

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kiesha K. Colbert	:	
	:	
v.	:	F-2016-2559271
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

This Initial Decision grants PECO Energy Company’s Motion to Dismiss the Complaint of Kiesha K. Colbert with prejudice because she failed to appear and prosecute the case.

HISTORY OF THE PROCEEDING

On July 28, 2016, Kiesha K. Colbert (Ms. Colbert or Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (Respondent or PECO) with the Pennsylvania Public Utility Commission (Commission) alleging that the utility is threatening to shut off her electric service, that her electricity bills are abnormally high, and that PECO has failed to adhere to the terms of a Commission-issued payment arrangement. As relief, Ms. Colbert requested that PECO conduct a high bill field investigation and that the Commission establish an affordable payment arrangement on her behalf.

The Complaint is a timely appeal of the Commission’s Bureau of Consumer Services’ (BCS) decision at BCS Case No. 3444123, which denied the Complainant’s informal complaint.

On August 17, 2016, Respondent filed an Answer denying the material allegations of the Complaint.

A Hearing Notice dated September 14, 2016, notified the parties that an initial hearing was scheduled in this matter for Wednesday, November 16, 2016, at 10:00 a.m.

A Prehearing Order was issued on October 3, 2016, advising the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to the proceeding, and directing the submission of documents prior to the hearing.

At 9:16 a.m. on the day of the hearing, I received a facsimile from Ms. Colbert requesting a continuance of the hearing due to a family emergency. Upon receipt of her request, I informed PECO's counsel, who had no objection to the continuance of the hearing.

A Hearing Cancellation/Reschedule Notice was issued on February 28, 2017, notifying the parties that the initial hearing in this matter was rescheduled for Thursday, March 30, 2017, at 10:00 a.m.

Following the Hearing Cancellation/Reschedule Notice, I issued a second Prehearing Order advising the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to the proceeding, and directing the submission of documents prior to the hearing.

The hearing convened as scheduled on March 30, 2017. Shawane L. Lee, Esq. appeared representing PECO Energy Company. Neither Complainant nor a counsel for the Complainant appeared at the hearing. The hearing convened after I confirmed that the Complainant had not called, or otherwise shown good cause not to appear at the scheduled hearing.

Counsel for PECO moved to dismiss the Complaint with prejudice for lack of prosecution. That Motion is granted pursuant to the ordering paragraphs below. The record was closed on May 1, 2017.

FINDINGS OF FACT

1. The Complainant is Kiesha K. Colbert, whose mailing address is 256 Church Street, Downingtown, PA 19335.
2. The Respondent is PECO Energy Company.
3. On July 28, 2016, Ms. Colbert filed a formal Complaint against PECO alleging that the utility is threatening to shut off her electric service, that her electricity bills are abnormally high, and that PECO has failed to adhere to the terms of a Commission-issued payment arrangement.
4. As relief, Ms. Curtis requested that PECO conduct a high bill field investigation and that the Commission establish an affordable payment arrangement on her behalf.
5. On August 17, 2016, the Respondent filed an Answer denying the material allegations of the Complaint.
6. A Hearing Notice dated September 14, 2016, notified the parties that an initial hearing was scheduled in this matter for Wednesday, November 16, 2016, at 10:00 a.m.
7. A Prehearing Order was issued on October 3, 2016, advising the parties of the proper procedure to obtain a continuance to reschedule the hearing date.

8. A Hearing Cancellation/Reschedule Notice was issued on February 28, 2017, notifying the parties that the initial hearing in this matter was rescheduled for Thursday, March 30, 2017, at 10:00 a.m.

9. A second Prehearing Order was issued on March 28, 2017, advising the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to the proceeding, and directing the submission of documents prior to the hearing.

10. None of the documents mailed to Complainant at the address provided on her Complaint was returned to the Commission by the United States Postal Service as undeliverable.

11. The Complainant failed to appear at the scheduled hearing.

12. The Complainant did not settle or withdraw this Complaint prior to the scheduled hearing date or obtain a continuance.

13. To date, there is no further information about the Complainant regarding this hearing.

DISCUSSION

In this formal Complaint, Ms. Colbert alleged that the utility is threatening to shut off her electric service, that her electricity bills are abnormally high, and that PECO has failed to adhere to the terms of a Commission-issued payment arrangement. As relief, Ms. Colbert requested that PECO conduct a high bill field investigation and that the Commission establish an affordable payment arrangement on her behalf. As the party seeking affirmative relief from the Commission, the burden of proof rests on the Complainant. 66 Pa.C.S.A. § 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). Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 1994).

A Hearing Cancellation/Reschedule Notice dated February 28, 2017, and a Prehearing Order dated March 28, 2017, were mailed to Ms. Colbert at the address listed on her formal Complaint form. Neither document was returned to the Commission as undeliverable by the post office. Therefore, the Complainant was deemed to have received these documents and had sufficient notice of the day, date and time of the scheduled hearing. Neither the Complainant nor a representative licensed to practice law in this Commonwealth appeared at the hearing. To date, there is no further information about the Complainant regarding this hearing. Her failure to appear is unexcused.

Once notice of a hearing and the opportunity to be heard have been provided, it is the responsibility of the parties to appear and participate in the hearing. *Craig Sentner v. Bell Telephone Co. of Pennsylvania*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993). The Complainant waived the opportunity to participate in the hearing by failing to appear. Ms. Colbert's Complaint will be dismissed with prejudice. 52 Pa.Code § 5.245(a); *Martin W. Jefferson v. UGI Utilities, Inc.*, 1995 Pa. PUC LEXIS 159; *El-Ayazra v. West Penn Power Company*, Docket No. F-2015-250-2509292 (Opinion and Order entered June 30, 2016).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S.A. § 701.
2. As the Complainant, Kiesha K. Colbert had the burden of proof and failed to carry that burden. 66 Pa.C.S.A. § 332(a).

3. Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 1994).

4. By failing to appear and be heard on this Complaint, Complainant waived the opportunity to participate in the hearing. 52 Pa.Code § 5.245(a); *Martin W. Jefferson v. UGI Utilities, Inc.*, 1995 Pa. PUC LEXIS 159; *El-Ayazra v. West Penn Power Company*, Docket No. F-2015-250-2509292 (Opinion and Order entered June 30, 2016).

5. Ms. Colbert has failed to meet her burden of proving that she is entitled to the relief she is seeking from the Commission.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PECO Energy Company to dismiss the formal Complaint of Kiesha K. Colbert at Docket No. F-2016-2559271 is granted.

2. That the Complaint filed by Kiesha K. Colbert against PECO Energy Company at Docket No. F-2016-2559271 is dismissed with prejudice for failure to prosecute.

3. That the Secretary's Bureau should mark this matter closed.

Date: August 4, 2017

/s/
Eranda Vero
Administrative Law Judge