

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Mary Hamilton	:	
	:	
v.	:	C-2019-3014254
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Kailey B. Maguire  
Special Agent

**INTRODUCTION**

This decision grants a motion to dismiss for failure to prosecute the complaint of an electric service customer for failure of the Complainant to appear at the scheduled hearing, at the designated date and time, despite being given notice of the hearing.

**HISTORY OF THE PROCEEDING**

On November 12, 2019, Mary Hamilton (Complainant) filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO or Respondent). In her complaint, Ms. Hamilton averred PECO was threatening to shut off her service or had already shut off her service and indicated she was seeking a Commission-issued payment arrangement.

On December 3, 2019, PECO filed an answer in response to the complaint asserting, *inter alia*, it provides service to 4134 Whiting Road, Philadelphia, Pennsylvania (service address), and denied all other material allegations in the complaint. PECO concluded its answer by requesting dismissal of the complaint.

On December 5, 2019, the Commission issued a Call-In Telephonic Hearing Notice to the parties, establishing an initial telephonic hearing for January 7, 2020, at 10:00 a.m. and assigning the undersigned as Presiding Officer.<sup>1</sup> Of note, the Hearing Notice advised the parties: “*Attention: You may lose this case if you do not take part in this hearing and present facts on the issues raised.*” (emphasis in the original).

Also on December 5, 2019, a Prehearing Order was issued reminding the parties of the date and time of the hearing and addressed, *inter alia*, the procedures applicable to the hearing including the method by which a party could request a change of the scheduled hearing date if the date was not convenient for them. Further, the Prehearing Order advised the parties:

If you fail to participate in the hearing on the scheduled day and time, the hearing will proceed in your absence. You will be deemed to have waived the opportunity to participate in the hearing. **The case may be dismissed ‘with prejudice,’ whereby, you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.**

(emphasis in the original).

Both the Hearing Notice and Prehearing Order were sent to Ms. Hamilton at the address provided in her complaint via regular, first-class mail. Neither document was returned by the postal authorities as undeliverable.

On January 7, 2020, at approximately 8:00 a.m., the undersigned received notification that Ms. Hamilton had left a voicemail message with the Office of Administrative Law Judge (OALJ) around 10:30 p.m. the night prior, indicating there was a death in her family, making her unavailable to participate in the scheduled hearing. Ms. Hamilton requested the hearing be rescheduled. As PECO did not object and good cause existed, the continuance request was granted. By order granting the continuance the parties were notified that all provisions of the initial prehearing order issued on December 5, 2019, remained in effect.

---

<sup>1</sup> 52 Pa. Code § 56.174 provides for review by a special agent of any case in which the issue is solely the ability to pay.

By Hearing Cancellation/Reschedule Notice dated January 22, 2020, the Commission rescheduled this matter for a call-in telephonic hearing for March 10, 2020, at 10:00 a.m.

The Hearing Cancellation/Reschedule Notice was sent to Ms. Hamilton at the address provided in her complaint via regular, first-class mail and was not returned by the postal authorities as undeliverable.

The hearing convened on March 10, 2020, at 10:00 a.m., as scheduled. Edward Fisher, Esquire, appeared on behalf of Respondent and was ready to proceed with one witness. Complainant did not appear. Out of an abundance of caution at 10:07 a.m. the undersigned called Ms. Hamilton at the phone number provided in her complaint and left a voice message reminding Ms. Hamilton of the scheduled hearing and informing her that if she did not call into the toll-free bridge number to participate, the hearing would proceed in her absence. After waiting approximately ten more minutes for Complainant to appear and participate, the hearing proceeded in Complainant's absence. Respondent noted PECO had made multiple efforts to contact Complainant regarding this matter, without success. At the conclusion of the hearing, Respondent moved to dismiss the complaint with prejudice for failure of Complainant to appear and prosecute her complaint. The undersigned informed counsel the motion would be taken under advisement and a ruling would be issued in an initial decision.

The record closed on March 10, 2020, following the conclusion of the telephonic hearing.<sup>2</sup> As of the date of this decision, no communication has been made to OALJ by Ms. Hamilton or on her behalf explaining the March 10, 2020 absence. For the reasons discussed below, this decision grants Respondent's motion to dismiss the complaint with prejudice.

#### FINDINGS OF FACT

1. Complainant is Mary Hamilton.
2. Respondent is PECO Energy Company.

---

<sup>2</sup> Pursuant to 52 Pa. Code § 56.174(3), the hearing was digitally recorded. No court reporter was present.

3. The service address is 4134 Whiting Road, Philadelphia, Pennsylvania.

4. On December 5, 2019, an Initial Call-In Telephonic Hearing Notice was issued, scheduling this matter for a telephonic hearing to be held on January 7, 2020, at 10:00 a.m.

