

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Linda Harmon

v.

PECO Energy Company

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C-2015-2502663

INITIAL DECISION

Before
David A. Salapa
Administrative Law Judge

INTRODUCTION

The customer filed a complaint against her electric utility alleging that there are incorrect charges on her bills. The complaint also requested a payment arrangement for the unpaid balance on the customer's electric utility account. This decision strikes the customer's direct testimony and dismisses complaint because the customer terminated participation in the hearing before she could be cross examined on her direct testimony.

HISTORY OF THE PROCEEDING

On August 28, 2015, Linda Harmon (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (Respondent). The complaint alleges that there are incorrect charges on her bills. The complaint also requests that the Commission order a payment arrangement for the unpaid balance on the customer's electric utility account.

The Respondent filed an answer on September 23, 2105. The answer admits that the Respondent provides electric service to the Complainant at the address shown on the complaint. The answer also admits that the Complainant is seeking a payment arrangement. The answer denies that there are incorrect charges on the Complainant's bills. The answer requests that the Commission dismiss the complaint.

By hearing notice dated December 2, 2015, the Commission scheduled a telephonic hearing for this matter on January 25, 2016 at 10:00 a.m. and assigned the case to me. I issued a prehearing order dated December 2, 2015, addressing, inter alia, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

Due to a major winter storm that occurred on January 25, 2016, the scheduled hearing was cancelled. By hearing notice dated February 1, 2016, the Commission scheduled a telephonic hearing for this matter on March 16, 2016 at 1:00 p.m.

I conducted a telephonic hearing on March 16, 2016. Linda Harmon appeared pro se. Shawane L. Lee, Esquire represented the Respondent. The Complainant indicated that she had been hospitalized and had just been discharged from the hospital. N.T. 5-6. I determined that it was appropriate to continue the hearing. N.T. 6. Counsel for the Respondent consented to continuing the hearing. N.T. 6.

By hearing notice dated March 17, 2016, the Commission scheduled a telephonic hearing for this matter on May 18, 2016 at 10:00 a.m.

I conducted a telephonic hearing on May 18, 2016. Linda Harmon appeared pro se and presented testimony in support of her complaint. Shawane L. Lee, Esquire represented the Respondent which presented two witnesses who sponsored eight exhibits that I admitted into the record.

The initial hearing resulted in a transcript of 61 pages. The record closed on June 9, 2016, the date the transcript was filed with the Secretary's Bureau. For the reasons set forth below, I will dismiss the complaint.

FINDINGS OF FACT

1. The Complainant in this case is Linda Harmon. N.T.
2. The Respondent in this case is PECO Energy Company. N.T. 5.
3. On August 28, 2015, the Complainant filed a complaint against the Respondent.
4. The Respondent filed an answer on September 23, 2105.
5. A telephonic hearing was conducted on May 18, 2016.
6. The Complainant presented testimony in support of her complaint at the May 18, 2016. N.T. 8-25.
7. The Complainant disconnected from the conference call before being cross examined on her testimony. N.T. 27.

DISCUSSION

The Complainant in this proceeding has the burden of proof to show that the Respondent is responsible or accountable for the problem described in the complaint. Patterson v. Bell Telephone Co. of Pa., 72 Pa. PUC 196 (1990); Feinstein v. Philadelphia Suburban Water Co., 50 Pa. PUC 300 (1976). The Complainant must establish her case by a preponderance of the evidence. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa.Cmwlt. 1990), alloc. den., 602 A.2d 863 (Pa. 1992). To meet her burden of proof, the Complainant must present

evidence more convincing, by even the smallest amount, than that presented by the Respondent. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

Here the complaint alleges that there are incorrect charges on the Complainant's bill. The complaint also requests that the Commission order a payment arrangement for the unpaid balance on the Complainant's electric utility account.

During the hearing, the Complainant presented testimony in support of her complaint. N.T. 8-25. During this testimony, counsel objected to the Complainant's testimony as hearsay. N.T. 25. I sustained the objection. N.T. 25. The Complainant then requested a further hearing so that she could produce additional witnesses. N.T. 26. I denied this request, pointing out that the hearing had been continued twice and that the Complainant had sufficient time to prepare her case and subpoena witnesses. N.T. 26-27. The Complainant disconnected from the conference call before being cross examined on her testimony. N.T. 27.

