

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lucy and Cassandra Scipio	:	
	:	
v.	:	C-2024-3045949
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
F. Joseph Brady  
Administrative Law Judge

**INTRODUCTION**

This Decision dismisses the Formal Complaint of Lucy and Cassandra Scipio for their failure to appear for the hearing and prosecute the Complaint.

**HISTORY OF THE PROCEEDING**

On January 31, 2024, Lucy and Cassandra Scipio (Complainants) eFiled<sup>1</sup> a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (Respondent or PECO) alleging incorrect charges on their electric bills.

---

<sup>1</sup> The Complainants utilized the Commission’s eFiling service to electronically file the Formal Complaint. When the Complainants registered for an eFiling account with the Commission, the Complainants also registered an email address in order to be served Commission documents via the Commission’s eService process.

On February 21, 2024, the Respondent filed an Answer in which it denied the material allegations of fact and conclusions of law in the Complaint. The Respondent requested that the Complaint be dismissed.

By Initial Call-In Telephonic Hearing Notice dated April 23, 2024, a telephonic hearing was scheduled for June 25, 2024, and the matter was assigned to me. The Hearing Notice provided the parties with the Toll-Free Bridge Number and the PIN to call and participate in the telephonic hearing. The Hearing Notice further stated as follows:

**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.

**CONTINUANCES.** You may request a continuance of the hearing if you have a good reason. All continuances will be granted only for good cause. To request a continuance, you must submit a written request (a “motion”) at least five (5) days before the hearing. Your motion should include: 1) The case name, number, and hearing date; 2) The reason for the request; and 3) Whether the other party agrees (or if you do not know).

On May 30, 2024, a Prehearing Order was served on the parties which reminded them of the date and time of the hearing. The Prehearing Order warned against possible dismissal for failure to appear. Additionally, the Prehearing Order informed the parties about the applicable procedural rules, and again included the procedure to follow for hearing continuances.

The Hearing Notice and Prehearing Order were eServed to the Complainants at the Complainants’ request and in the ordinary course of the

Commission's business to the email address provided and registered with the Commission by the Complainants.<sup>2</sup> Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.

On June 25, 2024, the hearing convened as scheduled. Khadijah Scott, Esquire, appeared on behalf of PECO and was ready to proceed. The Complainants were not present to start the hearing. After a short recess to allow time for the Complainants to appear, the hearing proceeded in the Complainants' absence. No testimony was taken, and no exhibits were introduced into the record. At the hearing, the Respondent moved to dismiss the Complaint for the Complainants' failure to appear and prosecute. I took this motion under advisement.

On June 26, 2024, Cassandra Scipio submitted a letter via facsimile to my attention that stated the reason she missed the hearing was because "[she] forgot, and [she] was very tired." A copy of the letter was forwarded to PECO. PECO objected to the rescheduling of the hearing stating the Complainants have not expressed "good cause" for missing the hearing.

The record closed on July 16, 2024, upon the filing of the transcript with the Commission.

#### FINDINGS OF FACT

1. The Complainants are Lucy and Cassandra Scipio.
2. The Respondent is PECO Energy Company.

---

<sup>2</sup> *Supra, n. 1.*

3. On January 31, 2024, the Complainants filed a Formal Complaint against the Respondent.

4. On February 21, 2024, the Respondent filed an Answer to the Complaint.

5. On April 23, 2024, a Call-In Telephone Hearing Notice was issued scheduling an initial telephonic hearing on June 25, 2024, at 10:00 a.m.

6. On May 30, 2024, a Prehearing Order was issued providing additional information to the parties regarding the hearing.

7. The Hearing Notice and Prehearing Order were eServed to Complainant at the Complainant's request and in the ordinary course of the Commission's business to the email address provided and registered with the Commission by the Complainant.

8. Both the Hearing Notice and Prehearing Order provided the parties with the toll-free bridge telephone number and PIN to call and participate in the hearing, and, *inter alia*, the procedure for requesting a continuance and the possible consequences of failing to appear at the hearing.

