for \$7,300 was returned for non-sufficient funds. Tr. 14; PGW Exh. 3, pp. 55-56.
22. On May 12, 2018, Complainant filed a Formal Complaint with the Commission at Docket No. C-2018-3001829 seeking a payment arrangement. Tr. 14; PGW Exh. 3, pp. 58-64.
23. On July 25, 2018, PGW filed a Certificate of Satisfaction with the Commission at Docket No. C-2018-3001829. Tr. 14; PGW Exh. 3, p. 65.

24. On February 10, 2022, PGW issued a 10-Day Shut Off Notice to Complainant with an effective date of April 1, 2022. Tr. 14; PGW Exh. 3, p. 67.

25. On March 31, 2022, Complainant submitted a check to PGW for \$360, which canceled the shut-off. Tr. 15; PGW Exh. 3, p. 69.

26. On April 7, 2022, Complainant's check for \$360 was returned for non-sufficient funds. Tr. 15; PGW Exh. 3, p. 70-71.

27. On May 27, 2022, PGW issued a 10-Day Shut Off Notice to Complainant with an effective date of June 8, 2022. Tr. 15; PGW Exh. 3, p. 72.

28. On June 7, 2022, Complainant submitted a check to PGW for \$245, which canceled the shut-off. Tr. 15; PGW Exh. 3, p. 74.

29. On June 7, 2022, Complainant filed an informal complaint with BCS at Case No. 3843027, disputing the amount of his bills. Tr. 16; PGW Exh. 3, pp. 76-77.

30. On June 14, 2022, Complainant's check for \$245 was returned for non-sufficient funds. Tr. 16; PGW Exh. 3, p. 74-75.

31. On August 10, 2022, BCS dismissed the informal complaint pursuant to finding Complainant's bills are correct. Tr. 16; PGW Exh. 3, pp. 78-79.

32. On September 29, 2022, PGW issued a 10-Day Shut Off Notice to Complainant with an effective date of October 11, 2022. Tr. 16; PGW Exh. 3, p. 80.

33. On October 11, 2022, Complainant filed an informal complaint with BCS at Case No. 3870720, disputing the shut off notice. Tr. 16; PGW Exh. 3, pp. 81-82.

34. On December 2, 2022, BCS closed the informal complaint pursuant to Complainant's authorization. Tr. 16; PGW Exh. 3, pp. 83-84.

35. On March 23, 2023, PGW issued a 10-Day Shut Off Notice to Complainant with an effective date of April 4, 2023. Tr. 17; PGW Exh. 3, p. 85.

36. On March 31, 2023, Complainant applied for PGW's Customer Responsibility Program (CRP) and a 15-day hold was placed on his account. Tr. 17; PGW Exh. 3, p. 86.

37. On April 11, 2023, Complainant submitted a check to PGW for \$2,500. Tr. 17; PGW Exh. 3, p. 87.

38. On April 12, 2023, Complainant filed a Formal Complaint with the Commission at Docket No. C-2023-3039819, alleging PGW was threatening to shut off his service or had already shut off his service and he was having a reliability, safety or quality problem. Tr. 17; PGW Exh. 3, pp. 89-94.

39. On April 18, 2023, Complainant's check for \$2,500 was returned for non-sufficient funds. Tr. 17; PGW Exh. 3, pp. 87-88.

40. On May 15, 2023, an Initial Telephonic Hearing Notice in Docket No. C-2023-3039819 was issued to all parties, setting an Initial Telephonic Hearing for June 29, 2023. PGW Exh. 3, p. 97.

41. On June 5, 2023, the Complainant emailed the Office of Administrative Law Judge (OALJ) to request a continuance of the hearing in Docket No. C-2023-3039819 for medical reasons. PGW Exh. 3, p. 97.

42. On June 20, 2023, an order in Docket No. C-2023-3039819 was issued granting the continuance and sending the matter for rescheduling. PGW Exh. 3, p. 97.

