

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Vanee Flowers	:	
	:	
v.	:	F-2023-3037961
	:	
PECO Energy Company	:	

INITIAL DECISION ON REMAND

Before
Arlene Ashton
Administrative Law Judge

INTRODUCTION

The Public Utility Commission reversed an Initial Decision issued in this matter on June 16, 2023 and remanded this matter to the Office of Administrative Law Judge for the purpose of conducting a hearing on the issues presented in this case. This Initial Decision on Remand dismisses the Formal Complaint filed by the Complainant because by refusing to participate in the remand hearing, she failed to prosecute her Formal Complaint.

HISTORY OF THE PROCEEDING

On January 25, 2023, Vanee Flowers (Complainant) filed a Formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission).¹ In the Complaint, the Complainant contends that there were incorrect charges on her bill. Specifically, the Complainant contends that she should not be responsible for any outstanding balance on a PECO account in her name for utility service provided while she rented an apartment at 927 Coates Street, 2nd Floor Unit, Sharon Hill,

¹ The Complaint is a timely appeal from a determination of the Commission's Bureau of Consumer Services (BCS) at BCS No. 3866604 issued on December 21, 2022.

Pennsylvania 19079 (Service Address).² The Complainant requests that: (a) she be reimbursed for all electric service provided to her at the Service Address; and (b) that all balances for utility service to her at the Service Address be charged to the owner of the rental property.

On February 17, 2023, the Respondent filed an Answer denying the material allegations of the Complaint.³

By Hearing Notice dated February 21, 2023, an initial telephonic hearing was scheduled for April 12, 2023, at 10:00 a.m., and the matter was assigned to me.

I issued a Prehearing Order on March 9, 2023. The Prehearing Order directed the parties to comply with various procedural requirements and explained that the Complainant bears the burden of proof to establish that the Respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that she is entitled to the relief requested in the Complaint.

The hearing convened as scheduled on April 12, 2023. The Complainant participated *pro se* and testified. The Complainant offered four exhibits, which were entered into the record. The Respondent appeared and was represented by Khadijah Scott, Esq., who presented the testimony of Anna Mae Migliaccio, a PECO regulatory assessor. Respondent offered four exhibits, which were all entered into the record.

The hearing resulted in a 93-page transcript. The record closed on April 26, 2023, when the transcript was filed with the Commission.

On July 14, 2023, an Initial Decision (ID) was issued dismissing the Formal Complaint filed by the Complainant due to the Complainant's failure to meet her burden of establishing that PECO violated the Public Utility Code, Commission regulations or a

² On the complaint form, the Complainant checked boxes indicating that the utility service that is the subject of the complaint included electric, gas, steam heat and storm water. The words "electrical pole" and other illegible words were also hand-written on the complaint form. Complaint ¶ 3.

³ The Formal Complaint was served on PECO on January 31, 2023. PECO's Answer indicated that the Complainant had electric and gas heating service at the Service Address. Answer ¶ 3.

Commission Order regarding the transfer of the balance from the Complainant's account at the Service Address to her account at the Current Address. On August 3, 2023, the Complainant filed Exceptions to the ID. On August 18, 2023, PECO filed Replies to Exceptions. On October 19, 2023, the Commission entered an Opinion and Order remanding the case to the Office of Administrative Law Judge (OALJ) for a further hearing to develop the record on the issue of whether PECO conducted a foreign load investigation on the Complainant's account.

On March 8, 2024, a Call-In Telephone Remand Hearing Notice (Remand Hearing Notice) was issued scheduling a hearing for Wednesday, May 1, 2024 at 10:00 a.m.

The hearing convened as scheduled on May 1, 2024. The Complainant appeared for the hearing *pro se*; she indicated that she had no witnesses to present at the hearing other than herself. Khadijah Scott, Esquire appeared on behalf of PECO and presented the testimony of one witness, Ramona Milburn.

Shortly after the hearing began, a recess was taken to allow the parties to engage in settlement discussions, with the presiding officer acting as Settlement Judge. Settlement discussions were conducted for approximately 13 minutes; however, the parties were unable to reach an agreement and, at the parties' request, the hearing was resumed to allow the Complainant to provide her testimony. In lieu of testimony, the Complainant proffered proposed exhibits for entry into the record. Before any ruling on admission of the first of the Complainant's proposed exhibits, the Complainant stated that she was "adjourning the hearing" and disconnected her line.

A recess was taken to allow the Complainant to return to the hearing; however, she failed to do so. When the hearing resumed, counsel for PECO moved to dismiss the Complaint with prejudice for failure to prosecute the Complaint.

