

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Andrew Dodson	:	
	:	
v.	:	C-2021-3029814
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Gail M. Chiodo
Administrative Law Judge

INTRODUCTION

This decision dismisses the formal complaint of a utility service customer against the utility company for the failure of the customer to appear for the hearing and prosecute his complaint.

HISTORY OF THE PROCEEDING

On November 2, 2021, Andrew Dodson (“Complainant”) filed a formal complaint with the Pennsylvania Public Utility Commission (“Commission”) against PECO Energy Company (“PECO” or “Company”) alleging that there are incorrect charges on his bill, that his bills are too high, and that he is receiving two bills for the same address. As relief, Complainant requested a reconciliation of the billing and an affordable payment plan.

On December 20, 2021, PECO timely filed an answer denying all material allegations in the complaint. PECO further averred that its technicians conducted a field visit at the service address on April 27, 2021, and after performing several tests and analysis, PECO concluded that Complainant’s balance and bills were correct. PECO also averred that

Complainant's service was shut off on November 16, 2021, but was restored on November 30, 2021, after the parties entered into a payment agreement. Additionally, PECO averred that Complainant's balance is \$7,909.51, and requested that the complaint be dismissed.

On December 21, 2021, a Call-In Telephone Hearing Notice was served on both parties scheduling a hearing on February 17, 2022 at 10:00 a.m., and assigning me as the presiding officer. On December 28, 2021, a Prehearing Order was served on both parties which reminded the parties of the hearing date and time. Both the Hearing Notice and the Prehearing Order provided certain hearing information and rules that would govern the proceeding including how to request a continuance, if necessary, and the consequences of failing to appear at the hearing and present evidence including the dismissal of the complaint.

Both the Hearing Notice and Prehearing Order were served on Complainant at the email address provided by Complainant in his complaint. Neither document was not returned as undeliverable.

On February 3, 2022, in anticipation of the hearing, counsel for PECO emailed its proposed exhibits to both me and Complainant. The proposed exhibits contained a cover letter which, in bold print, referred to the hearing on February 17, 2022.

On February 17, 2022, the hearing convened as scheduled. Ms. Khadijah Scott, Esquire, appeared on behalf of PECO. Two witnesses for PECO also appeared and were prepared to testify. Complainant did not appear. I recessed the hearing and convened it again approximately ten minutes later in order to allow time for Complainant to appear. Since Complainant did not appear, the hearing proceeded in his absence. No testimony was taken and no exhibits were introduced. However, PECO noted that, in an attempt to resolve this matter, PECO contacted Complainant prior to the hearing but the parties were unable to reach a settlement; and that Complainant was aware of the February 17, 2002 hearing. Tr. at 5-6. PECO moved to dismiss the complaint for the failure of Mr. Dodson to appear and prosecute his

complaint. I took this motion under advisement. The record closed at the conclusion of the hearing pursuant to 52 Pa. Code § 5.431(a).¹

On February 22, 2022, five days after the record closed, the administrative staff of the Office of Administrative Law Judge (OALJ) forwarded to me a summary of a phone call from Complainant who told staff that he missed the hearing on February 17, 2022 because he thought the hearing was scheduled for February 23, 2022; that he had been dealing with a car accident; and that his minor son was home sick on the date of the scheduled hearing.

As a result of my review of the summary of Complainant's call to administrative staff, shortly thereafter on that same day (February 22, 2022), an OALJ staff attorney called Complainant back. Complainant was instructed that if wanted to reopen the record to take testimony and present evidence, that he needed as soon as possible to put his reasons in writing, and provide details why he missed the hearing and could not ask for a continuance prior to the hearing. Seven days later, on March 1, 2022, Complainant submitted via email to me an informal petition to reopen the record, in which he acknowledged that he knew the hearing was on February 17, 2022 but that he was in no shape to present his case at a hearing because his minor son was home sick with the flu and Complainant contracted Covid-19 in late June or August of 2021. See Complainant's petition to reopen the record.²

Since it appeared that counsel for PECO was not served Complainant's petition to reopen the record, on March 1, 2022, I forwarded the petition to attorney Scott. Later that day on March 1, 2022, attorney Scott submitted an objection in opposition to the petition. Counsel argued that Complainant did not show good cause to schedule a further hearing, citing to, *inter alia*, Complainant's inconsistent and insufficient reasons to reopen the record to take further testimony and evidence. Counsel for PECO averred that on February 25, 2022, Complainant

¹ Section 5.431(a) provides: "The record will be closed at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission." 52 Pa. Code § 5.431(a).

