

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Robin Reardon Callahan	:	
	:	
v.	:	C-2023-3041307
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Darlene Davis Heep
Administrative Law Judge

INTRODUCTION

This decision dismisses the Formal Complaint for failure to prosecute because the Complainant failed to appear for the hearing.

HISTORY OF THE PROCEEDING

On June 15, 2023, Robin Reardon Callahan (Ms. Callahan or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO (PECO or Respondent). On the Complaint form, Ms. Callahan marked the boxes indicating that PECO was threatening to or had already shut off her service and that she would like a payment arrangement.

On June 30, 2023, PECO filed an Answer admitting that the Complainant has PECO electric service. PECO also admitted in the Answer that PECO sent the Complainant a termination notice and asserted that the Complainant was not entitled to a payment arrangement.

On July 6, 2023, an Interim Order Setting Resolution Conference was issued, with the conference to take place no later than August 3, 2023. The parties did not reach an agreement,

On September 19, 2023, an Initial Call-In Telephonic Hearing Notice was eServed to all parties setting a hearing for 10:00 a.m. on November 8, 2023. On October 10, 2023, a Pre-hearing Order was issued. The Pre-hearing Order advised the Complainant of the procedures and stated the date and time of the hearing. Both the Prehearing Order and the Hearing Notice advised the Complainant that failure to participate in the hearing or present evidence in support of her claims could result in dismissal of the Complaint.

The hearing began as scheduled on November 8, 2023, at 10:00 a.m. Khadijah Scott, Esquire, represented PECO. The Complainant did not call in for the hearing. A recess was taken to allow the Complainant time to call in to the hearing.

The hearing resumed at 10:16 a.m. The Complainant had not called in. Counsel for PECO moved that the Complaint be dismissed for failure to prosecute. The matter was taken under advisement and the hearing adjourned at 10:20 a.m.

The record closed on December 15, 2023, when the transcript was received.

FINDINGS OF FACT

1. The Complainant is Robin Reardon Callahan.
2. PECO Energy Company is the Respondent.
3. On June 15, 2023, the Complainant filed this action regarding her PECO service.
4. The Respondent filed an Answer on June 30, 2023.

5. On September 19, 2023, a Hearing Notice was eServed to all parties, setting an Initial Telephonic Hearing for November 8, 2023, beginning at 10:00 a.m.

6. The Hearing Notice advised all parties:

[y]ou may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised. Your case may be, dismissed “with prejudice” which means that you will be, barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.

7. On October 10, 2023, a Pre-hearing Order was issued, which advised the Complainant of the procedures and the date and time of the hearing and also stated:

FAILURE TO APPEAR: You may lose the case if you do not take part in this hearing and present evidence on the issues raised. Your case may be dismissed “with prejudice” which means that you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.

8. On the Complaint form, the Complainant selected eService as her method of communication with the Commission and the Hearing Notice and Prehearing Order were both eServed to the Complainant.

9. None of the documents sent to the Complainant were returned to the Office of Administrative Law Judge as undeliverable.

10. Counsel for PECO timely called in to the hearing on November 8, 2023.

11. The Complainant was not present when the telephonic hearing began as scheduled at 10:00 a.m. on November 8, 2023.

12. A short recess was taken to allow the Complainant time to call in to the hearing.

13. The hearing resumed at 10:16 a.m. after the Complainant had not called in to the hearing.

14. During the hearing, counsel for PECO made a motion to dismiss the Complaint and that motion was taken under advisement.

15. The Complainant had not called into the hearing when the hearing adjourned at 10:20 a.m.

16. The Complainant did not request a continuance or provide a statement of "good cause" for her absence on the scheduled hearing date or otherwise explain why her failure to attend 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). Further, electronic service which is not indicated undeliverable is considered presumed to be received by the parties. *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 Jan. 27, 2017) (*Zirkel*); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Nov. 16, 2016) (*Morella*).

In the Complaint filed, the Complainant selected eService as the method of communication with the Commission. A Hearing Notice and a Prehearing Order were eServed to the Complainant at the email address she provided to and registered with the Commission. The Prehearing Order and the Hearing Notice contained information regarding the date, time and call-in information for the telephonic hearing. None of these documents were returned as

undeliverable. It is therefore deemed that the Complainant received these documents and had notice of the date and time of the scheduled hearing. *Hu; Zirkel; Morella*.

As the Commission noted in *Strydio v. PPL Electric Utilities Corp.*, Docket No. C-2017-2633043, p. 6 (Opinion and Order entered July 18, 2018) (*Strydio*), "[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* (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 scheduled hearing and did not appear. To date, the Complainant has not contacted the Commission or the undersigned to explain why her failure to attend the hearing was unavoidable.¹ Therefore, the Complainant has waived the opportunity to participate in the hearing by failing to appear. 52 Pa. Code § 5.245(a); *Jefferson v. UGI Utils., Inc.*, 1995 Pa.P.U.C. LEXIS 159 (Opinion and Order entered Dec. 26, 1995).

Additionally, 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. As the party bringing this Complaint, the Complainant bears the burden of proving by a preponderance of the evidence that she is entitled to relief. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). By failing to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden. *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.

Finally, there are no facts in the record that would allow the Commission to reach the conclusion that the Complainant's failure to attend the hearing was unavoidable. The Complaint will be dismissed.

¹ 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).

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 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. The Commission is required to provide due process to the parties appearing before them. This due process requirement is satisfied when the parties are accorded notice and the opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).
5. 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).
6. The Complainant's due process rights have been fully protected. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Order entered Oct. 25, 1993).
7. The Complainant failed to appear and failed to carry her burden of proof in this proceeding. 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

