

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Linda Meade	:	
	:	
v.	:	C-2023-3041672
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Arlene Ashton
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint of Linda Meade against PECO Energy Company due to the Complainant’s failure to appear for the hearing to prosecute the Complaint.

HISTORY OF THE PROCEEDING

On July 7, 2023, Linda Meade (Complainant or Ms. Meade) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (Respondent or PECO). In the Complaint, the Complainant alleges that PECO shut off her service, there are incorrect charges on her bill, and she is having a reliability, safety, or quality problem with her service. The Complainant requests that her electric service be restored, an audit be conducted on bills issued to her since 2013, and a payment arrangement be awarded to her.

On July 31, 2023, the Respondent filed an answer with new matter (Answer) to the Complaint denying all material allegations in the Complaint.¹ In the Answer, PECO confirmed that the Complainant's service was terminated on May 18, 2023, and indicated that the Complainant is no longer a PECO customer. In addition, PECO indicated that the Complainant's account was finalized on June 21, 2023, with a balance of \$21,334.69.

In new matter, PECO argued that the PUC has no jurisdiction to adjudicate the Complaint, and that the Complaint should be dismissed on the grounds of *res judicata* and failure to file the Complaint within the statutory limit for filing claims provided in the Public Utility Code (Code).² The Answer was accompanied by a notice to plead, requiring the Complainant to file a response within 20 days of service. The Complainant did not file a response to the new matter raised in the Answer.

Also on July 31, 2023, the Respondent filed preliminary objections on the grounds of: (a) lack of jurisdiction; and (b) legal insufficiency of the Complaint on the grounds of *res judicata* and failure to file the Complaint within the statutory limit for filing claims provided in the Code. The preliminary objections was accompanied by a notice to plead, requiring the Complainant to file a response within 20 days of service.³ The Complainant did not file a response to the preliminary objections.

On September 19, 2023, the Commission issued a Motion Judge Assignment Notice, assigning this matter to me.

On October 4, 2023, I issued an Interim Order granting in part and denying in part the Preliminary Objections raised by PECO. Pursuant to the Interim Order, certain issues and/or

¹ Commission records indicate that the Complaint was served on the Respondent on July 11, 2023.

² 66 Pa. Code §§ 101–3316.

³ Although the Notice to Plead indicated that a response was due in 20 days, Commission regulations specify that an answer to Preliminary Objections is due within 10 days of the date of service. 52 Pa. Code 5.101(b), (f).

allegations raised by Ms. Meade were stricken from the Complaint⁴ and an evidentiary hearing was ordered to be scheduled to address the remaining allegations of unreasonable service and incorrect and/or high billing for electric service.

On October 13, 2023, an Initial Call-In Telephone Hearing Notice was issued advising the parties that a call-in telephonic hearing was scheduled for November 16, 2023, at 10:00 a.m.

On November 3, 2023, Khadijah Scott, counsel for PECO, filed a Motion for Continuance of Hearing Date requesting a continuance of the hearing scheduled for November 16, 2023. On November 13, 2023, I issued an Interim Order granting Respondent's Motion For Continuance.

On November 14, 2023, a Cancellation/Reschedule Hearing Notice was issued advising the parties that the call-in telephonic hearing scheduled for November 16, 2023, at 10:00 a.m. had been cancelled and rescheduled for November 30, 2023, at 10:00 a.m.

On November 30, 2023, the hearing commenced as scheduled. Counsel for the Respondent and the Complainant appeared for the hearing. No testimony was taken; however, with me acting as settlement judge, the parties conducted off-the record settlement discussions. At the conclusion of their discussions, the parties indicated that they wished to continue the hearing to allow PECO to conduct a field inspection visit, to explore Ms. Meade's eligibility for PECO's Customer Assistance Program and to allow Ms. Meade to consider a settlement offer made by PECO during their discussions.

⁴ The claims and allegations stricken from the Complaint included the following: request for a Commission-issued payment arrangement, claims of unreasonable service for electric service provided to the Complainant arising on or before January 6, 2020, claims of incorrect and/or high billing for electric service provided to the Complainant arising on or before January 6, 2020, any claims arising prior to July 7, 2020, and any request for refund of a payment made prior to July 7, 2019.

On December 1, 2023, a Further Call-In Hearing Notice was issued advising the parties that a Further Call-In telephonic hearing was scheduled for February 5, 2024, at 10:00 a.m.

