

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nikisha Leach	:	
	:	
v.	:	C-2023-3042690
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint of Nikisha Leach against PECO Energy Company because she failed to appear for her hearing and prosecute her Complaint.

HISTORY OF THE PROCEEDING

On September 5, 2023, Nikisha Leach (Complainant or Ms. Leach) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO or Respondent), indicating that the Respondent is threatening to shut off her utility service and requesting a payment arrangement.

On September 20, 2023,¹ Respondent filed an Answer denying the material allegations of the Complaint.

¹ The Complaint was served on the Respondent by the Secretary's Bureau on September 5, 2023.

On November 15, 2023, the Commission issued an Initial Call-In Telephonic Hearing Notice, and the matter was scheduled for hearing on February 7, 2024, at 10:00 a.m. The case was assigned to me. The Notice contained the following information:

FAILURE TO APPEAR: You 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.

I issued a Prehearing Order on November 21, 2023. The Prehearing Order directed the parties to comply with various procedural requirements and indicated how to request a change in the hearing date. It also contained the same warning that was found in the Hearing Notice.²

The hearing began on February 7, 2024, as scheduled. Counsel for PECO was present with a witness and was prepared to proceed. The Complainant failed to call in to the hearing.

No witnesses were presented, and no exhibits were introduced into the record. Counsel for PECO moved that the Complaint be dismissed 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 February 27, 2024, upon my receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is Nikisha Leach.
2. The Respondent is PECO Energy Company.

² The Complainant accepts eService of documents. There was no indication that the Hearing Notice or Prehearing Order were undeliverable.

3. On September 5, 2023, Ms. Leach filed a Complaint against the Respondent with the Commission.
4. On September 20, 2023, the Respondent filed an Answer to the Complaint.
5. On November 15, 2023, the Commission issued an Initial Call-In Telephonic Hearing Notice, and the matter was scheduled for hearing on February 7, 2024, at 10:00 a.m.
6. On November 21, 2023, a Prehearing Order was sent to all parties containing, *inter alia*, a warning of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing.
7. Both the Hearing Notice and Prehearing Order contained the warning that failing to appear could result in the case being dismissed with prejudice.
8. Both the Hearing Notice and Prehearing Order were sent to the Complainant via eService to the email address Complainant provided to and registered with the Commission.
9. The Hearing Notice and Prehearing Order sent to the Complainant were not returned as being undeliverable.
10. The Complainant failed to appear at the February 7, 2024, hearing.
11. The Complainant did not settle or withdraw this Complaint prior to the scheduled hearing date or obtain a continuance.
12. The Complainant has not contacted the Commission 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). "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).

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).

The Commission served notice of the February 7, 2024, hearing in this case to the Complainant on November 15, 2023, via eService which the Complainant accepts. The notice informed the parties of the date and time of the hearing, as well as how to call in for the hearing. The Hearing Notice was not returned as being undeliverable.

In addition, I issued a Prehearing Order dated November 21, 2023, which, *inter alia*, warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to appear and participate in the hearing. The Prehearing Order, which was also served on the Complainant via eService, was not returned as undeliverable. The Prehearing Order also included the date and time of the hearing and call-in instructions. Accordingly, I must presume that the Hearing Notice and Prehearing Order, which was sent in the ordinary course of business, were received by the Complainant. *See 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). Therefore, the Complainant is deemed to have received the documents and had sufficient notice of the day and time of the scheduled hearing. Neither the Complainant nor a representative licensed to practice law in this

Commonwealth appeared at the hearing on her behalf. To date, there is no further information about the Complainant regarding this hearing. Her failure to appear was not unavoidable.

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). 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). 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. *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).

There is nothing to indicate that the Hearing Notice and Prehearing Order were not received by the Complainant, and to date, there has been no communication to the Office of Administrative Law Judge or me by, or on behalf of, Complainant explaining why Complainant's failure to appear at the hearing was unavoidable.

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 her requested relief. The Complainant did not appear for the hearing scheduled for February 7, 2024. Thus, by her failure to appear, the Complainant did not meet her burden of proof.

Consequently, it is appropriate to grant PECO's Motion and to dismiss Ms. Leach's Complaint.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of the dispute. 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 it. This due process requirement is satisfied when the parties are provided notice and the opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

5. Notice sent via electronic mail to a party's registered address with no notification that service failed to be delivered to that address is presumed to have been received. *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).

6. The due process rights of the Complainant have been fully protected. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

7. By failing to appear for the hearing and proffer any evidence to support the Complaint, the Complainant has failed to meet her burden of proving that she is entitled to the relief that she seeks 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 filed by Nikisha Leach at Docket No. C-2023-3042690 is granted.
2. That the Formal Complaint of Nikisha Leach in *Nikisha Leach v. PECO Energy Company* at Docket No. C-2023-3042690 is dismissed.
3. That Docket No. C-2023-3042690 be marked closed.

Date: May 23, 2024

_____/s/
Marta Guhl
Administrative Law Judge