43. On June 23, 2023, a Rescheduled Initial Telephonic Hearing Notice in Docket No. C-2023-3039819 was issued, setting a hearing for August 9, 2023. PGW Exh. 3, p. 97.

44. Subsequently, a relative of Complainant contacted the OALJ and stated that a further continuance was needed for medical reasons. PGW Exh. 3, p. 97.

45. On August 1, 2023, a Rescheduled Initial Telephonic Hearing Notice in Docket No. C-2023-3039819 was issued to all parties, setting a hearing for September 26, 2023. PGW Exh. 3, p. 97.

46. On September 21, 2023, Complainant submitted a letter from a physician stating that he required additional time for rehabilitation and requested a continuance. PGW Exh. 3, p. 98.

47. On September 21, 2023, a Rescheduled Initial Telephonic Hearing Notice in Docket No. C-2023-3039819 was issued to all parties, setting a hearing for November 28, 2023. PGW Exh. 3, p. 98.

48. On or about November 21, 2023, a relative of Complainant called the OALJ and stated that Complainant had not yet fully recovered and requested continuation of the hearing set for November 28, 2023. PGW Exh. 3, p. 98.

49. On December 16, 2023, an Order in Docket No. C-2023-3039819 was issued that continued the hearing and advised Complainant that no further continuances would be granted. PGW Exh. 3, p. 98.

50. On January 2, 2024, an Initial Call-In Telephonic Hearing Notice in Docket No. C-2023-3039819 was issued, setting a hearing for February 12, 2024, beginning at 10:00 a.m. Tr. 17; PGW Exh. 3, pp. 95, 98.

51. Complainant failed to appear for the hearing on February 12, 2024. Tr. 17; PGW Exh. 3, pp. 95, 98.

52. On June 17, 2024, the Commission issued a Final Order dismissing the Formal Complaint filed by Complainant at Docket Number C-2023-3039819. Tr. 18; PGW Exh. 3, p. 105.

53. On August 1, 2024, PGW issued a 10-Day Shut Off Notice to Complainant with an effective date of August 13, 2024. Tr. 18; PGW Exh. 3, p. 106.

54. On August 8, 2024, Complainant filed an informal complaint with BCS at Case No. 4008681, seeking a payment arrangement. Tr. 18; PGW Exh. 3, pp. 107-108.

55. On September 10, 2024, BCS dismissed the informal complaint pursuant to 66 Pa.C.S. §1405(c). Tr. 18; PGW Exh. 3, p. 109.

56. On September 12, 2024, Complainant filed a Formal Complaint with the Commission at Docket No. C-2024-3051117 seeking a payment arrangement. Tr. 18; PGW Exh. 3, pp. 110-117.

57. On December 18, 2024, PGW filed a Certificate of Satisfaction with the Commission at Docket No. C-2024-3051117. Tr. 18; PGW Exh. 3, p. 118.

58. On March 13, 2025, PGW issued a 10-Day Shut Off Notice to Complainant with an effective date of April 1, 2025. Tr. 19; PGW Exh. 3, p. 119.

59. On March 28, 2025, Complainant filed an informal complaint with BCS at Case No. 4048784, alleging bill is incorrect and seeking a payment arrangement. Tr. 19; PGW Exh. 3, pp. 120-121.

60. On April 3, 2025, BCS closed the informal complaint. Tr. 19; PGW Exh. 3, p. 122.

61. On April 4, 2025, the Complainant filed this current Formal Complaint with the Commission. Tr. 19; PGW Exh. 3, p. 123.

62. On April 24, 2025, Respondent filed an answer to the Complaint.

63. On April 30, 2025, a Call-In Telephone Hearing Notice was served on Complainant scheduling an initial telephonic hearing on June 23, 2025, at 10:00 a.m.

64. On May 5, 2025, a Prehearing Order for Telephone Hearing was served on Complainant providing additional information to the parties regarding the hearing.

65. Both the Hearing Notice and Prehearing Order were eServed to Complainant in the ordinary course of the Commission's business to the email address that was registered with the Commission by Complainant.

