

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Thelma Minichino

v.

PECO Energy Company

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C-2017-2594772

INITIAL DECISION

Before
Darlene Davis Heep
Administrative Law Judge

INTRODUCTION

This decision dismisses the formal Complaint (Complaint) for failure to prosecute because Complainant did not appear for the hearing.

HISTORY OF THE PROCEEDING

On March 13, 2017, Thelma Minichino (Ms. Minichino or Complainant) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO or Respondent or company). In the Complaint, Ms. Minichino states that she is having a reliability, safety or quality problem and that she is billed for more electricity than she uses.

On April 3, 2017, PECO filed an Answer denying all material allegations. PECO also averred that the company had conducted a high bill investigation and determined that there was no foreign load or billing errors.

On April 5, 2017, a Hearing Notice was issued setting a telephonic initial hearing for May 18, 2017, at 10:00 a.m. The Hearing Notice included a toll-free conference number with instructions directing the Complainant to call in for the hearing.

A Prehearing Order issued on April 10, 2017, informed the Complainant that the matter could be dismissed if she did not appear, that any requests for continuance must be submitted in writing five days in advance and that a change of the hearing date would be granted only where good cause is shown. The Prehearing Order also contained the toll-free bridge number and call-in instructions.

The hearing began as scheduled at 10:00 a.m. on May 18, 2017. Counsel for PECO, Shawane Lee, Esq., appeared by telephone with witnesses and was prepared to proceed. Complainant did not call in for the hearing.

A recess was taken to allow the Complainant time to call. Simultaneously, calls were made to the telephone number provided by the Complainant on her Complaint form. After several unsuccessful attempts to contact Complainant by telephone, the hearing resumed at 10:20 a.m. The Complainant had not called in for the hearing. Attorney Lee moved that the matter be dismissed for failure to prosecute.

The record closed on June 20, 2017, upon receipt of the transcript. This decision grants the Respondent's Motion to Dismiss the Complaint.

FINDINGS OF FACT

1. The Complainant in this case is Thelma Minichino.
2. PECO Energy Company is the Respondent.
3. On March 13, 2017, the Complainant filed this action.

4. The Respondent filed an Answer on April 3, 2017.
5. By Hearing Notice dated April 5, 2017, the Commission scheduled a telephonic initial hearing for May 18, 2017, at 10:00 a.m.
6. The Commission sent the Hearing Notice to Ms. Minichino by regular first-class mail to the address stated on the Complaint.
7. The Hearing Notice contained a toll-free telephone number with calling instructions for the Complainant to follow to call in for the scheduled hearing.
8. On April 10, 2017, a Prehearing Order was mailed to the Complainant which advised the Complainant that the matter would be dismissed if she did not participate, that requests for continuances must be submitted in writing and also provided the toll-free number to call in for the hearing, with instructions.
9. The Complainant did not call in for the May 18, 2017 telephonic hearing.
10. A 20 minute recess was taken to allow the Complainant time to call in.
11. During the recess, several calls were made to the Complainant at the telephone number that she provided on her Complaint form; the Complainant did not answer the telephone.
12. The Hearing Notice and the Prehearing Order were sent by first-class mail to the address provided by the Complainant on her Complaint form.
13. None of the documents mailed to the Complainant were returned as undeliverable.

14. The Complainant did not contact the Commission to request a continuance or to state that she could not participate in the hearing on May 18, 2017.

15. The Complainant has not contacted the Commission since the May 18, 2017, hearing date.

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

The Complainant received all notices by first-class mail and none of those notices was returned as undeliverable. All were sent to the address provided by the Complainant on the Complaint form. None of the documents was returned by the Post Office as undeliverable. Therefore, the due process requirement of notice was met.

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 they are entitled to relief. By failing to appear and proffer any evidence to support her Complaint, the Complainant has failed to meet this burden. Therefore, 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.

Ms. Minichino did not call in for hearing as directed on the Hearing Notice and the Prehearing Order. Also, at the time of the scheduled hearing, she could not be reached when several attempts were made to call her at the telephone number that she provided to the Commission on her Complaint form. She has not contacted the Commission since. Under these

circumstances, the Complainant has had ample opportunity to appear and be heard in this proceeding, but did not 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).

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 for the hearing and proffer any evidence to support the 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 Thelma Minichino at Docket No.C-2017-2594772 is granted.

2. That the Complaint of Thelma Minichino against PECO Energy Company at Docket No. C-2017-2594772 is dismissed with prejudice for failure of the Complainant to appear for the hearing and prosecute the Complaint.

3. That the matter at Docket No. C-2017-2594772 is marked closed.

Date: June 21, 2017

/s/
Darlene Davis Heep
Administrative Law Judge