

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tauheed Davenport	:	
	:	
v.	:	C-2023-3040056
	:	
PECO Energy Company – Electric	:	

Tauheed Davenport	:	
	:	
v.	:	C-2023-3040058
	:	
PECO Energy Company – Natural Gas	:	

INITIAL DECISION

Before
Steven K. Haas
Administrative Law Judge

INTRODUCTION

This Initial Decision grants a Motion to Dismiss two consolidated Formal Complaints for failure to prosecute because the Complainant failed to appear for the hearing at the designated date and time despite having been given notice of the hearing and the opportunity to be heard.

HISTORY OF THE PROCEEDING

On April 15, 2023, the Complainant, Tauheed Davenport, filed two Formal Complaints with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO). The Formal Complaint assigned Docket No. C-2023-3040056

addresses the electric service provided by PECO to Ms. Davenport. The Formal Complaint assigned Docket No. C-2023-3040058 addresses the natural gas service provided by PECO to Ms. Davenport. In her two Formal Complaints, which are identical, Ms. Davenport acknowledged that she has a large outstanding balance on her PECO account. She seeks in each case an affordable payment arrangement.

On May 8, 2023, PECO filed an Answer to the Formal Complaint at Docket No. C-2023-3040058. On May 9, 2023, PECO filed an Answer to the Formal Complaint at Docket No. C-2023-3040056. In both Answers, PECO denied that the Complainant was entitled to a new payment arrangement and requested that the complaint be dismissed.

On July 21, 2023, the Commission issued an Initial Telephonic Hearing Notice scheduling a telephonic hearing for September 13, 2023, and assigning me as the Presiding Officer. By Order dated July 21, 2023, I consolidated the two formal complaints for purposes of hearing, briefing and decision, finding that they involved common questions of fact and law. Also on July 21, 2023, I issued a Prehearing Order in which I provided instructions to the parties for participation in the telephonic hearing. Among other things, the Prehearing Order provided the call-in numbers to connect to the telephonic hearing and informed the parties that they may lose the case if they do not participate in the hearing. Both the Hearing Notice and the Prehearing Order were sent to the Complainant by First-Class Mail and electronic mail at the addresses provide by her on her formal complaint forms. Neither were returned to the Commission as undeliverable.

The telephonic hearing was convened as scheduled on September 13, 2023, at 10:00 a.m. Khadijah Scott, Esquire, appeared on behalf of PECO along with one witness. No one connected to the hearing on behalf of Ms. Davenport. I delayed the start of the hearing approximately ten minutes in case Ms. Davenport was running late. Ms. Davenport never connected to the hearing. Ms. Scott moved for dismissal of the two complaints due to the failure of the Complainant to appear and prosecute her complaints. As further explained below, I will grant PECO's motion and dismiss the two complaints.

FINDINGS OF FACT

1. The Complainant in this case is Tauheed Davenport.
2. The Respondent in this case is PECO Energy Company.
3. On April 15, 2023, Ms. Davenport filed two Formal Complaints with the Commission against PECO at Docket Nos. C-2023-3040056 and C-2023-3040058.
4. Ms. Davenport's complaint at Docket No. C-2023-3040056 involves electric service provided by PECO.
5. Ms. Davenport's complaint at Docket No. C-2023-3040058 involves natural gas service provided by PECO.
6. On May 8, 2023, PECO filed an Answer to the Formal Complaint at Docket No. C-2023-3040058.
7. On May 9, 2023, PECO filed an Answer to the Formal Complaint at Docket No. C-2023-3040056.
8. In both of its Answers, PECO denied that the Complainant was entitled to a new payment arrangement and requested that the complaint be dismissed.
9. On July 21, 2023, an Initial Telephonic Hearing Notice was served on the parties scheduling an Initial Call-In Telephonic Hearing for September 13, 2023, beginning at 10:00 a.m.
10. By Order dated July 21, 2023, I consolidated the two Formal Complaint proceedings for purposes of hearing, briefing and decision, finding that the two complaints involved common questions of fact and law.

11. On July 21, 2023, a Prehearing Order containing instructions for participation in the telephonic hearing was served on the parties.

12. Both the Telephonic Hearing Notice and the Prehearing Order were sent to Ms. Davenport via First-Class Mail and electronic mail to the addresses provided by her on her complaint forms.

13. Both the Telephonic Hearing Notice and the Prehearing Order instructed the parties that they may lose their case if they did not appear and take part in the hearing.

14. Neither the Telephonic Hearing Notice nor the Prehearing Order served on the Complainant were returned to the Commission as undeliverable.

15. By electronic mail dated September 6, 2023, PECO sent to the Complainant and me proposed hearing exhibits. In its e-mail, PPL restated the date and time scheduled for the telephonic hearing.

16. The hearing convened as scheduled on September 13, 2023, beginning at 10:00 a.m.

17. The hearing was delayed approximately 10 minutes to accommodate any delay of anyone appearing on behalf of Ms. Davenport.

