

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Colby Simpkins	:	
	:	
v.	:	C-2022-3036798
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Eranda Vero  
Administrative Law Judge

**INTRODUCTION**

This decision denies the Formal Complaint of Colby Simpkins because the Complainant failed to appear at the scheduled hearing and prosecute his Complaint.

**HISTORY OF THE PROCEEDING**

On November 15, 2022, Colby Simpkins (Mr. Simpkins or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO, Company, or Respondent) alleging that the Company is threatening to shut off his gas service or has already shut off his service, and that his outstanding balance is incorrect. As relief, Mr. Simpkins requested the Commission review the correctness of his outstanding balance with PECO. In addition, Mr. Simpkins requested the Commission’s help in lowering and paying his bills.

On December 5, 2022, PECO filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.

A Hearing Notice dated January 24, 2023, notified the parties that an initial call-in telephonic hearing was scheduled for March 23, 2023, at 10:00 a.m. The Hearing Notice stated, “You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised.”

On February 22, 2022, I issued a Prehearing Order. The Prehearing Order directed the parties to comply with various procedural requirements and warned in bold type: **“You may lose the case if you do not take part in this hearing and present evidence on the issues raised.”**

The Hearing Notice and the Prehearing Order were served on the Complainant by electronic mail at the email address listed in the Complaint.<sup>1</sup> None of the emails sent by the Commission to the Complainant were returned as undeliverable.

The hearing convened as scheduled on March 23, 2023. Khadijah Scott, Esq. appeared representing the Respondent. The Complainant failed to call-in. The Complainant was given an additional 15 minutes to call in but failed to do so.

At the hearing, counsel for PECO moved that the Complaint be dismissed for lack of prosecution pursuant to 52 Pa. Code § 5.245. That Motion is granted pursuant to the ordering paragraphs below.

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

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<sup>1</sup> By Order entered September 15, 2021, the Commission used its general regulatory authority to waive the service requirements set forth in the Commission’s regulations at 52 Pa Code §§ 1.53 and 1.54, thereby permitting electronic service by the Commission on all parties, regardless of whether a particular party has agreed to electronic service. *See, Waiver of Regulations Regarding Service Requirements*, M-2021-3028321, at 7 (September 15, 2021). By Order entered March 10, 2022, the Commission extended the waiver of service requirements to October 1, 2022, then by Order entered September 15, 2022, extended the waiver again to April 3, 2023. *See, Waiver of Regulations Regarding Service Requirements*, M-2021-3028321 (Orders entered March 10, 2022, and September 15, 2022, respectively).

The record in this matter closed on April 6, 2023, upon receipt of the hearing transcript.

### FINDINGS OF FACT

1. The Complainant is Colby Simpkins.
2. The Respondent is PECO Energy Company.
3. On November 15, 2022, Mr. Simpkins filed a Complaint against PECO alleging that the Company is threatening to shut off his gas service or has already shut off his service, and that his outstanding balance is incorrect.
4. As relief, Mr. Simpkins requested the Commission review the correctness of his outstanding balance with PECO and help in lowering and paying his bills.
5. On December 5, 2022, PECO filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.
6. A Hearing Notice dated January 24, 2023, informed the parties that an initial call-in telephonic hearing was scheduled in this matter on March 23, 2023, at 10:00 a.m.
7. The Hearing Notice stated, “You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised.”
8. A Prehearing Order issued on February 22, 2023, directed the parties to comply with various procedural requirements and warned in bold type: **“You may lose the case if you do not take part in this hearing and present evidence on the issues raised.”**
9. The Hearing Notice and the Prehearing Order were served electronically upon the Complainant at the email address he provided to the Commission.

10. Neither the Hearing Notice nor the Prehearing Order were returned as undeliverable.

11. The Complainant failed to appear at the March 23, 2023, hearing.

12. The Complainant did not request a continuance, withdraw the Complaint, or otherwise notify the Commission to explain why his failure to appear at the hearing was unavoidable.

### DISCUSSION

In this Complaint, Mr. Simpkins alleged that the Company is threatening to shut off his gas service or has already shut off his service, and that his outstanding balance is incorrect. As relief, Mr. Simpkins requested the Commission review the correctness of his outstanding balance with PECO and help in lowering and paying his bills. 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). Both the Hearing Notice and Prehearing Order were electronically served to the email address provided by Complainant to the Commission. Neither was 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.*, Docket No. C-2019-3012075 (Order entered Dec. 19, 2019) (*Hu*); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Apr. 7, 2017) (*Zirkel*); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 24, 2017) (*Morella*).

As the Commission noted in *Strydio v. PPL Electric Utilities Corp.*, Docket No. C-2017-2633043 at 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 for the hearing. Additionally, the January 24, 2023, Hearing Notice and the February 22, 2023 Prehearing Order advised the Complainant that the case could be dismissed for failure to call in and participate in the hearing. 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 and shall not be permitted to later reopen the matter or be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a). Thus, the Complainant has waived the opportunity to participate in the hearing by failing to appear. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995).

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. By failing to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden. Consequently, the Complaint will be dismissed on this basis as well. *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.

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); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a). There are no facts on the record that suggest that Complainant's failure to appear was unavoidable. However, there are also no facts on the record that Mr. Simpkins has ever abused the administrative process to avoid paying his bills. *See, e.g. Amanda Polk Hell v. West Penn Power Co.*, Docket No. C-2021-3028202 (Order entered September 15, 2022). Additionally, on April 20, 2023, the Commission entered an order that determined that despite the September 2022 Order waiving service requirements, 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 (Opinion and Order entered Apr. 20, 2023). Therefore, in the present matter, it is appropriate to dismiss the Complaint without prejudice to refile.

#### 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 Complainant received notice of the hearing. *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 Apr. 7, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017).
  
3. The due process rights of the Complainant have been fully protected in this proceeding and Complainant's failure to appear was not unavoidable. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984); 52 Pa. Code § 5.245(a).
  
4. As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).

5. The Complainant did not participate in the hearing, failed to appear for the hearing, did not present any evidence and, therefore, failed to meet the Complainant's burden of proving eligibility for the relief sought from the Commission. 66 Pa.C.S. § 332(a).

6. 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. *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); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

7. When a *pro se* Complainant has not affirmatively agreed to accept service via email and fails to appear at a hearing, dismissal should be without prejudice. *Hoyt v. Columbia Gas of Pa., Inc.*, Docket No. F-2022-3032680 (Opinion and Order entered Apr. 20, 2023).

#### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PECO Energy Company to dismiss the Formal Complaint filed by Colby Simpkins at Docket No. C-2022-3036798 is granted.

2. That the Formal Complaint of Colby Simpkins in *Colby Simpkins v. PECO Energy Company* at Docket No. C-2022-3036798, is dismissed without prejudice to refiling.

3. That Docket No. C-2022-3036798 is marked closed.

Date: June 8, 2023

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Eranda Vero  
Administrative Law Judge