On December 8, 2023, a Prehearing Order was issued reminding the parties of the date and time of the further hearing, directing the parties to comply with various procedural requirements, and advising that the Complainant could lose the case for failure to participate in the hearing or present facts on the issues raised.

On February 5, 2024, the hearing commenced as scheduled. Counsel for the Respondent called in with two witnesses 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.

The record closed on February 27, 2024, upon the filing of the transcript with the Commission.

FINDINGS OF FACT

1. The Complainant is Linda Meade.
2. The Respondent is PECO Energy Company.
3. Respondent provided electricity service to Complainant.
4. On July 7, 2023, the Complainant filed a Complaint against PECO.

5. When filing the Complaint, Ms. Meade did not indicate that she wished to receive communication from the Commission via any of the methods listed on the Complaint form, i.e., eFiling, Email or First-Class Mail. Complaint ¶2.

6. The Complaint form filed by Ms. Mead included the following notice **“If you do not select one of the three options above, the Commission will serve all documents to you by First Class Mail at the address listed on page 1 of this form.”** Complaint ¶2 (emphasis in original).

7. On July 31, 2023, the Respondent filed a timely answer with new matter to the Complaint.

8. On July 31, 2023, the Respondent filed preliminary objections to the Complaint averring that the Complaint should be dismissed on the grounds of (a) lack of jurisdiction; and (b) legal insufficiency of the Complaint.

9. On September 19, 2023, a Motion Judge Assignment Notice was sent to the Complainant via U.S. First-Class Mail and eServed on PECO, advising the parties that the matter had been assigned to me.

10. On October 4, 2023, an Interim Order was issued granting in part and denying in part the Preliminary Objections filed by PECO; the Interim Order was sent to the Complainant via U.S. First-Class Mail and eServed on PECO.

11. On October 13, 2023, an Initial Call-In Telephonic Hearing Notice was sent to the Complainant via U.S. First-Class Mail and eServed on PECO scheduling an initial telephonic hearing on November 16, 2023, at 10:00 a.m.

12. On November 3, 2023, PECO filed a Motion for Continuance.

13. On November 13, 2023, an Interim Order granting PECO's Motion for Continuance was issued; the Interim Order was sent to the Complainant via U.S. First-Class Mail and eServed on PECO.

14. On November 14, 2023, a Cancellation/Reschedule Hearing Notice was issued informing the parties that the November 16, 2023, hearing had been rescheduled to November 30, 2023, at 10:00 a.m.; the Interim Order was sent to the Complainant via U.S. First-Class Mail and eServed on PECO.

15. The November 30, 2023 hearing was convened as scheduled and the parties participated in settlement judge discussions.

16. After the settlement discussions, the parties requested a continuance to: (a) allow PECO to conduct a field inspection and to contact the Complainant concerning her qualification for PECO's Customer Assistance Program; and (b) to allow the Complainant time to consider a settlement offer made by PECO. Tr. 10.

17. On December 1, 2023, a Further Telephonic Hearing Notice was sent to the Complainant via U.S. First-Class Mail and eServed on PECO scheduling a Further Hearing on February 5, 2024, at 10:00 a.m.

18. On December 8, 2023, a Prehearing Order was issued to the Complainant via U.S. First-Class Mail and eServed on PECO which, *inter alia*, reminded the parties of the date and time of the scheduled further hearing and the telephone number to call, and the passcode to enter to participate in the hearing.

19. The Hearing Notice, the Cancellation and Reschedule Hearing Notice, the Further Hearing Notice and the Prehearing Order provided certain hearing information and rules that would govern the proceeding including how to request a continuance and the consequences of failing to appear at the hearing and present evidence, including dismissal of the complaint.

20. The Hearing Notice, the Cancellation and Reschedule Hearing Notice, the Further Hearing Notice and the Prehearing Order sent to the Complainant were not returned to the Commission as undeliverable.

21. On February 5, 2024, Complainant failed to appear and participate in the scheduled hearing.

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 Hearing Notices issued for the November 16, 2023, November 30, 2023, and February 5, 2024, hearings, and the Prehearing Order were all served on the Complainant by U.S. First-Class Mail at the address that the Complainant provided in her Complaint. None of the Notices nor the Prehearing Order served on the Complainant 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 Electric Utilities 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, all Hearing Notices and the 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.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995).