66. 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.

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

68. On June 10, 2025, Mr. Smith requested a continuance via email with a letter attached that he claimed was from Dr. Kenneth Lau at Jefferson Health. PGW Exh. 4.

69. PGW objected to the continuance request due to the fact that the attached letter contained multiple discrepancies that brought its legitimacy into question.² Tr. 19-22; PGW Exh. 4.

70. On June 11, 2025, per my instruction, my legal assistant advised Mr. Smith that given the information provided by PGW, his request for a continuance was denied but would be reconsidered if he could provide verifiable proof of a scheduled medical procedure.

71. On June 13, 2025, Mr. Smith sent an email that contained a screenshot of a dental appointment for June 23, 2025 at 9:30 AM.

² Some of the questionable parts of the letter include: the letter states the procedure is to be performed at Penn Medicine but Dr. Lau works at Jefferson Health and has no association with Penn Medicine; the letter states the surgery is scheduled for Sunday, June 22, 2025, and surgeries are not generally scheduled for a Sunday; the phone number on the letter is not Dr. Lau's office number but rather an unidentified voicemail; next to "Date:" it says "[Insert today's date];" PGW contacted both Jefferson Health and Penn Medicine and neither could find any procedures scheduled for Mr. Smith.

72. On June 13, 2025, per my instruction, my legal assistant replied to Mr. Smith's email about the dental appointment and inquired about the length of the continuance he was seeking.

73. On June 13, 2025, Mr. Smith replied: "At this point it doesn't even matter."

74. On June 13, 2025, per my instruction, my legal assistant advised Mr. Smith that I would consider his response to mean he is no longer seeking a continuance, and the hearing will proceed as scheduled on June 23, 2025.

75. Complainant failed to appear and participate in the scheduled telephonic hearing on June 23, 2025. Tr. 5-6.

76. Complainant has not made a successful payment on his account since April 12, 2015. Tr. 23.

77. Complainant's current outstanding balance is \$7,306.21. Tr. 20.

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 April 30, 2025, the Commission served Complainant a Hearing Notice which advised the parties of the date and time of the hearing, and how to participate. Second, on May 5, 2025, the Commission served Complainant a Prehearing Order which reminded the parties of the date and time of the hearing, and how to participate. Further, both documents advised the parties, *inter alia*, how to request a continuance prior to the hearing if needed. Finally, both 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 eServed to Complainant at the email address he registered with the Commission. Neither was returned to the Commission as undeliverable. Notice eServed to a party's registered email address with no notification that service failed 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 (Final Order entered Apr. 7, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017).

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. In this case, on June 11, 2025, Complainant did request a continuance prior to the hearing claiming to have a medical appointment. In support, Complainant submitted a letter (PGW Exh. 4) that he claimed was from Dr. Kenneth Lau at Jefferson Health. However, PGW objected to the continuance request due to the fact that the attached letter contained multiple discrepancies that brought its legitimacy into question. Some of the questionable parts of

the letter include: the letter states the procedure is to be performed at Penn Medicine but Dr. Lau works at Jefferson Health and has no association with Penn Medicine; the letter states the surgery is scheduled for Sunday, June 22, 2025, and surgeries are not generally scheduled for a Sunday; the phone number on the letter is not Dr. Lau's office number but rather an unidentified voicemail; next to "Date:" it says "[Insert today's date];" and PGW contacted both Jefferson Health and Penn Medicine and neither could find any procedures scheduled for Mr. Smith.

