

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Darrell Ross

v.

PECO Energy Company

:
:
:
:
:

C-2008-2060301

INITIAL DECISION

Before
Ky Van Nguyen
Administrative Law Judge

HISTORY OF THE PROCEEDINGS

On August 28, 2008, Darrell Ross (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (Respondent) alleging a billing dispute. The Respondent filed an answer denying the material allegations of the complaint.

By Hearing Notice dated March 2, 2009 the parties were notified that an Initial Hearing in this case was scheduled for the morning of May 15, 2009 in Philadelphia. The Hearing Notice notified the parties that they should be present in the hearing room until their case was called.

A Prehearing Order was issued on April 23, 2009, stating the date and time of the scheduled hearing and advising the parties that the case could be dismissed if they failed to obtain a continuance or failed to appear for the hearing. The Prehearing Order also advised the parties of applicable procedural rules.

On May 13, 2009, the Complainant requested a continuance of the hearing, alleging that she needed time to ask the Respondent to forward to her the Respondent's billing records and that she would not be prepared for the hearing without the requested information. I denied the request because the request was not submitted five days before the hearing date and because she had more than enough time to seek the requested information.

On the day of the hearing, the Complainant's case was called. The Complainant failed to appear. Tishekia Williams, Esquire, appeared on behalf of the Respondent, presented the testimony of one witness and introduced seven exhibits (PECO Exhibits 1-6 and 8) into the record. She also moved to dismiss the complaint. This motion will be granted in the ordering paragraph below.

The record closed at the conclusion of the hearing on May 15, 2009.

FINDINGS OF FACT

1. The Complainant is a customer of the Respondent and takes service at 707 Longacre Court, Apartment B, Yeadon, PA.
2. On October 14, 2008, Administrative Law Judge David A. Salapa issued an Initial Decision limiting the Complainant's claim for a refund to the time after August 28, 2004.
3. By May 12, 2009, the Complainant owed the Respondent a bill of \$347.10 for gas and electric service (PECO Exhibit 2).
4. The Complainant was provided a proper notice of the hearing.
5. The Complainant failed to appear at the hearing.

DISCUSSION

Section 332(a) of the Public Utility Code, 66 Pa. C.S. §332(a),¹ provides that the party seeking relief from the Commission has the “burden of proof.” “Burden of proof” is a duty to establish a fact by a “preponderance of the evidence.” The term “preponderance of the evidence” means that one party has presented evidence which is more convincing, by even the smallest amount, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950). In other words, “preponderance” is not dependent on the number of witnesses testifying on either side but rather on the credibility of the testimony in the light of all the evidence in a case. Burch v. Reading Co., 240 F.2d 574 (3d Cir. 1957) cert. denied, 353 U.S. 965 (1957).

Under these principles the Complainant has the burden of proving by a preponderance of the evidence that the Respondent has acted unreasonably in changing the due date monthly without notice and that she has not owed the Respondent a bill that goes back over 15 years. The Complainant could not sustain the burden of proof because she did not appear at the hearing.

When a complainant does not appear, the only function remaining to this forum is that of announcing the facts and dismissing the case.

Further, the Commission satisfied the requirement of affording the Complainant with administrative due process, by providing timely notice of the hearing on her complaint, and the opportunity to be heard. Schneider v. Pa. PUC, 479 A.2d 10 (Pa. Cmwlth. 1984). The Commission’s Hearing Notice of March 2, 2009 which informed the parties of the day, date and time of the hearing in this case, was mailed to the Complainant at the address provided on the formal complaint form. The Commission’s Hearing Notice has not been returned by the United States Postal Service. Therefore it is presumed that the Complainant received the Commission’s

¹ Section 332(a) of the Public Utility Code provides:

(a) Burden of Proof. -- Except as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof.

notice of the hearing. Berkowitz v. Mayflower Securities, Inc., 317 A.2d 584 (Pa. 1974); Meierdierck v. Miller, 147 A.2d 406 (Pa. 1959); Judge v. Celina Mutual Ins. Co., 449 A.2d 658 (Pa. Super. 1982); Samaras v. Hartwick, 697 A.2d 71 (Pa. Super. 1997).

Once timely notice of a hearing and the opportunity to be heard have been provided, it is then the responsibility of the parties to be present and participate in the hearing. Craig Sentner v. Bell Telephone Co. of Pennsylvania, Docket No. F-00161106 (Pa. PUC October 25, 1993). The Commission has held that when a complainant fails to be present at a scheduled hearing, then the complaint is to be dismissed with prejudice. Darling v. Philadelphia Electric Company, Docket No. F-00161139 (Pa. PUC November 16, 1993).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa. C.S. §701.
2. The Complainant has failed to carry her burden of proof.

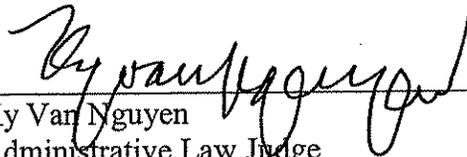
ORDER

THEREFORE,

IT IS ORDERED:

1. That the Respondent's Motion to Dismiss the complaint is granted.
2. That the complaint filed by Darrell Ross against PECO Energy Company at Docket No. C-2008-2060301 is dismissed with prejudice.

Date: May 27, 2009


Ky Van Nguyen
Administrative Law Judge