

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Daniel Norris

v.

PECO Energy Company

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F-2023-3043817

INITIAL DECISION

Before
Arlene Ashton
Administrative Law Judge

INTRODUCTION

This decision dismisses the Formal Complaint of Daniel Norris, an electric service customer for failure of the customer to appear for the scheduled hearing and prosecute his complaint despite having notice and an opportunity to be heard.

HISTORY OF THE PROCEEDING

On October 25, 2023, Daniel Norris (Complainant or Mr. Norris) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO or Respondent).¹ Mr. Norris alleged that PECO had shut off his service and that he had received notice of the impending shut off just three days before his service was terminated. Complaint ¶ 4. As relief, Mr. Norris requested a Commission payment arrangement to have his service restored. Complaint ¶¶ 4, 5.

¹ The Complaint is a timely appeal from the determination of the Commission's Bureau of Consumer Services (BCS), at BCS No. 3940216, which dismissed Complainant's informal complaint. A timely BCS appeal is subject to de novo review. 52 Pa. Code § 56.173(a).

On November 13, 2023, PECO timely filed an Answer denying the material allegations and conclusions of law in the Complaint. Further, PECO averred, *inter alia*; that the Complainant's service was terminated for non-payment on August 28, 2023; proper termination notice was given to Complainant; that Complainant defaulted on three PECO-issued payment agreements PECO entered into with Complainant in 2019 and 2021; that Complainant is not entitled to a Commission-issued payment arrangement because his outstanding balance consists of CAP arrears; and that Complainant's balance at the time of termination was \$2,295.15.

On January 9, 2024, an Initial Call-In Telephonic Hearing Notice ("Hearing Notice") was served on the parties, scheduling a call-in telephonic evidentiary hearing on March 1, 2024, at 10:00 a.m., and assigning me as the presiding officer. This Hearing Notice included the telephone number to call, and the passcode to enter, for the parties to participate in the hearing. The Hearing Notice also informed the parties that they could lose the case and that the case could be dismissed with prejudice if they failed to take part in the hearing and present evidence on the issues raised in the Complaint.

On January 12, 2024, my Prehearing Order was served on the parties which, *inter alia*, reminded the parties of the hearing date and time, and the telephone number to call, and the passcode to enter, to participate in the hearing. Additionally, the Prehearing Order provided certain hearing information and rules that would govern the proceeding including how to request a continuance, if necessary, and the consequences of failing to appear at the hearing and present evidence including the dismissal of the complaint.

In the ordinary course of the Commission's business, the Hearing Notice and Prehearing Order were served via U.S. First-Class Mail to Complainant at the street address provided by him to the Commission.

Neither the Hearing Notice nor the Prehearing Order sent to the Complainant were returned to the Commission as undeliverable.

On March 1, 2024, at 10:00 a.m., the hearing convened as scheduled. Ms. Khadijah Scott, Esquire, appeared on behalf of PECO, along with a witness, and was prepared to proceed. A court reporter was also present. Complainant did not appear. I recessed the hearing and convened it again approximately ten minutes later in order to allow time for Complainant to appear. Since Complainant did not appear after this recess, the hearing proceeded in his absence. No testimony was taken, and no exhibits were introduced for the record.

During the hearing, PECO moved to dismiss the Complaint without prejudice (Motion) for the failure of Complainant to appear and prosecute his Complaint. At this time, Attorney Scott noted that, on February 16, 2024, she served on the Complainant PECO's five proposed hearing exhibits, which noted the date and time of the hearing.

I took PECO's Motion under advisement. The record closed at the conclusion of the hearing pursuant to 52 Pa. Code § 5.431(a) (providing that the record will be closed at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission).

To date, no communication has been received by the undersigned or the Office of Administrative Law Judge explaining why Complainant's failure to attend the hearing was unavoidable. This decision grants PECO's Motion.

FINDINGS OF FACT

1. The Complainant is Daniel Norris.
2. The Respondent is PECO Energy Company.
3. Respondent provided electricity service to Complainant.
4. On October 25, 2023, Mr. Norris filed the Complaint against Respondent.

5. On November 13, 2023, Respondent timely filed the Answer to the Complaint.

6. On January 8, 2024, an Initial Call-In Telephonic Hearing Notice was served on the parties, scheduling an initial telephonic hearing on March 1, 2024, at 10:00 a.m., and assigning me as the presiding officer.

