

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tauheed Davenport	:	
	:	
v.	:	F-2024-3049802
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Alphonso Arnold III
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint of Tauheed Davenport against PECO Energy Company due to her failure to appear for the telephonic evidentiary hearing to prosecute her Formal Complaint.

HISTORY OF THE PROCEEDING

On June 4, 2024, Tauheed Davenport (“Ms. Davenport” or “Complainant”) filed a Formal Complaint against PECO Energy Company (“PECO” or “Respondent”) with the Pennsylvania Public Utility Commission (“Commission”), seeking admission

into PECO's Customer Assistance Program. The Complaint was served on PECO on June 27, 2024.¹

On paragraph 9 of the Complaint form titled "Three Options to Receive Documents – Choose One," Ms. Davenport checked the option indicating that she agreed to receive all Commission documents by First-Class Mail. Complaint ¶ 9.

On July 5, 2024, PECO filed an Answer to the Complaint, wherein it admitted or denied the assertions in the Complaint.

On July 15, 2024, the Commission issued a Hearing Notice scheduling an evidentiary hearing to be held in this matter for September 9, 2024, and assigning Administrative Law Judge ("ALJ") Darlene D. Heep as Presiding Officer to this proceeding.

On August 7, 2024, the Commission issued ALJ Heep's Prehearing Order, which set forth the procedural rules that would govern the evidentiary hearing.

On September 10, 2024, the Commission issued a Judge Change Notice. The Notice changed the Presiding Officer over this proceeding from ALJ Heep to the undersigned. The Notice further cancelled the September 9, 2024, evidentiary hearing and rescheduled the hearing to October 18, 2024, at 10:00 a.m.²

¹ The Complaint is a timely appeal of a decision by the Commission's Bureau of Consumer Services (BCS) at BCS No. 3968512. The timely appeal is subject to *de novo* review. 52 Pa. Code § 56.173(a).

² The Commission's internal docketing system does not contain an electronic transcript of the September 9, 2024, hearing. Thus, I presume that the September 9, 2024, hearing was not held and was cancelled informally prior to its formal cancellation through the Judge Change Notice.

On October 18, 2024, the evidentiary hearing was held as scheduled. Khadijah Scott, Esquire, appeared on behalf of PECO with a witness and was prepared to proceed. Ms. Davenport did not appear for the hearing, even after the hearing was delayed until 10:11 a.m. Attorney Scott made a Motion to Dismiss the Complaint for failure of Ms. Davenport to appear and prosecute her Complaint. The Motion was taken under advisement.

Following the hearing, I noticed that the Judge Change Notice contained the incorrect parties in the certificate of service. Out of caution that the Notice was not properly served to Ms. Davenport, I decided to hold a further hearing in this case.

Therefore, on October 21, 2024, the Commission issued a Hearing Notice scheduling an evidentiary hearing for November 13, 2024, at 1:00 p.m. Of note, the Hearing Notice contained the following warning:

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.

October 21, 2024, Hearing Notice, p. 2.

On October 31, 2024, an electronic transcript of the October 18, 2024, evidentiary hearing was filed with the Commission.

On November 13, 2024, the evidentiary hearing was held as scheduled. Khadijah Scott, Esquire, appeared on behalf of PECO with a witness and was prepared to proceed. Ms. Davenport did not appear for the hearing, even after the hearing was delayed

until 1:10 p.m. Attorney Scott made a Motion to Dismiss the Complaint for failure of Ms. Davenport to appear and prosecute her Complaint, which was taken under advisement.

On December 2, 2024, an electronic transcript of the November 13, 2024, evidentiary hearing was filed with the Commission. The record in this matter was closed on this date.

For the reasons discussed below, PECO's Motion to Dismiss will be granted, and the Complaint will be dismissed.

FINDINGS OF FACT

1. Complainant is Tauheed Davenport.
2. Respondent is PECO Energy Company.
3. On June 4, 2024, Complainant filed a Complaint with the Commission against Respondent.
4. Complainant selected First-Class Mail as her preferred method of service of Commission Documents. Complaint ¶ 9.
5. On July 5, 2024, Respondent filed an Answer to the Complaint.
6. On October 21, 2024, the Commission issued a Hearing Notice scheduling an evidentiary hearing for November 13, 2024, at 1:00 p.m.
7. The October 21, 2024, Hearing Notice provided the Parties with the conference and PIN numbers for participation in the November 13, 2024, hearing and

warned the Parties that they may lose their case if they do not participate in the hearing and present evidence on the issues raised.

8. The October 21, 2024, Hearing Notice was served to Complainant by First-Class Mail, as this was her preferred method of service indicated on her Complaint form.

9. The October 21, 2024, Hearing Notice was not returned to the Commission as undeliverable by the postal authorities.

10. Complainant failed to appear and participate in the November 13, 2024, evidentiary hearing.

11. Complainant has not contacted the Office of Administrative Law Judge or the undersigned to explain her absence from the November 13, 2024, hearing.

DISCUSSION

Legal Standards

Due Process and Notice

As an administrative agency of the Commonwealth, the Commission is required to provide due process to the parties appearing before it. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlt. 1984) (citing *Fusaro v. Pa. Pub. Util. Comm'n*, 382 A.2d 794 (Pa. Cmwlt. 1978)). Due process is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Id.*

The Commission is required to fix the time and place of a hearing in a complaint proceeding and to serve notice thereof upon the parties in interest. *See* 66 Pa.C.S. § 703(a)-(b). Service on interested persons is sufficient to provide notice. 52 Pa. Code § 5.201(a). Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *See Berkowitz v. Mayflower Sec., Inc.*, 317 A.2d 584 (Pa. 1974) (“*Berkowitz*”); *Chartiers Indus. and Com. Dev. Auth. v. Allegheny Cnty. Bd. of Prop. Assessment Appeals and Rev.*, 645 A.2d 944, 946 (Pa. Cmwlth. 1994); *Geary v. Verizon Pa. Inc.*, Docket No. C-2009-2118625 (Opinion and Order entered Sept. 16, 2010) (“*Geary*”).

