

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Natasha Tinson

v.

PECO Energy Company

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:

F-2016-2546103

**INITIAL DECISION**

Before  
David A. Salapa  
Administrative Law Judge

**INTRODUCTION**

This decision dismisses a complaint for failure of the customer to appear at the telephonic hearing and prosecute the complaint.

**HISTORY OF THE PROCEEDING**

On May 16, 2016, Natasha Tinson (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (Respondent). The complaint is a timely appeal of the Commission’s Bureau of Consumer Services’ (BCS’) March 22, 2016 decision at BCS No. 3393177 dismissing the Complainant’s informal complaint.

At paragraph 4 of the Commission’s complaint form, the Complainant checked the boxes stating “The utility is threatening to shut off my service or has already shut off my service,” “I would like a payment arrangement” and “incorrect charges are on my bill.”

At paragraph 5 of the Commission's complaint form, the complaint alleged that the Complainant receives disability payments of \$733.00 per month while her rent is \$625.00 per month. The complaint requested that the Commission order a payment arrangement that the Complainant can afford.

On June 9, 2016, the Respondent filed a motion to file answer nunc pro tunc. According to the motion, the Commission served the Complainant's complaint on the Respondent on May 18, 2016. According to the motion, the Respondent's answer was due on or before June 7, 2016. Due to an administrative oversight, the Respondent alleged it was filing an answer on June 9, 2016. The motion further asserted that the late filing of the answer did not affect the substantive rights of the Complainant. The motion requested that the Commission accept the Respondent's answer for filing. The Complainant did not file an answer to the Respondent's motion.

The Respondent filed an answer with new matter, with a notice to plead on June 9, 2016. The answer admitted that the Respondent provides service to the Complainant at the address shown on the complaint. Attached to the answer is a document marked as Exhibit 1 which is a copy of the Complainant's account history.

The answer asserted that the Complainant was enrolled in the Respondent's customer assistance program (CAP) on June 27, 2014. The answer stated that the Complainant was reenrolled in Respondent's CAP on September 23, 2015. The Complainant's next scheduled recertification is on September 23, 2017. The answer asserted that the Complainant's entire outstanding account balance is comprised of CAP arrears.

The answer indicated that the Complainant filed an informal complaint with BCS at BCS No. 3376447 on August 20, 2015, requesting a payment arrangement. Attached to the answer is a document marked Exhibit 2, which is a copy of the BCS case details report. On August 24, 2015, BCS issued a decision dismissing the complaint, pursuant to 66 Pa.C.S. § 1405(c). Attached to the answer is a document marked Exhibit 3, which is a copy of the BCS decision.

The answer stated that the Complainant's account balance is \$2,625.86, which is comprised entirely of CAP arrears. Since the \$2,625.86 account balance consists of CAP arrears, the answer contended that the Complainant is not entitled to a payment arrangement.

The new matter reiterated the assertions in the answer that the Complainant is enrolled in the Respondent's CAP and that her arrearages consist entirely of CAP arrears. The new matter asserted that, pursuant to 66 Pa.C.S. § 1405(c), CAP arrearages are not subject to payment arrangements. The answer and new matter requested that the Commission dismiss the complaint. The Complainant did not file an answer to the Respondent's new matter.

On June 30, 2016, the Respondent filed a motion for judgment on the pleadings, with a notice to plead. The motion reiterated the assertions in the answer with new matter that the Complainant is enrolled in the Respondent's CAP and that her arrearages consist entirely of CAP arrears. The motion renewed the argument that, pursuant to 66 Pa.C.S. § 1405(c), CAP arrearages are not subject to payment agreements.

In addition, the motion stated that the Complainant had not filed an answer to the Respondent's new matter. The motion requested that the Commission deem the facts alleged in the new matter as admitted, pursuant to 52 Pa.Code § 5.63(b).

The motion argued that there is no dispute as to the facts that the Complainant is enrolled in the Respondent's CAP, that the Complainant's entire past due balance is CAP arrears and that the sole relief the Complainant seeks is a Commission-ordered payment arrangement. Since the statute at 66 Pa.C.S. § 1405(c) prohibits the Commission from ordering a payment arrangement on CAP arrearages, the motion concluded that the Commission cannot grant the relief that the Complainant seeks. The motion requested that the Commission dismiss the complaint with prejudice, since there is no dispute as to any material facts and the Respondent was entitled to judgment as a matter of law. The Complainant did not file an answer to the motion for judgment on the pleadings.

By notice dated December 22, 2016, the Commission notified the parties that it had assigned the case to me as motion judge. By order dated December 27, 2016, I granted the motion for judgment on the pleadings in part and denied the request in the complaint for a payment arrangement. I ordered that the remaining issue concerning incorrect charges set forth in the Complainant's complaint be scheduled for a hearing.

