

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Peter Westlove	:	
	:	
v.	:	F-2024-3047782
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint of Peter Westlove for failure to appear for the hearing and prosecute the Complaint.

HISTORY OF THE PROCEEDING

On March 18, 2024, Peter Westlove (Complainant) filed a Formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission).¹ In the Complaint, the Complainant placed checkmarks in boxes indicating “[t]he utility is threatening to shut

¹ The Complaint is a timely appeal from the determination of the Commission’s Bureau of Consumer Services (BCS), at BCS No. 3945545, which dismissed Complainant’s informal complaint. A timely BCS appeal is subject to de novo review. 52 Pa. Code § 56.173(a).

off my service or has already shut off my service,” “[i]ncorrect charges are on my bill,” and “[o]ther,” next to which he provided the following statement:

I entered into a payment agreement and the utility company changed the agreement without notice. Also, I believe I’m being charged for electricity that is calming [sic] space. Utility Company said they would send somebody out and they never did to get in contact with me addressing the common space electricity concerns. Also, I’m on the program and monies haven’t been forgiven when I made payments, or when I was receiving assistance and helping making payments none of the cap was being deducted as we agreed-upon.

Under the “requested relief” section of the Complaint form, the Complainant requested:

I would like to be entered back into my payment arrangement with a manageable payment arrangement based on my income from start. I would like to set up a new payment arrangement moving forward without having to pay the rears [sic] to get me back into a payment arrangement as that price is just ridiculous amount. I would also like to have pico [sic] come out like they said they would, and communicate with me the common space electricity from outside, and I feel that I’m being charged for.

On April 12, 2024, the Respondent filed an Answer and New Matter to the Complaint. In the Answer, the Respondent denied all material allegations of fact in the Complaint. PECO further responded that the Complainant has a delinquent balance of \$9,302.09 on his account, for which it may terminate service, and that the Complainant does not have a pending termination notice. As New Matter, the Respondent averred: that the Complainant enrolled in PECO’s Customer Assistance Program (CAP) in 2017; that the Complainant is currently enrolled in PECO’s CAP program; that the Complainant’s \$9,302.09 balance is comprised of CAP arrears; and that the Commission

does not have jurisdiction to give the Complainant a payment agreement on the CAP arrears portion of his balance pursuant to 66 Pa.C.S. §1405(c).

By Initial Call-In Telephonic Hearing Notice dated May 16, 2024, an initial call-in telephonic hearing was scheduled for July 25, 2024 at 10:00 a.m., and the matter was assigned to Administrative Law Judge (ALJ) Darlene D. Heep. The Hearing Notice advised the parties of the date and time of the scheduled hearing as well as how to call in for the hearing and warned of the following:

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.

ALJ Heep issued a Prehearing Order on May 30, 2024. The Prehearing Order also advised the parties of the date and time of the scheduled hearing as well as how to call in for the hearing. Additionally, the Prehearing Order directed the parties to comply with various procedural requirements and directed that a request to change the scheduled hearing should be submitted at least five days prior to the hearing date, be in writing and state the agreement or opposition of the other party. It warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing. It also explained that the Complainant bears the burden of proof to establish that the respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that he is entitled to the relief requested in the Complaint.

The hearing convened as scheduled on July 25, 2024. The Complainant appeared *pro se*. The Respondent appeared and was represented by Khadijah Scott, Esquire. ALJ Heep continued the hearing to allow PECO an opportunity to investigate the service address for foreign load.

By Initial Call-In Telephonic Hearing Notice dated July 26, 2024, an initial call-in telephonic hearing was scheduled for August 27, 2024 at 1:00 p.m., before ALJ Heep. The Hearing Notice again advised the parties of the date and time of the scheduled hearing as well as how to call in for the hearing and warned of the following:

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.

By Judge Change Notice dated August 7, 2024, the parties were advised that the initial call-in telephonic hearing scheduled for August 27, 2024 at 1:00 p.m., was reassigned to me.

The hearing convened as scheduled on August 27, 2024. Ms. Scott called in for the scheduled hearing, as did Mr. Westlove. Before going on record, the Complainant requested a continuance of the scheduled hearing because he was suffering from COVID-19. Ms. Scott objected to Mr. Westlove’s request because the matter had already been rescheduled once to allow PECO to perform a high bill field investigation. Noting PECO’s objection, I granted the Complainant’s request for the stated reason.

By Order dated August 27, 2024, I granted the Complainant’s request for continuance and ordered that the hearing scheduled for August 27, 2024 be rescheduled.

