

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Christina Fynes	:	C-2022-3035452
	:	C-2022-3035459
v.	:	
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Arlene Ashton  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses two Formal Complaints filed by Christina Fynes against PECO Energy Company because she failed to appear for the scheduled evidentiary hearing and prosecute her Formal Complaints.

**HISTORY OF THE PROCEEDING**

On September 20, 2022, Christina Fynes filed a Formal Complaint (Electric Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO). In the Electric Complaint, Ms. Fynes averred that PECO was threatening to shut off or had already shut off her electric service and requested a payment agreement. The Electric Complaint was assigned Docket No.C-2022-3035452 and was served on PECO by the Commission’s Secretary’s Bureau on September 20, 2022.

On September 20, 2022, Christina Fynes also filed a Formal Complaint (Gas Complaint) with the Commission against PECO. In the Gas Complaint, Ms. Fynes averred that

PECO was threatening to shut off or had already shut off her gas service and requested a payment agreement. The Gas Complaint was assigned Docket No.C-2022-3035459 and was served on PECO by the Commission's Secretary's Bureau on September 20, 2022.

On October 10, 2022, PECO filed an Answer and New Matter in response to Ms. Fyne's Electric Complaint (Electric Answer). In its Electric Answer, PECO denied all material allegations of fact and conclusions of law in the Electric Complaint. PECO further averred that: (1) pursuant to 66 Pa.C.S. §1406, it has the right to terminate Ms. Fynes' service due to the delinquent balance on her account; and (2) under 66 Pa.C.S. §1406(c), Ms. Fynes is not entitled to a Commission ordered payment agreement because the entire outstanding balance on her account is comprised entirely of arrears accrued under PECO's Customer Assistance Program (CAP). In New Matter, PECO averred that the Commission lacks jurisdiction to grant the payment agreement requested by Ms. Fynes and requested that the Electric Complaint be dismissed.

On October 10, 2022, PECO also filed an Answer and New Matter in response to Ms. Fyne's Gas Complaint (Gas Answer). In its Gas Answer, PECO denied all material allegations of fact and conclusions of law in the Gas Complaint. PECO further averred that: (1) pursuant to 66 Pa.C.S. §1406, it has the right to terminate Ms. Fynes Service due to the delinquent balance on her account; and (2) under 66 Pa.C.S. §1406(c), Ms. Fynes is not entitled to a Commission ordered payment agreement because the entire outstanding balance on her account is comprised entirely of arrears accrued under PECO's CAP. In New Matter, PECO averred that the Commission lacks jurisdiction to grant the payment agreement requested by Ms. Fynes and requested that the Gas Complaint be dismissed.

On October 10, 2022, PECO filed Motions to Consolidate the Complaints at Docket No.C-2022-3035452 and at Docket No.C-2022-3035459 (individually and collectively, Motion to Consolidate) requesting that the two dockets be consolidated because they involve the same parties, contain the same allegations and concern the same questions of fact and law. PECO's Motions to Consolidate the Complaints at Docket No.C-2022-3035452 and at Docket No.C-2022-3035459 were granted by Order dated January 18, 2023.

On November 17, 2022, a Hearing Notice was issued establishing an initial telephonic hearing for Docket No.C-2022-3035452 and Docket No.C-2022-3035459 for January 19, 2023, at 10:00 a.m. and assigning me as the presiding officer. The Hearing Notice advised the parties of the date and time of the scheduled hearing 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.

In anticipation of that hearing, a Prehearing Order was also issued on November 17, 2022, setting forth hearing information and the rules that would govern that proceeding. 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>1</sup> or a Commission Order or regulation, and that Complainant is entitled to the relief requested in the Complaint.

The hearing convened as scheduled on January 19, 2023, at 10:00 a.m. The Complainant, counsel for PECO and a witness for PECO were present and participated in the hearing. During the course of the hearing, the parties jointly requested a two-week continuance to allow the parties to pursue settlement discussions and negotiations.

By Interim Order dated January 19, 2023, the parties’ request for continuance was granted. A Hearing Notice dated January 19, 2023 (Further Hearing Notice) was issued advising

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<sup>1</sup> Public Utility Code (Code), 66 Pa.C.S. § 101–3316.

the parties that the further call-in telephonic hearing was scheduled for February 2, 2023, at 1:00 p.m. (Further Hearing).

The Further Hearing convened as scheduled on February 2, 2023. Counsel for PECO was present with a witness and was prepared to proceed. Ms. Fynes was not present. In light of the Complainant's absence, the Further Hearing was recessed for approximately 10 minutes to allow the Complainant additional time to appear. When the Further Hearing reconvened at 1:22 p.m., the Complainant still had not appeared for the Further 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 Further Hearing, Respondent's counsel moved that the Complaint be dismissed, with prejudice, 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 February 13, 2023, upon receipt of the transcript for the Further Hearing.

#### FINDINGS OF FACT

1. The Complainant is Christina Fynes.
2. The Respondent is PECO Energy Company.
3. On September 20, 2022, Ms. Fynes filed the Electric Complaint with the Commission against PECO Energy Company at Docket No. C-2022-3035452.
4. On September 20, 2022, Ms. Fynes filed the Gas Complaint with the Commission against PECO Energy Company at Docket No. C-2022-3035459.
5. On October 20, 2022, Respondent timely filed an Answer to each of the Complaints filed by the Complainant.

6. By Hearing Notice dated November 17, 2022, a call-in telephonic hearing for Docket No. C-2022-3035452 and Docket No. C-2022-3035459 was scheduled for January 19, 2023, at 10:00 a.m.

7. On November 17, 2022, I issued a Prehearing Order that also advised the parties of the date and time of the scheduled hearing.

