

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lola Sofolawe

v.

PECO Energy Company

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C-2023-3041790

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On July 10, 2023, Lola Sofolawe (Complainant) filed a Formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant alleged that PECO sent her account to a third-party collection agency, when she had a payment agreement that she entered into with PECO and was timely paying every month. The Complainant also alleged that she overpaid PECO for services because she moved out of the service address on April 1, 2023.

On August 7, 2023, PECO filed an Answer to the Complaint. In its Answer, PECO either admitted or denied the various averments of the Complaint and requested that the Complaint be dismissed.

By Initial Call-In Telephonic Hearing Notice dated August 9, 2023, a telephonic hearing was scheduled for September 28, 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 August 28, 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.

On September 13, 2023, Counsel for PECO filed a Motion for Continuance because their primary witness was unavailable. Counsel for PECO represented that the Complainant was notified of the continuance request but did not advise whether or not she objected.

On September 19, 2023, I issued an Order granting PECO's Motion for Continuance.

By Call-In Telephone Cancellation/Reschedule Hearing Notice dated September 19, 2023, a telephonic hearing was rescheduled for November 14, 2023, at 10:00 am. This Notice again advised that the Complainant could lose the case for failure to participate in the hearing or present facts on the issues raised.

The Hearing Notices and Prehearing Orders were sent to the Complainant by U.S. First-Class Mail as chosen by the Complainant on her Complaint form. Additionally, they were also sent to the e-mail address that the Complainant provided to the Commission. Neither the Hearing Notices nor the Prehearing Orders were returned to the Commission as undeliverable.

On November 14, 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 November 22, 2023, upon the filing of the transcript with the Commission.

FINDINGS OF FACT

1. The Complainant is Lola Sofolawe.
2. The Respondent is PECO Energy Company.
3. On July 10, 2023, the Complainant filed a Complaint with the Commission against the Respondent.
4. On August 7, 2023, the Respondent filed an Answer to the Complaint.
5. By Initial Call-In Telephonic Hearing Notice dated August 9, 2023, a telephonic hearing was scheduled for September 28, 2023.
6. On August 28, 2023, a Prehearing Order was issued reminding the parties of the date and time of the scheduled hearing.
7. On September 13, 2023, PECO filed a Motion for Continuance.

8. On September 19, 2023, an Order was issued granting PECO's Motion for Continuance.

9. By Call-In Telephone Cancellation/Reschedule Hearing Notice dated September 19, 2023, the telephonic hearing was rescheduled for November 14, 2023, at 10:00 am.

10. The Hearing Notices and Prehearing Orders were sent to the Complainant by U.S. First-Class Mail and in the ordinary course of the Commission's business to the e-mail address that the Complainant provided to the Commission.

11. Neither the Hearing Notices nor the Prehearing Orders were returned to the Commission as undeliverable.

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

13. The Complainant did not call in to the November 14, 2023, hearing.

14. Counsel for PECO was present and prepared to proceed at the November 14, 2023, hearing. Tr. 4-5.

15. The Complainant has not contacted the Commission to explain 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). 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 November 14, 2023, hearing and the Prehearing Order were served on the Complainant by U.S. First-Class Mail and at the e-mail address that the Complainant provided to the Commission. Neither were returned as undeliverable. Accordingly, I must presume that these documents, which were sent in the ordinary course of business, were received by the Complainant. *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).

As the Commission noted in *Strydio v. PPL Elec. Utils. 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 the Complainant 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). However, these provisions in the Code and in the Commission's regulations do not apply if the presiding officer determines that the party's failure to appear at the hearing 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).

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. Complainant has not contacted the Commission to explain why her failure to appear at the hearing was unavoidable nor are there any facts in the record that the Complainant's failure to appear at the hearing was unavoidable. 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. *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).

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 the Complainant is eligible for the relief sought from the Commission. 66 Pa.C.S. § 332(a).