In addition to the questionable nature of the letter, discussed in more detail below, I also took notice of Complainant's extensive history of failing to appear for hearings. As a result, per my instruction, my legal assistant advised Mr. Smith that his request for a continuance is denied at this time but would be reconsidered if he could provide verifiable proof of a scheduled medical procedure. In response, on June 13, 2025, instead of a surgery at Penn Medicine or Jefferson Health, Mr. Smith sent an email that contained a screenshot of a dental appointment at Aspen Dental for June 23, 2025. Nevertheless, per my instruction, my legal assistant replied to Mr. Smith's email about the dental appointment and inquired about the length of the continuance he was seeking. Mr. Smith replied to this inquiry that: "At this point it doesn't even matter." Thus, per my instruction, my legal assistant advised Mr. Smith that I would consider his response to mean he is no longer seeking a continuance, and the hearing will proceed as scheduled on June 23, 2025. To date, there has been no other 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 with prejudice.

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, 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 with prejudice. *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 with prejudice will be granted.

Abuse of Process/Complainant Bar

In addition to its Motion to Dismiss, PGW argues that Complainant is abusing the Commission's process and complaint procedures to avoid termination. Thus,

PGW requests that Complainant be barred from filing further formal or informal complaints until his outstanding arrearages are paid in full.

The Commission has found an abuse of administrative due process in numerous other cases. In *Grossman v. Bell Telephone Co. of Pennsylvania*, 67 Pa.P.U.C. 714 (1988) (*Grossman*), the Commission stated that abuse of administrative process is an exploitation of due process. The *Grossman* case involved a *pro se* litigant who abused the regulatory practice by frequently requesting continuances of hearings without showing good cause, and then not appearing for his scheduled hearings and not honoring a settlement with the utility. *Id.* Abuse of administrative process cases often involve Complainants filing consecutive pleadings, complaints and motions for continuance of hearings in order to avoid payment and termination of services. As the Commission stated in *Argento's Pizza v. Philadelphia Gas Works*, Docket No. C-2009-2138055 (Final Order entered Oct. 1, 2010), the factors to be considered include the following: 1) the number and nature of complaints; 2) the number of defaulted payments; 3) the use of tactics to avoid payments and service terminations that became due; and 4) the history of payments. Similarly, in *Mazza v. PECO Energy Co.*, Docket No. C-2012-2318472 (Opinion and Order entered Apr. 23, 2014), the Commission ultimately found an abuse of process and precluded the filing of future complaints until the arrearage on the account was satisfied.

In this matter, Complainant has filed numerous informal and formal complaints related to his account with PGW. Complainant has filed seven informal complaints and six formal complaints. All of the complaints were filed just before Complainant's gas service was scheduled to be terminated. Certificates of Satisfaction were filed in two of the formal complaints prior to a hearing being convened. However, in the other four formal complaints (including the instant formal complaint), Complainant failed to appear for the hearings. In the Formal Complaint immediately prior (Docket No. C-2023-3039819), Complainant was granted numerous continuance requests but still

failed to appear for the hearing. In addition, Complainant has also made five payments to prevent the shut-off of his service which were later cancelled due to non-sufficient funds. Further, it has been over ten years since Complainant made a successful payment on his account on April 12, 2015. This has resulted in Complainant's current outstanding balance rising to \$7,306.21.

The Respondent has the right to bill and receive payment for the utility service actually supplied. 66 Pa.C.S. § 1303, *Neal v. Phila. Gas Works*, Docket No. Z-00871874 (Final Order entered Jan. 4, 2002); *Angie's Bar v. Duquesne Light Co.*, 72 Pa.P.U.C. 213 (1990). In fact, the Commission has consistently held that:

A public utility is entitled to full payment for service provided to customers and all customers are obligated to pay for the utility service provided to them. Otherwise, a customer's unpaid bills are included in the utility's uncollectible expenses and ultimately paid for by other utility customers.

Griggs v. Phila. Gas Works, Docket No. F-2020-3021754 (Opinion and Order entered July 15, 2021), citing *Scaccia v. West Penn Power Co.*, 55 Pa. P.U.C. 637 (1982); *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Bolt v. Duquesne Light Co.*, Docket No. Z-8712758 (Order entered April 8, 1988). The record in this case highlights a disturbing trend in Complainant's use of the Commission's informal and formal complaint procedures to avoid paying his gas bills while evading the Company's termination procedures.

