

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tauheed Davenport	:	
	:	
v.	:	C-2022-3033480
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Steven K. Haas  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision grants a Motion to Dismiss for failure to prosecute because the Complainant failed to appear for the hearing at the designated date and time despite being given notice of the hearing and the opportunity to be heard.

**HISTORY OF THE PROCEEDING**

On June 27, 2022, the Complainant, Tauheed Davenport, filed a Formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO) at Docket No. C-2022-3033480. In her Formal Complaint, Ms. Davenport is seeking an affordable payment arrangement

On July 18, 2022, PECO filed an Answer and New Matter to Ms. Davenport's Complaint. In its Answer, PECO denied that the Complainant is legally entitled to a Commission-ordered payment arrangement. In its New Matter, PECO averred that, since the Complainant is enrolled in the Company's customer assistance program, the Commission may

not give her a payment arrangement. 66 Pa.C.S §1405(c). PECO's New Matter contained a Notice to Plead. Ms. Davenport did not file a response to PECO's New Matter.

On September 26, 2022, the Commission issued a Call-In Telephone Hearing Notice scheduling a call-in telephonic hearing on November 17 2022, beginning at 10:00 a.m. and assigning me as the Presiding Officer.

On September 26, 2022, I issued a Prehearing Order which set forth the various rules that would govern the hearing. Both the Hearing Notice and the Prehearing Order stated that a party may lose the case if it did not take part in the hearing and present facts on the issues raised. Both the Hearing Notice and the Prehearing Order were sent to Ms. Davenport at the email address provided by her on her Formal Complaint form. Neither was returned as undeliverable.

The hearing was convened on November 17, 2022, as scheduled. Khadijah Scott, Esquire, appeared on behalf of PECO. No one appeared on behalf of the Complainant. At the hearing, Ms. Scott moved for dismissal of the Complaint for failure of the Complainant to appear and prosecute her case.

The record in this case was closed on November 18, 2022, and consists of a brief hearing transcript. No exhibits were admitted into the record. This Initial Decision grants PECO's motion to dismiss the Complaint for failure to prosecute.

#### FINDINGS OF FACT

1. The Complainant in this case is Tauheed Davenport.
2. The Respondent in this case is PECO Energy Company.
3. On June 27, 2022, Ms. Davenport filed a Formal Complaint with the Commission against PECO.

4. On July 18, 2022, PECO filed an Answer and New Matter to Ms. Davenport's Complaint.
5. On September 26, 2022, a Call-In Telephonic Hearing Notice was issued scheduling an Initial Call-In Telephonic Hearing for November 17, 2022, beginning at 10:00 a.m.
6. On September 26, 2022, a Prehearing Order was issued setting forth various rules that would govern the telephonic hearing.
7. Both the Hearing Notice and Prehearing Order instructed the parties that they may lose their case if they did not appear and take part in the hearing.
8. Both the Hearing Notice and the Prehearing Order were served on the Complainant at the email address provided by her on her Formal Complaint form.
9. Neither the Hearing Notice nor the Prehearing Order served on the Complainant were returned to the Commission as undeliverable.
10. No one called in to the hearing on behalf of Ms. Davenport at the designated date and time as instructed on the Hearing Notice.
11. The hearing was delayed 10 minutes to accommodate any delay in anyone appearing at the hearing on behalf of Ms. Davenport.
12. Ms. Davenport has not contacted the Commission to explain why her failure to attend the hearing was unavoidable.

### DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). "Burden of proof" means a

duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950). As a matter of law, a Complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa.P.U.C. 196 (1990). The offense must be a violation of the Public Utility Code, the Commission's regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, Ms. Davenport is requesting that the Commission establish an affordable payment arrangement. Ms. Davenport, therefore, has the burden of proof in this proceeding.

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 of the hearing and the opportunity to be heard. Id.; see also, J.P. v. Dep't of Human Servs., 150 A.3d 173 (Pa. Cmwlth. 2016).

No one appeared on behalf of Ms. Davenport at the date and time set for the hearing in this case despite notice of the hearing having been provided to her. Commission regulations address circumstances when a party fails to appear in a proceeding.

Section 5.245 provides:

**§ 5.245. Failure to appear, proceed or maintain order in proceedings.**

- (a) After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will:
  - (1) Be deemed to have waived the opportunity to participate in the conference or hearing.
  - (2) Not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing.

- (3) Not be permitted to recall witnesses who were excused for further examination.

52 Pa. Code § 5.245(a).

The Prehearing Order and Hearing Notice were both served on Ms. Davenport at the email address provided by her on her Formal Complaint form and neither were returned to the Commission as undeliverable. Notice served to a party with no notification that service has failed is presumed received. Hu v. PECO Energy Co., Docket No. C-2019-3012075 (Order entered Dec. 19, 2019); Zirkel v. Phila. Gas Works, Docket No. C-2016-2561176 (Final Order entered Apr. 7, 2017). As noted above, the Hearing Notice and the Prehearing Order instructed the parties that if they fail to participate in the hearing, the hearing may proceed without them and a decision may be entered against the non-appearing party.

No one appeared on behalf of Ms. Davenport at the time of the hearing, nor did anyone ever request a postponement or continuance of the hearing. As such, Ms. Davenport had notice of the hearing and an opportunity to be heard in this proceeding but chose not to appear. Therefore, Ms. Davenport's due process rights have been fully protected. Sentner v. Bell Tel. Co. of Pa., Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993); *see also*, 52 Pa. Code § 5.245(a).

During the hearing, counsel for PECO moved for dismissal of the Complaint for lack of prosecution. By failing to appear and present any evidence in support of her Complaint, Ms. Davenport failed to carry her burden of proof. Once notice of a hearing and the opportunity to be heard have been provided by the Commission, it is the responsibility of parties to appear and participate in the hearing. Strydio v. PPL Elec. Utils. Corp., Docket No. C-2017-2633043 (Opinion and Order entered July 18, 2018).

Based on the above discussion, it is appropriate to dismiss the Complaint. Jefferson v. UGI Utils., Inc., Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995). Accordingly, the merits of the complaint will not be addressed in this Initial Decision. There are no facts in the record that would allow the Commission to reach the conclusion that

Complainant's failure to attend the hearing was unavoidable. Accordingly, the Formal Complaint will be dismissed with prejudice. Little v. Pittsburgh Water & Sewer Auth., Docket No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022); Williams v. PECO Energy Company, Docket No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019); 52. Pa Code § 5.245(a)-(c).

### 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 party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. "Burden of proof" means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

4. The Commission is 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).

5. This due process requirement is satisfied when the parties are accorded notice and the opportunity to be heard. Schneider v. Pa. Pub. Util. Comm'n, 479 A.2d 10 (Pa. Cmwlth. 1984).

6. After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will: 1) be deemed to have waived the opportunity to participate in the conference or hearing; 2) not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing; and 3) not be permitted to recall witnesses who were excused for further examination. 52 Pa. Code § 5.245(a).

7. Ms. Davenport's due process rights have been fully protected. Sentner v. Bell Tel. Co. of Pa., Docket No. F-00161106 (Opinion and Order entered October 25, 1993).

8. Ms. Davenport failed to carry her burden of proof in this proceeding. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950); 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PECO Energy Company to dismiss the Formal Complaint of Tauheed Davenport at Docket No. C-2022-3033480 for failure to prosecute is granted.

2. That the Formal Complaint filed in Tauheed Davenport v. PECO Energy Company at Docket No. C-2022-3033480 is hereby dismissed with prejudice.

3. That this matter be marked closed.

Date: January 17, 2023

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/s/  
Steven K. Haas  
Administrative Law Judge