

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Shakia Jackson	:	
	:	
v.	:	F-2023-3041642
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This decision denies the Formal Complaint of Shakia Jackson because she failed to appear at the scheduled hearing and prosecute her Complaint.

HISTORY OF THE PROCEEDING

On July 6, 2023, Shakia Jackson (Ms. Jackson or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO, Company, or Respondent) alleging that PECO is threatening to shut off her utility services or has shut off the service, and that she is unable to pay her utility bills to PECO. As relief, the Complaint requests that the Commission establish a payment arrangement on her behalf.

The Complaint is a timely appeal from the determination of the Commission's Bureau of Consumer Services (BCS) which dismissed Complainant's informal complaint at BCS Case No. 3920158. A timely BCS appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

On July 26, 2023, PECO filed a Corrected Answer denying all material allegations of fact and conclusions of law in the Complaint.

An Initial Call-in Telephone Hearing Notice (Hearing Notice) dated July 27, 2023, notified the parties that an initial call-in telephone hearing was scheduled on September 21, 2023, at 10:00 a.m. The Hearing Notice provided the following instructions (emphasis original):

To participate in the hearing,

- You must dial the toll-free Conference number below
- You must enter the PIN number below when instructed
- You must speak your name when prompted, and press #
- Then, the telephone system will connect you to the hearing

Toll-free Bridge Number: 1-866-560-8322
PIN Number: 36676820

The Hearing Notice further stated, “You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised.”

On August 25, 2023, I issued a Prehearing Order. The Prehearing Order directed the parties to comply with various procedural requirements, reminded them of the time and date of the hearing, provided instructions for calling in to the hearing, and warned in bold type: “**You may lose the case if you do not take part in this hearing and present evidence on the issues raised.**”

The Hearing Notice and the Prehearing Order were served electronically¹ upon the Complainant at the email address that she provided to the Commission. Neither the Hearing Notice nor the Prehearing Order were returned as undeliverable.

¹ In the Formal Complaint form, the Complainant agreed to receive all documents by email at the email address she provided on the form.

The hearing convened as scheduled on September 21, 2023. Khadijah Scott, Esq. appeared representing the Respondent. The Complainant failed to call in. The Complainant was given an additional 15 minutes to call in but failed to do so.

At the hearing, counsel for PECO moved that the Complaint be dismissed for lack of prosecution pursuant to 52 Pa. Code § 5.245.

Around 12:40 p.m. on the day of the hearing, Ms. Jackson contacted the Philadelphia Office of the Commission and stated that she missed the hearing because she thought that the presiding officer would contact her for the hearing. She requested a new hearing date.

By email dated September 21, 2023, I informed PECO's counsel of Ms. Jackson's communication and request for a continuance of the hearing. PECO did not object to the request for a new hearing date.

Also on September 21, 2023, Ms. Jackson was informed orally that her request was granted and that she would need to dial-in to the hearing using the instructions that were provided to her.

By Further Call-in Telephone Hearing Notice (Further Hearing Notice) dated September 25, 2023, the parties were informed that a further call-in telephone hearing was scheduled on November 9, 2023, at 10:00 a.m. Like the Hearing Notice of July 2, 2023, the Further Hearing Notice provided instructions for calling in to the hearing and also stated, "You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised."

On October 12, 2023, I issued a second Prehearing Order. Like the first Prehearing Order, the second reminded the parties of the time and date of the further hearing, provided instructions for calling in to the hearing, and warned in bold type: "**You may lose the case if you do not take part in this hearing and present evidence on the issues raised.**"

The Further Hearing Notice was served upon the Complainant both electronically and by U.S. First-Class Mail at the addresses that she provided to the Commission. The second Prehearing Order was served electronically to the Complainant at the email address that she provided. Neither the Further Hearing Notice nor the second Prehearing Order were returned as undeliverable.

The further hearing convened as scheduled on November 9, 2023. Khadijah Scott, Esq. appeared representing the Respondent. The Complainant failed to call in. The Complainant was given an additional 15 minutes to call in but failed to do so.