Based on the foregoing, I find Complainant is abusing the administrative process in order to avoid paying his bills and having his service shut off. Accordingly, I will grant PGW's request to bar Complainant from filing any further informal or formal complaints related to his current outstanding balance with PGW until it is paid in full. Further, PGW is authorized to terminate Complainant's gas service upon issuance of a final order by the Commission.

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 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 (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 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).

9. By law, a public utility is entitled to receive payment for the service it provides, and the Complainant must pay the Respondent for the service he consumes. *Scaccia v. W. Penn Power Co.*, 55 Pa.P.U.C. 637 (1982); *Kea v. Peoples Nat Gas Co.*, 60 Pa. PUC 215 (1985); *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982).

10. The Respondent has the right to bill and receive payment for the utility service actually supplied. 66 Pa.C.S. § 1303, *Neal v. Phila. Gas Works*, Docket No. Z-00871874, (Final Order entered Jan. 4, 2002); *Angie's Bar v. Duquesne Light Co.*, 72 Pa.P.U.C. 213 (1990).

11. The Commission may preclude a party from filing further informal or formal complaints when the party has abused the Commission's complaint procedures in order to avoid the termination of his or her service. *Mazza v. PECO Energy Co.*, Docket No. C-2012-2318472 (Opinion and Order entered Apr. 23, 2014); *Argento's Pizza v. Phila. Gas Works*, Docket No. C-2009-2138055 (Final Order entered Oct. 1, 2010); *Grossman v. Bell Tel. Co. of Pa.*, 67 Pa.P.U.C. 714 (1988).

12. Complainant has abused the administrative due process by filing multiple similar complaints, incurring a substantial outstanding balance, and evidencing a poor payment history, in an attempt to avoid termination and payment for services. *Mazza v. PECO Energy Co.*, Docket No. C-2012-2318472 (Opinion and Order entered Apr. 23, 2014); *Argento's Pizza v. Phila. Gas Works*, Docket No. C-2009-2138055 (Final Order entered Oct. 1, 2010); *Grossman v. Bell Tel. Co. of Pa.*, 67 Pa.P.U.C. 714 (1988).

ORDER

THEREFORE,

IT IS ORDERED:

1. That Philadelphia Gas Works' Motion to Dismiss, with prejudice, the Formal Complaint of Howard Smith at Docket No. C-2025-3054418 is granted.

2. That the Formal Complaint filed by Howard Smith in *Howard Smith v. Philadelphia Gas Works* at Docket No. C-2025-3054418, is hereby dismissed with prejudice.

3. That Howard Smith is precluded from filing further informal or formal complaints with the Commission regarding the arrearages on the account for gas service rendered by Philadelphia Gas Works until such time as the outstanding arrearages in the amount of \$7,306.21 are paid in full, and that the filing of any complaint pertaining to those arrearages which are the subject of this proceeding shall be rejected without further proceedings.

4. That the filing of any other pleading related to this case, concerning the same subject matter be, and hereby is, deemed not to stay implementation of this Order.

5. That Commission staff (including but not limited to the Bureau of Consumer Services and the Secretary's Bureau) shall reject any formal or informal complaint that is filed with the Commission by Howard Smith, any member of his/her family, or any other person in the household, pertaining to the service address of 2404 S. Millick St., Philadelphia, PA, until the outstanding arrearages in the amount of \$7,306.21 are paid in full.

6. That any filing of a new informal or formal complaint by Howard Smith against Philadelphia Gas Works must include proof that the arrearages in the amount of \$7,306.21 have been paid in full (e.g. billing statement, account statement, receipt of payment, cancelled check, bank statement, proof of discharge of the arrearages in bankruptcy, or correspondence with the utility confirming payment in full).

7. That, if proof that the outstanding arrearages have been paid in full is not provided, the Secretary's Bureau and Bureau of Consumer Services are directed to reject the complaint, without a hearing before the Office of Administrative Law Judge.

