

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|---------------------|---|----------------|
| Frances Mestichelli | : | |
| | : | |
| v. | : | C-2022-3036731 |
| | : | |
| PECO Energy Company | : | |

INITIAL DECISION

Before
Arlene Ashton
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint of Fran Mestichelli against PECO Energy Company because the Complainant failed to appear for the hearing and prosecute the Complaint.

HISTORY OF THE PROCEEDING

On November 8, 2022, Fran Mestichelli (Complainant) filed a Formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission) alleging that the utility is threatening to shut off her electric service. As relief, the Complainant requested the issuance of a reasonable payment arrangement.¹

¹ The Complainant identified herself as “Fran Mestichelli” on the complaint form. Although she appeared via telephone at the April 28, 2023 hearing and indicated her name was Frances, however, she did not spell her first name on the record. The transcript refers to her as “Francis” Mestichelli; for clarity, she will be referred to as Fran Mestichelli throughout this Decision. In addition, on the complaint form, the Complainant included a telephone number but no email address.

On November 30, 2022, PECO filed a timely Answer denying the material allegations of the Complaint.²

On December 2, 2022, Chief Administrative Law Judge Charles Rainey issued an Interim Order directing the parties to attempt to resolve the matter through mediation which proved unsuccessful.

By Initial Call-In Telephonic Hearing Notice dated January 12, 2023, a telephonic hearing was scheduled for March 16, 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 and warned them that they may lose the case if they do not take part in the hearing and present evidence on the issues raised.

On January 25, 2023, I issued a Prehearing Order. The Prehearing Order directed the parties to comply with various procedural requirements and warned: **“FAILURE TO APPEAR:** You may lose the case if you do not take part in this hearing and present evidence on the issues raised.” In addition, the Prehearing Order instructed the parties that, “[c]ontinuances will be granted only for good cause. To request a continuance, you must submit a written request (a “motion”) at least five (5) days before the hearing.”

The Hearing Notice and the Prehearing Order were served on the Complainant via First-Class Mail to the mailing address provided by the Complainant in her Complaint.

On March 15, 2023, the Complainant contacted the Commission leaving a voice message in which she requested that the March 16, 2023 hearing be continued due to illness. On March 16, 2023, because the Complainant provided no indication that she had notified PECO of the request, my legal assistant informed PECO’s counsel of the request. By email dated the same day, counsel for PECO responded that Respondent did not object to the Complainant’s request

² The Complaint was served on PECO on November 10, 2022.

for a continuance of the scheduled hearing. By Interim Order dated March 17, 2023, I granted the Complainant's continuance request and cancelled the March 16, 2023 hearing.

A Hearing Cancellation/Reschedule Notice, dated March 21, 2023, informed the parties that the initial telephonic hearing was rescheduled for April 17, 2023, at 10:00 a.m. The Hearing Cancellation/Reschedule Notice advised the parties of the date and time of the scheduled hearing and warned them again that they might lose the case if they did not take part in the hearing and present evidence on the issues raised. The Hearing Cancellation/Reschedule Notice was served on the Complainant via First-Class Mail.

On April 12, 2023, the Complainant again left a voice mail message for my legal assistant requesting a continuance of the hearing scheduled for April 17, 2023. Lacking any indication that PECO had been informed of the request, my legal assistant informed PECO's counsel of the Complainant's second continuance request. PECO counsel again agreed to continue the hearing.

A Hearing Cancellation/Reschedule Notice, dated April 13, 2023, informed the parties that the initial telephonic hearing was rescheduled for April 28, 2023, at 10:00 a.m.

On April 14, 2023, the Complainant again left a voice mail message for my legal assistant requesting a continuance of the hearing scheduled for April 28, 2023, indicating that she would prefer a hearing on May 26, 2023. The Complainant failed to indicate the reason for her unavailability for the April 28, 2023, hearing, nor did she indicate why she would be unavailable until May 26, 2032.

By Order dated April 17, 2023, the Complainant's third continuance request was denied. The April 17, 2023 Order also ordered that the April 28, 2023 hearing proceed as scheduled and directed the Complainant to comply the instructions regarding continuance requests included in the Prehearing Order as to any future continuance request.

The Complainant and the Respondent appeared for the hearing on April 28, 2023. During the hearing, the parties expressed interest in settlement and asked me to facilitate their discussions by acting as a settlement judge. Although the discussions did not result in a settlement agreement, the parties agreed to pursue other options that might allow the Complainant to obtain some relief as to electricity rates and/or eligibility for other assistance with her utility bills. Tr. 10-12. The parties were informed that if no agreement was reached on or before June 12, 2023, the hearing would be rescheduled. Tr. 11. During the hearing, the Complainant was reminded that the parties are expected to comply with all orders issued by the presiding officer. The Complainant was specifically instructed to re-read the information, including the Prehearing Order sent to her relating to the proper procedure for requesting a continuance. Tr. 12.

