

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Marie Swanson	:	
	:	
v.	:	F-2022-3033781
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint of Marie Swanson against PECO Energy Company because the Complainant failed to appear for the hearing and prosecute the Complaint.

HISTORY OF THE PROCEEDING

On June 18, 2022, Marie Swanson (Complainant) filed a Formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission) alleging: that the utility is threatening to shut off her electric service; that PECO improperly refused to accept a LIHEAP Crisis grant to restore her service; and that she is unable to pay her utility bills to PECO. As relief, the Complainant requests that the Commission issue a payment arrangement on her behalf.

On August 3, 2022, PECO filed an Answer denying the material allegations of the Complaint¹

¹ The Complaint was served on the Respondent by the Commission on July 14, 2022.

By Initial Call-In Telephonic Hearing Notice dated August 11, 2022, a telephonic hearing was scheduled for September 20, 2022, at 10:00 a.m., and the matter was assigned to me. The Hearing Notice advised the parties of the location, date and time of the scheduled hearing and warned in bold capital letters: “**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.**”

On August 31, 2022, I issued a Prehearing Order directing the parties to comply with various procedural requirements. The Prehearing Order warned in bold and capital type: “**FAILURE TO APPEAR: You may lose the case if you do not take part in this hearing and present evidence on the issues raised.**”

The Hearing Notice and the Prehearing Order were served on the Complainant by electronic mail at the email address listed in the Complaint..² None of the emails sent by the Commission to the Complainant were returned as undeliverable.

The initial hearing began on September 20, 2022, as scheduled. Counsel for the Respondent called-in with a witness available to testify. The Complainant failed to call-in. The hearing convened at approximately 10:10 a.m., after I confirmed that the Complainant had not called or otherwise shown good cause not to appear at the scheduled hearing. No witnesses were presented, and no exhibits were introduced into the record. Counsel for PECO moved that the Complaint be dismissed for lack of prosecution pursuant to 52 Pa. Code § 5.245. That Motion is granted pursuant to the ordering paragraphs below.

The record closed on September 29, 2022, upon receipt of the hearing transcript.

² The Commission issued an Order on March 20, 2020, which provides that service by the Commission on parties will be exclusively electronic during the pendency of the Proclamation of Disaster Emergency. *See, Emergency Order re Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements*, M-2020-3019262, at 4 (Mar. 20, 2020). By Order entered September 15, 2021, the Commission used its general regulatory authority to waive the service requirements set forth in the Commission’s regulations at 52 Pa Code §§ 1.53 and 1.54 thereby continuing to permit electronic service by the Commission on all parties, regardless of whether a particular party has agreed to electronic service. *See, Waiver of Regulations Regarding Service Requirements*, M-2021-3028321, at 7 (Sept. 15, 2021). By Order entered March 10, 2022, the Commission extended the waiver of service requirements to October 1, 2022, then by Order entered September 15, 2022 extended the waiver again to April 3, 2023. *See, Waiver of Regulations Regarding Service Requirements*, M-2021-3028321 (Orders entered Mar. 10, 2022, and Sept. 15, 2022, respectively).

FINDINGS OF FACT

1. The Complainant is Marie Swanson.
2. The Respondent is PECO Energy Company.
3. On June 18, 2022, the Complainant filed a Complaint with the Commission against the Respondent.
4. On August 3, 2022, the Respondent filed an Answer to the Complaint.
5. By Initial Call-In Telephonic Hearing Notice dated August 11, 2022, a telephonic hearing was scheduled for September 20, 2022, at 10:00 a.m.
6. The Initial Call-in Hearing Notice advised the parties of the location, date and time of the scheduled hearing and warned in bold capital letters: “**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.**”
7. By Prehearing Order dated August 31, 2022, the parties were directed to comply with various procedural requirements.
8. The Prehearing Order warned in bold and capital type: “**FAILURE TO APPEAR: You may lose the case if you do not take part in this hearing and present evidence on the issues raised.**”
9. The Hearing Notice and the Prehearing Order were served on the Complainant by electronic mail at the email address provided by Complainant in the Complaint.
10. Neither the Initial Call-in Telephonic Hearing Notice nor the Prehearing Order were returned as undeliverable.

11. The Complainant failed to appear at the September 20, 2022, hearing.
12. The Complainant did not request a continuance or withdraw the Complaint.

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, however, when the administrative agency provides the parties notice and the opportunity to be heard. *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (Pa. Cmwlth. 2016). Notice electronically served to a party with no notification that service failed is presumed received. *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Apr. 7, 2017) (*Zirkel*); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017) (*Morella*); and *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered Dec. 19, 2019).

By Initial Call-In Telephonic Hearing Notice dated August 11, 2022, a telephonic hearing was scheduled for September 20, 2022, at 10:00 a.m. The Initial Call-In Telephonic Hearing Notice advised the parties of the location, date and time of the scheduled hearing and warned in bold capital letters: “**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.**”

On August 31, 2022, I issued a Prehearing Order directing the parties to comply with various procedural requirements. The Prehearing Order warned in bold and capital type: “**FAILURE TO APPEAR: You may lose the case if you do not take part in this hearing and present evidence on the issues raised.**”

The Hearing Notice and the Prehearing Order were served on the Complainant by electronic mail at the email address provided by Complainant in the Complaint. Neither document was returned to the Commission as undeliverable. It is therefore deemed that the

Complainant had notice of the date and time and participation information for the September 20, 2022, hearing. *Zirkel; Morella*. Neither the Complainant nor a representative on behalf of the Complainant licensed to practice law in this Commonwealth appeared at the hearing. To date, Complainant failed to provide any information or reasonable excuse why her failure to appear at the scheduled hearing was unavoidable.

As the Commission noted in *Strydio v. PPL Electric Utilities Corp.*, "[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." *Strydio v. PPL Elec. Utils. Corp.*, Docket No. C-2017-2633043 at 6 (Opinion and Order entered July 18, 2018) (citing, *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered Jan. 24, 2002)); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993).

The Complainant was notified of the scheduled hearing and did not appear for the hearing. Additionally, the February 10, 2022, Further Hearing Notice and Second Prehearing Order advised the Complainant that the case could be dismissed for failure to call-in and participate in the hearing. Thus, the Complainant has waived the opportunity to participate in the hearing by failing to appear. 52 Pa. Code § 5.245(a)(1); *Jefferson v. UGI Utils., Inc.*, 1995 Pa. PUC LEXIS 159 (Opinion and Order entered Dec. 26, 1995). Further, by failing to appear, the Complainant is not permitted to reopen the disposition of this matter and her Complaint will be dismissed with prejudice. 52 Pa. Code § 5.245(a)(2); *Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022).

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. By failing to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden. Consequently, the Complaint will be dismissed on this basis as well. *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 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 of and the parties to this proceeding. 66 Pa.C.S. § 701.

2. The Complainant received notice of the hearing. *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Final Order entered Dec. 19, 2019).

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 Oct. 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, did not present any evidence and, therefore, failed to meet the Complainant's burden of proving eligibility for the relief 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 Formal Complaint filed by Marie Swanson at Docket No. F-2022-3033781 is granted.

2. That the Formal Complaint of Marie Swanson at Swanson v. PECO Energy Company, Docket No. F-2022-3033781 is dismissed with prejudice.

3. That Docket No. F-2022-3033781 is marked closed.

Date: December 20, 2022

/s/
Eranda Vero
Administrative Law Judge