

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Alphonso Wheeler	:	
	:	
v.	:	F-2023-3044775
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Arlene Ashton  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision denies the Formal Complaint of Alphonso Wheeler for the failure to appear for the scheduled hearing and prosecute his Formal Complaint despite having notice and an opportunity to be heard

**HISTORY OF THE PROCEEDING**

On November 27, 2023, Alphonso Wheeler (Complainant or Mr. Wheeler) filed a Formal Complaint (Complaint) in this matter against PECO Energy Company (Respondent or PECO).<sup>1</sup> In the Complaint, Mr. Wheeler alleged that there were incorrect

---

<sup>1</sup> The Complaint is a timely appeal from the determination of the Commission's Bureau of Consumer Services (BCS), at BCS No. 3913230, which dismissed Complainant's informal complaint. A timely BCS appeal is subject to de novo review. 52 Pa. Code § 56.173(a).

charges on his bill for electric service and that PECO was threatening to shut off his service. He also requested a payment agreement.

On December 22, 2023, PECO filed a Certificate of Satisfaction, indicating that the issues raised in the Complaint had been satisfied and that the Complainant had acknowledged satisfaction to PECO.

On January 11, 2024, PECO filed a Withdrawal of Certificate of Satisfaction, indicating that it wished to withdraw the Certificate of Satisfaction filed on December 22, 2023.

On January 11, 2024, PECO filed an Answer (Answer) to the Complaint in which it denied the material allegations of fact and conclusions of law found in the Complaint.

On January 18, 2024, an Initial Telephonic Hearing Notice (“Hearing Notice”) was issued establishing an initial telephonic hearing for this matter for March 13, 2024 at 10:00 a.m. and assigning me as the presiding officer. In anticipation of that hearing, a Prehearing Order was issued on January 30, 2024, setting forth various rules that would govern that proceeding. Consistent with the Complainant’s selection of the preferred method of service provided in the Complaint, the Hearing Notice and the Prehearing Order were served on Mr. Wheeler via U.S. First-Class Mail. Complaint ¶ 9. As a courtesy to the Complainant, a copy of the Hearing Notice and the Prehearing Order were also sent to Mr. Wheeler via email using the email address provided on the complaint form.<sup>2</sup>

---

<sup>2</sup> All Hearing Notices and Orders issued in this matter were served on the Complainant in the same manner.

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

On March 11, 2024, PECO filed a motion requesting a two-week continuance of the hearing scheduled for March 13, 2024 due to the unavailability of its witness. In the motion, PECO indicated that it had informed Mr. Wheeler that it would file a Motion for continuance and that the Complainant does not object to the request.

On March 12, 2024, I issued an Order granting PECO's motion for continuance. Also on March 12, 2024, a Cancelled/Rescheduled Initial Telephonic Hearing Notice ("Second Hearing Notice") was issued establishing an initial telephonic hearing for this matter for May 7, 2024, at 10:00 a.m.

The Second Hearing Notice was not returned to the Commission as undeliverable.

On May 7, 2024, the hearing convened, as scheduled. Ms. Khadijah Scott, Esquire, appeared on behalf of PECO, along with a witness and was prepared to proceed with the hearing. A court reporter was also present. The Complainant did not appear; however, shortly before the scheduled start of the hearing, he sent an email requesting a continuance until May 9, 2024, indicating that he works overnight and would not be "at his best today." OALJ staff contacted the Complainant and asked him to join the hearing so that he could put his request on the record. Tr. 2-3. After a brief recess, Mr. Wheeler joined the teleconference. He was informed that his request for a continuance would be granted and a discussion concerning the parties' availability took place and the parties were advised that the hearing would be rescheduled to a mutually convenient date. Tr. 4-8. No testimony was taken, and no exhibits were introduced for the record.

On May 17, 2024, a Cancelled / Rescheduled Initial Telephonic Hearing Notice (“Third Hearing Notice”) was issued establishing a telephonic hearing for this matter for July 26, 2024, at 1:00 p.m. The Third Hearing Notice was served on the Complainant via U.S. First-Class Mail and emailed to him.

