

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17120**

Public Meeting held August 22, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman  
Kimberly Barrow, Vice Chair  
Ralph V. Yanora  
Kathryn L. Zerfuss  
John F. Coleman, Jr.

Nikisha Leach

C-2023-3042690

v.

PECO Energy Company

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of Nikisha Leach (Ms. Leach or

Complainant) filed on June 6, 2024,<sup>1</sup> to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Marta Guhl issued May 23, 2024, in the above-captioned proceeding. Replies to the Exceptions of the Complainant were received from PECO on June 17, 2024. For the reasons stated below, we shall deny the Exceptions of the Complainant and dismiss the Formal Complaint (Complaint).

## I. History of the Proceeding

On September 5, 2023, the Complainant filed a Formal Complaint (Complaint) against PECO Energy Company (PECO or the Respondent) with the Commission. In the Complaint, Ms. Leach indicated that PECO is threatening to shut off or had already shut off the electric service at the service address and the Complainant requested a payment arrangement on an arrearage of \$2,479. Complaint at 2, Answer at 2.

PECO filed an Answer admitting that the Complaint states that the Respondent is threatening to shut off utility service at Ms. Leach's address listed on the Complaint. Specifically, PECO admits that the Complainant received a ten-day termination notice effective on or after September 11, 2023 for a past due balance of \$2,213.<sup>2</sup> Answer at 2. The Respondent averred that, pursuant to 66 Pa.C.S. § 1406, the

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<sup>1</sup> Although the Complainant filed Exceptions with the Commission's Secretary's Bureau on June 6, 2024, the Exceptions did not contain a certificate of service or any other indication that the parties of record to the case were served. Because the Complainant is not represented by an attorney, the Commission's Secretary's Bureau served a copy of the Exceptions on PECO Energy Company (PECO or Respondent) on June 10, 2024. In order to avoid prejudice to either Party, pursuant to 52 Pa. Code § 5.535, PECO was given until June 20, 2024, to file Replies to Exceptions.

<sup>2</sup> PECO states that the Complainant's current balance is \$2,479 as of 09/01/2023. *See* Answer at 2, Exh. 1 at 3. PECO's Exhibit 1 shows the payment history on Ms. Leach's account for electric residential service including charges for electric usage and payments by the Complainant. *See* Answer at 2, Exh. 1 at 1-3.

Complainant has a delinquent balance on her account, for which PECO may terminate service. *Id.*; *see*, 66 Pa.C.S. § 1406. PECO also averred that the Complainant has had multiple payment arrangements<sup>3</sup> that Ms. Leach has failed to maintain. Answer at 2, Exh. 2 at 1. Pursuant to 66 Pa.C.S. § 1405(d), the Respondent states that the Complainant is not entitled to any additional payment agreements and that the Complaint should be dismissed. Answer at 3; *see*, 66 Pa.C.S. § 1405(d). Moreover, PECO states that the Complainant's bills and balance are correct. Answer at 3.

An Interim Order Setting Conference Between Parties was issued by the Commission on September 21, 2023, referring the matter to mediation. By Hearing Notice dated November 15, 2023, an initial telephonic hearing was scheduled for February 7, 2024, at 10:00 a.m., and the matter was assigned to the ALJ. The Hearing Notice advised the Parties of the date, time, and dial-in number for the scheduled hearing and warned of the consequences of failing to appear, which included the dismissal of the case if a Party is not present and prepared to go forward with the case when it is called. Hearing Notice at 1-2.

On November 21, 2023, the ALJ issued a Prehearing Order which reminded the Parties of the date, time, and dial-in number for the scheduled hearing and included instructions on how to call in for the hearing. Prehearing Order at 1. The Prehearing Order informed the Parties about the applicable procedural rules and guidelines for the proceeding, including the procedure to request a change of the scheduled hearing date. Furthermore, the Prehearing Order warned of the consequences of a Party failing to appear; specifically, that a Party may lose the case if it does not take part in the hearing and present evidence on the issue raised. Prehearing Order at 1.

