

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Ashanti Howell	:	
	:	
v.	:	C-2023-3040147
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complaint of Ashanti Howell against PECO Energy Company because she failed to appear and prosecute her Complaint.

HISTORY OF THE PROCEEDING

On April 25, 2023, Ashanti Howell (Complainant) filed a Formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission).¹ In the Complaint, the Complainant placed checkmarks in the boxes indicating “[t]he utility is threatening to shut off my service or has already shut off my service,” and “I would like a payment agreement.” Under the “requested relief” section, the Complainant indicated that she is requesting a feasible payment arrangement. The Complainant further indicated that her bill is too high for a single-family home, and that she keeps receiving shut-off notices without any payment arrangements.

¹ The Complainant utilized the Commission’s eFile service to electronically file the Formal Complaint. When the Complainant registered for an eFile account with the Commission, the Complainant also registered an email address in order to be served Commission documents via the Commission’s eService process.

On May 15, 2023, the Respondent filed an Answer and New Matter to the Complaint. In the Answer, PECO denied all material allegations of fact in the Complaint. As New Matter, the Respondent indicated that the Complainant is enrolled in PECO's Customer Assistance Program (CAP), that the Complainant's past due balance is \$11,079.48, and that the Complainant's balance is comprised of CAP arrears. The Respondent averred that, pursuant to 66 Pa.C.S. § 1405(c), the Commission does not have jurisdiction to give the Complainant a payment agreement.

By Initial Telephonic Hearing Notice dated June 16, 2023, an initial call-in telephonic hearing was scheduled for August 17, 2023 at 10:00 a.m., and the matter was assigned to me. The Hearing Notice advised the parties of the date and time of the scheduled hearing as well as how to call in for the hearing and warned of the following:

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 June 26, 2023. The Prehearing Order also advised the parties of the date and time of the scheduled hearing as well as how to call in for the hearing. Additionally, 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 warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing. It also explained that the Complainant bears the burden of proof to establish that the respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that she is entitled to the relief requested in the Complaint.

On June 30, 2023, the Respondent filed an Amended Answer and New Matter to the Complaint. The Respondent indicated in a footnote that the purpose of the Amended

Answer was to correct an error in paragraph 10 of its original Answer to the Complaint. PECO's Answer and New Matter appears to be otherwise identical.

The hearing convened as scheduled on August 17, 2023. Counsel for PECO called in to the hearing with a witness and was prepared to proceed. Ms. Howell did not call in for the hearing, nor did she contact my office to indicate that she would or would not appear.

Because a customer who files a complaint before the Commission has an affirmative duty to make himself or herself available to participate in hearings on the complaint, I deemed Ms. Howell's failure to call in for the scheduled hearing as evidence that she did not wish to participate in the hearing.

At the hearing, no witnesses were presented and no exhibits were introduced into the record. Respondent's counsel 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 September 15, 2023, the date the transcript was filed with the Commission.

FINDINGS OF FACT

1. The Complainant is Ashanti Howell.
2. The Respondent is PECO Energy Company.
3. By Initial Telephonic Hearing Notice dated June 16, 2023, an initial call-in telephonic hearing was scheduled for August 17, 2023 at 10:00 a.m.
4. On June 26, 2023, I issued a Prehearing Order that also advised the parties of the date and time of the scheduled hearing.

5. The Hearing Notice and the Prehearing Order were both eServed upon the Complainant.

6. Neither the Hearing Notice nor the Prehearing Order eServed upon the Complainant were returned as undeliverable.

7. The Complainant failed to call in for the August 17, 2023, hearing.

8. The Complainant has not contacted the Commission to explain why her failure to attend 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). To establish a sufficient case and satisfy the burden of proof, the complainant must show that the respondent public utility is responsible or accountable for the problem described in the complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990) (*Samuel J. Lansberry, Inc.*). A preponderance of the evidence is established by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

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). However, this due process requirement is satisfied when the parties are provided notice and the opportunity to appear and be heard. *Id.* The Complainant had adequate notice of the time and date of the hearing, yet she failed to call in for, or explain why she could not attend, the hearing at the scheduled time. Therefore, it is appropriate to dismiss the Complaint.

The Commission eServed notice of the August 17, 2023 scheduled hearing in this case to the Complainant on June 16, 2023. This 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 the 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 June 26, 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 eServed on the Complainant, was never returned as undeliverable. Accordingly, I must presume that these documents, which were sent in the ordinary course of business, were received by the 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 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. The Complainant's 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. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

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).

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. *Samuel J. Lansberry, Inc.* The Complainant did not appear for the hearing scheduled for August 17, 2023. Thus, by her failure to appear, Complainant did not meet her burden of proof.

Respondent's motion to dismiss will be granted.

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. 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).

4. 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).

5. 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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of PECO Energy Company to dismiss the formal Complaint of Ashanti Howell at Ashanti Howell v. PECO Energy Company, Docket No. C-2023-3040147, is granted.

2. That the Complaint of Ashanti Howell at Ashanti Howell v. PECO Energy Company, Docket No. C-2023-3040147, is dismissed.

3. That the Secretary mark this docket closed.

Date: December 7, 2023

_____/s/
Christopher P. Pell
Deputy Chief Administrative Law Judge