

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Margo Pendleton	:	
	:	
v.	:	C-2023-3043603
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Darlene Davis Heep
Administrative Law Judge

INTRODUCTION

This Decision grants the Respondent’s Motion to Dismiss for failure to prosecute because the Complainant failed to appear for the hearing.

HISTORY OF THE PROCEEDING

On October 19, 2023, Margo Pendleton (Ms. Pendleton or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission against PECO Energy Company (PECO or Respondent). On the Complaint form, Ms. Pendleton checked the boxes that state: 1) The utility is threatening to shut off my service or has already shut off my service; and 2) Incorrect charges are on my bill. Under Requested Relief, Ms. Pendleton stated that she would like a lower and correct bill and to make an affordable payment arrangement.

In her complaint, Complainant selected the option to receive all communications from the Commission via eService through an eFiling account she registered with the Commission.

On November 7, 2023, Respondent PECO filed its answer. In the answer, PECO asserted that the Complainant is not entitled to a payment arrangement and that the bills issued to the Complainant and the balance on her account are correct. PECO also denied all the material allegations of the Complaint.

On November 9, 2023, an Interim Order Setting Conference Between Parties was issued. In the Interim Order, the parties were directed to discuss this matter to determine whether such discussion can result in resolution of the Complaint. The matter was not resolved.

On December 26, 2023, an Initial Call-In Telephonic Hearing Notice was issued setting a telephonic hearing for February 8, 2024 at 1:30 p.m. A Prehearing Order was issued dated January 16, 2024.

The hearing was held on February 8, 2023 as scheduled. Ms. Pendleton did not call in to the telephonic hearing. Khadijah Scott, Esquire, appeared on behalf of PECO with a witness prepared to proceed.

A short recess was taken to allow the Complainant time to call in to the hearing. When the hearing resumed at 1:45 p.m., the Complainant had not called in. Attorney Scott moved that the matter be dismissed for failure to prosecute, which was taken under advisement. The Complainant had not called in by the time the hearing ended at 1:50 p.m. To date, the Complainant has not contacted the Commission to explain why her failure to appear for the hearing was unavoidable.

The record closed on February 29, 2024 when the transcript was received.

FINDINGS OF FACT

1. The Complainant is Margo Pendleton, a PECO Energy Company customer on McCallum Street in Philadelphia, Pennsylvania.

2. PECO Energy Company is the Respondent.
3. On October 19, 2023, the Complainant filed a Formal Complaint.
4. The Respondent filed an answer on November 7, 2023.
5. On December 26, 2023, an Initial Telephonic Hearing Notice was issued to all parties, setting a hearing for February 8, 2024.
6. The Hearing Notice included the date and time of the telephonic hearing, 1:30 p.m., as well as dial in information and instructions.
7. 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.
8. A Prehearing Order dated January 16, 2024 was issued, which advised the Complainant of the procedures and stated the date and time of the hearing and dial in information.
9. The Prehearing Order 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.
10. The hearing began as scheduled on February 8, 2024 at 1:30 p.m.

11. Counsel for PECO dialed in for the February 8, 2024 hearing.
12. The Complainant was not present when the telephonic hearing began as scheduled at 1:30 p.m. on February 8, 2024.
13. A recess was taken to allow the Complainant time to call in to the hearing.
14. The hearing resumed at 1:45 p.m. and the Complainant had not called in to the hearing.
15. Counsel for PECO made a motion to dismiss the Complaint for failure to prosecute, which was taken under advisement.
16. The Complainant had not called into the hearing when the hearing adjourned at 1:50 p.m.
17. On the Complaint form, Ms. Pendleton selected to receive documents by eService.
18. Both the Hearing Notice and Prehearing Order were eServed on Complainant to the email address provided and registered by Complainant to the Commission.
19. None of the documents sent to the Complainant were returned as undeliverable to the Office of Administrative Law Judge (OALJ).
20. Complainant has not contacted the Office of Administrative Law Judge to explain why her failure to appear at the hearing was unavoidable.

DISCUSSION

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 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); *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) (*Morella*).

On the Complaint form, Ms. Pendleton selected eFiling as the method to receive all documents from the Commission. The Hearing Notice and the Prehearing Order were sent to the Complainant electronically to the email address that she provided to the Commission. Both documents contained the date, time and call-in information for the hearing and advised the Complainant that she may lose the case if she did not take part in this hearing and present evidence on the issues raised. None of the 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. *Morella*. The Complainant did not request a continuance and has not contacted the Office of Administrative law Judge to explain why her failure to appear at the hearing was unavoidable.

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), "[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 scheduled hearing and did not appear. To date, the Complainant has not contacted the Commission or the undersigned regarding this hearing.¹ 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. PUC LEXIS 159 (Opinion and Order entered December 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. 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. By failing to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden. The Complaint will be dismissed. *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 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. Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. This due process requirement is satisfied when

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).

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 be deemed to have waived the opportunity to participate in the conference or hearing. 52 Pa. Code § 5.245(a)(1).

6. The Complainant's due process rights have been fully protected. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and 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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PECO Energy Company to dismiss the formal Complaint of Margo Pendleton at Docket No. C-2023-3043603 is granted.

2. That the Formal Complaint filed by Margo Pendleton in Margo Pendleton v. PECO Energy Company at Docket No. C-2023-3043603 is dismissed.

3. That the Secretary's Bureau should mark this matter closed.

Date: May 9, 2024

_____/s/
Darlene Heep
Administrative Law Judge