

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

AILAC Ltd.	:	
	:	
v.	:	C-2021-3028631
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

The Complainant did not appear for the hearing and the formal complaint is dismissed for failure to prosecute.

HISTORY OF THE PROCEEDING

On September 13, 2021, AILAC Ltd. (Complainant) filed a formal complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO, Company or Respondent). On the Complaint form, the Complainant states that a downed wire caused damage to multiple vehicles as well as the asphalt at its property.

PECO filed an Answer and New Matter on October 12, 2021.¹ PECO denied all material allegations of fact. In the New Matter, PECO contends that the Complainant failed to state a claim upon which relief may be granted.

¹ The Formal Complaint was served on PECO by the Secretary's Bureau on September 21, 2021.

On December 1, 2021, an Initial Call-In Telephonic Hearing Notice was served upon all parties, setting an Initial Telephonic Hearing for January 25, 2022, at 10:00 a.m. and the matter was assigned to me. The Hearing Notice indicated the following:

[y]ou 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.

A Prehearing Order was served upon all parties on December 6, 2021, again informing the Complainant of the date and time of the hearing and providing procedural information. The first paragraph of the Prehearing Order also advised the Complainant that:

FAILURE TO APPEAR: You may lose the case if you do not take part in this hearing and present evidence on the issues 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.

Also, in the second paragraph, the Prehearing Order advised that:

CONTINUANCES. You may request a continuance of the hearing if you have a good reason. 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.

The hearing began on January 25, 2022, at 10:00 a.m. but was recessed until 10:20 a.m., to allow the Complainant additional time to call-in for the hearing. Khadijah Scott, Esquire, called in on behalf of PECO. The Complainant did not call in for the hearing. Counsel for PECO made an oral Motion to Dismiss for Failure to Prosecute.

The record closed on February 16, 2022, upon the filing of the transcript with the Secretary's Bureau. PECO's Motion to Dismiss for Failure to Prosecute is ready for a decision.

FINDINGS OF FACT

1. The Complainant is AILAC Ltd.
2. The Respondent is PECO Energy Company.
3. On September 13, 2021, the Complainant filed this action.
4. The Respondent filed an Answer on October 12, 2021.
5. On December 1, 2021, a Hearing Notice was issued on all parties, setting an Initial Call-In Telephonic Hearing for January 25, 2022, at 10:00 a.m.
6. The Hearing Notice was served on the parties of record electronically to the email addresses provided by the parties in the pleadings.
7. A Prehearing Order was issued to all parties on December 6, 2021, again informing the Complainant of the date and time of the hearing and providing procedural information.
8. The Prehearing Order was served electronically on the parties to the email addresses provided by the parties in the pleadings.
9. On the day of the hearing, PECO was present and represented by counsel.
10. On the day of the hearing, the Complainant did not call in for the hearing or have an attorney call in on its behalf.

11. None of the documents sent to the parties were returned as undeliverable to the Office of Administrative Law Judge (OALJ).

12. The Complainant did not request a continuance or provide a statement of "good cause" for its absence on the scheduled hearing date.

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). The essential elements of due process in an administrative proceeding are notice and an opportunity to be heard. *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (Pa. Cmwlth. 2016). Further, electronic service which is not indicated undeliverable is considered presumed to be received by the parties. *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016)(*Morella*); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017).

A Hearing Notice and a Prehearing Order were sent to the Complainant. The Prehearing Order and the Hearing Notice contained information regarding the date, time and call-in information for the hearing. These documents were served upon the Complainant and neither of these documents were returned as undeliverable. It is therefore deemed that the Complainant received these documents and had notice of the date and time of the scheduled hearing. *Morella*.

As the Commission noted in *Strydio v. PPL Elec. Utils. Corp.*, Docket No. C-2017-2633043, p. 6 (Opinion and Order entered July 18, 2018), "[o]nce notice of a hearing and the opportunity to be heard have been provided by the Commission, it is the responsibility of the parties to appear and participate in the hearing," (citing, *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered January 24, 2002)); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993). The

Complainant was notified of the scheduled hearing and did not appear. To date, the Complainant has not contacted the Commission or the undersigned regarding this hearing. The Complainant has waived the opportunity to participate in the hearing by failing to appear. 52 Pa. Code § 5.245(a); *Jefferson v. UGI Utils., Inc.*, 1995 Pa. PUC LEXIS 159 (Opinion and Order entered December 26, 1995).

Finally, Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of any request for relief. As the party bringing this Complaint, the Complainant bears the burden of proving by a preponderance of the evidence that it is entitled to relief. By failing to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden. The Complaint will be dismissed. *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); *El-Ayazra v. W. Penn Power Co.*, Docket No. F 2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa. Code § 5.245.

CONCLUSIONS OF LAW

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

2. The Complainant received notice of the hearing. *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017).

3. The due process rights of the Complainant have been fully protected in this proceeding. *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (Pa. Cmwlth. 2016); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa. Code § 5.245(a).

4. As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).

5. The Complainant did not participate in the hearing, failed to appear for the hearing and did not present any evidence and, therefore, it failed to meet its burden of proving entitlement to the relief that is sought from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PECO Energy Company to dismiss the Complaint filed by AILAC Ltd. at Docket No. C-2021-3028631 is granted.
2. That the Complaint of AILAC Ltd. against PECO Energy Company at Docket No. C-2021-3028631 is dismissed with prejudice.
3. That Docket No. C-2021-3028631 be marked closed.

Date: May 11, 2022

/s/
Marta Guhl
Administrative Law Judge