

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Aisha Thomas

v.

PECO Energy Company

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C-2024-3049457

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On May 24, 2024, Aisha Thomas (Ms. Thomas or Complainant) filed a Formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO, Company, or Respondent) alleging that: 1) the utility is threatening to terminate or has already terminated her service; 2) she is unable to pay her bill to PECO; and 3) there are incorrect charges on her bills from PECO. As relief, the Complainant requests that the Commission establish a payment arrangement for her and order PECO check her meter for accuracy.

The Formal Complaint was served upon the Respondent by the Secretary of the Commission on June 11, 2024. On July 1, 2024, PECO filed an Answer denying all material allegations of fact and conclusions of law in the Complaint

An Initial Call-in Telephone Hearing Notice dated July 23, 2024, notified the parties that an initial call-in telephone hearing was scheduled for September 18, 2024, at 10:00 a.m. and that the matter was assigned to me. The Hearing Notice provided the parties with the Toll-Free Bridge Number and the PIN/Passcode to call and participate in the telephonic hearing. The Hearing Notice further stated as follows:

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.

CONTINUANCES. You may request a continuance of the hearing if you have a good reason. All continuances will be granted only for good cause. To request a continuance, you must submit a written request (a “motion”) at least five (5) days before the hearing. Your motion should include: 1) The case name, number, and hearing date; 2) The reason for the request; and 3) Whether the other party agrees (or if you do not know).

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.” (Emphasis in the original). Additionally, the Prehearing Order stated as follows:

CONTINUANCES. You may request a continuance of the hearing if you have a good reason. Continuances will be granted only for good cause. To request a continuance, you must serve a written request to me and every other party (a “motion”) at least five (5) days before the hearing.

The Initial Call-in Telephonic Hearing Notice and the Prehearing Order were served electronically upon the Complainant at the email address that she provided to the Commission.¹

The hearing was convened as scheduled on September 18, 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. At the hearing, counsel for PECO moved that the Complaint be dismissed for lack of prosecution pursuant to 52 Pa. Code § 5.245.

On September 25, 2024, Ms. Thomas sent to PECO counsel and myself an email containing a single statement: “Hello nobody called me.” This was followed on October 8, 2024, by another email requesting a call back.

By email dated October 9, 2024, I inquired about the source of Ms. Thomas’ confusion regarding the procedure for attending the scheduled hearing. On the same date, Ms. Thomas explained via email that she thought the hearing would take place via Zoom and inquired about the appeal process. By email dated October 9, 2024, I informed Ms. Thomas that a further hearing would be scheduled in this matter and

¹ In the Formal Complaint form, the Complainant checked the box to receive all documents by email at the email address she provided on the form. Complaint ¶ 9.

provided her with the Toll-Free Bridge Number and the PIN/Passcode for joining the hearing.

A Further Call-In Telephone Hearing Notice dated October 21, 2024, notified the parties that a further call-in telephone hearing was scheduled on December 18, 2024, at 10:00 a.m.

On December 2, 2024, I issued a Second Prehearing Order which directed the parties to comply with various procedural requirements, reminded them of the time and date of the further 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.**” (Emphasis in the original). Like the previous Prehearing Order, the Second Prehearing Order stated as follows:

CONTINUANCES. You may request a continuance of the hearing if you have a good reason. Continuances will be granted only for good cause. To request a continuance, you must serve a written request to me and every other party (a “motion”) at least five (5) days before the hearing.

The Further Call-in Telephonic Hearing Notice and the Second Prehearing Order were served electronically upon the Complainant at the email address that she provided to the Commission.

The further hearing convened as scheduled on December 18, 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. At the hearing, counsel for PECO moved that the Complaint be dismissed for lack of prosecution pursuant to 52 Pa. Code § 5.245.

At 4:39 p.m. on December 18, 2024, Ms. Thomas sent to PECO’s counsel and me an email stating “I have covid can we reschedule for Monday the 23rd.” By email dated December 19, 2024, PECO’s counsel objected to Ms. Thomas’ request for a further continuance of the hearing.

The record in this matter closed on January 17, 2025, upon receipt of the hearing transcript.

FINDINGS OF FACT

1. The Complainant is Aisha Thomas.
2. The Respondent is PECO Energy Company.
3. On May 24, 2024, Ms. Thomas filed a Formal Complaint alleging that: (1) the utility is threatening to terminate or has already terminated her service; (2) she is unable to pay her bill to PECO; and (3) there are incorrect charges on her bills from PECO.
4. As relief, the Complainant requests that the Commission establish a payment arrangement for her and order PECO check her meter for accuracy.
5. In the Formal Complaint form, the Complainant checked the box to receive all documents by email at the email address she provided on the form. Complaint ¶ 9.
6. On July 1, 2024, PECO filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.

7. An Initial Call-in Telephone Hearing Notice dated July 23, 2024, notified the parties that an initial call-in telephone hearing was scheduled on September 18, 2024, at 10:00 a.m.

8. The Hearing Notice provided the parties with the Toll-Free Bridge Number and the PIN/Passcode to call and participate in the telephonic hearing and stated, “You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised.” July 23, 2024, Initial Call-in Hearing Notice, p.1.

9. 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 requesting a continuance of the hearing and for calling in to the hearing.

10. 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.”** August 14, 2024 Prehearing Order, ¶ 2 (emphasis in the original).

11. The Hearing Notice and the Prehearing Order were served on the Complainant via electronic mail at the email address that she provided to the Commission.

