

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Anne Wilson	:	
	:	
v.	:	C-2022-3033952
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Darlene Davis Heep  
Administrative Law Judge

**INTRODUCTION**

This decision grants the Respondent’s Motion to Dismiss a Formal Complaint for failure to prosecute because the Complainant failed to appear for the hearing.

**HISTORY OF THE PROCEEDING**

On July 18, 2022, Anne Wilson (Ms. Wilson or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO or Respondent). On the Complaint form, Ms. Wilson stated that the utility is threatening to shut off her service and that there are incorrect charges on her bill. She added that she was informed that there was a foreign load. As relief, Ms. Wilson sought a zero balance and fair, more accurate billing.

On August 11, 2022, PECO filed an Answer denying all material averments of the Complainant and stating that charges and billing for the Complainant were correct. PECO also

asserted that, in accordance with 66 Pa. C.S. §1406, PECO could terminate the Complainant's service because she had a delinquent balance.

On August 12, 2022, an Interim Order Setting Resolution Conference was issued. The parties could not reach an agreement.

On October 27, 2022, an Initial Call-In Telephonic Hearing Notice was electronically served to all parties, setting a hearing for 10:00 a.m. on January 11, 2023. On November 7, 2022, a Pre-hearing Order was served to all parties. The Pre-hearing Order advised the Complainant of the hearing procedures and stated the date and time of the hearing. Both the Prehearing Order and the Hearing Notice advised the Complainant that failure to participate in the hearing or present evidence in support of her claims could result in dismissal of the Complaint.

The Hearing Notice and Prehearing Order were electronically served to Complainant in the ordinary course of the Commission's business to the email address she provided to the Commission. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.

The hearing began as scheduled on January 11, 2022, at 10:00 a.m. Khadijah Scott, Esquire, represented PECO. The Complainant did not call in for the hearing. A recess was taken to allow the Complainant time to call in.

The hearing resumed at 10:15 a.m. The Complainant had not called in. Counsel for PECO moved that the Complaint be dismissed for failure to prosecute. The matter was taken under advisement.

The record closed as of January 18, 2023, when the 8-page transcript was received.

## FINDINGS OF FACT

1. The Complainant is Anne Wilson, a PECO Energy Company customer in Parkesburg, Pennsylvania.

2. PECO Energy Company is the Respondent.

3. On July 18, 2022, the Complainant filed a Formal Complaint against Respondent.

4. The Respondent filed an Answer on August 11, 2022.

5. On October 27, 2022, a Hearing Notice was served to all parties, setting an Initial Telephonic Hearing for January 11, 2023, beginning at 10:00 a.m.

6. The Hearing Notice advised all parties:

[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.

7. On November 7, 2022, a Pre-hearing Order was served, which advised the Complainant of the procedures and the date and time of the hearing and also stated:

**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.

8. The Hearing Notice and Prehearing Order were served electronically on the Complainant to the email address provided by the Complainant to the Commission.

9. None of the documents sent to the Complainant were returned to the Office of Administrative Law Judge as undeliverable.
10. Counsel for PECO dialed in at 10:00 a.m. for the January 11, 2023, hearing.
11. The Complainant was not present when the telephonic hearing began as scheduled at 10:00 a.m. on January 11, 2023.
12. A ten-minute recess was taken to allow the Complainant time to call in to the hearing.
13. The hearing resumed at 10:15 a.m. and the Complainant had not called in to the hearing.
14. When the Complainant failed to appear for the hearing after the recess, counsel for PECO made a motion to dismiss the Complaint, with prejudice, for failure to prosecute, which was taken under advisement.
15. The Complainant had not called into the hearing when the hearing adjourned at 10:20 a.m.
16. The Complainant did not request a continuance or provide a statement of "good cause" for her absence on the scheduled hearing date or otherwise explain why her failure to attend 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). 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. *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered Dec. 19, 2019) (*Hu*); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Jan. 27, 2017) (*Zirkel*); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Nov. 16, 2016) (*Morella*).

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 at the email address she provided to the Commission and none 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. *Hu; Zirkel; Morella*.

As the Commission noted in *Strydio v. PPL Electric Utilities 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 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. To date, the Complainant has not contacted the Commission or the undersigned to explain why her failure to attend the hearing was unavoidable. Therefore, 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.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995).

Additionally, 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 relief. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). 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 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.

Finally, there are no facts in the record that would allow the Commission to reach the conclusion that the Complainant's failure to attend the hearing was unavoidable. Accordingly, the Complaint is 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).

### 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. 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).
5. 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).

6. The Complainant's due process rights have been fully protected. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Order entered Oct. 25, 1993).

7. The Complainant failed to appear and failed to carry her burden of proof in this proceeding. 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

8. If there are no facts in the record that a party's failure to appear at a hearing was unavoidable, the complaint should 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).

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PECO Energy Company to dismiss the Formal Complaint of Anne Wilson at Docket No. C-2022-3033952 is granted.

2. That the Formal Complaint filed by Anne Wilson at Anne Wilson v. PECO Energy Company at Docket No. C-2022-3033952 is dismissed with prejudice for failure to prosecute.

