

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jennifer Dawkins	:	
	:	
v.	:	C-2022-3036383
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Arlene Ashton
Administrative Law Judge

INTRODUCTION

This decision dismisses the Formal Complaint of an electric service customer for the 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 October 27, 2022, Jennifer Dawkins (“Complainant” or “Ms. Dawkins”) filed a Formal Complaint with the Pennsylvania Public Utility Commission (“Commission”) against PECO Energy Company (“PECO” or “Respondent”). Ms. Dawkins alleged, *inter alia*, that PECO had issued a 10-day shut off notice, that she needed a payment agreement due to a medical necessity and that the PECO won’t help her to obtain a payment agreement. As relief, Ms. Dawkins requested a payment agreement.

On November 14, 2022, PECO timely filed an Answer with New Matter denying the material allegations and conclusions of law in the Formal Complaint. PECO acknowledged that on October 7, 2022, the Complainant received a termination notice effective on or after

October 24, 2022. Further, PECO averred, *inter alia*, that the Complainant entered into a PECO-issued payment agreement dated May 11, 2022; that she defaulted on that payment agreement on June 22, 2022; that she has not made a payment on her account in two years; and that Complainant has a balance in arrears of \$5,640.40. Finally, PECO averred that the Complainant was enrolled in PECO's Customer Assistance Program ("CAP"), and her outstanding balance is comprised of CAP arrears, depriving the Commission of jurisdiction to issue a payment agreement to the Complainant.

On January 23, 2023, an Initial Call-In Telephonic Hearing Notice ("Hearing Notice") was eServed on both parties scheduling a call-in telephonic evidentiary hearing on March 7, 2023, at 10:00 a.m., and assigning me as the presiding officer. This Hearing Notice included the telephone number to call, and the passcode to enter, for the parties to participate in the hearing.

On January 26, 2023, my Prehearing Order was eServed 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.

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

On March 7, 2023, the hearing convened, as scheduled. Ms. Khadijah Scott, Esquire, appeared on behalf of PECO, along with a witness, and the Respondent was prepared to proceed. A court reporter was also present. The Complainant did not appear. The hearing was recessed at 10:05 a.m. to allow time for the Complainant to appear and was re-convened ten minutes later at 10:15 a.m. The Complainant did not appear after the recess and the hearing proceeded despite her absence. No testimony was taken, and no exhibits were introduced for the record.

During the hearing, PECO moved to dismiss the Formal Complaint with prejudice (“Motion”) for the failure of the Complainant to appear and prosecute her complaint.

I took PECO’s Motion under advisement. The record closed at the conclusion of the hearing pursuant to 52 Pa. Code § 5.431(a) (providing that the record will be closed at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission).¹

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

FINDINGS OF FACT

1. The Complainant is Jennifer Dawkins.
2. The Respondent is PECO Energy Company.
3. Respondent provided electric service to Complainant.
4. On October 27, 2022, Ms. Dawkins filed a Formal Complaint against Respondent.
5. On November 14, 2022, Respondent timely filed an Answer with New Matter to the Formal Complaint.
6. On January 23, 2023, an Initial Call-In Telephonic Hearing Notice was eServed on both parties scheduling an initial telephonic hearing on March 7, 2023, at 10:00 a.m., and assigning me as the presiding officer.

¹ The transcript for the hearing was received on March 29, 2023.

7. On January 26, 2023, a Prehearing Order was eServed on the Complainant 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.

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. Both the Hearing Notice and the Prehearing Order were eServed to the Complainant at the email address she registered with and provided to the Commission for service of Commission documents.

10. Neither the Hearing Notice nor the Prehearing Order sent to the Complainant were returned to the Commission as undeliverable.

11. On March 7, 2023, the Complainant failed to appear and participate in the scheduled hearing.

12. To date, no communication has been received by the undersigned or the Office of Administrative Law Judge regarding the Complainant's absence from the hearing.

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. PECO Elec. Utils. Corp.*, No. C-00014869 at 3 (Opinion and Order entered Jan. 28, 2002) (citing *Schneider*).

The Hearing Notice scheduled a hearing on March 7, 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 issued 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 eServed to the Complainant at the email address she registered with the Commission. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable. Notice eServed to a party’s registered email address with no notification that service failed is presumed to have been received. *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).

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).

The party who failed to appear at the hearing has the burden of explaining why 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).

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

Accordingly, for the reasons stated above, the Complaint is dismissed with prejudice.

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. The 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, 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).

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

8. 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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PECO Energy Company to dismiss, with prejudice, the Complaint of Jennifer Dawkins at Docket No. C-2022-3036383 is granted.
2. That the Complaint of Jennifer Dawkins in *Jennifer Dawkins v. PECO Energy Company* at Docket No. C-2022-3036383 is dismissed with prejudice.
3. That the docket at Docket No. C-2022-3036383 be marked closed.

Date: June 21, 2023

_____/s/
Arlene Ashton
Administrative Law Judge