

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Damian Lewis	:	
	:	
v.	:	C-2023-3040115
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint of Damian Lewis against PECO Energy Company with prejudice because the Complainant failed to appear for the hearing and prosecute the Complaint.

HISTORY OF THE PROCEEDING

On April 17, 2023, Damian Lewis (Complainant) eFiled 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 a checkmark in the boxes indicating: “The utility is threatening to shut off my service or has already shut off my service,” and “I would like a payment agreement.”

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, PECO filed an Answer and New Matter to the Complaint, along with a Notice to Plead. In its Answer, PECO either admitted or denied the various averments of the Complaint and requested that the Complaint be dismissed.

In its New Matter, PECO alleged that the Complainant's account became final on April 24, 2023, with an outstanding balance of \$5,547.74. Further, PECO alleged that the Complainant's balance is comprised of Customer Assistance Program (CAP) arrears. PECO argued that the Complainant is no longer a customer of PECO, therefore, the Commission lacks jurisdiction to order a payment agreement and the Complaint should be dismissed.

The Complainant did not file an answer to the New Matter.

By Initial Call-In Telephonic Hearing Notice dated June 15, 2023, a telephonic hearing was scheduled for August 10, 2023, and the matter was assigned to me. The Notice advised that the Complainant could lose the case for failure to participate in the hearing or present facts on the issues raised.

A Prehearing Order was issued on June 27, 2023. The Prehearing Order reminded the parties of the date and time of the hearing, directed the parties to comply with various procedural requirements, and advised that the Complainant could lose the case for failure to participate in the hearing or present facts on the issues raised.

The Hearing Notice and Prehearing Order were eServed to Complainant at the Complainant's request and in the ordinary course of the Commission's business to the email address provided and registered with the Commission by the Complainant.² Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.

² *Supra, n. 1.*

On August 10, 2023, the hearing convened as scheduled. Counsel for the Respondent called in with a witness available to testify. The Complainant failed to call in to the hearing. The Complainant was given additional time to call and participate in the hearing but failed to do so.

No witnesses were presented, and no exhibits were introduced into the record. At the hearing, 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 September 18, 2023, upon the filing of the transcript with the Commission.

FINDINGS OF FACT

1. The Complainant is Damian Lewis.
2. The Respondent is PECO Energy Company.
3. On April 17, 2023, the Complainant eFiled a Complaint with the Commission against the Respondent.
4. On April 17, 2023, the Complainant registered an email address with the Commission for the purpose of being served Commission documents via the Commission's eService process.
5. On May 15, 2023, the Respondent filed an Answer and New Matter to the Complaint, along with a Notice to Plead.
6. The Complainant did not file an Answer to the New Matter.

7. By Initial Call-In Telephonic Hearing Notice dated June 15, 2023, a telephonic hearing was scheduled for August 10, 2023.

8. On June 27, 2023, a Prehearing Order was issued reminding the parties of the date and time of the scheduled hearing.

9. Both the Hearing Notice and Prehearing Order were eServed upon the Complainant to the email address provided and registered with the Commission by the Complainant.

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

11. Both the Hearing Notice and the Prehearing Order advised the Complainant that the Complaint may be dismissed if the Complainant did not call in to the hearing.

12. The telephonic hearing began on August 10, 2023, at 10:11 a.m., to allow the Complainant additional time to call in. Tr. 3.

13. The Complainant did not call in to the August 10, 2023, hearing.

14. Counsel for PECO was present and prepared to proceed at the August 10, 2023, hearing. Tr. 3-4.

15. The Complainant has not contacted the Commission 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). The essential elements of due process in an administrative proceeding are notice and an opportunity to be heard. *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (Pa. Cmwlth. 2016).

The notice for the August 10, 2023, hearing was eServed on the Complainant at the email address that the Complainant provided and registered with the Commission. The prehearing order was also eServed to the Complainant. Neither was 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).

As the Commission noted in *Strydio v. PPL Electric Utilities Corp.*, "[o]nce notice of a hearing and the opportunity to be heard have been provided by the Commission, it is the responsibility of the parties to appear and participate in the hearing." *Strydio v. PPL Elec. Utils. Corp.*, Docket No. C-2017-263304, p. 6 (Opinion and Order entered July 18, 2018) (citing, *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered Jan. 24, 2002)); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993). Additionally, both the Hearing Notice and Prehearing Order advised the Complainant that the case could be dismissed if the Complainant did not call in and participate in the hearing. The Complainant was notified of the scheduled telephonic hearing and did not appear.

In this case, the Complainant did not call in for the scheduled hearing. Under the circumstances, it appears the Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. Therefore, the due process rights of the Complainant have been fully protected. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106

(Opinion and Order entered Oct. 25, 1993). By failing to call in to the scheduled hearing, the Complainant has waived the opportunity to participate in the hearing. 52 Pa. Code § 5.245(a)(1); *Jefferson v. UGI Utils., Inc.*, 1995 Pa.P.U.C. LEXIS 159 (Opinion and Order entered Dec. 26, 1995).

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. The Complainant was advised in the Hearing Notice and the Prehearing Order that he could lose the case for failure to participate in the hearing or present facts on the issues raised. By failing to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden. Because the Complainant failed to appear, the Complainant is not permitted to reopen the disposition of this matter. 52 Pa. Code § 5.245(a)(2). Further, the Complainant has not contacted the Commission to explain why his failure to appear at the hearing was unavoidable.³ Consequently, the Complaint will 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); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995); *El-Ayazra v. W. Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa. Code § 5.245.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.

2. The Complainant received notice of the hearing. *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).

³ 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).

3. The due process rights of the Complainant have been fully protected in this proceeding. *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (Pa. Cmwlth. 2016); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993).

4. If there are no facts in the record that the party's failure to appear at a hearing was unavoidable, the complaint will 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).

5. As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).

6. The Complainant did not appear and participate in the hearing, did not present any evidence, and, therefore, has failed to meet the burden of proving that he is eligible for the relief sought 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 Damian Lewis at *Damian Lewis v. PECO Energy Company*, Docket Number C-2023-3040115, is granted.