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<sup>3</sup> PECO states that the Complainant is not entitled to a PUC ordered payment agreement as Exhibit 2 shows that the Complainant had a PUC-ordered payment arrangement in September 2022 as well as three company issued payment agreements. Answer at 2, Exh. 2 at 1.

The evidentiary hearing convened on February 7, 2024, as scheduled. Counsel for PECO was present along with one potential witness. The Complainant did not appear. The ALJ proceeded with the hearing and noted that the Complainant did not request a continuance or postponement of the hearing. Tr. at 4. When the hearing adjourned at 10:20 a.m., the Complainant still had not appeared or contacted the Office of Administrative Law Judge to indicate whether the Complainant would or would not appear. Counsel for PECO moved to dismiss the Complaint for failure to prosecute. Tr. at 4. The ALJ indicated that she would take the Respondent's motion under advisement. *Id.*

The record closed on February 27, 2024 upon receipt of the transcript by ALJ Guhl.

On May 23, 2024, the Commission issued the Initial Decision of ALJ Guhl, wherein she recommended that the Complaint be dismissed for failure of the Complainant to appear at the hearing and prosecute the Complaint. I.D. at 2, 7.

As noted, *supra*, the Complainant filed Exceptions on June 6, 2024. PECO filed its Reply to Exceptions on June 17, 2024.

## **II. Discussion**

### **A. Legal Standards**

#### **1. Due Process**

As an administrative agency of the Commonwealth, the Commission is required to provide due process to the parties appearing before it. Due process is satisfied when the parties are afforded notice and the opportunity to appear and be heard.

*Schneider v. Pa. PUC*, 479 A.2d 10, 15 (Pa. Cmwlth. 1984) (Schneider). The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *Montefiore Hospital Ass’n of Western Pennsylvania v. Pa. PUC*, 421 A.2d 481, 484 (Pa. Cmwlth. 1980).

The Commission is required to fix the time and place of a hearing in a complaint proceeding and to serve notice thereof upon the parties in interest. *See* 66 Pa.C.S. § 703(a)-(b). Service on interested persons is sufficient to provide notice. 52 Pa. Code § 5.201(a).

Once a hearing is scheduled and duly notified by the Commission, it is the responsibility of the parties to appear and participate in the hearing. *Mumma v. PPL Electric Utilities Corporation*, 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).

A party to a proceeding has the right to request a continuance of the hearing, which may be considered and granted by the presiding officer “only for good cause shown.” *See* 52 Pa. Code § 1.15(b). The party making the request must file a motion at least five days prior to the hearing date stating the facts on which the request is made, except that during a hearing, an oral request for hearing continuance may be made before the presiding officer in the hearing room. 52 Pa. Code § 1.15(b).

If a party fails to appear at a scheduled and duly notified hearing, the party will be deemed to have waived the opportunity to participate in a hearing in the matter. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a)-(b). This result is not applied to the party, however, if the presiding officer determines that the party’s failure to appear was “unavoidable” and the interests of the other party (or parties) and the public will not be “prejudiced” by permitting the reopening or further examination. 66 Pa.C.S. § 332(f);

52 Pa. Code § 5.245(a)-(b). Also, this result may not be applied if the presiding officer of the Commission determines that the complainant demonstrated a good faith attempt to attend the hearing. *See, e.g., Yomari Then v. Philadelphia Gas Works*, Docket No. F-2012-2318264 (Opinion and Order entered June 13, 2013); *see also, Windell C. Wiggins v. PECO Energy Company*, Docket No. C-2010-2190335 (Opinion and Order entered October 27, 2011).

The public interest is prejudiced by the wasteful use of the agency's and the respondent's time and resources in addressing a complaint. *See Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); *see also, e.g., Charles Nichols III v. Bell-Atlantic-Pennsylvania*, Docket No. C-00956667 (Opinion and Order entered August 4, 1995).

## **2. Burden of Proof**

As the party seeking affirmative relief from the Commission, the Complainant in this proceeding bears the burden of proof pursuant to Section 332(a) of the Code. 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant, as the party seeking relief, must show that PECO is responsible or accountable for the problem described in the Complaint. *Patterson v. The Bell Telephone Company of Pennsylvania*, 72 Pa. P.U.C. 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by PECO. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC*, 413 A.2d 1037 (Pa. 1980).

