

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Marcella Parker	:	
	:	
v.	:	F-2022-3034455
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Arlene Ashton  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Formal Complaint of Marcella Parker against PECO Energy Company because she failed to appear for the scheduled hearing and prosecute her Complaint.

**HISTORY OF THE PROCEEDING**

On August 8, 2022, Marcella Parker (the Complainant or Ms. Parker) filed a Formal Complaint (Complaint) against PECO Energy Company (PECO or the Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint,<sup>1</sup> the Complainant stated that she wanted her service restored and a payment arrangement that would be affordable.

On August 30, 2022, the Respondent filed an Answer denying all material allegations of fact in the Complaint. PECO averred that the Complainant's service was terminated

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<sup>1</sup> The Complaint is a timely appeal from a determination of the Commission's Bureau of Consumer Services (BCS) at BCS No. 3854040.

on July 28, 2022, for non-payment. PECO further averred that the Complainant's service bills, and the balance owed are correct. PECO also averred that the Complainant has had multiple payment agreements but only made two payments in the last two years, demonstrating a continued poor payment history. Additionally, PECO averred that Complainant's balance is \$8,670.30, and requested that the Complaint be dismissed.

By Hearing Notice dated August 31, 2022, a call-in telephonic hearing was scheduled for October 20, 2022, at 10:00 a.m., and the matter was assigned to me. The Hearing Notice advised the parties of the date and time of the scheduled hearing as well as how to call in and warned of the following:

**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. 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.

I issued a Prehearing Order on September 6, 2022. The Prehearing Order also advised the parties of the date and time of the scheduled hearing as well as how to call in for the hearing. Additionally, the Prehearing Order directed the parties to comply with various procedural requirements and directed that a request to change the scheduled hearing should be sent to me at least five days prior to the hearing date, be in writing and state the agreement or opposition of the other party. It warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing. It also explained that the Complainant bears the burden of proof to establish that the Respondent violated its tariff, the Public Utility Code,<sup>2</sup> or a Commission Order or regulation, and that she is entitled to the relief requested in the Complaint.

The hearing convened as scheduled on October 20, 2022. Counsel for PECO was present with a witness and was prepared to proceed. Ms. Parker was not present. In light of the Complainant's absence, the hearing was recessed for 10 minutes to allow the Complaint

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<sup>2</sup> Public Utility Code (Code), 66 Pa. C.S. § 101-3316.

additional time to appear. When the hearing was reconvened at 10:10 a.m., the Complainant still had not appeared for the hearing nor had she contacted my office to indicate that she would or would not appear.

No witnesses were presented, and no exhibits were introduced into the record. At the hearing, Respondent's counsel moved that the Complaint be dismissed for lack of prosecution pursuant to 52 Pa. Code § 5.245. In accordance with Commission policy, I am granting the Motion.

The record closed on November 14, 2022, the date the transcript was filed with the Commission.

#### FINDINGS OF FACT

1. The Complainant is Marcella Parker.
2. The Respondent is PECO Energy Company.
3. On August 8, 2022, Ms. Parker filed the Formal Complaint with the Commission against PECO.
4. On August 30, 2022, Respondent timely filed the Answer to the Complaint.
5. By Initial Telephonic Hearing Notice dated August 31, 2022, a call-in telephonic hearing was scheduled for October 20, 2022, at 10:00 a.m.
6. On September 6, 2022, I issued a Prehearing Order that also advised the parties of the date and time of the scheduled hearing.
7. Both the Hearing Notice and the Prehearing Order were served on the Complainant at the email address provided by her to the Commission.

8. Neither the Hearing Notice nor the Prehearing Order served on the Complainant were returned to the Commission as undeliverable.

9. On October 20, 2022, counsel for PECO and a witness appeared and were prepared to proceed with the scheduled hearing in this matter at 10:00 a.m.

10. The Complainant did not call in to the hearing at 10:00 a.m., the designated date and time as instructed on the Hearing Notice and the Prehearing Order.

11. A recess was taken to allow Ms. Parker or a representative an opportunity to call-in. Th hearing was reconvened at 10:10 a.m., however, neither she nor a representative called into the hearing by the time the hearing adjourned at 10:23 a.m.

12. The Complainant has not contacted the Commission to explain why her failure to appear at the hearing was unavoidable.

#### 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). However, this due process requirement is satisfied when the parties are provided notice and the opportunity to appear and be heard. *Id.* The Complainant had adequate notice of the time and date of the hearing, yet she failed to appear or explain why she could not attend the hearing at the scheduled time. Therefore, it is appropriate to dismiss the Complaint.

The Commission served notice of the October 20, 2022, hearing in this case to the Complainant on May 18, 2022, via e-mail, to the address she provided in her Complaint. The notice informed the parties of the date and time of the hearing, as well as how to call in for the hearing. The notice was not returned as undeliverable.

In addition, I issued a Prehearing Order dated September 6, 2021, which, *inter alia*, warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to appear and participate in the hearing. The Prehearing Order, which was also served on the Complainant via e-mail, was never returned as undeliverable. The Notice of Hearing and Prehearing Order were sent to the Complainant at the email address provided by her. Accordingly, I must presume that these documents, which were sent in the ordinary course of business, were received by the Complainant. *See 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 Jan. 27, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Nov. 16, 2016).

A customer who files a complaint before the Commission has an affirmative duty to make himself or herself available to participate in hearings on the complaint. *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered Jan. 28, 2002); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993). The Complainant did not call in for the scheduled hearing on October 20, 2022.

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). Under the circumstances, it appears the Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. Therefore, the due process rights of the Complainant have been fully protected. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993).

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 she is entitled to her requested relief. The Complainant did not appear for the hearing scheduled for October 20, 2022. Thus, by her failure to appear, Complainant did not meet her burden of proof.

Consequently, it is appropriate to grant PECO's motion to dismiss the Complaint and dismiss Ms. Parker'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.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of the dispute. 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 it. 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).

5. The due process rights of the Complainant have been fully protected. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

6. After being notified, a party who fails to appear at a scheduled conference or 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).

7. By failing to appear for the hearing and proffer any evidence to support the Complaint, the Complainant has failed to meet her burden of proving that she is entitled to the relief that she seeks from the Commission. 66 Pa.C.S. § 332(a).

8. The Respondent's Motion that the Complaint be dismissed for lack of prosecution may be granted. 52 Pa. Code § 5.245

#### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PECO Energy Company to dismiss the Complaint of Marcella Parker at Docket No. F-2022-3034455 for lack of prosecution is granted.

2. That the Complaint of Marcella Parker at Marcella Parker v. PECO Energy Company at Docket F-2022-3034455, is dismissed with prejudice.

3. That the Secretary mark the proceeding at Docket No. F-2022-3034455 closed.

Date: January 27, 2023

\_\_\_\_\_/s/\_\_\_\_\_  
Arlene Ashton  
Administrative Law Judge