On June 30, 2023, a Further Hearing Notice was issued advising the parties that the hearing was rescheduled for September 14, 2023.

On September 13, 2023, my legal assistant received an email from “Donna Mestichelli” that appeared to include a message from the Complainant indicating that she could not participate in a telephone hearing on September 14, 2023 because she was not feeling well and requesting a continuance.

There was no indication that the Complainant had informed PECO of her request, as she had been directed to do in the Prehearing Order and the April 17, 2023 Order.

On September 13, 2023, I forwarded the Complainant’s request together with an Order denying the request to PECO. The Order was also served on the Complainant via U.S. First-Class Mail and a copy was sent to her using Donna Mestichelli’s email address. The Order informed the Complainant that the hearing would proceed as scheduled on September 14, 2023, at 10:00 a.m.

The initial hearing convened as scheduled on September 14, 2023. 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 until 10:15 to call-in but failed to do so. No witnesses

were presented. PECO moved to have four exhibits entered into the record. There being no objection, the proposed exhibits were so entered.

Counsel for PECO moved that the Complaint be dismissed with prejudice for lack of prosecution pursuant to 52 Pa. Code § 5.245. That Motion is granted pursuant to the ordering paragraphs below.

To date, there has been no further information from the Complainant regarding this hearing or why her failure to appear at the September 14, 2023 hearing was unavoidable. The record closed on October 4, 2023 upon receipt of the transcript in this matter.

FINDINGS OF FACT

1. The Complainant is Fran Mesticelli.
2. The Respondent is PECO Energy Company.
3. On November 8, 2022, the Complainant filed a Complaint with the Commission against the Respondent.
4. On November 30, 2022, the Respondent filed an Answer to the Complaint.
5. By Initial Call-In Telephonic Hearing Notice dated January 12, 2023, a telephonic hearing was scheduled for March 16, 2023, at 10:00 a.m.
6. The January 12, 2023, Hearing Notice warned the parties that they may lose the case if they do not take part in the hearing and present evidence on the issues raised.
7. On January 25, 2023, I issued a Prehearing Order that directed the parties to comply with various procedural requirements.

8. The Prehearing Order included the following instructions concerning any request for a continuance:

To request a continuance, you must submit a written request (a “motion”) at least five (5) days before the hearing. Your motion should include:

- (1) The case name, case number, and hearing date;
- (2) The reason you are requesting a continuance; and
- (3) State whether the other party(s) agrees to the request (or if you do not know).

You must submit the motion to me through my legal assistant at:

Pamela McNeal
pmcneal@pa.gov

You must submit the motion to the other party(s) at their email address.

9. The Prehearing Order warned: “You may lose the case if you do not take part in this hearing and present evidence on the issues raised.”

10. On March 15, 2023, the Complainant left a voice mail message for my legal assistant requesting that the March 16, 2023, hearing be continued due to health-related reasons.

11. On March 16, 2023, the Office of Administrative Law Judge (OALJ) informed PECO’s counsel of the Complainant’s request.

12. The Respondent did not object to the Complainant’s request for a continuance of the March 16, 2023, hearing.

13. By Interim Order dated March 16, 2023, the Complaint’s first request for continuance was granted.

14. A Hearing Cancellation/Reschedule Notice dated March 21, 2023, was issued and informed the parties that the initial telephonic hearing was rescheduled for April 17, 2023, at 10:00 a.m.

15. The March 21, 2023, Hearing Cancellation/Reschedule Notice advised the parties of the date and time of the scheduled hearing and warned them again that they might lose the case if they did not take part in the hearing and present evidence on the issues raised.

16. On April 12, 2023, Respondent left another voice mail message for my legal assistant requesting a continuance of the hearing scheduled for April 17, 2023.

17. OALJ informed PECO counsel of the Complainant's second continuance request and expressed no objection to the granting of the request.

18. On April 13, 2023, a Hearing Cancellation/Reschedule Notice was issued informing the parties that the initial telephonic hearing was rescheduled for April 28, 2023, at 10:00 a.m.

19. The April 13, 2023, Hearing Cancellation/Reschedule Notice advised the parties of the location, date and time of the scheduled hearing and warned them again that they might lose the case if they did not take part in the hearing and present evidence on the issues raised.

20. On April 14, 2023, the Complainant left a voice mail message for my legal assistant requesting a continuance of the hearing scheduled for April 28, 2023, indicating that she would prefer a hearing on May 26, 2023.