Upon the presentation by the Complainant of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence, to rebut the evidence of the Complainant, shifts to PECO. If the evidence presented by PECO is of co-equal weight, the Complainant has not satisfied the burden of proof. The Complainant now has to provide some additional evidence to rebut that of PECO. *Burleson v. Pa. PUC*, 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff'd*, 461 A.2d 1234 (Pa. 1983).

While the burden of persuasion may shift back and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001).

## **B. Initial Decision**

The ALJ made twelve Findings of Fact and reached seven Conclusions of Law. I.D. at 2-3; 6-7. We shall adopt and incorporate herein by reference the ALJ's Findings of Fact and Conclusions of Law, unless they are reversed or modified by this Opinion and Order, either expressly or by necessary implication.

In recommending that the Commission dismiss the Complaint, the ALJ found that Ms. Leach was unable to sustain her burden of proof because the Complainant failed to appear for the hearing and proffer any evidence to support her Complaint. I.D. at 7. The ALJ stated that the Commission sent a Hearing Notice to the Complainant and the ALJ issued a Prehearing Order, both served on the Complainant via eService which were not returned as undeliverable. I.D. at 4. Therefore, the ALJ presumed that the documents were received by the Complainant and that Ms. Leach had sufficient notice of the date and time and participation information for the February 7, 2024 hearing in this case. I.D. at 4.

Furthermore, the ALJ found that the Complainant did not appear for the hearing and had been advised, by the Hearing Notice and Prehearing Order, that the case could be dismissed for failure to call-in and participate in the hearing. The ALJ noted that both the Pennsylvania Public Utility Code (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 and shall not be permitted to later reopen the matter or be permitted to recall excused witnesses. I.D. at 5, 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

The ALJ also determined that a party who failed to appear at a hearing has the burden of explaining why her failure to appear was unavoidable. I.D. at 5; 66 Pa.C.S. § 332(a); *Herr v. West Penn Power Co.*, Docket No. C-2021-3028202 (Opinion and Order entered September 15, 2022). The ALJ further noted that when there are no facts in the record that the party's failure to appear was unavoidable, the Complaint should be dismissed. I.D. at 5 (citations omitted). The ALJ also noted that, as of the date of the issuance of the Initial Decision, there had been no communication to the Office of Administrative Law Judge including ALJ Guhl by the Complainant explaining why her failure to appear at the hearing was unavoidable. I.D. at 5.

The ALJ therefore concluded that the Complainant, by failing to participate and proffer any evidence to support her Complaint at the February 7, 2024 hearing, has failed to meet her burden of proof. I.D. at 6. The ALJ ultimately granted PECO's motion to dismiss the Complaint. *Id.*

### C. Exceptions and Reply to Exceptions

The Complainant's Exceptions<sup>4</sup> consist of a typed paragraph recognizing receipt of the Initial Decision that states she did not attend the hearing. Exc. at 1. The Complainant also notes that she did not receive a reminder regarding the hearing. *Id.* Ms. Leach further states that she is in financial hardship due to a series of medical and financial concerns with her family members. Exc. at 1. The Complainant indicates that she can afford her monthly utility service payments plus an extra \$100.00 toward the "back balance." *Id.* The Complainant further notes in her Exceptions that she does not qualify for "any programs that give you money towards your bills." Exc. at 1. The Exceptions were signed by the Complainant.

In its Reply Exceptions, PECO argues that the Complainant failed to appear for the February 7, 2024 hearing despite both the parties being provided a Hearing Notice and a Prehearing Order via the Commission's E-File subscription service. R. Exc. at 3. PECO points out the key paragraphs in the Commission's Hearing Notice and Prehearing Order noting how to participate in the hearing as well as what would occur if the Complainant failed to appear at the hearing. R. Exc. at 4.

