

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Patricia Stone	:	
	:	
v.	:	F-2023-3044482
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Arlene Ashton  
Administrative Law Judge

**INTRODUCTION**

This decision dismisses the Formal Complaint of Patricia Stone for the failure to appear for the scheduled hearing and prosecute her Complaint despite having notice and an opportunity to be heard.

**HISTORY OF THE PROCEEDING**

On November 16, 2023, Patricia Stone filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO, Respondent or Company).<sup>1</sup> When filing the Complaint, Ms. Stone indicated that PECO was threatening to shut off service or had already done so and that she wanted a payment agreement. As relief, Ms. Stone requested that power be restored. She also requested a payment arrangement.

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<sup>1</sup> The Complaint is a timely appeal from the determination of the Commission's Bureau of Consumer Services (BCS), at BCS No. 3954385, which dismissed Complainant's informal complaint. A timely BCS appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

On December 14, 2023, PECO timely filed an Answer (Answer) confirming that the Complainant's gas and electric service was terminated for non-payment on November 7, 2023.<sup>2</sup> Further, PECO averred that on November 20, 2023, the Complainant requested that her services be disconnected. On November 21, 2023, Complainant's account was finalized.

On December 19, 2023, an Interim Order was issued setting a Resolution Conference for this matter. The parties were unable to resolve the matter.

On January 30, 2024, an Initial Call-In Telephonic Hearing Notice (Hearing Notice) was served on the parties<sup>3</sup> scheduling a call-in telephonic evidentiary hearing on April 4, 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. In addition, the Hearing Notice included the following warning:

**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.

On March 27, 2024, a Cancelled/Rescheduled Initial Hearing Notice was issued, cancelling the scheduled April 4, 2024, hearing and rescheduling the Initial Hearing for April 15, 2023, at 1:30 PM.

On March 28, 2024, my Prehearing Order was served on both parties which, *inter alia*, reminded the parties of the hearing date and time, 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

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<sup>2</sup> The Complaint was served on PECO on November 29, 2023.

<sup>3</sup> Consistent with the method of service requested in the Complaint, the Notice of Hearing and all other documents served by the Commission were sent via email to the email address she specified on the Complaint form. All documents were served on PECO via eService.

a continuance, if necessary, and the consequences of failing to appear at the hearing and present evidence, including the dismissal of the complaint.

None of the documents served on the Complainant via email were returned to the Commission as undeliverable.

On April 15, 2024, at 1:30 p.m., the hearing convened as scheduled. Khadijah Scott, Esquire, appeared on behalf of PECO, along with a witness, and the Company was prepared to proceed. A court reporter was also present. Complainant did not appear. I recessed the hearing and convened it again approximately 15 minutes later at 1:45 p.m. to allow time for Complainant to appear. The Complainant did not appear after this recess and the hearing proceeded in her absence. No testimony was taken, and no exhibits were introduced for the record.

During the hearing, the Company moved to dismiss the Complaint without prejudice (Motion) for the failure of Complainant to appear and prosecute the Complaint. Tr. 5. Attorney Scott noted that she had endeavored to contact the Complainant by email on April 3, 2024, to offer the Complainant a payment agreement and while the email was received by the Complainant, she did not reply to it. Tr. 6. In addition, counsel for PECO indicated that she had communicated with the Complainant by email and had sent proposed exhibits to the Complainant. Tr. 6. Finally, counsel for PECO stated that the Complainant's account balance was approximately \$14,000, all of it being CAP arrears. Tr. 6.

The record closed on April 19, 2024, upon receipt of the transcript for the hearing. To date, no communication has been received by the undersigned or the Office of Administrative Law Judge explaining why Complainant's failure to appear at the April 15, 2024, hearing was unavoidable. This decision grants PECO's Motion.

## FINDINGS OF FACT

1. The Complainant is Patricia Stone.
2. The Respondent is PECO Energy Company.
3. Respondent provided electric and gas service to Complainant.
4. On November 16, 2023, Ms. Stone filed a Formal Complaint against Respondent.
5. On December 14, 2023, Respondent timely filed an Answer to the Complaint.
6. On January 30, 2024, an Initial Call-In Telephonic Hearing Notice was served on the Complainant via email scheduling an initial telephonic hearing on April 4, 2024, at 10:00 a.m. and assigning me as the presiding officer.
7. On March 27, 2024, a Cancelled/Rescheduled Initial Hearing Notice was issued, cancelling the scheduled April 4, 2024, hearing and rescheduling the Initial Hearing for April 15, 2023 at 1:30 PM.
8. On March 28, 2024, a Prehearing Order was served on the Complainant via email which, *inter alia*, reminded the parties of the date and time of the rescheduled hearing, the telephone number to call, and the passcode to enter to participate in the hearing.
9. The Hearing Notice, the Hearing Cancellation and Rescheduling 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 warned of the consequences of failing to appear at the hearing and present evidence, including the dismissal of the Complaint.

10. Neither the Hearing Notice, the Hearing Cancellation and Rescheduling Notice nor the Prehearing Order were returned to the Commission as undeliverable.

11. On April 15, 2024, the Complainant failed to appear and participate in the scheduled hearing.

12. To date, Complainant has not contacted the undersigned or the Office of Administrative Law Judge to explain why her failure to appear at 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 January 30, 2024 Hearing Notice scheduled a hearing on April 4, 2024, and included the telephone number to call, and the passcode to enter for the parties to participate in the hearing. The same is true for the March 27, 2024, Cancelled/Rescheduled

Initial Hearing Notice, which cancelled the scheduled April 4, 2024, hearing and rescheduling the Initial Hearing for April 15, 2023, at 1:30 PM. Additionally, the Prehearing Order dated March 28, 2024, served on the Complainant reminded the parties of the date and time of the scheduled hearing, the telephone number to call, and the passcode to enter to participate in the hearing. Further, 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.

The Hearing Notice, the Cancelled/Rescheduled Initial Hearing Notice and Prehearing Order were served by email to the address provided by the Complainant on the complaint form. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable. Accordingly, it must be presumed that this email was received by Complainant. *Skow v. Metro. Edison Co.*, Docket No. F-2023-3042228 (Final Order entered May 7, 2024); *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).

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 appear 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 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); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

To date, no communication has been received by the undersigned or the Office of Administrative Law Judge explaining why Complainant's failure to appear at the hearing was unavoidable. 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 her failure to appear and prosecute her Complaint, the Complainant did not meet her burden of proof.

Further, Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As the proponent of any request for relief, Complainant bears the burden of proof. By failing to participate and proffer any evidence to support the complaint, Complainant has failed to meet this burden.

Consequently, it is appropriate to dismiss Ms. Stone'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.

Accordingly, Respondent's Motion to Dismiss the Complaint 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. Notice emailed to a party and not returned to the Commission as undeliverable is presumed to be received. *Skow v. Metro. Edison Co.*, Docket No. F-2023-3042228 (Final Order entered May 7, 2024); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final entered Apr. 7, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017);.

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. If the presiding officer determines that the failure to appear at a 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, 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).

6. 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); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

7. 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).

8. The Complainant has failed to meet 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 Patricia Stone at Docket No. F-2023-3044482 is granted.

2. That the Formal Complaint of Patricia Stone in Patricia Stone v. PECO Energy Company at Docket No. F-2023-3044482 is dismissed, without prejudice.

3. That the docket at Docket No. F-2023-3044482 be marked closed.

Date: July 2, 2024

\_\_\_\_\_/s/\_\_\_\_\_  
Arlene Ashton  
Administrative Law Judge