In addition, 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 Notices 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).

At the hearing, the Respondent moved that the Complaint be dismissed with prejudice based on the Complainant's filing of multiple complaints on the same facts, the amount of the Complainant's outstanding balance of over \$18,000 and the Complainant's failure to respond to outreach by counsel to discuss the settlement offer made by PECO. Tr. 18-19. In addition, counsel to PECO noted that she had contacted the Complainant on January 24, 2024, to discuss the hearing and PECO's pending settlement offer but received no response.

On Friday, March 29, 2024, approximately seven weeks after the date of the hearing, the Complainant contacted the Office of Administrative Law Judge (OALJ) via email to

request “a continuance of her case,” implying that she had been unaware of the February 5, 2024 hearing, had only recently learned of the hearing from PECO and had received a shut-off notice from PECO and that shut off was scheduled for the following Monday, April 1, 2024.⁵

In light of the content and tenor of the Complainant’s email, I responded via email directly to the parties the same day, indicating that no decision would be made on the request, which was construed as a request to re-open the record, until PECO has been given a reasonable opportunity to respond to the request. I also directed PECO counsel to provide PECO’s response to the Complainant’s request at her earliest opportunity.

On April 1, 2024, PECO Counsel responded to my email, with a copy to the Complainant. PECO objected to the granting of a continuance, averring that the Complainant had not provided good cause for her request. In support of its position, PECO asserted that: (a) during the initial hearing, PECO offered the Complainant a 24-month payment agreement with waiver of late payment charges in the amount of \$3,706.30; (b) the matter was continued to facilitate a high bill field visit by a PECO representative; and (c) a field visit took place on December 8, 2023. Additionally, on December 1, 2023, a representative of PECO’s CAP department contacted the Complainant to discuss PECO’s CAP and assist the Complainant with an application for the program. Further, PECO’s counsel indicated that she and her administrative assistant had endeavored to contact the Complainant via email on January 24, 2024, that the emails were not returned as undeliverable, and that the Complainant failed to respond to either email message from PECO.

In an Order issued April 1, 2024, I denied the Complainant’s request, stating, in part:

I recognize that Complainant is appearing *pro se* in this proceeding. Traditionally, the Commission has been hesitant to rule unfavorably against *pro se* litigants based on technical grounds and has stated that all litigants, particularly *pro se*

⁵ A party who fails 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).

litigants, should be afforded a meaningful opportunity to be heard. *See, e.g., Amir v. PECO Energy Co.*, C-2010-2190024 (Opinion and Order entered Jan. 13, 2011); *Destefano v. Peoples Natural Gas Co.*, 56 Pa.P.U.C. 489 (1982); and *Halpern v. Bell Tele. Co. of Pa.*, C-00923950 (Opinion and Order entered Oct. 19, 1992). Compliance with the terms of multiple hearing Notices and a Prehearing Order is, however, more than just a technical issue. Those directives are not a nullity, and compliance with clearly set forth procedural rules and directives is an essential part of affording due process of law to both parties. The orderly resolution of the many cases that come before the Commission depends on reasonable diligence by the parties to litigation. *Forti v. PPL Elec. Utils. Corp.*, C-202-3015285 (Opinion and Order entered Nov. 19, 2020).

In light of the above, I find it appropriate to dismiss the Complaint 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 parties and subject matter in this proceeding. 66 Pa.C.S. § 701.

2. Documents served by U.S. First-Class Mail and not returned as undeliverable are presumed to have been received. *Berkowitz v. Mayflower Sec., Inc.*, 455 Pa. 531, 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 Commission is required to provide due process to the parties appearing before them; 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).

4. 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, not be permitted thereafter to reopen the disposition of the matter accomplished at the hearing, and not be permitted to recall excused witnesses. 66 Pa.C.S. § 332(f), 52 Pa. Code § 5.245(a).

5 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).

6 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).

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

8 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 she is eligible for the relief sought 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 Linda Meade at Docket No. C-2023-3041672 with prejudice is granted.
2. That the Formal Complaint of Linda Meade at Linda Meade v. PECO Energy Company, Docket No. C-2023-3041672 is dismissed with prejudice.
3. That the Secretary's Bureau shall mark Docket No. C-2023-3041672 as closed.

Date: May 28, 2024

_____/s/
Arlene Ashton
Administrative Law Judge