² For the sake of accuracy and completeness of the record to allow appropriate review, I forwarded Complainant's informal petition to reopen the record and PECO's response thereto, as well as Complainant's further replies, to the Secretary's Bureau for docketing in this matter.

called her and requested her agreement to a continuance for reasons other than those stated in his petition.

By Order dated March 17, 2022, Complainant's petition to reopen the record was denied. The Order considered the merits of the petition, detailed the procedural history, and concluded that there was no reason to believe that conditions of fact or of law in this matter had so changed as to require, or that the public interest required, the reopening of the proceeding.³ The reader is referred to this Order for a full discussion of the merits of the petition.

A transcript of the hearing was filed on March 8, 2022. This decision grants PECO's motion to dismiss the complaint.

FINDINGS OF FACT

1. The Complainant is Andrew Dodson.
2. The Respondent is PECO Energy Company.
3. On November 2, 2021, Mr. Dodson filed a formal complaint against Respondent.
4. On December 20, 2021, Respondent timely filed an answer to the complaint.
5. On December 21, 2021, a Call-In Telephone Hearing Notice was served on both parties scheduling an initial hearing on February 17, 2022 at 10:00 a.m.
6. On December 28, 2021, a Prehearing Order was served on both parties.

³ See, 52 Pa. Code § 5.5.71, which provides the circumstances in which a presiding officer may reopen the record, which is more fully discussed in the *March 17, 2022 Order* denying Complainant's petition.

7. Neither the Hearing Notice nor Prehearing Order, which were served to Complainant at the email address provided by him in his complaint, was returned as undeliverable.

8. Both the Hearing Notice and the Prehearing Order provided certain hearing information and rules that would govern the proceeding including how to request a continuance, if necessary, and the consequences of failing to appear at the hearing and present evidence including the dismissal of the complaint with prejudice.

9. On February 17, 2022, Complainant failed to appear and participate in the scheduled hearing.

10. On March 1, 2022, Complainant submitted a petition to reopen the record in this proceeding, which was denied by Order dated March 17, 2022.

DISCUSSION

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.* As the proponent of any request for relief, the 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). Additionally, the Commission's decision must be supported by substantial evidence. 2 Pa.C.S. § 704.

The Commission is required to fix the time and place of a hearing in a complaint proceeding and 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 § 5.61(a). 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 Elec. Utils. Corp.*, C-00014869 (Order entered Jan. 24, 2002).

In the instant case, both the Hearing Notice and Prehearing Order were served on Complainant. Neither document was returned as undeliverable. Both the Hearing Notice and the Prehearing Order provided certain hearing information and rules that would govern the proceeding including how to request a continuance, if necessary, and the consequences of failing to appear at the hearing and present evidence including the dismissal of the complaint.

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, 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) and 52 Pa. Code § 5.245(a). However, neither of these provisions apply 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. 66 Pa.C.S. § 332(f) and 52 Pa. Code § 5.245(b).

Twelve days after the scheduled hearing and the record was closed, on March 1, 2022, Complainant submitted a petition to reopen the record. By Order dated March 17, 2022, after discussing the merits of the petition, the petition was denied. Consequently, I find that Complainant waived the opportunity to participate in a hearing on the matters raised in the complaint and Complainant's absence was not unavoidable. Thus, by his failure to appear, Complainant did not meet his burden of proof.

Consequently, it is appropriate to grant PECO's motion to dismiss the complaint⁴ and dismiss Mr. Dodson's complaint. As the Commission has explained, where the complainant fails to appear for a scheduled hearing without good cause, the public interest is prejudiced by the wasteful use of the agency's and the respondent's time and resources. *See, e.g., Elliott v. Pa. Elec. Co.*, F-618-3003502 (Opinion and Order entered Feb. 6, 2020), and the cases cited therein. Consequently, Respondent's motion to dismiss the complaint will be granted.

⁴ PECO did not request that the dismissal be with prejudice; hence, this decision grants PECO's motion as made by PECO. Tr. at 5.

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. 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, 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).

4. 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(b).

5. 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).

6. 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).

7. The Complainant has failed to meet his burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PECO Energy Company to dismiss the complaint of Andrew Dodson at Docket No. C-2021-3029814 is granted.
2. That the complaint of Andrew Dodson against PECO Energy Company at Docket No. C-2021-3029814 is dismissed for failure of the Complainant to appear at the hearing and prosecute the complaint.
3. That the docket at Docket No. C-2021-3029814 be marked closed.

Date: March 18, 2022

/s/
Gail M. Chiodo
Administrative Law Judge