By Initial Call-In Telephone Hearing Notice dated August 29, 2024, the Initial Call-In Telephonic hearing was rescheduled for October 1, 2024 at 1:00 p.m. The Hearing Notice advised the parties of the date and time of the scheduled hearing as well as how to call in for the hearing and again warned of the following:

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.

The hearing convened as scheduled on October 1, 2024. Counsel for PECO called in to the hearing with a witness and was prepared to proceed. Mr. Westlove did not call in for the hearing, nor did he contact my office to indicate that he would or would not appear.

Because a customer who files a complaint before the Commission has an affirmative duty to make himself or herself available to participate in hearings on the complaint, I deemed Mr. Westlove’s failure to call in for the scheduled hearing as evidence that he did not wish to participate in the hearing.

At the hearing, no witnesses were presented and no exhibits were introduced into the record. Respondent’s counsel 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 October 21, 2024, the date the transcript was filed with the Commission.

FINDINGS OF FACT

1. The Complainant in this case is Peter Westlove.
2. The Respondent in this case is PECO Energy Company.

3. On March 18, 2024, the Complainant filed a Formal Complaint against PECO Energy Company.

4. Complainant selected electronic service for all documents from the Commission.² Complaint ¶ 9.

5. On April 12, 2024, the Respondent filed an Answer and New Matter to the Complaint.

6. By Initial Call-In Telephonic Hearing Notice dated May 16, 2024, an initial call-in telephonic hearing was scheduled for July 25, 2024, at 10:00 a.m., and the matter was assigned to Administrative Law Judge Darlene D. Heep.

7. ALJ Heep issued a Prehearing Order on May 30, 2024 that directed the parties to comply with various procedural requirements and directed that a request to change the scheduled hearing should be submitted at least five days prior to the hearing date, be in writing and state the agreement or opposition of the other party.

8. The hearing convened as scheduled on July 25, 2024. The Complainant appeared *pro se*. The Respondent appeared and was represented by Khadijah Scott, Esquire.

9. ALJ Heep continued the hearing to August 7, 2024, to allow PECO an opportunity to investigate the service address for foreign load.

10. By Judge Change Notice dated August 7, 2024, the parties were advised that the initial call-in telephonic hearing scheduled for August 27, 2024 at 1:00 p.m., was reassigned to me.

² While Complainant checked the box for service by email on his Formal Complaint form, he also registered with the Commission's eFile/eService program.

11. By Order dated August 27, 2024, I granted the Complainant's request for continuance and ordered that the August 27, 2024 hearing be rescheduled.

12. By Initial Call-In Telephone Hearing Notice dated August 29, 2024, the Initial Call-In Telephonic hearing was rescheduled for October 1, 2024 at 1:00 p.m.

13. The Hearing Notice was served electronically to the Complainant at the Complainant's request and in the ordinary course of the Commission's business to the email address provided by the Complainant on the Formal Complaint form.

14. The Hearing Notice was not returned as undeliverable.

15. The Complainant failed to call in for the October 1, 2024 hearing.

16. The Complainant has not contacted the Commission to explain why his failure to attend the October 1, 2024 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 August 29, 2024, the Complainant was served a Hearing Notice which advised the parties of the date and time of the hearing, and how to participate. Both the Hearing Notice and ALJ Heep's May 30, 2024 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 Notice and Prehearing Order were served to the Complainant at the email address provided by the Complainant. Neither were returned as undeliverable. Accordingly, I must presume that these documents, which were sent in the ordinary course of business, were received by the Complainant. *Skow v. Metro. Edison Co.*, Docket No. F-2023-3042228 (Final Order entered May 7, 2024); *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).

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. To date, there has been no communication with the Office of Administrative Law Judge 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.

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. Cmwlt. 1984).

3. The Complainant received notice of the hearing. *Skow v. Metro. Edison Co.*, Docket No. F-2023-3042228 (Final Order entered May 7, 2024); *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 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. Cmwlt. 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).

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

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PECO Energy Company to dismiss the Formal Complaint of Peter Westlove filed against PECO Energy Company at Docket No. F-2024-3047782 is granted.

2. That the Formal Complaint filed at Peter Westlove v. PECO Energy Company at Docket No. F-2024-3047782 is dismissed without prejudice for failure to prosecute.

3. That the Secretary's Bureau should mark this matter closed.

Date: January 14, 2025

/s/
Christopher P. Pell
Deputy Chief Administrative Law Judge