Failure to appear for a hearing

Once 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. *Mumma v. PECO Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered Jan. 24, 2002) (“*Mumma*”).

If a party fails to attend a scheduled hearing, such failure to appear will be deemed a waiver of the party’s opportunity to participate in a hearing, unless the presiding officer determines that such failure was “unavoidable” and that the interests of the other parties and of the public would not be “prejudiced” by permitting such reopening or further examination. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a)-(b).

Moreover, the Commission will exercise its discretion and excuse a complainant’s failure to appear at a hearing if the complainant demonstrates that he/she made a good faith attempt to attend the hearing. *See, e.g., Then v. Phila. Gas Works*, Docket No. F-2012-2318264 (Opinion and Order entered June 13, 2013) (vacating ALJ’s decision to dismiss complaint with prejudice and remanded for hearing because complainant attempted to attend the scheduled hearing, and appeared in the correct

building, but was unable to locate the hearing room in the building due to language challenges).

However, if a complainant's failure to appear was not unavoidable, or if the complainant did not make a good faith attempt to attend the duly scheduled hearing, the Commission has recognized that any further procedural activity in the docket would prejudice the public interest due to the wasteful use of the agency's and the respondent's time and resources in addressing the complaint. *See Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892, at 5 (Opinion and Order entered Dec. 26, 1995) (“*Jefferson*”). In such instances, to preserve judicial economy, the Commission typically will dismiss a complaint, *with prejudice*, barring the complainant from filing another complaint raising the same claims and issues presented in the dismissed complaint. *Id.*

Burden of Proof

Section 332(a) of the Code provides that a complainant, as the party seeking affirmative relief from the Commission, has the burden of proof. 66 Pa.C.S. § 332(a). The evidentiary burden of proof is the “preponderance of the evidence” standard. *Suber v. Pa. Comm’n on Crime and Delinq.*, 885 A.2d 678 (Pa. Cmwlth. 2005); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600 (Pa. Cmwlth. 1990). To establish a fact or claim by a preponderance of the evidence means to offer evidence that is more convincing, by even the smallest amount, than the probative value of the evidence presented by the other party. *Se-Ling Hosiery, Inc. v. Margulies*, 70 A.2d 854 (Pa. 1950).

As a matter of law, to establish a legally sufficient claim, a complainant must show that the named utility is responsible or accountable for the problem described in the Complaint in order to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa.P.U.C. 196

(1990). The offense must be a violation of the Code, a Commission Regulation or Order, or a Commission-approved tariff. 66 Pa.C.S. § 701.

Analysis

Complainant received notice and the opportunity to be heard in this proceeding. Complainant agreed to receive service of Commission documents in this proceeding by First-Class Mail by indicating her preference for that method of service on her Complaint form. Complaint ¶ 9. On October 21, 2024, the Commission served a Hearing Notice to Complainant to her mailing address indicated on her Complaint form. The Hearing Notice was not returned to the Commission as undeliverable by the postal authorities. Therefore, Complainant is presumed to have received the Notice. *Berkowitz; Geary*.

The Notice contained the date and time of the November 13, 2024, evidentiary hearing; therefore, Complainant had notice of the date and time of the November 13, 2024, evidentiary hearing. Notably, the Notice indicated that the hearing would take place telephonically, that the Parties would need to call a conference line and then enter a PIN number to participate in the hearing, and that the Complainant would lose her case if she failed to appear for the hearing and present evidence on the issues raised.

As Complainant was provided notice and the opportunity to be heard, it was her responsibility to appear and participate in the hearing. *Mumma*. Complainant failed to appear for the November 13 2024, evidentiary hearing. To date, Complainant has not contacted the Office of Administrative Law Judge or me to explain her absence

from the hearing.³ Therefore, Complainant's absence from the hearing was not unavoidable, nor can a finding be made that Complainant made a good faith effort to participate in the hearing.

Complainant, as the party with the burden of proof, failed to meet her burden because she failed to participate in the hearing to proffer evidence in support of her Complaint. Thus, it is appropriate to dismiss the Complaint. *Jefferson*. Respondent's Motion to Dismiss will be granted in the Ordering paragraphs below.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter 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) (citing *Fusaro v. Pa. Pub. Util. Comm'n*, 382 A.2d 794 (Pa. Cmwlth. 1978)).

3. Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *See Berkowitz v. Mayflower Sec., Inc.*, 317 A.2d 584 (Pa. 1974); *Chartiers Indus. and Com. Dev. Auth. v. Allegheny Cnty. Bd. of Prop. Assessment Appeals and Rev.*, 645 A.2d 944, 946 (Pa. Cmwlth. 1994); *Geary v. Verizon Pa. Inc.*, Docket No. C-2009-2118625 (Opinion and Order entered Sept. 16, 2010)..

³ 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).

4. If a party fails to attend a scheduled hearing, such failure to appear will be deemed a waiver of the party's opportunity to participate in a hearing, unless the presiding officer determines that such failure was "unavoidable" and that the interests of the other parties and of the public would not be "prejudiced" by permitting such reopening or further examination. 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a)-(b).

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. *Jefferson v. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995).

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

7. By failing to appear for the hearing and proffer any evidence to support the Complaint, Complainant has failed to meet her 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 for failure of Tauheed Davenport to appear at the scheduled evidentiary hearing and prosecute her Complaint is granted.