21. The Complainant failed to indicate the reason for her unavailability for the April 28, 2023, hearing nor did she indicate why she would be unavailable until May 26, 2023.

22. By Interim Order issued April 17, 2023, the Complainant's third request for a continuance of the April 28, 2023 hearing was denied.

23. The April 17, 2023 Interim Order directed the Complainant to follow explicit and specific instructions concerning any further continuance request.

24. The parties appeared for the April 28, 2023, hearing and expressed interest in pursuing settlement discussions and customer support programs; therefore, the hearing was continued and the parties were given until June 12, 2023 to pursue a resolution of the matter.

25. The parties were unable to resolve their dispute on or prior to June 12, 2023.

26. On June 30, 2023 a Further Hearing Notice was issued and informed the parties that the initial telephonic hearing was rescheduled for September 14, 2023, at 10:00 a.m.

27. The June 30, 2023 Further Hearing Notice advised the parties of the date and time of the scheduled hearing and warned them that they might lose the case if they did not take part in the hearing and present evidence on the issues raised.

28. On September 13, 2023, my legal assistant received an email that appeared to have been sent by the Complainant indicating that she could not participate in a telephone hearing on September 14, 2023 10:00 a.m. because she was not feeling well and requesting a continuous.

29. My legal assistant forwarded the Complainant's request to PECO since there was nothing in the email to indicate the Complainant informed PECO of her request.

30. On September 13, 2023, I issued an Order denying the Complainant's request and informed the Complainant that the hearing would proceed as scheduled on September 14, 2023, at 10:00 a.m.

31. The Initial Hearing Notice, the March 21, 2023 and April 13, 2023 Hearing Cancellation /Reschedule Notices, and the June 30, 2023 Further Hearing Notice were served on the Complainant via First-Class Mail to the address provided by the Complainant in her Complaint.

32. The Prehearing Order and the Interim Orders issued on March 16, 2023, April 17, 2023, and September 13, 2023, were served on the Complainant via First-Class Mail to the address provided by the Complainant in her Complaint.

33. A copy of the September 13, 2023 Order was also sent to the Complainant using Donna Mestichelli's email address.

34. The further hearing convened as scheduled on September 14, 2023.

35. Counsel for the Respondent called in to the further hearing with a witness available to testify.

36. The Complainant failed to call in to the further hearing on September 14, 2023.

37. The Complainant was given until 10:15 to call in to the hearing but failed to do so.

38. None of the Hearing notices sent to the Complainant via U.S. First-Class Mail were returned as undeliverable.

39. No Order sent to the Complainant via U.S. First-Class Mail, including the Prehearing Order or any Interim Order, were returned as undeliverable.

40. The Complainant failed to appear at the September 14, 2023 hearing.

41. Respondent was present at the September 14, 2023 hearing represented by counsel and a witness available to testify.

42. Since the date of the hearing, the Complainant has provided no information regarding why her 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). This due process requirement is satisfied, however, when the administrative agency provides the parties notice and the opportunity to be heard. *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (Pa. Cmwlth. 2016). Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *Berkowitz v. Mayflower Sec., Inc.*, 317 A.2d 584 (Pa. 1974) (*Mayflower*); *Chartiers Indus. & Com. Dev. Auth. V. Allegheny Cnty. Bd. of Prop. Assessment Appeals & Rev.*, 645 A.2d 944 (Pa. Cmwlth. 1994); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993).

By Initial Call-In Telephonic Hearing Notice dated January 12, 2023, the Commission informed the parties that a telephonic hearing was scheduled in this matter for March 16, 2023, at 10:00 a.m. The January 12, 2023 Hearing Notice warned the parties that they may lose the case if they do not take part in the hearing and present evidence on the issues raised. On January 25, 2023, I issued a Prehearing Order that directed the parties to comply with various procedural requirements. The Prehearing Order warned: "You may lose the case if you do not take part in this hearing and present evidence on the issues raised."

On March 15, 2023, the Complainant contacted my legal assistant and left a voice mail requesting that the March 16, 2023 hearing be continued due to health-related reasons. Respondent did not object to the Complainant's request, and by Hearing

Cancellation/Reschedule Notice dated March 21, 2023, the initial telephonic hearing was rescheduled for April 17, 2023, at 10:00 a.m.

Like the January 12, 2023, Hearing Notice, the January 25, 2023, Prehearing Order, the March 21, 2023, and April 13, 2023, Hearing Cancellation/Reschedule Notices, and the June 30, 2023, Further Hearing Notice advised the parties of the date and time of the scheduled hearing and warned them again that they might lose the case if they did not take part in the hearing and present evidence on the issues raised.