After the Complainant disconnected from the hearing, I allowed the Respondent to present its case. N.T. 27. The Respondent presented testimony and exhibits in support of its case. N.T. 27-59. I will dismiss the Complainant's complaint because the Complainant terminated participation in the hearing before she could be cross examined on her direct testimony.

In general, administrative agencies of the Commonwealth of Pennsylvania, like the Commission, are required to provide reasonable examination and cross-examination of witnesses at hearings. 2 Pa.C.S. § 505. Providing the opportunity for reasonable cross examination is a necessary part of a hearing.

At the beginning of the hearing, I explained to the Complainant that her testimony would be subject to cross examination. N.T. 5. When the Complainant objected to being cross examined, I explained to her that cross examination was a normal part of an adversarial proceeding. N.T. 7. I informed her that I could not allow her to testify without affording the Respondent the opportunity to cross examine her on her testimony. N.T. 7. The information I

provided to the Complainant concerning cross examination is consistent with Pennsylvania appellate court decisions, the Public Utility Code and Commission regulations.

Concerning the necessity of providing the opportunity for cross examination in a hearing, the Commonwealth Court of Pennsylvania in Balfour Beatty Construction Inc. v. Department of Transportation, 783 A.2d 901 (2001) (Balfour) stated:

Adjudicatory action may not be taken validly by a judicial or administrative tribunal except upon a hearing wherein each party has an opportunity to know the claims of his opponent, to hear the evidence introduced against him, to cross-examine witnesses, to introduce evidence in his own behalf, and to make argument.

Concerning hearings conducted by the Commission, 66 Pa.C.S. § 332(c), provides for cross-examination in Commission proceedings:

Every party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

The Commission's Rules of Administrative Practice and Procedure also recognize the right of cross-examination. The regulation at 52 Pa. Code §5.243(a), provides that parties have the right to cross-examine witnesses.

In McCort and Family v. Bell Telephone Company of Pa., 47 PA PUC 725 (1974), 1974 Pa. PUC LEXIS 72 (McCort), the Commission addressed the impact of a complainant's refusal to be cross-examined by the utility. The Commission concluded that the complainant's refusal to be cross examined caused the record to be incomplete and that the Commission therefore lacked the basis for deciding the complaint. The Commission dismissed the complaint.

In this case, as in McCort, the Complainant has caused the record in this proceeding to be incomplete by disconnecting from the conference call and not being cross

examined on her direct testimony. The Commission therefore lacks the basis for deciding the complaint and cannot grant the relief requested in the Complainant's complaint.

In addition, the Complainant's direct testimony, which was not subject to cross-examination, will be stricken from the record. The Commission has previously stricken direct testimony that was not subject to cross examination. Halulko and Hoppe v. Commonwealth Telephone Company, 1988 Pa. PUC LEXIS 368 (Halulko and Hoppe); Jackson v. PPL Electric Utilities Corp., Docket No. C-20030104 (Final Order entered November 1, 2004) (Jackson). Since there is no evidence to support the complaint, the Complainant has failed to meet her burden of proof.

The Complainant's refusal to allow herself to be cross examined has caused the Commission and the Respondent to waste time, money, and energy by conducting and participating in this proceeding. I will dismiss her complaint with prejudice consistent with prior Commission decisions in Jackson and McCort.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. § 701.
2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).
3. The Complainant has not met her burden of proving that she is entitled to relief. 66 Pa.C.S. § 332(a).
4. Adjudicatory action may not be taken validly by a judicial or administrative tribunal unless the parties have been provided the opportunity to cross-examine witnesses. 2 Pa. C.S. §505; Balfour.

5. The Commission must provide for cross-examination in Commission proceedings. 66 Pa. C.S. §332(a); 52 Pa. Code §5.243(a).

6. The Complainant's direct testimony is properly stricken from the record due to Complainant's failure to submit to cross-examination concerning that testimony. Jackson, Halulko and Hoppe.

7. The complaint should be dismissed with prejudice. McCort.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the direct testimony of Linda Harmon at Docket No. C-2015-2502663 is stricken from the record due to her failure to submit to cross examination concerning that testimony.

2. That the complaint of Linda Harmon against PECO Energy Company at Docket No. C-2015-2502663 is dismissed with prejudice.

3. That the proceeding at Docket No. C-2015-2502663 is marked closed.

Date: June 15, 2016

/s/
David A. Salapa
Administrative Law Judge