PECO also argues, in its Reply Exceptions, that the Complainant did not allege that the ALJ made an error of law or abused her discretion in any manner. In addition, the Respondent submits that Ms. Leach did not allege that ALJ Guhl utilized an incorrect electronic mail address to notify her of the hearing date. Further, the Respondent claims that the Complainant did not set forth that PECO violated any

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<sup>5</sup> Section 5.533(b) of our Regulations requires that each exception be numbered and identify the finding of fact and conclusion of law to which exception is taken and cite to the relevant pages of the Initial Decision. *See* 52 Pa. Code § 5.533(b). Nevertheless, recognizing that the Complainant is appearing *pro se*, we will accept the Exceptions as filed, pursuant to Section 1.2(a) of our Regulations, and consider the merits.

regulation, statute or order. R. Exc. at 5. Thus, PECO concludes that the Complainant has failed to state any good cause of action that would warrant why the record should be opened and a further hearing should be granted. R. Exc. at 4.

PECO also claims that the Complainant's Exceptions merely attempt to litigate the facts of her case as to why she is eligible for a payment agreement before the Commission. R. Exc. at 4. The Respondent further submits that the Complainant states that she did not receive a reminder about the hearing. *Id.* PECO points out that it had forwarded its proposed hearing exhibits to the Complainant on January 24, 2024 specifically stating that the hearing was scheduled for February 7, 2024 at 10:00 a.m. PECO states that, even assuming *arguendo* the Complainant's statement to be true, the Respondent submits that Ms. Leach was reminded of the hearing two weeks prior to the hearing date by its communication. R. Exc. at 4, Exh. 1. PECO further argues that ALJ Guhl correctly determined that the Complainant did not meet her burden of proof and that the ALJ's decision to dismiss this case should be upheld. R. Exc. at 5.

#### **D. Disposition**

As a preliminary matter, we note that any argument or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

Where a party fails to appear at a hearing, the failure to appear is deemed to be a waiver of the right to present evidence to support claims in the complaint if the party was afforded due process, and the reason for failing to appear was not established as unavoidable. We also note that it is within the sound discretion of the ALJ to decide

whether a complainant's failure to appear was unavoidable and whether permitting a hearing would prejudice the public interest or the interest of the other party. *See* 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a), (b). Upon a complainant's failure to appear, it is for the ALJ to weigh whether that failure should be deemed the complainant's waiver of the opportunity to participate in a hearing in a complaint proceeding, pursuant to 66 Pa.C.S. § 331(d) (pertaining to authority of the ALJ as presiding officer). In so doing, the ALJ must, as a preliminary matter, ensure that the complainant has been afforded due process. The ALJ must ensure that notice and opportunity to be heard has been afforded, both in the proceeding in general and specifically, with respect to the hearing at which the Complainant has failed to appear. *See Schneider, Montefiore.*

On this point, we agree with the ALJ that the Complainant's due process rights to notice and opportunity to be heard were accommodated and preserved throughout the underlying proceeding. The Hearing Notice dated November 15, 2023, advised the Parties of the date, time, and dial-in number for the scheduled hearing and warned of the consequences of failing to appear:

**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.

Hearing Notice at 1 (emphasis in original).

In addition, the Prehearing Order issued by the ALJ on November 21, 2023, again reminded the Parties of the date, time, and dial-in number for the scheduled hearing. The Prehearing Order also gave a similar warning to the participants regarding

the consequences of failing to appear. Finally, the Prehearing Order gave specific instructions on how to participate in the hearing:

To participate in the hearing, **you must dial the toll-free number listed below. You will be prompted to enter a PIN number, which is also listed below. You will be asked to speak your name, press the # key, and then the telephone system will connect you to the hearing.** If you have any witnesses you want to have present during the hearing who are participating from a separate phone, you must provide them with the telephone number and PIN Number.

Prehearing Order at 1 (emphasis added).

On review, we concur with the ALJ's finding that both the Hearing Notice and the Prehearing Order were served by eservice on the Complainant, and neither was returned as undeliverable. The Hearing Notice and Prehearing Order advised the Parties of the date, time, and the *dial-in number* for the scheduled hearing. Importantly, each of these documents also specified that the Complainant could lose the case through dismissal as a consequence of failing to appear. In addition, the Complainant's Exceptions note that she received the Initial Decision of ALJ Guhl which was sent electronically to Ms. Leach at the email address on file further verifying that the Complainant was in receipt of the documents sent electronically by the Commission in this matter.

