

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Monique Washington	:	
	:	
v.	:	F-2022-3036012
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Marta Guhl  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Complaint of Monique Washington against PECO Energy Company because she failed to appear for her hearing and prosecute her Complaint.

**HISTORY OF THE PROCEEDING**

On September 22, 2022, Monique Washington (Complainant or Ms. Washington) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO or Respondent), indicating that there were incorrect charges on her bill and requesting a payment arrangement.

On October 31, 2022<sup>1</sup>, Respondent filed an Answer denying the material allegations of the Complaint.

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<sup>1</sup> The Complaint was served on the Respondent by the Secretary's Bureau on October 11, 2022.

On November 9, 2022, the Commission issued an Initial Call-In Telephonic Hearing Notice and the matter was scheduled for hearing on January 17, 2023 at 10:00 a.m. The case was assigned to me. The Notice contained the following information:

**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 December 13, 2022. 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 also contained the same failure to appear warning that was found in the Hearing Notice.

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 on January 17, 2023, as scheduled. Counsel for PECO was present with a witness and was prepared to proceed. The Complainant failed to call-in for the hearing and has not contacted my office at any point to explain why her failure to appear at the hearing was unavoidable.

No witnesses were presented, and no exhibits were introduced into the record. Counsel for PECO 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 January 30, 2023, upon my receipt of the transcript.

## FINDINGS OF FACT

1. The Complainant is Monique Washington.
2. The Respondent is PECO Energy Company.
3. On September 22, 2022, Ms. Washington filed a Complaint with the Commission against the Respondent.
4. On October 31, 2022, the Respondent filed an Answer to the Complaint.
5. On November 9, 2022, the Commission issued an Initial Call-In Telephonic Hearing Notice and the matter was scheduled for hearing on January 17, 2023 at 10:00 a.m.
6. On December 13, 2022, a Prehearing Order was sent to all parties containing, *inter alia*, a warning of potentially serious consequences if they failed to obtain a continuance and failed to attend 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 Prehearing Order contained the warning that failing to appear could result in the case being dismissed with prejudice.
9. None of the documents sent to Complainant were returned to the Commission as undeliverable.
10. The Complainant failed to appear at the January 17, 2023, hearing.

11. The Complainant did not settle or withdraw this Complaint prior to the scheduled hearing date or obtain a continuance.

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

### DISCUSSION

As the party seeking affirmative relief from the Commission, the burden of proof rests on the Complainant. 66 Pa.C.S. § 332(a).

Administrative agencies, like the Public Utility Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. Pub. Util. Comm'n.*, 479 A.2d 10 (Pa. Cmwlth. 1984).

The Commission served notice of the January 17, 2023, hearing in this case on the Complainant on November 9, 2022, electronically, to the email 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 also advised Complainant that failure to appear may result in dismissal with prejudice which means that Complainant would be barred from filing another complaint raising the same claim(s) and issues(s) presented in the dismissed complaint. The notice was not returned as undeliverable.

In addition, I issued a Prehearing Order dated December 13, 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, which was also served on the Complainant electronically, was never returned as undeliverable. The Notice of Hearing and Prehearing Order were sent to the Complainant at the 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).

Neither the Complainant nor a representative licensed to practice law in this Commonwealth appeared at the hearing on her behalf. To date, there is no further information about the Complainant regarding this hearing. Her failure to appear was not unavoidable.

Once notice of a hearing and the opportunity to be heard have been provided, it is the responsibility of the parties to appear and participate in the hearing. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a). The Complainant waived the opportunity to participate in the hearing by failing to appear.

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).<sup>2</sup>

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

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<sup>2</sup> Notwithstanding the aforementioned, on April 20, 2023 the Commission adopted an order that determined it is inconsistent with due process to dismiss a formal complaint with prejudice in which a *pro se* complainant fails to appear at a hearing when complainant has not affirmatively agreed to accept service via email. *Hoyt v. Columbia Gas of Pa., Inc.*, Docket No. F-2022-3032680 (Order adopted Apr. 20, 2023).

that she is entitled to her requested relief. The Complainant did not appear for the hearing scheduled for January 17, 2023. Thus, by her failure to appear, Complainant did not meet her burden of proof.

Consequently, while PECO's Motion to dismiss Ms. Washington's Complaint will be granted, the Complaint will be dismissed without prejudice. *See, e.g., Elliott v. Pa. Elec. Co.*, F-2018-3003502 (Opinion and Order entered Feb. 6, 2020); *See also, Hoyt v. Columbia Gas of Pa., Inc.*, Docket No. F-2022-3032680 (Order adopted Apr. 20, 2023).

### 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 preserved. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

6. 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).

7. The Respondent's Motion that the Complaint be dismissed for lack of prosecution may be granted. *See Elliott v. Pa. Elec. Co.*, F-2018-3003502 (Opinion and Order entered Feb. 6, 2020).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PECO Energy Company to dismiss the Formal Complaint filed by Monique Washington at Docket No. F-2022-3036012 is granted.

2. That the Formal Complaint of Monique Washington in *Monique Washington v. PECO Energy Company* at Docket No. F-2022-3036012 is dismissed without prejudice.

3. That Docket No. F-2022-3036012 be marked closed.

Date: April 27, 2023

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Marta Guhl  
Administrative Law Judge