

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Anna Irizarry	:	
	:	
v.	:	F-2024-3045380
	:	
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 December 14, 2023 Anna Irizzary (Ms. Irizzary or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission against PECO Energy Company (PECO or Respondent). On the Complaint form, Ms. Irizzary stated that she does not want to be on budget billing and that she would like a payment arrangement. This is an appeal of a Bureau of Consumer Services decision, BCS # 3955333. A timely BCS appeal is subject to de novo review. 52 Pa. Code § 56.173(a).

On January 29, 2024, Respondent PECO filed its Answer.¹ In the Answer, PECO asserted that the complainant is not overcharged in budget billing and that such billing is authorized

¹ The Complaint was served on PECO on January 11, 2024.

under its tariff. The company also averred that the Complainant was previously given a payment arrangement by the Commission.

On January 31, 2024, an Interim Order Setting Conference Between Parties was issued. The parties could not reach a settlement and by order dated March 20, 2024, a hearing was set for May 23, 2024. A Prehearing Order was issued on April 2, 2024.

The hearing began as scheduled on May 23, 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 about 10:20 a.m.

The record closed as of June 4, 2024, when the 5-page transcript was received.

FINDINGS OF FACT

1. The Complainant is Anna Irizarry, a PECO customer in Philadelphia, Pennsylvania.
2. PECO Energy Company is the Respondent.
3. On December 14, 2023, the Complainant filed a Formal Complaint against PECO.
4. The Respondent filed an Answer on January 29, 2024.

5. On March 20, 2024, a Hearing Notice was issued to all parties, setting an Initial Call-In Telephonic Hearing for May 23, 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 2, 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 23, 2024 hearing at 10:00 a.m.

9. The Complainant was not present when the telephonic hearing began as scheduled on May 23, 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 when the hearing adjourned at 10:20 a.m.

14. On the Complaint form, Ms. Irizarry selected email as the method by which she would receive all documents.

15. Both the Hearing Notice and Prehearing Order were served on the Complainant to the email address that Ms. Irizarry 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. The Complainant has not contacted the Commission to explain why her failure to appear at the hearing was unavoidable.

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, electronic 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 (Final Order entered Jan. 31, 2017) (*Morella*); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Apr. 7, 2017).

A Hearing Notice and a Pre-hearing Order were sent to the Complainant. The Pre-hearing 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.*, Docket No. C-2017-2633043, p. 6 (Opinion and Order entered July 18, 2018), "[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," (citing, *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered Jan. 24, 2002)); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993).

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. *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).

The Complainant was notified of the scheduled hearing and did not appear. To date, there has been no communication to the Office of Administrative Law Judge or me by, or on behalf of, Complainant explaining why Complainant's failure to appear at the hearing was unavoidable. 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.*, 1995 Pa.P.U.C. LEXIS 159 (Opinion and Order entered Dec. 26, 1995).

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. 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).

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 (Opinion and Order entered Oct. 25, 1993).

7. The Complainant failed to appear and failed to carry 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 Anna Irizarry filed against PECO Energy Company at Docket No. F-2024-3045380 is granted.

2. That the Formal Complaint filed by Anna Irizarry in Anna Irizarry v. PECO Energy Company at Docket No. F-2024-3045380 is dismissed for failure to prosecute.

3. That the Secretary's Bureau should mark this matter closed.

Date: August 28, 2024

/s/
Darlene Heep
Administrative Law Judge