5. By Prehearing Order issued on December 5, 2019, the parties were informed of the date and time of the call-in telephonic hearing and were provided with various procedures applicable to the hearing, notably, the method by which a party could request a continuance of the hearing date, if needed.

6. The Prehearing Order advised the parties: “If you fail to participate in the hearing on the scheduled day and time, the hearing will proceed in your absence. You will be deemed to have waived the opportunity to participate in the hearing. **The case may be dismissed ‘with prejudice,’ whereby, you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.**” (emphasis in the original).

7. On January 6, 2020, Ms. Hamilton requested a continuance and with no objection from PECO, the continuance request was granted.

8. On January 22, 2020, an interim order was entered formally granting Complainant’s continuance request and directing the parties that all provisions of the initial prehearing order issued on December 5, 2019, remained in effect.

9. On January 22, 2020, a Cancellation/Reschedule Hearing Notice was issued, scheduling this matter for a call-in telephonic hearing to be held on March 10, 2020, at 10:00 a.m.

10. The Cancellation/Reschedule Hearing Notice stated the following: *Attention: You may lose this case if you do not take part in this hearing and present facts on the issues raised.*” (emphasis in the original).

11. Both the Initial Hearing Notice, Prehearing Order, and Cancellation/Reschedule Hearing Notice provided the parties with the toll-free bridge telephone number and PIN number to participate in the hearing.

12. The Initial Hearing Notice, Prehearing Order, and Cancellation/Reschedule Hearing Notice were sent to the address provided in the complaint via regular, first-class mail.

13. Neither the Initial Hearing Notice, Prehearing Order, nor the Cancellation/Reschedule Hearing Notice served upon Ms. Hamilton was returned to the Commission as undeliverable by the postal authorities.

14. Complainant did not appear by phone to participate in the March 10, 2020 telephonic hearing at 10:00 a.m.

15. The undersigned presiding officer out of an abundance of caution called Complainant at 10:07 a.m. on March 10, 2020, to remind her of the hearing and informed her that if she did not call into the toll-free bridge number to participate in the hearing, the hearing would be held in her absence.

16. As of the date of this decision, no communication has been made to the Office of Administrative Law Judge by Ms. Hamilton or on her behalf explaining the March 10, 2020 absence.

## DISCUSSION

### Due Process

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

opportunity to be heard at a meaningful time and in a meaningful manner. *Montefiore Hospital Ass'n of Western Pa. v. Pa. Pub. Util. Comm'n*, 421 A.2d 481, 484 (Pa. Cmwlth. 1980).

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. 66 Pa. C.S. § 703(a)-(b). Service on interested persons is sufficient to provide notice. 52 Pa. Code § 5.201(a). Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. See *Berkowitz v. Mayflower Securities, Inc.*, 317 A.2d 584 (Pa. 1974) (*Mayflower*); *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944, 946 (Pa. Cmwlth. 1994), *appeal denied*, 653 A.2d 1234 (Pa. 1994); *Geary v. Verizon Pennsylvania Inc.*, Docket No. C-2009-2118625 (Order entered September 16, 2010) (*Geary*).

Once notice of a hearing and the opportunity to be heard have been provided to the parties, it is the responsibility of the parties to appear and participate in the hearing. *Mumma v. PPL Electric Utilities Corporation*, Docket No. C-00014869 (Order entered January 24, 2002); *Sentner v. Bell Tel. Co. of PA*, Docket No. F-00161106 (Order entered October 25, 1993) (*Sentner*).

In the instant matter, the record shows Complainant was provided both notice and the opportunity to appear and be heard. The January 22, 2020 Cancellation/Reschedule Hearing Notice informed the parties of the date and time of the hearing and the December 5, 2019, Prehearing Order addressed, *inter alia*, how to request a continuance prior to the hearing, and that failure to appear for the hearing and present evidence on the issues raised in the complaint could result in dismissal of the complaint. Both documents were served separately, by regular first-class mail to the address provided by Ms. Hamilton in the complaint. Neither document was returned to the Commission as undeliverable by the postal authorities. Accordingly, it must be presumed these documents, which were sent to the Complainant in the ordinary course of business, were received by Ms. Hamilton. *Mayflower*.

Under these circumstances, the Complainant had ample notice and opportunity to appear and be heard in this proceeding, however, chose not to do so. Further, Complainant had previously requested and was granted a prior continuance in this matter, evidencing her notice, and

understanding of how to request a continuance. Additionally, Complainant made no attempt to notify the Presiding Officer she did not plan on participating in the March 10, 2020 rescheduled hearing. Therefore, the due process rights of Complainant have been fully protected. *Sentner*.

