

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

Eartha Page

v.

PECO Energy Company

Public Meeting July 12, 2018

2571178-OSA

Docket No. F-2016-2571178

STATEMENT OF COMMISSIONER JOHN F. COLEMAN, JR.

Before the Pennsylvania Public Utility Commission (Commission or PUC) are Exceptions and Reply Exceptions to the Initial Decision of Administrative Law Judge (“ALJ”) Marta Guhl of June 6, 2017, dismissing the above-captioned Formal Complaint for failure to prosecute and meet the burden of proof. The Complainant alleged that PECO Energy Company (PECO) had terminated her electric service and requested a payment arrangement to restore service. PECO filed an Answer requesting that the Complaint be dismissed.

The Office of Administrative Law Judge (“OALJ”) initially scheduled an in-person hearing in this matter for January 9, 2017. On January 9, 2017 the ALJ convened the hearing as scheduled. PECO’s counsel was present in person with one witness and ready to proceed. The Complainant was not present. PECO contacted the Complainant by telephone, at which time she informed PECO that her car had a flat tire, and she could not attend the hearing. She made a request for a continuance which PECO did not oppose, and which was granted by the presiding ALJ.

A second in-person hearing was scheduled for February 21, 2017. According to the hearing transcript, the hearing was convened as scheduled by ALJ Guhl, and PECO’s counsel was present with a witness and ready to proceed. The ALJ noted that the Complainant was not present and had not contacted either the OALJ or PECO to explain her absence or request a continuance. PECO moved to dismiss the case for lack of prosecution, which the ALJ granted. The hearing was concluded at 10:21 am.

Sometime shortly after the hearing concluded, the Complainant reached the ALJ’s office by telephone, and explained that she was waiting outside the OALJ’s offices for the hearing to begin. The ALJ’s legal assistant advised her to put this information in writing, and to send it to the OALJ. Later that day the Complainant provided a letter alleging that the Complainant had arrived at 10:02 am but had been unable to contact anyone in the OALJ to bring her back to the hearing room. The presiding ALJ forwarded this information to counsel for PECO. PECO disputed the allegation, stating that they had checked the hallway, lobby and waiting rooms at 10:10 am, and no one was present. They also stated that when its counsel and witness left the hearing later at about 10:20 am, that no one was present in the hallway, lobby or telephone areas.

The presiding ALJ issued an Initial Decision on May 19, 2017, that granted PECO's Motion to Dismiss the case for lack of prosecution. The presiding ALJ noted that the Complainant had received notice of the hearing, was not present, and had not requested a continuance. The ALJ held that the Complainant had been given two opportunities to attend an in-person evidentiary hearing, and that she had been afforded adequate due process in this proceeding.

The Complainant filed Exceptions to the Initial Decision in which she requested a new evidentiary hearing. She maintained that she was present in the PUC waiting room at the time of the hearing, and that PECO's employees never called out to her by name when they came out, again implying that she was present.

In Reply Exceptions, PECO maintained that its employees checked the waiting room, hallways, and telephone areas at the ALJ's request at 10:10 am, and that no one was present in any of these locations. They reiterated that when they left the hearing about ten minutes later, no one at all was present in any of these areas. This Reply Exception is accompanied by a Verification, signed by PECO's counsel for this case, in which states that the representations made by her are true and subject to criminal penalties for false statements. I note that counsel for PECO has appeared before the Commission's OALJ on a regular basis in litigated proceedings for a number of years.

In reviewing this matter, I am guided by the provisions of the Public Utility Code and our regulations that provide that parties who fail to participate in scheduled conferences be deemed to have waived the opportunity to participate and not later be allowed to reopen the matter.¹ The Commission is permitted, however, to excuse the absence if it finds that the failure to appear was "unavoidable" and that the interests of other parties and the public would not be prejudiced.²

Based on a review of the record, I cannot conclude that the Complainant's absence from the February 21, 2017 hearing was unavoidable. The Complainant had notice of the time, date, and location of the hearing, and I accept the ALJ's conclusion and PECO's representation that she was not present in the waiting room. Additionally, PECO is persuasive that a remand for the purposes of attempting to hold a third hearing for this case is prejudicial to its interests and the public. PECO states that it cannot begin the collection process on the outstanding balance until this case is concluded.

Accordingly, I dissent from the proposed Order, and would have affirmed the ALJ's Initial Decision.

Date: July 12, 2018



**JOHN F. COLEMAN, JR.
COMMISSIONER**

¹ 66 Pa.C.S. § 332(f), 52 Pa. Code § 5.245(a).

² 52 Pa. Code § 5.245(b)