

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Billy Slater	:	
	:	
v.	:	C-2024-3045912
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Marta Guhl  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Formal Complaint of Billy Slater against PECO Energy Company because he failed to appear for his hearing and prosecute his Complaint.

**HISTORY OF THE PROCEEDING**

On January 9, 2024, Billy Slater (Complainant or Mr. Slater) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO or Respondent), indicating that there were incorrect charges on his bills and requesting a payment arrangement.

On February 19, 2024,<sup>1</sup> Respondent filed an Answer denying the material allegations of the Complaint.

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<sup>1</sup> The Complaint was served on the Respondent by the Secretary's Bureau on January 31, 2024.

On April 1, 2024, the Commission issued an Initial Call-In Telephonic Hearing Notice, and the matter was scheduled for hearing on May 17, 2024, at 10:00 a.m. The case was assigned to me. The Notice contained the following information:

**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.

I issued a Prehearing Order on May 6, 2024. The Prehearing Order directed the parties to comply with various procedural requirements and indicated how to request a change in the hearing date. It also contained the same warning that was found in the Hearing Notice.<sup>2</sup>

The hearing began on May 17, 2024, as scheduled. Counsel for PECO was present with a witness and was prepared to proceed. The Complainant failed to call into the hearing.

No witnesses were presented, and no exhibits were introduced into the record. Counsel for PECO moved that the Complaint be dismissed for lack of prosecution pursuant to 52 Pa. Code § 5.245. In accordance with Commission policy, I am granting the Motion.

The record closed on June 3, 2024, upon my receipt of the transcript.

#### FINDINGS OF FACT

1. The Complainant is Billy Slater.
2. The Respondent is PECO Energy Company.

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<sup>2</sup> On his Formal Complaint form, the Complainant selected First-Class Mail delivery for service of documents from the Commission. Complaint, p. 6. There was no indication that the Hearing Notice was returned as undeliverable. However, it appears that the Prehearing Order was returned as undeliverable on May 21, 2024. There is no indication that the Complainant had contacted the Commission to change or update his mailing address.

3. On January 9, 2024, Mr. Slater filed a Complaint with the Commission against the Respondent.
4. On February 19, 2024, the Respondent filed an Answer to the Complaint.
5. On April 1, 2024, the Commission issued an Initial Call-In Telephonic Hearing Notice, and the matter was scheduled for hearing on May 17, 2024, at 10:00 a.m.
6. On May 6, 2024, a Prehearing Order was sent to all parties containing, *inter alia*, a warning of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing.
7. Both the Hearing Notices and Prehearing Order contained the warning that failing to appear could result in the case being dismissed with prejudice.
8. Both the Hearing Notices and Prehearing Order were served on the Complainant via First-Class Mail to the address listed on the Formal Complaint form, which the Complainant indicated on his Formal Complaint form as his accepted form of service.
9. The Hearing Notice sent to the Complainant was not returned as being undeliverable.
10. The Prehearing Order was returned as undeliverable on May 21, 2024.
11. The Complainant failed to appear at the May 17, 2024, hearing.
12. The Complainant did not settle or withdraw this Complaint prior to the scheduled hearing date or obtain a continuance.

13. The Complainant did not contact the Commission to change or update his mailing address or other contact information.

14. The Complainant has not contacted the Commission to explain why his 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). “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).

Administrative agencies, like the Public Utility Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. Pub. Util. Comm’n.*, 479 A.2d 10 (Pa. Cmwlt. 1984).

The Commission served notice of the May 17, 2024, hearing in this case to the Complainant on April 1, 2024, via First-Class Mail which the Complainant accepts. The notice informed the parties of the date and time of the hearing, as well as how to call in for the hearing. The Hearing Notice was not returned as being undeliverable.

In addition, I issued a prior Prehearing Order dated May 6, 2024, which, *inter alia*, warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to appear and participate in the hearing. The Prehearing Order, which was also served on the Complainant via First-Class Mail to the address Complainant provided in his Formal Complaint, was returned as undeliverable on May 21, 2024. The Complainant did not contact the Commission to update, correct or change his mailing address or other contact

information.<sup>3</sup> Accordingly, I must presume that the Hearing Notice, which was sent in the ordinary course of business, was received by the Complainant. *Berkowitz v. Mayflower Sec., Inc.*, 317 A.2d 584 (Pa. 1974); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. 1997); *Judge v. Celina Mut. Ins. Co.*, 449 A.2d 658 (Pa. Super. 1982). Therefore, the Complainant is deemed to have received the Hearing Notice and had sufficient notice of the day and time of the scheduled hearing. Neither the Complainant nor a representative licensed to practice law in this Commonwealth appeared at the hearing on his behalf. To date, there is no further information about the Complainant regarding this hearing. His failure to appear was not unavoidable.

Once notice of a hearing and the opportunity to be heard have been provided, it is the responsibility of the parties to appear and participate in the hearing. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered Oct. 25, 1993). There is nothing to indicate that the Hearing Notice was not received by the Complainant.

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).

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 by a preponderance of the evidence that

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<sup>3</sup> “It is the duty of a party to apprise the Commission promptly of changes to the party's current address.” 52 Pa. Code § 1.53(d).

he is entitled to his requested relief. The Complainant did not appear for the hearing scheduled for May 17, 2024. Thus, by his failure to appear, the Complainant did not meet his burden of proof.

Consequently, it is appropriate to grant PECO's Motion and to dismiss Mr. Slater's Complaint. However, since the prehearing order was returned as undeliverable, this matter will be dismissed without prejudice.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of the dispute. 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. The Commission is required to provide due process to the parties appearing before it. 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).

5. Notice sent via First-Class mail to a party's registered address with no notification that service failed to be delivered to that address is presumed to have been received. *Berkowitz v. Mayflower Sec., Inc.*, 317 A.2d 584 (Pa. 1974); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. 1997); *Judge v. Celina Mut. Ins. Co.*, 449 A.2d 658 (Pa. Super. 1982).

6. The due process rights of the Complainant have been fully protected. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

7. 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).

8. By failing to appear for the hearing and proffer any evidence to support the Complaint, the Complainant has failed to meet his burden of proving that he is entitled to the relief that he seeks from the Commission. 66 Pa.C.S. § 332(a).

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PECO Energy Company to dismiss the Formal Complaint filed by Billy Slater at Docket No. C-2024-3045912 is granted.

2. That the Formal Complaint of Billy Slater in *Billy Slater v. PECO Energy Company* at Docket No. C-2024-3045912 is dismissed.

3. That Docket No. C-2024-3045912 be marked closed.

Date: August 28, 2024

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Marta Guhl  
Administrative Law Judge