At the hearing, counsel for PECO renewed her Motion to Dismiss the Complaint for lack of prosecution pursuant to 52 Pa. Code § 5.245.

The record in this matter closed on December 14, 2023, upon receipt of the hearing transcript.

FINDINGS OF FACT

1. The Complainant is Shakia Jackson.
2. The Respondent is PECO Energy Company.
3. On July 6, 2023, Ms. Jackson filed a Formal Complaint alleging that PECO is threatening to shut off her utility services or has shut off the service, and that she unable to pay her utility bills to PECO.
4. As relief, the Complaint requests that the Commission establish a payment arrangement on her behalf.

5. On July 26, 2023, PECO filed a Corrected Answer denying all material allegations of fact and conclusions of law in the Complaint.

6. A Hearing Notice dated July 27, 2023, notified the parties that an initial call-in telephone hearing was scheduled on September 21, 2023, at 10:00 a.m.

7. The Hearing Notice provided the following instructions:

To participate in the hearing,

- You must dial the toll-free Conference number below
- You must enter the PIN number below when instructed
- You must speak your name when prompted, and press #
- Then, the telephone system will connect you to the hearing

Toll-free Bridge Number: 1-866-560-8322

PIN Number: 36676820

8. The Hearing Notice stated, “You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised.”

9. A Prehearing Order was issued on August 25, 2023, directing the parties to comply with various procedural requirements, reminding them of the time and date of the hearing, providing instructions for calling in to the hearing, and warning in bold type: “**You may lose the case if you do not take part in this hearing and present evidence on the issues raised.**”

10. The Hearing Notice and the Prehearing Order were served electronically upon the Complainant at the email address that she provided to the Commission.

11. Neither the Hearing Notice nor the Prehearing Order were returned as undeliverable.

12. The Complainant failed to appear at the September 21, 2023 hearing.

13. On September 21, 2023, around 12:40 p.m., Ms. Jackson contacted the Philadelphia Office of the Commission and stated that she missed the hearing because she thought that the presiding officer would contact her for the hearing.

14. Ms. Jackson requested and was granted a new hearing date.

15. By Further Hearing Notice dated September 25, 2023, the parties were informed that a further call-in telephone hearing was scheduled on November 9, 2023, at 10:00 a.m.

16. The Further Hearing Notice provided instructions for calling in to the hearing and also stated, “You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised.”

17. The Further Hearing Notice was served upon the Complainant both electronically and by U.S. First-Class Mail at the addresses that she provided to the Commission.

18. On October 12, 2023, a second Prehearing Order was issued to the parties.

19. The second Prehearing Order, reminded the parties of the time and date of the further hearing, provided instructions for calling in to the hearing, and warned in bold type: **“You may lose the case if you do not take part in this hearing and present evidence on the issues raised.”**

20. The second Prehearing Order was served electronically to the Complainant at the email address that she provided to the Commission.

21. Neither the Further Hearing Notice nor the second Prehearing Order were returned as undeliverable.

22. The Complainant failed to appear at the November 9, 2023 further hearing.

23. The Complainant did not request a continuance, withdraw the Complaint, or otherwise notify the Commission to explain why her failure to appear at the further hearing was unavoidable.

DISCUSSION

In this Complaint, the Complainant alleges that PECO is threatening to shut off her utility services or has shut off the service, and that she is unable to pay her utility bills to PECO. As relief, the Complaint requests that the Commission establish a payment arrangement on her behalf. As the party seeking affirmative relief from the Commission, the burden of proof rests on the Complainant. 66 Pa.C.S. § 332(a).

Administrative agencies, like the Public Utility Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984). Notice served to a party with no notification that service failed is presumed received. *Fonzo v. PPL Elec. Utils. Corp.*, Docket No. F-2023-3041304 (Final Order entered Jan. 17, 2024) (*Fonzo*); *Berkowitz v. Mayflower Sec., Inc.*, 317 A.2d 584 (Pa. 1974) (*Berkowitz*); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959) (*Meierdierck*); *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. 1997) (*Samaras*); *Judge v. Celina Mut. Ins. Co.*, 449 A.2d 658 (Pa. Super. 1982) (*Judge*); *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered Dec. 19, 2019) (*Hu*); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered April 7, 2017) (*Zirkel*); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered January 31, 2017) (*Morella*).