8. The parties appeared at the January 19, 2023, hearing.

9. At the January 19, 2023, hearing, the parties jointly requested a two-week continuance to allow additional time to pursue settlement discussions and negotiations.

10. By Interim Order dated January 19, 2023, the parties' request for continuance was granted.

11. A Further Hearing Notice dated January 19, 2023, was issued advising the parties that the further call-in telephonic hearing was scheduled for February 2, 2023, at 1:00 p.m.

12. The Hearing Notice, the Prehearing Order, the Interim Order and the Further Hearing Notice were served on the Complainant electronically at the address provided by her to the Commission.

13. The Hearing Notice, the Prehearing Order, the Interim Order and the Further Hearing Notice served on the Complainant were not returned to the Commission as undeliverable.

14. The Further Hearing convened as scheduled on February 2, 2023.

15. On February 2, 2023, counsel for PECO and a witness appeared and were prepared to proceed with the scheduled Further Hearing in this matter.

16. The Complainant did not call in to the Further Hearing on February 2, 2023, at the designated time as instructed on the Further Hearing Notice, the Interim Order and the Prehearing Order.

17. A ten-minute recess was taken to allow Ms. Fynes or a representative an opportunity to call-in to the Further Hearing.

18. The Further Hearing reconvened after the recess; however, neither Ms. Fynes nor a representative called into the Further Hearing before the Further Hearing adjourned at 1:25 p.m.

19. The Complainant has not contacted the Commission to explain why her failure to appear at the Further 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.

On November 17, 2022, the Commission electronically served a Hearing Notice to the Complainant for Docket No.C-2022-3035452 and Docket No.C-2022-3035459, at the email address she provided in the Electric Complaint and the Gas Complaint. The Notice informed the Complainant 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 November 17, 2022, 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 was also

served electronically to the email address Complainant provided in the Electric Complaint and the Gas Complaint. The Prehearing Order was not returned as undeliverable. 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). Indeed, the Complainant's presence at the January 19, 2023, hearing corroborates and supports the conclusion that the Complainant received the Hearing Notice and Prehearing Order electronically served to her.

The hearing was convened as scheduled on January 19, 2022, at 10:00 a.m. The Complainant, counsel for PECO and a witness for PECO were present and participated in the hearing. During the course of the hearing, the parties jointly requested a two-week continuance to allow the parties to pursue settlement discussions and negotiations. The parties indicated that they would be available for an evidentiary hearing on February 2, 2023, at 1:00 p.m.

On January 19, 2023, I issued an Interim Order granting the parties' request for continuance, which was also served electronically to the same email address Complainant provided in the Electric Complaint and the Gas Complaint. The Interim Order also indicated that a further evidentiary hearing would be scheduled for February 2, 2023, at 1:00 p.m. to resolve this matter if the parties failed to reach an agreement settling their dispute prior to that date and confirmed that the provisions of the November 17, 2022 Prehearing Order remained in effect. The Interim Order was not returned as undeliverable.

On January 19, 2023, the Commission electronically served the February 2, 2023, Notice of Further Hearing in this case to the Complainant, at the email address she provided in the Electric Complaint and the Gas Complaint. The Notice of Further Hearing informed the parties of the date and time of the Further Hearing, as well as how to call in for the Further Hearing. The Notice of Further Hearing was not returned as undeliverable.

The Notice of Further Hearing and Interim Order were also served on the

Complainant electronically at the email address she provided in the Electric Complaint and the Gas Complaint. Neither of these documents were returned as undeliverable. 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). Furthermore, the Complainant's appearance at the January 19, 2023, hearing corroborates and supports the conclusion that the Complainant received each of the notices and orders served to her electronically.

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 February 2, 2023.

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).

The party who failed to appear at the hearing has the burden of explaining why his/her failure to appear was unavoidable. 66 Pa.C.S. § 332(a); *Herr v. West Penn Power Co.*, Docket No. C-2021-3028202 (Opinion and Order entered Sept. 15, 2022). 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.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Little v. Pittsburgh Water & Sewer Auth.*, Docket No. F-2021-3027107 (Opinion and Order entered Feb. 7, 2022); *Williams v. PECO Energy Co.*, Docket No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

Complainant failed to appear for the Further Hearing despite receiving notice and despite the undersigned allowing additional time for Complainant to appear. To date, there has been no communication to the Office of Administrative Law Judge or myself by, or on behalf of, Complainant explaining why Complainant's failure to appear at the Further Hearing was unavoidable. Consequently, I find that Complainant waived the opportunity to participate in a hearing on the matters raised in the Complaints, Complainant's absence was not unavoidable, and the Complaints should be dismissed with prejudice.

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 Further Hearing scheduled for February 2, 2023. Thus, by her failure to appear, Complainant did not meet her burden of proof.

Consequently, it is appropriate to grant PECO's Motion and to dismiss, with prejudice, the Electric Complaint and the Gas Complaint filed by Ms. Fynes. 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).

### 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. 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.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022).

8. By failing to appear for the hearing and proffer any evidence to support the Electric Complaint and the Gas 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).

9. The Respondent's Motion that the Electric Complaint and the Gas 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 Complaints of Christina Fynes at Docket No. C-2022-3035452 and Docket No. C-2022-3035459 with prejudice, for lack of prosecution is granted.

2. That the Complaints of Christina Fynes at Christina Fynes v. PECO Energy Company at Docket No. C-2022-3035452 and at Docket No. C-2022-3035452, are dismissed with prejudice.

3. That the Secretary mark the proceedings at Docket No. C-2022-3035452 and Docket No. C-2022-3035459 closed.

Date: April 10, 2023

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/s/  
Arlene Ashton  
Administrative Law Judge