The record closed on May 22, 2024 upon delivery of the transcript for the remand hearing.

FINDINGS OF FACT

1. The Complainant is Vanee Flowers.
2. The Respondent is PECO Energy Company.
3. Respondent provided electric and gas service to Complainant.
4. On January 25, 2023, Ms. Flowers filed a Formal Complaint against the Respondent.
5. On February 17, 2023, Respondent timely filed an Answer to the Complaint.
6. On February 21, 2023, an Initial Telephonic Hearing Notice was electronically served on the Complainant scheduling an initial telephonic hearing on April 12, 2023, at 10:00 a.m., and assigning me as the presiding officer.
7. On March 9, 2023, a Prehearing Order was electronically served on the Complainant 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 warned of the consequences of failing to appear at the hearing and present evidence, including the dismissal of the Complaint.
9. On July 14, 2023, an Initial Decision was issued in this matter.
10. The Complainant filed Exceptions to the Initial Decision on August 3, 2023.

11. Replies to Exceptions were filed by PECO on August 18, 2023.

12. On October 19, 2023, the Commission issued an Opinion and Order which held in abeyance consideration of the Exceptions and Replies to Exceptions and remanded the matter to the Office of Administrative Law Judge as deemed necessary.

13. On March 8, 2024, the Remand Hearing Notice was issued informing the parties that an initial call-in telephonic hearing on remand was scheduled in this matter on May 1, 2024, at 10:00 A.M.

14. The Remand Hearing Notice stated, “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.”

15. On May 1, 2024, the Complainant appeared *pro se* for the remand hearing. Tr. 97-98.

16. At the request of the parties, a recess was taken to allow the parties to engage in off-the-record settlement discussions with the presiding officer acting as settlement judge. Tr. 105-106, 109.

17. After approximately 13 minutes of discussion which did not culminate in a settlement, the remand hearing was reconvened. Tr. 110.

18. Approximately 15 minutes after the hearing reconvened, the Complainant stated, “I’m adjourning,” and disconnected from the hearing. Tr. 119.

19. The Complainant did not request a continuance or withdraw the Complaint before abandoning the remand hearing.

20. A recess was taken to allow the Complainant an opportunity to reconnect to the hearing. Tr. 119-120.

21. The Complainant did not appear for the hearing after a 7-minute recess. Tr. 5.

22. Upon resumption of the hearing, PECO moved to dismiss the Complaint with prejudice for failure to prosecute the Complaint. Tr. 13-14.

23. Complainant has not contacted the undersigned or the Office of Administrative Law Judge (OALJ) to explain why her failure to appear at the remand 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 this case, the March 8, 2024 Remand Hearing Notice scheduled a hearing on May 1, 2024, and included the telephone number to call, and the passcode to enter, for the parties to participate in the hearing. The same was true for the February 21, 2023, Initial Hearing Notice, which scheduled the April 12, 2023, hearing. Additionally, the Prehearing Order issued March 9, 2023, served on the Complainant 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 remand hearing and present evidence including the dismissal of the Complaint.

The Complainant appeared for the May 1, 2024 remand hearing and participated in the remand hearing for almost an hour. She then refused to further participate in the remand hearing and disconnected from the hearing line while the hearing was in process.

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 appearing for the hearing and refusing to proffer any evidence to support the Complaint, the Complainant has failed to meet her burden. The Complaint will be dismissed. *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 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.

In this case, the Respondent specifically made a motion to dismiss the Complaint with prejudice due to the Complainant's intentional action to discontinue her participation in the hearing. Tr. 121-122.

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 OALJ regarding Complainant's abrupt departure from the remand hearing. Therefore, I find that Complainant waived the opportunity to participate in a remand hearing on the matters raised in the Complaint and Complainant's absence was not unavoidable. Thus, Complainant did not meet her burden of proof.

Consequently, it is appropriate to dismiss Ms. Flowers' 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).

Accordingly, Respondent's Motion to dismiss the Complaint with prejudice will be granted.

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 due process rights of the Complainant have been fully protected in this proceeding. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).
3. As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).

4. The Complainant refused to participate in the remand hearing and refused to present any evidence; therefore, she failed to meet her burden of proving entitlement to 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 with prejudice the Formal Complaint filed by Vanee Flowers at Docket No. F-2023-3037961 is granted.

2. That the Formal Complaint of Vanee Flowers in Vanee Flowers v. PECO Energy Company at Docket No. F-2023-3037961 is dismissed, with prejudice.

3. That Docket No. F-2023-3037961 be marked closed.

Date: August 19, 2024

/s/
Arlene Ashton
Administrative Law Judge