

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Taska Taylor	:	
	:	
v.	:	C-2022-3036796
	:	
Pennsylvania Electric Company	:	

**INITIAL DECISION**

Before  
Gail M. Chiodo  
Administrative Law Judge

**INTRODUCTION**

This decision dismisses the formal complaint of an electric service customer for failure of the customer to appear for the scheduled hearing and prosecute her complaint despite having notice and an opportunity to be heard.

**HISTORY OF THE PROCEEDING**

On November 14, 2022, Taska Taylor (“Complainant”) filed a formal complaint with the Pennsylvania Public Utility Commission (“Commission”) against Pennsylvania Electric Company (“Penelec” or “Company”) in which she alleged that the utility was threatening to shut off her electric service. As relief, Ms. Taylor requested a Commission payment arrangement.

On December 5, 2022, Penelec timely filed an answer and denied the material allegations of the complaint. Penelec also averred, *inter alia*, that Complainant defaulted on a Commission-issued payment arrangement and three Company payment agreements. Further, the

Company averred that the account balance, as of December 1, 2022, was \$11,079.48. Penelec requested that the complaint be dismissed or denied in its entirety.

On December 9, 2022, an Initial Call-In Telephonic Hearing Notice (“Hearing Notice”) was served on both parties scheduling a call-in telephonic evidentiary hearing on February 9, 2023, at 1:30 p.m., and assigning me as the presiding officer. The Hearing Notice included the telephone number to call, and the passcode to enter, for the parties to participate in the hearing.

Also on December 9, 2022, a Prehearing Order was served on both parties which, *inter alia*, reminded the parties of the hearing date and time, and the telephone number to call, and the passcode to enter, to participate in the hearing. Additionally, the Prehearing Order provided certain hearing information and rules that would govern the proceeding, including how to request a continuance, if necessary, and the consequences of failing to appear at the hearing and present evidence, including the 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.<sup>1</sup> Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.

On February 9, 2023, at 1:30 p.m., the hearing convened as scheduled. Ms. Margaret A. Morris, Esquire, appeared on behalf of Penelec, along with a witness, and the Company was prepared to proceed. Complainant did not appear. I recessed the hearing and convened it again approximately fifteen minutes later in order to allow time for Complainant to appear. Since Complainant did not appear after this recess, the hearing proceeded in her absence. No testimony was taken and no exhibits were introduced for the record.

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<sup>1</sup> The Hearing Notice and Prehearing Order were sent to Complainant by email pursuant to the Commission’s *Order re Waiver of Regulations Regarding Service Requirements*, Docket No. M-2021-3028321 (Order entered Sept. 15, 2022, effective until April 3, 2023) (providing that service by the Commission on the parties shall be exclusively electronic).

During the hearing, the Company moved to dismiss the complaint with prejudice (“Motion”) for the failure of the Complainant to appear and prosecute her complaint. Prior to Penelec’s Motion, attorney Morris noted that, pursuant to the Prehearing Order directing the Company to contact the Complainant to discuss possible settlement,<sup>2</sup> attorney Morris emailed Complainant on January 29, 2023; however, at the time of the hearing, Ms. Taylor had not returned Penelec’s email to discuss possibly settling this matter.<sup>3</sup>

I took Penelec’s Motion under advisement. The record closed at the conclusion of the hearing pursuant to 52 Pa. Code § 5.431(a).<sup>4</sup>

To date, no communication has been received by the undersigned or the Office of Administrative Law Judge regarding Complainant’s absence. This decision grants Penelec’s Motion.

#### FINDINGS OF FACT

1. The Complainant is Taska Taylor, an electric service customer.
2. The Respondent is Pennsylvania Electric Company.
3. On November 14, 2022, Ms. Taylor filed a formal complaint against Respondent.
4. On December 5, 2022, Respondent timely filed an answer to the complaint.

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<sup>2</sup> See Prehearing Order, ¶ No. 10, which also notes that it is the Commission’s policy to encourage settlements.

<sup>3</sup> See, Tr. at 4-5, which hearing transcript was filed on March 7, 2023.

<sup>4</sup> Section 5.431(a) provides: “The record will be closed at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission.” 52 Pa. Code § 5.431(a).

5. On December 9, 2022, an Initial Call-In Telephonic Hearing Notice was served on both parties scheduling an initial telephonic hearing on February 9, 2023, at 1:30 p.m., and assigning me as the presiding officer.

6. Also on December 9, 2022, a Prehearing Order was served on both parties which, *inter alia*, reminded the parties of the date and time of the scheduled hearing and the telephone number to call, and the passcode to enter, to participate in the hearing.

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

8. Both the Hearing Notice and the Prehearing Order provided certain hearing information and rules that would govern the proceeding including how to request a continuance, if necessary, and the consequences of failing to appear at the hearing and present evidence, including the dismissal of the complaint.

9. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.

10. On February 9, 2023, Complainant failed to appear and participate in the scheduled hearing.

11. To date, no communication has been received by the undersigned or the Office of Administrative Law Judge explaining why Complainant's 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) (*Schneider*). This due process requirement is satisfied when the parties are provided notice and the opportunity to be heard. *Id.* As the proponent of any request for relief, the complainant bears the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, the Commission’s decision must be supported by substantial evidence. 2 Pa.C.S. § 704.

The Commission is required to fix the time and place of a hearing in a complaint proceeding and serve notice thereof upon the parties in interest. 66 Pa.C.S. § 703(a)-(b). Service on interested persons is sufficient to provide notice. 52 Pa. Code § 5.61(a). As the Commission explained, “[i]t is well-established law that once timely notice of a hearing and the opportunity to be heard have been provided, it is the responsibility of the parties to be present and participate in the hearing.” *Mumma v. UGI Elec. Utils. Corp.*, No. C-00014869 at 3 (Opinion and Order entered Jan. 28, 2002) (citing *Schneider*).

In the instant case, the Hearing Notice scheduled a hearing on February 9, 2023, and included the telephone number to call, and the passcode to enter, for the parties to participate in the hearing. Further, a Prehearing Order was served on both parties which, *inter alia*, reminded the parties of the hearing date and time, and the telephone number, and passcode to enter, to participate in the hearing. Additionally, the Prehearing Order provided certain hearing information and rules that would govern the proceeding including how to request a continuance, if necessary, and the consequences of failing to appear at the hearing and present evidence, including the dismissal of the complaint.

Both the Hearing Notice and Prehearing Order were electronically served on the Complainant to the email address provided by Complainant to the Commission. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents sent to Complainant were received by Complainant. *Hu v. PECO Energy Co.*, No. C-2019-3012075 (Order entered Dec. 19, 2019); *Zirkel v. Phila. Gas Works*, No. C-2016-2561176 (Final Order entered Apr. 7, 2017); *Morella v. PECO Energy Co.*, No. C-2016-2553416 (Final Order entered Jan. 31, 2017).

Both the Public Utility Code and the Commission's regulations provide that, after being notified, a party who fails to appear at a scheduled 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). However, neither of these provisions apply if the presiding officer determines that the failure to be represented was unavoidable and that the interests of the other parties and of the public would not be prejudiced by permitting the reopening or further examination. 66 Pa.C.S. § 332(f), 52 Pa. Code § 5.245(b).

In the instant case, to date, no communication has been received by the undersigned or the Office of Administrative Law Judge explaining why Complainant's failure to appear at the hearing was unavoidable. Therefore, I find that Complainant waived the opportunity to participate in a hearing on the matters raised in the complaint and Complainant's absence was not unavoidable. Thus, by her failure to appear, Complainant did not meet her burden of proof.

Consequently, it is appropriate to dismiss Ms. Taylor's complaint. As the Commission has explained, where a 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.*, No. F-2018-3003502 (Opinion and Order entered Feb. 6, 2020) and the cases cited therein. Additionally, when there are no facts in the record that the party's failure to appear was unavoidable, the complaint should be dismissed with prejudice. *Brown v. PECO Energy Co.*, No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Little v. Pgh Water & Sewer Auth.*, No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022); *Williams v. PECO Energy Co.*, No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019); *Jefferson v. UGI Utils., Inc.*, No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

Accordingly, Respondent's Motion to dismiss the complaint with prejudice will be granted.

## 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 Commission is required to provide due process to the parties appearing before them; 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).

3. After being notified, a party who fails to appear at a scheduled 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).

4. If the presiding officer determines that the failure to be represented was unavoidable and that the interests of the other parties and of the public would not be prejudiced by permitting the reopening or further examination, the presiding officer may find that a party did not waive the opportunity to participate in the hearing. 66 Pa.C.S. § 332(f), 52 Pa. Code § 5.245(b).

5. Complainant's due process rights have been fully protected and Complainant's failure to appear was not unavoidable. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

6. As the party seeking relief, Complainant bears the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a), *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

7. The Complainant has failed to meet her burden of proof in this proceeding.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Pennsylvania Electric Company to dismiss with prejudice the Formal Complaint of Taska Taylor at Docket No. C-2022-3036796 is granted.
2. That the Formal Complaint of Taska Taylor against Pennsylvania Electric Company at Docket No. C-2022-3036796 is dismissed with prejudice.
3. That the docket at Docket No. C-2022-3036796 be marked closed.

Date: April 6, 2023

\_\_\_\_\_/s/  
Gail M. Chiodo  
Administrative Law Judge