

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nekisha Fuller	:	
	:	
v.	:	F-2024-3047145
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Darlene Davis Heep  
Administrative Law Judge

**INTRODUCTION**

This Decision grants the Respondent’s Motion to Dismiss for failure to prosecute because the Complainant failed to appear for the hearing.

**HISTORY OF THE PROCEEDING**

On February 21, 2024, Nekisha Fuller (Ms. Fuller or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission against PECO Energy Company (PECO or Respondent).<sup>1</sup> On the Complaint form, Ms. Fuller stated that the utility was threatening to or had shut off her service and that she would like a payment arrangement. She also sought review of all PECO bills issued to her in 2023.

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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. 3936646, which dismissed Complainant’s informal complaint. A timely BCS appeal is subject to de novo review. 52 Pa. Code § 56.173(a).

On March 26, 2024, Respondent PECO filed its Answer, denying that there are incorrect charges on the bills issued. PECO also stated that the Complainant had a balance of \$11,134.55 and that the Complainant has defaulted on several payment arrangements.

The Answer also stated that the Complainant's balance was comprised of customer assistance program (CAP) arrears and noted that 66 Pa.C.S. §1405(c) provides that, "(c)ustomer assistance program rates shall be timely paid and shall not be the subject of payment agreements negotiated or approved by the commission." Consequently, pursuant to 66 Pa.C.S. §1405(c), the Commission cannot give the Complainant a payment agreement on her CAP arrearage. PECO also stated in the Answer that on July 24, 2023, the Complainant received a Ten-Day Termination Notice effective on or after July 24, 2023, for a past due balance of \$9,677.16.

On March 28, 2024, a Hearing Notice was emailed to all parties,<sup>2</sup> setting an Initial Telephonic Hearing for May 16, 2024 starting at 10:00 a.m.

On April 19, 2024 a Prehearing Order was issued. The Prehearing Order was also emailed to all the parties. The Prehearing Order advised the parties of the hearing procedures and stated the date and time of the hearing and gave specific dial-in instructions.

The hearing began as scheduled on May 16, 2024 at 10:00 a.m. Khadijah Scott, Esquire represented PECO. The Complainant did not call in for the hearing. A recess was taken to allow the Complainant time to call into the hearing.

The hearing resumed at 10:15 a.m. The Complainant had not called in. Counsel for PECO moved that the Complaint be dismissed for failure to prosecute. The matter was taken under advisement. The Complainant had not called in when the hearing adjourned at 10:20 a.m.

The record closed as of May 22, 2024, when the 7-page transcript was received.

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<sup>2</sup> The Complainant selected email as her preferred method of service for receiving documents from the Commission. Complaint, p. 6.

## FINDINGS OF FACT

1. The Complainant is Nakeshia Fuller, a PECO customer in Philadelphia, Pennsylvania.
2. PECO Energy Company is the Respondent.
3. On February 21, 2024, the Complainant filed a Formal Complaint against PECO.
4. The Respondent filed an Answer on March 26, 2024.
5. On March 28, 2024, a Hearing Notice was issued to all parties, setting an Initial Call-In Telephonic Hearing for May 16, 2024, beginning at 10:00 a.m.
6. The Hearing Notice advised all parties:

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.

7. On April 19, 2024, a Prehearing Order was issued, which advised the Complainant of the procedures and the date and time of the hearing and stated:

**FAILURE TO APPEAR:** You may lose the case if you do not take part in this hearing and present evidence on the issues 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.

8. Counsel for PECO dialed in for the May 16, 2024 hearing at 10:00 a.m.

9. The Complainant was not present when the telephonic hearing began as scheduled on May 16, 2024.
10. A recess was taken to allow the Complainant time to call in to the hearing.
11. The hearing resumed at 10:15 a.m. and the Complainant had not called in to the hearing.
12. Counsel for PECO moved to dismiss the Complaint for failure to prosecute.
13. The Complainant had not called into the hearing by the time the hearing adjourned at 10:20 a.m.
14. On the Complaint form, Ms. Fuller selected email as the method by which she would receive all documents.
15. Both the Hearing Notice and Prehearing Order were sent to the Complainant to the email address that Ms. Fuller registered with the Commission.
16. None of the documents sent to the Complainant were returned to the Office of Administrative Law Judge (OALJ) as undeliverable.
17. Three weeks after the hearing date, on June 6, 2024, the Complainant called OALJ and spoke with a Legal Assistant and stated that she could not dial into the hearing and that she was waiting for the Commission to call her.

## DISCUSSION

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

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). Further, email service which is not indicated undeliverable is presumed to be received by the parties. *Skow v. Metro. Edison Co.*, Docket No. F-2023-3042228 (Final Order entered May 7, 2024) (*Skow*); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016) (*Morella*); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017).

A Hearing Notice and a Prehearing Order were emailed to the Complainant. The Prehearing Order and the Hearing Notice contained information regarding the date, time and how to call in for the hearing. These documents were served upon the Complainant and none of these documents were returned as undeliverable. It is therefore deemed that the Complainant received these documents and had notice of the date and time of the scheduled hearing. *Skow*; *Morella*.

As the Commission noted in *Strydio v. PPL Elec. Utils. 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-2017-2633043, p. 6 (Opinion and Order entered July 18, 2018) (*citing, Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered January 24, 2002)); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993). The Complainant was notified of the scheduled hearing and did not appear.

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). The Complainant called the Commission three weeks after the hearing date and stated that she was unable to dial into the hearing and also that she waited for the Commission to call her. These statements are contradictory. Given the significant delay in the Complainant contacting the Commission and the inconsistent reasons provided for her absence, I find the Complainant's failure to appear at the hearing was not unavoidable. Therefore, the Complainant has waived the opportunity to participate in the hearing by failing to appear. 52 Pa. Code § 5.245(a); *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995). However, because the Complainant is *pro se*, the dismissal will not be with prejudice.

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 entitlement to relief by a preponderance of the evidence. By failing to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden. The Complaint will be dismissed. *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 subject matter and the parties to this proceeding. 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. Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them. This due process requirement is satisfied when the parties are accorded notice and the opportunity to be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

5. After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will: 1) be deemed to have waived the opportunity to participate in the conference or hearing; 2) not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing; and 3) not be permitted to recall witnesses who were excused for further examination. 52 Pa. Code § 5.245(a).

6. The Complainant's due process rights have been fully protected. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Order entered Oct. 25, 1993); 52 Pa. Code § 5.245(a).

7. The Complainant failed to appear at the hearing and failed to carry her burden of proof in this proceeding. 66 Pa.C.S. § 332(a); 52 Pa. Code § 5.245(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PECO Energy Company to dismiss the Formal Complaint of Nekisha Fuller filed against PECO Energy Company at Docket No. F-2047145 is granted.
2. That the Formal Complaint filed by Nekisha Fuller in Nekisha Fuller v. PECO Energy Company at Docket No. F-2047145 is dismissed for failure to prosecute.
3. That the Secretary's Bureau should mark this matter closed.

Date: August 20, 2024

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/s/  
Darlene Heep  
Administrative Law Judge