

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Margaret Thompson	:	
	:	
v.	:	C-2024-3048403
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Decision dismisses the Formal Complaint of Margaret Thompson because she failed to appear at the scheduled hearing and prosecute her Formal Complaint.

HISTORY OF THE PROCEEDING

On April 4, 2024, Margaret Thompson (Ms. Thompson or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO, Company, or Respondent) alleging that there are incorrect charges on her bills from PECO. In particular, Ms. Thompson alleges that PECO failed to refund an extra payment that was made on July 17, 2024. As relief, the Complainant requests that the Commission order PECO to rectify the situation and to stop double billing her.

On May 13, 2024, PECO filed an Answer denying all material allegations of fact and conclusions of law in the Complaint

By Interim Order issued on May 14, 2024, Chief Administrative Law Judge, Charles E. Rainey Jr., set the matter for resolution conference. The parties were unable to reach a resolution of the matter.

An Initial Call-in Telephone Hearing Notice dated July 17, 2024, notified the parties that an initial call-in telephone hearing was scheduled on September 19, 2024, at 10:00 a.m.

On August 14, 2024, I issued a Prehearing Order. The Prehearing Order directed the parties to comply with various procedural requirements, reminded them of the time and date of the hearing, provided instructions for calling in to the hearing, and warned in bold type: **“You may lose the case if you do not take part in this hearing and present evidence on the issues raised.”**

The Hearing Notice and the Prehearing Order were served by U.S. First-Class Mail upon the Complainant at the addresses that she provided to the Commission.¹ Neither the Hearing Notice nor the Prehearing Order were returned as undeliverable.

The hearing convened as scheduled on September 19, 2024. Khadijah Scott, Esq. appeared representing the Respondent. The Complainant failed to call in. The Complainant was given an additional 15 minutes to call in but failed to do so.

¹ In the Formal Complaint form, the Complainant agreed to receive all documents by First-Class Mail at the address she provided on the form. Complaint ¶ 9.

At the hearing, counsel for PECO moved that the Complaint be dismissed for lack of prosecution pursuant to 52 Pa. Code § 5.245.

The record in this matter closed on October 3, 2024, upon receipt of the hearing transcript.

FINDINGS OF FACT

1. The Complainant is Margaret Thompson.
2. The Respondent is PECO Energy Company.
3. On April 4, 2024, Ms. Thompson filed a Formal Complaint alleging that there are incorrect charges on her bills from PECO.
4. As relief, the Complainant requests that the Commission order PECO to rectify the situation and to stop double billing her.
5. On May 13, 2024, PECO filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.
6. An Initial Call-in Telephone Hearing Notice dated July 17, 2024, notified the parties that an initial call-in telephone hearing was scheduled on September 19, 2024, at 10:00 a.m.
7. The Hearing Notice stated, “You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised.”

8. A Prehearing Order dated August 14, 2024, directed the parties to comply with various procedural requirements, reminded them of the time and date of the hearing, provided instructions for calling in to the hearing, and warned in bold type: **“You may lose the case if you do not take part in this hearing and present evidence on the issues raised.”**

9. The Hearing Notice and the Prehearing Order were served by U.S. First-Class Mail upon the Complainant at the address that she provided to the Commission. Neither the Hearing Notice nor the Prehearing Order were returned as undeliverable.

10. The Complainant failed to appear at the September 19, 2024, hearing.

11. The Complainant did not request a continuance of the September 19, 2024, hearing, withdraw the Complaint, or otherwise notify 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, 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. Cmwlth. 1984). Notice served to a party with no notification that service failed is presumed received. *Berkowitz v. Mayflower Sec., Inc.*, 317 A.2d 584 (Pa. 1974) (*Berkowitz*); *Meierdierck v. Miller*, 147

A.2d 406 (Pa. 1959) (*Meierdierck*); *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. 1997) (*Samaras*); *Judge v. Celina Mut. Ins. Co.*, 449 A.2d 658 (Pa. Super. 1982) (*Judge*).

The Hearing Notice and the Prehearing Order were served by U.S. First-Class Mail upon the Complainant at the addresses that she provided to the Commission. Neither one was returned as undeliverable. It is therefore deemed that the Complainant had notice of the date and time and participation information for the September 19, 2024 hearing. *Berkowitz; Meierdierck; Samaras; Judge*.

As the Commission noted in *Strydio v. PPL Electric Utilities Corp.*, Docket No. C-2017-2633043 at 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 Complainant was notified of the schedule for the hearing and did not appear for the hearing. Additionally, the Hearing Notice and the Prehearing Order advised the Complainant that the case could be dismissed for failure to call-in and participate in the hearing. 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). Thus, the Complainant has waived the opportunity to participate in the hearing by failing to appear. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a); *Jefferson v. PECO Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995).

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. Metro. Edison 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. Metro. Edison Co.*, Docket No. C-2018-3000734 (Opinion and Order entered Mar. 14, 2019); *Jefferson v. PECO 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). Therefore, the Complaint will be dismissed.

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. By failing to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden. Consequently, the Complaint will be dismissed on this basis as well. *Jefferson v. PECO 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 of and the parties to this proceeding. 66 Pa.C.S. § 701.
2. The Complainant received notice of the hearing. *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).

3. The due process rights of the Complainant have been fully protected in this proceeding and Complainant's failure to appear was not unavoidable. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984); 52 Pa. Code § 5.245(a).

4. As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).

5. The Complainant did not participate in the hearing, failed to appear for the hearing, did not present any evidence and, therefore, failed to meet the Complainant's burden of proving eligibility for the relief sought from the Commission. 66 Pa.C.S. § 332(a).

6. 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. Metro. Edison 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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PECO Energy Company to dismiss the Formal Complaint filed by Margaret Thompson at Docket No. C-2024-3048403 is granted.