We find that the Complainant received proper notice and was reminded of the scheduled hearing date and given the dial-in number with instruction on how to participate in the hearing as stated in the previously mentioned Hearing Notice and Prehearing Order. We also agree that PECO's electronic submission of its exhibits to Ms. Leach in January 2024 for the upcoming hearing served as an additional reminder

that the hearing regarding her Complaint was scheduled for February 7, 2024 at 10:00 a.m.

Although Ms. Leach received adequate notice of the hearing and the subsequent instructions to participate, the Complainant failed to appear for the hearing and prosecute her Complaint, nor did she attempt to notify the ALJ of the inability to participate in the hearing on February 7, 2024. The Complainant also did not request a continuance from the ALJ at any time during the course of this proceeding. Therefore, we concur with ALJ Guhl that the Complainant's due process rights have been preserved and protected.

We further agree with the ALJ's finding that, having been provided notice and an opportunity to be heard but failing to appear and proffer any evidence to support the Complaint, the Complainant waived the right to present evidence in the proceeding and, therefore, failed to meet the required burden of proof. We agree with the ALJ's conclusion that the failure of the Complainant to appear at the scheduled hearing is unexcused, and that by failing to attend the hearing and present evidence on the issues raised, the Complainant failed to sustain her burden of proof.

For the reasons set forth above, we agree with the ALJ that the Complainant waived the opportunity to participate in the hearing by failing to appear. By failing to appear and offer evidence to support the Complaint, the Complainant has failed to meet the burden of proof that is placed on her under the Code to satisfy the request for relief. We further find that the Commission cannot grant a payment arrangement as requested by

Ms. Leach because the Complainant failed to appear at the scheduled hearing to present evidence whether an additional payment arrangement is permitted in this case.<sup>5</sup>

Consequently, the ALJ's recommendation to dismiss the Complaint,<sup>6</sup> is affirmed. Accordingly, the Complainant's Exceptions shall be denied.

### III. Conclusion

Upon review and consideration of the record in this proceeding, we shall deny the Exceptions of Nikisha Leach and adopt the ALJ's Initial Decision that dismisses the Complaint for failure of the Complainant to appear for the hearing and prosecute the Complaint, consistent with this Opinion and Order; **THEREFORE,**

#### **IT IS ORDERED:**

1. That the Exceptions of Nikisha Leach, filed on June 6, 2024, to the Initial Decision of Administrative Law Judge Marta Guhl are denied, consistent with this Opinion and Order.

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<sup>5</sup> In accordance with Section 1405(d) of the Code, absent a change in income, the Commission shall not establish or order a public utility to establish a second or subsequent payment arrangement if a customer has defaulted on a previous arrangement established by a Commission order or decision. 66 Pa.C.S. § 1405(d); See Answer at 2, Exh. 1 and 2.

<sup>6</sup> On April 20, 2023, the Commission adopted an order that determined it is inconsistent with due process to dismiss a formal complaint, with prejudice, in which a *pro se* complainant fails to appear at a hearing when the complainant has not affirmatively agreed to accept service via email. In addition, the Commission's order noted that there is no need to close the door to this venue to *pro se* complainants unless record evidence shows that they are abusing the Commission's administrative process to avoid paying their utility bills. See *Hoyt v. Columbia Gas of Pa., Inc.*, Docket No. F-2022-3032680 (Opinion and Order entered April 20, 2023).

2. That the Initial Decision of Administrative Law Judge Marta Guhl, issued on May 23, 2024, is adopted, consistent with this Opinion and Order.

3. That the Formal Complaint filed by Nikisha Leach on September 5, 2023, against PECO Energy Company at Docket No. C-2023-3042690, is denied and dismissed, consistent with this Opinion and Order.

4. That this proceeding at Docket No. C-2023-3042690, be marked closed.

**BY THE COMMISSION,**



Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: August 22, 2024

ORDER ENTERED: August 22, 2024