

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Laura Kilday

v.

PECO Energy Company

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C-2024-3050393

INITIAL DECISION

Before
Arlene Ashton
Administrative Law Judge

INTRODUCTION

This Decision denies the Formal Complaint of Laura Kilday because she failed to appear at the scheduled hearing and prosecute her Complaint.

HISTORY OF THE PROCEEDING

On July 18, 2024, Laura Kilday (Ms. Kilday or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO, Company or Respondent) alleging that the autopayment feature of her account was de-activated without her knowledge when she terminated her electric service, causing her not to receive a final bill and her account to be sent to a collection agency. As relief, the Complaint requests that the Commission require PECO to notify its customers of an e-billing issue, correct the issue and prohibit

PECO from sending accounts impacted by the issue for collection. The Complainant also requests that PECO be fined.

On August 16, 2024, the Company filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.

On August 29, 2024, an Interim Order Setting Resolution Conference was issued directing the parties to attempt to resolve the matter themselves. The parties were unable to amicably resolve the matter.

An Initial Call-in Telephonic Hearing Notice issued October 18, 2024, notified the parties that an initial call-in telephone hearing was scheduled for December 3, 2024, at 1:00 p.m., and that the matter was assigned to me. 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.”

On October 21, 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 and provided instructions for calling in to the hearing. In addition, the Prehearing Order 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 Initial Call-in Telephonic Hearing Notice and the Prehearing Order were eServed upon the Complainant at the email address that she provided to and registered with the Commission.¹ Neither the Hearing Notice nor the Prehearing Order were returned as undeliverable.

¹ On the Formal Complaint form, the Complainant checked the box to receive all documents by eService. Complaint ¶ 9.

The hearing convened as scheduled at 1:00 p.m. on December 3, 2024. Khadijah Scott, Esq. appeared representing the Respondent, with a witness prepared to participate in the hearing. The Complainant failed to call in to the hearing. A recess was taken to allow the Complainant until 1:15 p.m. to call in to the hearing, but she failed to do so.

At the hearing, counsel for the Company moved that the Complaint be dismissed for lack of prosecution pursuant to 52 Pa. Code § 5.245. The Motion was held in abeyance.

The record in this matter closed on December 10, 2024, upon receipt of the hearing transcript. To date, there has been no contact or communication from Ms. Kilday with me or anyone else at the Commission regarding her failure to appear at the December 3, 2024, hearing.

FINDINGS OF FACT

1. The Complainant is Laura Kilday.
2. The Respondent is PECO Energy Company.
3. On July 18, 2024, Ms. Kilday filed a Formal Complaint against the Company alleging that the autopayment feature of her account was de-activated without her knowledge when she terminated her electric service, causing her not to receive a final bill and her account to be sent to a collection agency.
4. As relief, the Complaint requests that PECO be fined and required to notify its customers of the billing issue she experienced, correct the issue and cease sending accounts impacted by the billing issue to collections.

5. On August 16, 2024, PECO filed an Answer.

6. An Initial Call-in Telephonic Hearing Notice dated October 18, 2024, notified the parties that an initial call-in telephone hearing was scheduled for December 3, 2024, at 1:00 p.m.

7. The Initial Call-In 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.” Initial Call-In Hearing Notice, p. 1.

8. A Prehearing Order dated October 21, 2024, directed the parties to comply with various procedural requirements, reminded them of the time and date of the hearing and provided instructions for calling in to the hearing.

9. The October 21, 2024 Prehearing Order warned: “You may lose the case if you do not take part in this hearing and present evidence on the issues raised.” Prehearing Order, ¶ 1.

10. The Hearing Notice and the Prehearing Order were served on the Complainant via eService to the email address she provided to and registered with the Commission.

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

12. The Complainant failed to appear at the December 3, 2024 hearing.

13. The Complainant did not request a continuance, withdraw the Complaint, or otherwise contact the Commission to explain why her failure to appear at the December 3, 2024, hearing was unavoidable.

DISCUSSION

In this Complaint, the Complainant alleged that the autopayment feature of her account was inactivated without her knowledge when she terminated her electric service, causing her not to receive a final bill and her account to be sent to a collection agency. As relief, the Complaint requests that PECO be fined and required to notify its customers of an e-billing issue, correct the issue and cease sending accounts impacted by the e-billing issue.

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). Both the Hearing Notice and Prehearing Order were served via eService to the email address registered with the Commission by the Complainant. Neither was returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents sent to the Complainant were received by the Complainant. *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Order entered Dec. 19, 2019) (*Hu*); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Final Order entered Apr. 7, 2017) (*Zirkel*); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered Jan. 31, 2017) (*Morella*).

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 scheduled hearing and did not appear for the hearing. Additionally, the October 18, 2024, Hearing Notice, and the October 21, 2024 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 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. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995).

Furthermore, the party who failed to appear at the hearing has the burden of explaining why the 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). There are no facts on the record that suggest that Complainant's failure to appear was unavoidable. 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. UGI 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. *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).
3. The due process rights of the Complainant have been fully protected in this proceeding and the 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. 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); 66 Pa.C.S. § 332(f); 52 Pa. Code § 5.245(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PECO Electric Company to dismiss the Formal Complaint filed by Laura Kilday at Docket No. C-2024-3050393 is granted.

2. That the Formal Complaint of Laura Kilday in *Laura Kilday v. PECO Electric Company* at Docket No. C-2024-3050393 is dismissed.

3. That Docket No. C-2024-3050393 be marked closed.

Date: January 21, 2025

/s/
Arlene Ashton
Administrative Law Judge