7. On January 12, 2024, a Prehearing Order was served on the parties which, *inter alia*, reminded the parties of the date and time of the scheduled hearing and the telephone number to call, and the passcode to enter, to participate in the hearing.

8. Both the Hearing Notice and the Prehearing Order provided certain hearing information and rules that would govern the proceeding including how to request a continuance, if necessary, and the consequences of failing to appear at the hearing and present evidence including the dismissal of the complaint.

9. Both the Hearing Notice and Prehearing Order were served on Complainant by U.S. First-Class Mail to the address provided by Complainant to the Commission.

10. Neither the Hearing Notice nor the Prehearing Order sent to the Complainant were returned to the Commission as undeliverable.

11. On March 1, 2024, Complainant failed to appear and participate in the scheduled hearing.

12. To date, no communication has been received by the undersigned or the Office of Administrative Law Judge explaining why Complainant's 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) (*Schneider*). This due process requirement is satisfied when the parties are provided notice and the opportunity to be heard. *Id.* As the proponent of any request for relief, the complainant bears the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, the Commission's decision must be supported by substantial evidence. 2 Pa.C.S. § 704.

The Commission is required to fix the time and place of a hearing in a complaint proceeding and serve notice thereof upon the parties in interest. 66 Pa.C.S. § 703(a)-(b). Service on interested persons is sufficient to provide notice. 52 Pa. Code § 5.61(a). As the Commission explained, “[i]t is well-established law that once timely notice of a hearing and the opportunity to be heard have been provided, it is the responsibility of the parties to be present and participate in the hearing.” *Mumma v. UGI Elec. Utils. Corp.*, No. C-00014869 at 3 (Opinion and Order entered Jan. 28, 2002) (citing *Schneider*).

In the instant case, the Hearing Notice scheduled a hearing on March 1, 2024, and included the telephone number to call, and the passcode to enter, for the parties to participate in the hearing. The Hearing Notice also informed the parties that they could lose the case and that the case could be dismissed with prejudice if they failed to take part in the hearing and present evidence on the issues raised in the Complaint.

Furthermore, a Prehearing Order was served on both parties which, *inter alia*, reminded the parties of the hearing date and time, and the telephone number, and passcode to enter, to participate in the hearing. Additionally, the Prehearing Order provided certain hearing information and rules that would govern the proceeding including how to request a continuance, if necessary, and the consequences of failing to appear at the hearing and present evidence including the dismissal of the complaint.

Both the Hearing Notice and Prehearing Order were served by U.S. First-Class Mail to the address provided on the complaint. Neither document was returned as being undeliverable. Accordingly, it must be presumed that this mail was received by 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).

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, 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). However, neither of these provisions apply if the presiding officer determines that the failure to be represented 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).

In the instant case, to date, no communication has been received by the undersigned or the Office of Administrative Law Judge regarding Complainant's absence.² Therefore, I find that Complainant waived the opportunity to participate in a hearing on the matters raised in the complaint and Complainant's absence was not unavoidable. Thus, by his failure to appear, Complainant did not meet his burden of proof.

Consequently, it is appropriate to dismiss Mr. Norris's complaint. As the Commission has explained, where a complainant fails to appear for a scheduled hearing without good cause, the public interest is prejudiced by the wasteful use of the agency's and the respondent's time and resources. *See, e.g., Elliott v. Pa. Elec. Co.*, No. F-2018-3003502 (Opinion and Order entered Feb. 6, 2020) and the cases cited therein.

² 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).

Accordingly, Respondent's Motion to dismiss the complaint without prejudice will be granted.

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 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).

3. 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).

4. If the presiding officer determines that the failure to be represented 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, the presiding officer may find that a party did not waive the opportunity to participate in the hearing. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(b).

5. Complainant's due process rights have been fully protected and Complainant's failure to appear was not unavoidable. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984); .

6. As the party seeking relief, Complainant bears the burden of proof by a preponderance of the evidence. 66 Pa.C.S. § 332(a); *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

7. The Complainant has failed to meet his 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 without prejudice the Complaint of Daniel Norris at Docket No. F-2023-3043817 is granted.
2. That the Complaint of Daniel Norris in Daniel Norris v. PECO Energy Company at Docket No. F-2023-3043817 is dismissed without prejudice.
3. That the docket at Docket No F-2023-3043817 be marked closed.

Date: May 28, 2024

/s/
Arlene Ashton
Administrative Law Judge