In this case, the Complainant failed to appear at the initial telephone hearing that was conducted on September 21, 2023. Hours after the hearing was concluded, the Complainant contacted the Commission's Philadelphia Office and explained that she had failed to appear at

the scheduled hearing because she misunderstood the instructions for participating in the telephone hearing. Ms. Jackson requested and was granted a new hearing date.

By Further Telephone Hearing Notice dated September 25, 2023, the parties were informed that a further call-in telephone hearing was scheduled on November 9, 2023, at 10:00 a.m. The Further Telephone Hearing Notice provided instructions for calling in to the hearing and also stated, “You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised.”

On October 12, 2023, I issued a second Prehearing Order. The second Prehearing Order reminded the parties of the time and date of the further hearing, provided instructions for calling in to the hearing, and warned in bold type: **“You may lose the case if you do not take part in this hearing and present evidence on the issues raised.”**

The Further Hearing Notice was served upon the Complainant both electronically and by U.S. First-Class Mail at the addresses that she provided to the Commission. The second Prehearing Order was served electronically to the Complainant at the email address that she provided. Neither the Further Hearing Notice nor the second Prehearing Order were returned as undeliverable. It is therefore deemed that the Complainant had notice of the date and time and participation information for the November 9, 2023 further hearing. *Fonzo; Berkowitz; Meierdierck; Samaras; Judge; Hu; Zirkel; Morella.*

As the Commission noted in *Strydio v. PPL Electric Utilities Corp.*, Docket No. C-2017-2633043 at 6 (Opinion and Order entered July 18, 2018), “[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.” (*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).

The Complainant was notified of the schedule for the further hearing, which she requested, and did not appear for the hearing. Additionally, the Further Hearing Notice and the

second Prehearing Order advised the Complainant that the case could be dismissed for failure to call-in and participate in the hearing. Moreover, it was explained orally to the Complainant when she called the Commission's Philadelphia office after she missed the first scheduled hearing, that Complainant must call into the hearing, and that the Commission would not call her at the time of the hearing. Both the Public Utility Code and the Commission's regulations provide that, after being notified, a party who fails to appear at a scheduled hearing shall be deemed to have waived the opportunity to participate in the hearing and shall not be permitted to later reopen the matter or be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a). Thus, the Complainant has waived the opportunity to participate in the hearing by failing to appear. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (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. By failing to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden. Consequently, the Complaint will be dismissed on this basis as well. *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 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.

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). Therefore, the Complaint will be dismissed with prejudice.

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 Complainant received notice of the hearing. *Fonzo v. PPL Elec. Utils. Corp.*, Docket No. F-2023-3041304 (Final Order entered Jan. 17, 2024) (*Fonzo*); *Berkowitz v. Mayflower Sec., Inc.*, 317 A.2d 584 (Pa. 1974) (*Berkowitz*); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959) (*Meierdierck*); *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. 1997) (*Samaras*); *Judge v. Celina Mut. Ins. Co.*, 449 A.2d 658 (Pa. Super. 1982) (*Judge*); *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); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017).

3. The due process rights of the Complainant have been fully protected in this proceeding and Complainant's failure to appear was not unavoidable. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984); 52 Pa. Code § 5.245(a).

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

5. The Complainant did not participate in the hearing, failed to appear for the hearing, did not present any evidence and, therefore, failed to meet the Complainant's burden of proving eligibility for the relief sought from the Commission. 66 Pa.C.S. § 332(a).

6. If there are no facts in the record that a party's failure to appear at a hearing 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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PECO Energy Company to dismiss the Formal Complaint filed by Shakia Jackson at Docket No. F-2023-3041642 is granted.
2. That the Formal Complaint of Shakia Jackson in Shakia Jackson v. PECO Energy Company at Docket No. F-2023-3041642, is dismissed with prejudice.
3. That Docket No. F-2023-3041642 is marked closed.

Date: March 13, 2024

_____/s/_____
Eranda Vero
Administrative Law Judge