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

13. The Complainant failed to appear at the September 18, 2024, hearing.

14. By email dated September 25, 2024, Complainant explained that her absence from the September 18, 2024 hearing was caused by her confusion regarding the procedure for joining the hearing and requested a continuance of the hearing.

15. By email dated October 9, 2024, I granted Ms. Thomas' request for another hearing.

16. A Further Call-in Telephone Hearing Notice dated October 21, 2024, notified the parties that a further call-in telephone hearing was scheduled for December 18, 2024, at 10:00 a.m.

17. A second Prehearing Order was issued on December 2, 2024, directing the parties to comply with various procedural requirements, reminding them of the time and date of the further hearing, providing 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.”** Second Prehearing Order, ¶ 2 (emphasis in the original).

18. Like the previous Prehearing Order, the Second Prehearing Order stated as follows:

CONTINUANCES. You may request a continuance of the hearing if you have a good reason. Continuances will be granted only for good cause. To request a continuance, you must serve a written request to me and every other party (a “motion”) at least five (5) days before the hearing.

Second Prehearing Order, ¶ 3.

19. The Further Call-in Telephonic Hearing Notice and the Second Prehearing Order were served electronically upon the Complainant at the email address that she provided to the Commission.

20. Neither the Further Call-in Telephonic Hearing Notice nor the Second Prehearing Order were returned as undeliverable.

21. The Complainant failed to appear at the December 18, 2024, further hearing.

22. By email sent at 4:39 p.m. on December 18, 2024, Ms. Thomas explained that she had Covid and requested that the hearing be rescheduled for December 23, 2024.

23. By email dated December 19, 2024, PECO's counsel objected to Ms. Thomas' late request for a further continuance of the hearing.

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). Both the Further Hearing Notice and the Second Prehearing Order were served electronically upon the Complainant at the email address that she provided to the Commission. Neither was returned to the Commission as undeliverable. Accordingly, it must be presumed that

these documents sent to Complainant were received by Complainant. *Skow v. Metro. Edison Co.*, Docket No. F-2023-3042228 (Final Order May 7, 2024) (*Skow*); *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. 24, 2017) (*Morella*). In addition to constructive notice, Ms. Thomas had actual notice of the further hearing as evidenced by her communication after the hearing adjourned.

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 Hearing Notices, and the Prehearing Orders 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. UGI Utils., Inc.*, Docket No. Z-00269892 (Opinion and Order entered Dec. 26, 1995).

Finally, the party who failed to appear at the hearing has the burden of explaining why 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). Ms. Thomas failed to appear at the initial hearing held on September 18, 2024. Several days after that hearing was adjourned, she contacted me and the attorney for the Respondent claiming confusion regarding the procedure for attending the hearing and requesting a further hearing. After explaining the procedure to her, I granted Ms. Thomas' request and scheduled a further hearing in this matter on December 18, 2024. Ms. Thomas did not appear at the further hearing. Hours after the further hearing was adjourned, Ms. Thomas contacted me and the attorney for PECO stating that she had Covid and requesting yet another continuance of the hearing. Counsel for PECO objected to Ms. Thomas' request for another continuance of the hearing, arguing that the Complainant had ample opportunity to advise PECO and the presiding officer of the need for a second continuance prior to the hearing but failed to do so.

Upon review of Ms. Thomas' request and PECO's objection, I agree with the latter. Every single document served by the Commission to the Complainant (two Hearing Notices and two Prehearing Orders) contained warnings regarding the failure to appear at the scheduled hearing and instructions for requesting continuances of the hearings in a timely manner and when good cause existed. In particular, the Further Hearing Notice further stated as follows:

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.

CONTINUANCES. You may request a continuance of the hearing if you have a good reason. All continuances will be

granted only for good cause. To request a continuance, you must submit a written request (a “motion”) at least five (5) days before the hearing. Your motion should include: 1) The case name, number, and hearing date; 2) The reason for the request; and 3) Whether the other party agrees (or if you do not know).

October 21, 2024, Further Call-in Hearing Notice, p. 1 (emphasis added). Also, the Second Prehearing Order stated as follows:

CONTINUANCES. You may request a continuance of the hearing if you have a good reason. Continuances will be granted only for good cause. To request a continuance, you must serve a written request to me and every other party (a “motion”) at least five (5) days before the hearing.

Second Prehearing Order, ¶ 3 (emphasis added).

As noted by PECO, the Complainant had ample opportunity to advise PECO and the presiding officer of the need for a second continuance prior to the December 18, 2024 further hearing. The Complainant could have dialed into the hearing and advised that she was ill and needed a continuance. She could have had someone contact the presiding officer and the Respondent on her behalf prior to the hearing. Instead, the Complainant sent an email at 4:39 p.m. after the further hearing had long adjourned. This indicates that Ms. Thomas had both the ability and the means with which to communicate and request a continuance before 10:00 a.m. I note that this was the second hearing in which the Complainant violated the Prehearing Order by failing to timely advise of her need for a continuance of the hearing. Consequently, Ms. Thomas’ request for yet another hearing will be denied.

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. *Skow v. Metro. Edison Co.*, Docket No. F-2023-3042228 (Final Order 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).

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 Aisha Thomas' request for another hearing is denied.
2. That the Motion of PECO Energy Company to dismiss the Formal Complaint filed by Aisha Thomas at Docket No. C-2024-3049457 is granted.