18. No one connected to the hearing on behalf of Ms. Davenport at the designated date and time as instructed on the Telephonic Hearing Notice.

19. Complainant never contacted the Commission after the hearing to explain why her failure to appear at the September 13, 2023, telephonic hearing was unavoidable.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 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). As a matter of law, a Complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa.P.U.C. 196 (1990). The offense must be a violation of the Public Utility Code, the Commission’s regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701. In this proceeding, Ms. Davenport requested payment arrangements for outstanding charges on her PECO accounts. Therefore, Ms. Davenport has the burden of proof in this proceeding.

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). This due process requirement is satisfied when the parties are provided notice of the hearing and the opportunity to be heard. Id.; see also, J.P. v. Dep’t of Human Servs., 150 A.3d 173 (Pa. Cmwlth. 2016).

No one appeared on behalf of Ms. Davenport at the date and time set for the hearing in this case despite notice of the hearing having been provided to her. Commission regulations address circumstances when a party fails to appear in a proceeding.

Section 5.245 provides:

§ 5.245. Failure to appear, proceed or maintain order in proceedings.

- (a) After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will:

- (1) Be deemed to have waived the opportunity to participate in the conference or hearing.
- (2) Not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing.
- (3) Not be permitted to recall witnesses who were excused for further examination.

52 Pa. Code § 5.245(a).

The Telephonic Hearing Notice and the Prehearing Order were served on Ms. Davenport via both First-Class Mail and electronic mail to the addresses provide by her on her complaint forms. Neither the Telephonic Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable. Both instructed the parties that they may lose their case if they fail to appear and present evidence on the issues raised. Notice served to a party with no notification that service has failed is presumed received. Berkowitz v. Mayflower Sec., Inc., 317 A.2d 584 (Pa. 1974); Meierdierck v. Miller, 147 A.2d 406 (Pa. 1959); Samaras v. Hartwick, 698 A.2d 71 (Pa. Super. 1997); Judge v. Celina Mut. Ins. Co., 449 A.2d 658 (Pa. Super. 1982); 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).

No one appeared on behalf of Ms. Davenport at the time of the hearing, nor did anyone on her behalf ever request a postponement or continuance of the hearing. As such, Ms. Davenport had notice of the hearing and an opportunity to be heard in this proceeding but chose not to appear. Therefore, Ms. Davenport's due process rights have been fully protected. Sentner v. Bell Tel. Co. of Pa., Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993). Further, once notice of a hearing and the opportunity to be heard have been provided by the Commission, it is the responsibility of parties to appear and participate in the hearing. Strydio v. PPL Elec. Utils. Corp., Docket No. C-2017-2633043 (Opinion and Order entered July 18, 2018). By failing to appear and present any evidence in support of her two complaints, Ms. Davenport failed to carry her burden of proof. 66 Pa.C.S. § 332(a).

During the hearing, counsel for PECO moved for dismissal of the two complaints for lack of prosecution. A party who fails 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 Complainant'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).

There are no facts in the record that would allow the Commission to reach the conclusion that Complainant's failure to attend the hearing was unavoidable. Accordingly, PECO's Motion will be granted, and Ms. Davenport's Formal Complaint will be dismissed with prejudice. Williams v. PECO Energy Company, Docket No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019).

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 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. 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).

5. This due process requirement is satisfied when the parties are provided with notice and the opportunity to be heard. Schneider v. Pa. Pub. Util. Comm'n, 479 A.2d 10 (Pa. Cmwlth. 1984).

6. After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will: 1) be deemed to have waived the opportunity to participate in the conference or hearing; 2) not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing; and 3) not be permitted to recall witnesses who were excused for further examination. 52 Pa. Code § 5.245(a).

7. Ms. Davenport's due process rights have been fully protected. Sentner v. Bell Tel. Co. of Pa., Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993); 52 Pa. Code § 5.245(a).

8. A party who fails to appear at the hearing has the burden of explaining why his/her failure to appear was unavoidable. Herr v. West Penn Power Co., Docket No. C-2021-3028202 (Opinion and Order entered Sept. 15, 2022).

9. When there are no facts in the record that the Complainant'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).

10. By failing to participate in the hearing and proffer any evidence to support her complaints, Complainant has failed to meet the burden of proof. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PECO Energy Company to dismiss the consolidated Formal Complaints of Tauheed Davenport against PECO Energy Company at Docket No. C-2023-3040056 and C-2023-3040058 for failure to prosecute is granted.

2. That the Formal Complaints filed in Tauheed Davenport v. PECO Energy Company at Docket No. C-2023-3040056 and Tauheed Davenport v. PECO Energy Company at Docket No. C-2023-3040058 are hereby dismissed with prejudice.

3. That these consolidated proceedings be marked closed.

Date: December 7, 2023

_____/s/
Steven K. Haas
Administrative Law Judge