The Prehearing Order and all hearing notices were served on the Complainant via First-Class Mail. None of these documents were returned as undeliverable by the United States Postal Service and are presumed to have been received by the Complainant. *See Mayflower*. In the present case, it is clear that the Complainant had actual notice of the hearings as evidenced by her requests for the continuance of the hearings scheduled for March 16, 2023, April 17, 2023, April 28, 2023 and September 14, 2023.

The Complainant ignored repeated warnings concerning the consequences of failing to appear at the hearing. Neither the Complainant nor a representative licensed to practice law in this Commonwealth appeared at the September 14, 2023 hearing on her behalf. In addition, the Complainant supplied no documentation to the presiding officer indicating that she has a medical condition that would prevent her from participating in a telephonic hearing, either on a scheduled hearing date or for a specified period of time. To date, there has been no further information from the Complainant regarding the reason for her failure to appear at the hearing.³ Therefore, her failure to appear is unexcused.

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). This is not the first instance in which Ms. Mestichelli has filed a formal complaint and failed to appear for a hearing. Thus, she is or should be aware of the consequences of failing to appear at the hearing. *See, Frances Mestichelli v. Philadelphia Gas Works*, Docket No. C-2021-3030024 (Final Order entered August 29, 2022); *Fran Mestichelli v. PECO Energy Co.*, Docket No. C-2019-3012541 (Final Order entered Oct. 28, 2020); *Fran Mestichelli v PECO Energy Co.*, Docket No. C-2018-3005706 (Final Order entered May 19, 2019). Conversely, Ms. Mestichelli, is or should be aware that relief may be granted or other resolution may be found when she appears for a hearing. *See, Fran Mestichelli v PECO Energy Co.*, Docket No. F-2021-3027483 (Certificate of Satisfaction filed October 5, 2021), *Fran Mestichelli v Philadelphia Gas Works* F-2018-3006752 (Final Order entered September 30, 2019).

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). Further, 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). The Complainant waived the opportunity to participate in the hearing by failing to appear. Frances Mesticelli's Complaint against PECO will be dismissed with prejudice. 52 Pa. Code § 5.245(a); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995).

As to each of the four requests for continuance made by the Complainant, she failed to comply with instructions for requesting a continuance provided in the Prehearing Order and/or Interim Orders issued in this matter.

A presiding officer's orders must be complied with, and a lack of compliance presents a sufficient basis to dismiss a complaint. *Treffinger v. PPL Elec. Utils. Corp.*, Docket No. C-20027978 (Opinion and Order entered Mar. 3, 2003); *Snyderville Cmty. Dev. Corp. v. Phila. Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006).

CONCLUSIONS OF LAW

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

2. As the Complainant, Fran Mesticelli had the burden of proof and failed to carry that burden. 66 Pa.C.S. § 332(a).

3. Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *Berkowitz v. Mayflower Sec., Inc.*, 317 A.2d 584 (Pa. 1974) (*Mayflower*); *Chartiers Indus. & Com. Dev. Auth. v. Allegheny Cnty. Bd. of Prop. Assessment Appeals & Rev.*, 645 A.2d 944 (Pa. Cmwlth. 1994).

4. By failing to appear and be heard on this Complaint, the Complainant waived the opportunity to participate in the hearing. 52 Pa. Code § 5.245(a); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995).

5. A presiding officer's orders must be complied with, and a lack of compliance presents a sufficient basis to dismiss a complaint. *Treffinger v. PPL Elec. Utils. Corp.*, Docket No. C-20027978 (Opinion and Order entered Mar. 3, 2003); *Snyderville Comm. Dev. Corp. v. Phila. Gas Works*, Docket No. C-20055032 (Opinion and Order entered July 31, 2006).

6. The Complainant's March 15, 2023 voice mail request for a continuance failed to comply with the requirements for a continuance set forth in the Prehearing Order.

7. The Complainant's April 12, 2023, April 14, 2023 and September 13, 2023 requests for a continuance failed to comply with the requirements for a continuance set forth in the Prehearing Order and the April 17, 2023 Order issued in this matter.

8. The Complainant has failed to meet her burden of proving that she is entitled to 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 Frances Mestichelli at Docket No. C-2021-3036731 is granted.
2. That the Formal Complaint filed by Fran Mestichelli at Fran Mestichelli v. PECO Energy Company at Docket No. C-2021-3036731 is dismissed with prejudice for failure to prosecute.
3. That the Secretary's Bureau should mark this matter closed.

Date: December 19, 2023

_____/s/
Arlene Ashton
Administrative Law Judge