9. Neither the Hearing Notice nor the Prehearing Order were returned to the Commission as undeliverable.

10. The Complainants failed to appear and participate in the scheduled telephonic hearing on June 25, 2024. Tr. 3.

11. Counsel for the Respondent was present and prepared to proceed at the June 25, 2024, hearing. Tr. 3-4.

12. Complainant Cassandra Scipio's expressed reasons for missing the hearing were that she forgot and was very tired.

13. Complainant Lucy Scipio has not contacted the Commission to explain why her failure to appear at the 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). This due process requirement is satisfied when the parties are provided notice and the opportunity to be heard. *Id.*

The record shows that the Complainants were provided notice and the opportunity to be heard. On April 23, 2024, the Complainants were served a Hearing Notice which advised the parties of the date and time of the hearing, and how to participate. On May 30, 2024, a Prehearing Order was issued providing additional information to the parties regarding the hearing. Both the Hearing Notice and the Prehearing Order advised the Complainants that the case could be dismissed if the Complainants did not call in and participate in the hearing.

The Hearing Notice and Prehearing Order were eServed on the Complainants at the email address that the Complainants provided and registered with the Commission. None were returned as undeliverable. Accordingly, I must presume that these documents, which were sent in the ordinary course of business, were received by the Complainants. *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered

Dec. 19, 2019); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Jan. 27, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Nov. 16, 2016).

Once a hearing is scheduled and the parties are duly notified by the Commission, it is the responsibility of the parties to appear and participate in the hearing. *Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered Jan. 28, 2002). Both the Public Utility 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. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a). However, these provisions in the Code and in the Commission's regulations do not apply if the presiding officer determines that the party's failure to appear at the hearing was unavoidable and that the interests of the other parties and of the public would not be prejudiced by permitting the reopening or further examination. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(b).

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 Complainants failed to appear for the hearing despite receiving notice and despite the undersigned allowing additional time for the Complainants to appear. Subsequently, Cassandra Scipio submitted a letter stating the reason she missed the hearing was because “[she] forgot, and [she] was very tired.” The Pennsylvania Commonwealth Court has made it clear that in administrative hearings, “a party's own negligence is not sufficient good cause as a matter of law for failing to appear at a ... hearing.” *Eat ‘N Park Hospitality Group, Inc. v. Unemployment Compensation Board of Review*, 970 A.2d 492, 494 (Pa.Cmwlth. 2008). I do not find that being tired and forgetting are “unavoidable” reasons for failing to appear at a hearing. Complainant Lucy Scipio has not contacted the Commission to explain why her failure to appear at the hearing was unavoidable. Additionally, the interests of PECO and the public would be prejudiced by the additional time and expense of rescheduling hearings simply because a complainant is too tired to appear the first time. Consequently, I find the Complainants waived the opportunity to participate in a hearing on the matters raised in the Complaint, the Complainants’ absence was not unavoidable, and the Complaint should be dismissed.

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). To establish a sufficient case and satisfy the burden of proof, the complainant must show that the respondent public utility is responsible or accountable for the problem described in the complaint. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa.P.U.C. 300 (1976). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600 (Pa. Cmwlth. 1990). A preponderance of the evidence is established by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

As the proponent of any request for relief, the Complainants bear the burden of proof. By failing to participate and proffer any evidence to support the

Complaint, the Complainants have failed to meet this burden. Thus, it is appropriate to dismiss the Complaint. *Brown v. PECO Energy Co.*, Docket No. C-2019-3009486 (Opinion and Order entered Apr. 22, 2022); *Williams v. PECO Energy Co.*, Docket No. C-2018-300734 (Opinion and Order entered Mar. 14, 2019) (citing *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995)).

Accordingly, the Respondent's Motion to Dismiss will be granted.

### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa.C.S. § 701.

2. The Commission is required to provide due process to the parties appearing before them; 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).

3. The Complainants received notice of the hearing. *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered Dec. 19, 2019); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Apr. 7, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017).

4. 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. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

5. If there are no facts in the record that a party's failure to appear at a hearing 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).

6. The Complainants' due process rights have been fully protected and the Complainants' failure to appear was not unavoidable. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

7. As the party seeking relief, the Complainants bear 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).

8. By failing to participate in the hearing and proffer any evidence to support the complaint, the Complainants have failed to meet the burden of proof. 66 Pa.C.S. § 332(a).

## ORDER

THEREFORE,

IT IS ORDERED:

1. That PECO Energy Company's Motion to Dismiss the Formal Complaint of Lucy and Cassandra Scipio at Docket Number C-2024-3045949 is granted.