The Third Hearing Notice was not returned to the Commission as undeliverable.

In anticipation of the July 26, 2024 hearing, a Prehearing Order was issued on July 19, 2024, reiterating the various rules that would govern that proceeding.

The July 19, 2024 Prehearing Order was not returned to the Commission as undeliverable.

On July 26, 2024, the hearing convened, as scheduled. Ms. Khadijah Scott, Esquire, appeared on behalf of PECO, along with a witness and was prepared to proceed with the hearing. A court reporter was also present. The Complainant did not appear. Tr. 11.

After a brief recess to allow time for the Complainant to appear, the hearing proceeded in the Complainant’s absence. Tr. 11- 12. No testimony was taken, and no exhibits were introduced into the record. At the hearing, the Respondent moved to dismiss the Complaint for the Complainant’s failure to appear and prosecute. Tr. 13. I took PECO’s motion under advisement.

The Complainant has not contacted the Commission to explain why his failure to appear at the hearing was unavoidable.

The record closed on August 19, 2024, upon the filing of the transcript with the Commission.

### FINDINGS OF FACT

1. The Complainant is Alphonso Wheeler.
2. The Respondent is PECO Energy Company.
3. On November 27, 2023, the Complainant filed a Formal Complaint against the Respondent.
4. On January 11, 2024, the Respondent filed an Answer to the Complaint.
5. On January 18, 2024, an Initial Telephonic Hearing Notice was issued establishing an initial telephonic hearing for this matter for March 13, 2024 at 10:00 a.m.
6. On January 30, 2024, a Prehearing Order was issued, setting forth various rules that would govern that proceeding.
7. On March 12, 2024, a Cancelled/Rescheduled Initial Telephonic Hearing Notice was issued establishing an initial telephonic hearing for this matter for May 7, 2024 at 10:00 a.m.
8. On May 17, 2024, a Cancelled/Rescheduled Initial Telephonic Hearing Notice was served on the Complainant establishing a telephonic hearing for this matter for July 26, 2024 at 1:00 p.m.

9. On July 19, 2024 hearing, a second Prehearing Order was served on the Complainant providing additional information to the parties regarding the hearing.

10. On July 26, 2024, the hearing convened as scheduled. Tr. 11.

11. The Complainant did not appear at the July 26, 2024 hearing. Tr. 14.

12. All hearing Notices and Prehearing Orders were served to the Complainant via U.S. First-Class Mail in the ordinary course of the Commission's business to the address provided by the Complainant.

13. All hearing Notices and Prehearing Orders 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.

14. None of the documents served on Complainant were returned to the Commission as undeliverable.

15. The Complainant failed to appear and participate in the scheduled telephonic hearing on July 26, 2024. Tr. 13.

16. Counsel for the Respondent was present and prepared to proceed at the July 26, 2024, hearing. Tr. 11.

17. The Complainant has not contacted the Commission to explain why his 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 Complainant was provided notice and the opportunity to be heard. On March 18, 2024, the Complainant was served a Hearing Notice which advised the parties of the date and time of the hearing, and how to participate. On March 29, 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 Complainant that the case could be dismissed if the Complainant did not call in and participate in the hearing.

The Hearing Notices and Prehearing Orders were all served by U.S. First-Class Mail to the address provided by the Complainant on the complaint form. None of those documents were returned as being undeliverable. Accordingly, it must be presumed that this mail was received by 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).

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 Complainant failed to appear for the hearing despite receiving notice and despite the undersigned allowing additional time for the Complainant to appear. To date, there has been no communication with the OALJ or me by, or on behalf of, the Complainant explaining why the Complainant's failure to appear at the hearing was unavoidable. Consequently, I find the Complainant waived the opportunity to participate in a hearing on the matters raised in the Complaint, the Complainant's 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 Complainant bears the burden of proof. By failing to participate and proffer any evidence to support the Complaint, the Complainant has 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. Notice mailed via U.S. First-Class Mail to a party and not returned to the Commission as undeliverable is presumed 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).

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 Complainant's due process rights have been fully protected and Complainant's 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 Complainant bears 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).

