

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Atia Zaidi	:	
	:	
v.	:	F-2022-3036945
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On November 18, 2022, Atia Zaidi (Complainant or Ms. Zaidi) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO or Respondent), indicating that the utility had shut off her service and requesting a payment arrangement.

On December 13, 2022¹, Respondent filed an Answer and New Matter denying the material allegations of the Complaint.

¹ The Complaint was served on the Respondent by the Secretary's Bureau on November 28, 2022.

On the same date, PECO also filed Preliminary Objections in this case. The Company indicates that the Commission lacks jurisdiction in this matter because the Complainant is not a customer or applicant for utility service.

On January 20, 2023, the Preliminary Objections were assigned to Deputy Chief Christopher Pell as a Motion Judge.

On February 10, 2023, DCALJ Pell issued an Interim Order which dismissed the Preliminary Objections and sent the case to be scheduled for a hearing.

On February 10, 2023, the Commission issued an Initial Call-In Telephonic Hearing Notice and the matter was scheduled for hearing on March 20, 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 February 21, 2023. 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 warning that was found in the Hearing Notice.

The hearing began on March 30, 2023, as scheduled. Counsel for PECO was present with a witness and was prepared to proceed. The Complainant failed to call into the hearing.

No witnesses were presented, and no exhibits were introduced into the record. Counsel for PECO 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 April 25, 2023, upon my receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is Atia Zaidi.
2. The Respondent is PECO Energy Company.
3. On November 18, 2022, Ms. Zaidi filed a Complaint with the Commission against the Respondent.
4. On December 13, 2022, the Respondent filed an Answer and New Matter to the Complaint, as well as Preliminary Objections.
5. On February 10, 2023, an Interim Order was issued which denied the Preliminary Objections.
6. On February 10, 2023, the Commission issued an Initial Call-In Telephonic Hearing Notice and the matter was scheduled for hearing on March 30, 2023 at 10:00 a.m.
7. On February 21, 2023, 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.
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. Both the Hearing Notice and Prehearing Order were eServed on Complainant to the email address provided and registered by Complainant with the Commission.

10. None of the documents sent to the Complainant were returned to the Commission as undeliverable.

11. The Complainant failed to appear at the March 30, 2023 hearing.

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

13. 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). “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).

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 March 30, 2023, hearing in this case to the Complainant on February 10, 2023, electronically, via eService, to the address she registered with the Commission. 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 was not returned as undeliverable.

In addition, I issued a Prehearing Order dated February 21, 2023, 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 via eService, was never returned as undeliverable. The Notice of Hearing and Prehearing Order were sent to the Complainant via eService and she indicated that she accepted eService. 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 Apr. 7, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017). Therefore, the Complainant was deemed to have received these documents and had sufficient notice of the day and time of the scheduled hearing. 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). The Complainant waived the opportunity to participate in the hearing by failing to appear. 52 Pa. Code § 5.245(a). 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).

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 hearing scheduled for March 30, 2023. Thus, by her failure to appear, the Complainant did not meet her burden of proof.

Consequently, it is appropriate to grant PECO's Motion and to dismiss Ms. Zaidi's Complaint, with prejudice. 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. Notice eServed to a party's registered email address with no notification that service failed to be delivered to that email address 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).

6. The due process rights of the Complainant have been fully protected. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlt. 1984).

7. 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).

8. The Respondent's Motion that the Complaint be dismissed with prejudice for lack of prosecution may be granted. *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 Formal Complaint filed by Atia Zaidi at Docket No. F-2022-3036945 is granted.

2. That the Formal Complaint of Atia Zaidi in *Atia Zaidi v. PECO Energy Company* at Docket No. F-2022-3036945 is dismissed with prejudice.

3. That Docket No. F-2022-3036945 be marked closed.

Date: July 20, 2023

_____/s/_____
Marta Guhl
Administrative Law Judge