### Failure to Appear

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 thereafter to reopen the disposition of the matter accomplished at the hearing, and not be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f); 52 Pa.Code § 5.245(a)-(b). However, these provisions do not apply if the presiding officer determines that the failure to be represented was unavoidable and that the interests of the other parties and the public would not be prejudiced by permitting the reopening or further examination, 66 Pa.C.S. § 332(f); 52 Pa.Code § 5.245(a)-(b), or if the presiding officer determines that the complainant demonstrated a good faith attempt to attend the hearing. *See, e.g., Then v. PECO Energy Company*, Docket No. F-2012-2318264 (Order entered June 13, 2013); *see also, Wiggins v. PECO Energy Company*, Docket No. C-2010-2190335 (Order entered October 27, 2011).

The public interest is prejudiced by the wasteful use of the Commission's and the respondent's time and resources in addressing a complaint. *See Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995) (*Jefferson*); *see also, e.g., Nichols v. Bell-Atlantic-Pennsylvania*, Docket No. C-00956667 (Order entered August 4, 1995). Out of concern for the waste of the Commission's (and Respondent's) time and resources, the Commission has dismissed *pro se* complaints with prejudice for failure of Complainant to appear at a hearing. *See e.g., Smith v. PECO Energy Company*, Docket No. F-2014-2446204 (Order entered September 3, 2015); *Day v. PECO Energy Company*, Docket No. C-2010-2181515 (Order entered June 10, 2011); and *Geary*.

In the instant matter, Complainant failed to appear for the hearing despite being given multiple written notices. Further, once the hearing began, the undersigned waited an additional twenty minutes to allow Complainant time to appear. Moreover, out of an abundance of

caution, during the recess the undersigned called the phone number provided by Ms. Hamilton in her complaint to remind her of the hearing and to inform her of the ramifications for failing to dial into the toll-free bridge number and participate in the hearing. To date, no communication has been received by the OALJ, by or on behalf of Complainant, regarding whether Complainant's absence was unavoidable or that Ms. Hamilton made a good faith attempt to attend the March 10, 2020 hearing. Consequently, Complainant has waived the opportunity to participate in a hearing on the issues raised in the complaint.

### Burden of Proof

The proponent of any request for relief from the Commission bears the burden of proof. 66 Pa.C.S. § 332(a). To satisfy this burden, a complainant, as the proponent of the request for relief, must show the named utility is responsible or accountable for the problem described in the complaint. *Patterson v. Bell Telephone Co. of Pa.*, 72 Pa. PUC 196 (1990); *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

Additionally, the Commission's decision must be supported by substantial evidence in the record. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980).

As the proponent of the request for relief from the Commission, Complainant bears the burden of proof. By failing to participate in the March 10, 2020 hearing and proffer any evidence to support the complaint, Complainant has failed to satisfy her burden. Accordingly, the merits of the complaint will not be addressed herein, and the complaint will be dismissed with prejudice. *Williams v. PECO Energy Co.*, Docket No. C-2018-300734 (Opinion and Order entered March 14, 2019), citing, *inter alia*, *Jefferson*.

## CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. § 701.

2. The Commission is required to provide due process to the parties appearing before it. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlt. 1984).

3. Once notice of a hearing and the opportunity to be heard has been provided, it is the responsibility of the parties to appear and participate in the hearing. *Sentner v. Bell Telephone Co. of Pennsylvania*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993).

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, shall not be permitted thereafter to reopen the disposition of the matter accomplished at the hearing, or be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f); 52 Pa.Code § 5.245(a).

5. If the presiding officer determines that the failure to be represented 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, the presiding officer may find that a party did not waive the opportunity to participate in the hearing. 66 Pa.C.S. § 332(f); 52 Pa.Code § 5.245(a).

6. Complainant's due process rights have been fully protected and Complainant's failure to appear was not unavoidable. *Sentner v. Bell Telephone Company of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

7. As the proponent of the request for relief, Complainant bears the burden of proof by a preponderance of the evidence standard. 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

8. By failing to appear and participate in the hearing and proffer any evidence in support of the complaint, Complainant has failed to satisfy her burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of PECO Energy Company to dismiss with prejudice the formal complaint of Mary Hamilton at Docket No. C-2019-3014254 is granted.

2. That the complaint of Mary Hamilton against PECO Energy Company at Docket No. C-2019-3014254 is hereby dismissed with prejudice.

3. That the Secretary's Bureau shall mark Docket No. C-2019-3014254 as closed.

Date: June 2, 2020

\_\_\_\_\_  
/s/  
Kailey B. Maguire  
Special Agent