

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tyree Harris

v.

PECO Energy Company

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C-2023-3039465

INITIAL DECISION

Before
Chad L. Allensworth
Administrative Law Judge

INTRODUCTION

This decision dismisses the Formal Complaint of an electric service customer for failure of the customer to appear at the scheduled hearing and prosecute his Formal Complaint despite having notice and an opportunity to be heard.

HISTORY OF THE PROCEEDING

On March 31, 2023, Tyree Harris (“Complainant”) filed a Formal Complaint (“complaint”) with Pennsylvania Public Utility Commission (“Commission”) against PECO Energy Company (“Respondent” or “PECO”) in which Complainant alleged that Respondent was threatening to or already had terminated his electric service and billed him incorrectly. On April 20, 2023, Respondent filed an Answer denying the material factual allegations and conclusions of law in the complaint.

On April 25, 2023, an Initial Call-In Telephonic Hearing Notice (“Hearing Notice”) was served on both parties scheduling a telephonic hearing on June 21, 2023, at 10:00

a.m., and assigning the undersigned as the presiding officer. The Hearing Notice included the telephone number to call and the passcode to enter for the parties to participate in the hearing.

Additionally, on April 25, 2023, a Prehearing Order was served on both parties which, *inter alia*, reminded the parties of the date and time of the scheduled hearing, the telephone number to call, and the passcode to enter and participate in the hearing. The Prehearing Order also 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.

The Hearing Notice and Prehearing Order were eServed to Complainant in the ordinary course of the Commission's business to the email address he registered with the Commission. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.

On June 8, 2021, Respondent requested a continuance of the June 21, 2023 hearing date based on an unavailable witness. Complainant did not object to the continuance or otherwise respond to the continuance request. Accordingly, I granted Respondent's continuance request by Order dated June 15, 2023. On June 15, 2023, a Rescheduled Initial Telephonic Hearing Notice ("Rescheduled Notice") was served on both parties rescheduling the telephonic hearing for August 23, 2023, at 10:00 a.m. The Rescheduled Notice included the telephone number to call and the passcode to enter for the parties to participate in the hearing. The Rescheduled Notice was also eServed on the Complainant.

On August 23, 2023, at 10:00 a.m., the hearing convened as scheduled. Attorney Khadijah Scott appeared on behalf of PECO, with two witnesses, and PECO was prepared to proceed. Complainant did not appear. I delayed going on record for approximately ten minutes to allow time for Complainant to appear, but neither Complainant nor anyone representing Complainant appeared. As such, the hearing proceeded in Complainant's absence. No testimony was taken and no exhibits were introduced for the record.

During the hearing, Respondent made a Motion to Dismiss the Complaint (“Motion”) for the failure of Complainant to appear and prosecute his Complaint.¹ The Motion was taken under advisement. Complainant did not contact the Office of Administrative Law Judge to explain his absence by close of business on August 23, 2023. The record closed on August 23, 2023. This decision grants PECO’s Motion to Dismiss.

FINDINGS OF FACT

1. Complainant is Tyree Harris.
2. Respondent is PECO Energy Company, who provides electric service to Complainant.
3. On March 31, 2023, Complainant filed a Formal Complaint against Respondent.
4. On April 20, 2023, Respondent filed its Answer to the complaint.
5. On April 25, 2023, an Initial Call-In Telephone Hearing Notice was served on Complainant scheduling an initial telephonic hearing on June 21, 2023, at 10:00 a.m.
6. On April 25, 2023, a Prehearing Order was served on Complainant reminding the Complainant of the date and time of the scheduled hearing as well as, providing certain hearing information and rules that would govern the proceeding including, *inter alia*, 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.
7. On June 8, 2023, Respondent filed a request to continue the June 21, 2023 hearing.

¹ Respondent’s Motion was made without specifying whether dismissal was sought with or without prejudice.

8. Complainant did not object to the continuance request.

9. By Order dated June 15, 2023, Respondent's continuance was granted.

10. On June 15, 2023, a Rescheduled Initial Telephonic Hearing Notice was served on Complainant rescheduling the telephonic hearing for August 23, 2023, at 10:00 a.m. and informing him of the telephone number to call into the hearing as well as the passcode to enter and participate in the hearing.

11. The Rescheduled Initial Telephonic Hearing Notice 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.

12. The April 25, 2023 Hearing Notice, the April 25, 2023 Prehearing Order, and the June 15, 2023 Rescheduled Initial Telephonic Hearing Notice were all eServed on Complainant at the email address registered by Complainant with the Commission.

13. The Rescheduled Initial Telephonic Hearing Notice was not returned to the Commission as undeliverable.

14. On August 23, 2023, Complainant failed to appear and participate in the scheduled hearing.

15. Complainant failed to contact the undersigned or the Office of Administrative Law Judge to explain why his failure to appear at the 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) ("*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. UGI Elec. Utils. Corp.*, No. C-00014869 at 3 (Opinion and Order entered Jan. 28, 2002) (citing *Schneider*).

On June 15, 2023, the Commission issued and served a Rescheduled Notice of the August 23, 2023 hearing on both parties. The Rescheduled Notice informed the parties of: (a) the date and time of the hearing; (b) how to call in for the hearing; (c) how to request a continuance if needed and (d) the consequences of failing to appear at the hearing and present evidence including the dismissal of the complaint. The Rescheduled Notice was eServed on Complainant at the email address registered by Complainant with the Commission. The Rescheduled Notice was not returned to the Commission as undelivered. Accordingly, it must be presumed that the document sent to Complainant was received by Complainant. *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).

In the instant case, Complainant failed to appear for the hearing despite receiving notice and despite the undersigned allowing additional time for Complainant 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). To date, Complainant has not communicated with the undersigned or the Office of Administrative Law Judge to explain why his failure to appear at the hearing was unavoidable. Therefore, I find that Complainant waived the opportunity to participate in a hearing on the matters raised in the complaint and Complainant's absence was not unavoidable. Thus, by his failure to appear, Complainant did not meet his burden of proof.

Consequently, it is appropriate to dismiss the complaint. As the Commission has explained, where a 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.*, No. F-2018-3003502 (Opinion and Order entered Feb. 6, 2020). When there are no facts in the record that the party's failure to appear was unavoidable, the complaint may 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).

Accordingly, Respondent's Motion to Dismiss the complaint will be granted.

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 and 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. Notice eServed to a party with no notification that service failed is presumed 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. Complainant's due process rights have been fully preserved 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).

7. As the party seeking relief, 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).

8. The Complainant has failed to meet his burden of proof in this proceeding. 66 Pa.C.S. § 332(a).