By notice dated January 24, 2017, the Commission scheduled this matter for a telephonic hearing on March 15, 2017, at 10:00 a.m. and assigned the case to me. I issued a prehearing order dated January 26, 2017, addressing, inter alia, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

I conducted a telephonic hearing on March 15, 2017, at 10:00 a.m. The Complainant failed to appear for that hearing. I attempted to call the Complainant at approximately 10:00 a.m. at the telephone number shown on the January 24, 2017 hearing notice. I received a message that the Complainant was not available. I left a message on the Complainant's voice mail, identifying myself and the purpose of my call. I indicated that I would call the Complainant again in approximately ten minutes.

I then verified with the support staff for the Office of Administrative Law Judge (OALJ) in Harrisburg that the Complainant had not contacted that office to indicate that she would be unable to participate in the telephonic hearing. My voice mail and email had no messages from the Complainant stating that she would be unable to participate in the hearing.

After verifying that the Complainant had not contacted OALJ in Harrisburg, I attempted to call the Complainant a second time at approximately 10:10 a.m. at the same telephone number I previously called. Again, I received a voice mail message indicating that the Complainant was not available. I left a message on the Complainant's voice mail, identifying myself and indicating that the hearing would proceed without the Complainant.

In addition, I attempted to call the Complainant at a second number supplied by the Respondent. I received a voice mail message indicating that the Complainant was not available. I left a message on the Complainant's voice mail, identifying myself and indicating that the hearing would proceed without the Complainant.

Upon commencement of the hearing, Shawane L. Lee, Esquire, counsel for the Respondent, moved to dismiss the complaint for failure to appear and prosecute. N.T. 7. I advised the Respondent that I would take its motion under advisement. N.T. 7.

The record closed on April 3, 2017, the date the transcript was filed with the Secretary's Bureau. This decision grants the Respondent's motion to dismiss the complaint.

#### FINDINGS OF FACT

1. The Complainant in this case Natasha Tinson.
2. The Respondent in this case is PECO Energy Company.
3. On May 16, 2016, the Complainant filed a complaint with the Commission against the Respondent.
4. The Respondent filed an answer with new matter on June 9, 2016.
5. By notice dated January 24, 2017, the Commission scheduled this matter for a telephonic hearing on March 15, 2017, at 10:00 a.m.
6. The Commission sent notice of the telephonic hearing in this case to the Complainant by regular first-class mail to the address stated on the complaint.
7. The Commission's hearing notice was never returned to the sender.

8. The Complainant failed to appear at the March 15, 2017 telephonic hearing.

9 The Complainant did not settle, withdraw or request a continuance of the matter.

### 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.Cmwlt. 1984). This due process requirement is satisfied, however, when the administrative agency provides the parties notice and the opportunity to be heard.

The Commission sent notice of the telephonic hearing in this case to the Complainant on January 24, 2017, by regular first-class mail to the Complainant's address. To my knowledge this piece of mail was never returned to the sender, the scheduling staff for OALJ in Harrisburg.

In addition, I issued a prehearing order dated January 26, 2017, which, inter alia, directed the parties to notify me if the telephone numbers where they could be reached at the time of the hearing changed. This order, which was also mailed to the Complainant at the address stated on the complaint, was never returned. Accordingly, I must presume that this mail, which was sent in the ordinary course of business, was received by the Complainant. Berkowitz v. Mayflower Securities, Inc., 317 A.2d 584 (Pa. 1974); Meierdierck v. Miller, 147 A.2d 406 (Pa. 1959); Samaras v. Hartwick, 698 A.2d 71 (Pa.Super. 1997); Judge v. Celina Mutual Insurance Co., 444 A.2d 658 (Pa.Super. 1982).

The Complainant did not appear for the scheduled hearing because she was not available at the telephone number listed on the telephonic hearing notice. The Complainant never notified me of another telephone number where she could be contacted for the hearing. Under these circumstances, it appears the Complainant had ample opportunity to appear and be

heard in this proceeding, but voluntarily chose not to do so. Therefore, the due process rights of the Complainant have been fully protected. Sentner v. Bell Telephone Co. of Pa., Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

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. As the party bringing this complaint, the Complainant bears the burden of proving by a preponderance of the evidence that she is entitled to relief. By failing to appear and proffer any evidence to support her complaint, the Complainant has failed to meet this burden. The Complainant's failure to appear has caused the Commission and the Respondent to waste resources. Under these circumstances, the complaint should be dismissed with prejudice. Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); El-Ayazra v. West Penn Power Company, 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 due process rights of the Complainant have been fully protected in this proceeding. Sentner v. Bell Telephone Co. of Pa., Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).
3. By failing to appear and proffer any evidence to support her complaint, the Complainant has failed to meet her burden of proving that she is entitled to the relief that she seeks from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of PECO Energy Company to dismiss the complaint filed by Natasha Tinson at Docket No. F-2016-2546103 is granted.
2. That the complaint of Natasha Tinson against PECO Energy Company at Docket No. F-2016-2546103 is dismissed with prejudice for failure to appear and prosecute.
3. That the docket at Docket No. F-2016-2546103 is marked closed.

Date: April 4, 2017

\_\_\_\_\_/s/  
David A. Salapa  
Administrative Law Judge