

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Denise MacNeal	:	
	:	
v.	:	F-2017-2584141
	:	
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 Denise MacNeal with prejudice because she failed to appear and prosecute the case.

HISTORY OF THE PROCEEDING

On January 11, 2017, Denise MacNeal (Ms. MacNeal 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 improperly asking her to assume responsibility for her deceased husband’s outstanding balance. As relief, Ms. MacNeal requested that the Commission order PECO to remove her husband’s outstanding balance from her account or, in the alternative, 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. 3467198, which denied the Complainant’s informal complaint.

On January 31, 2017, Respondent filed an Answer denying the material allegations of the Complaint.

A Hearing Notice dated March 8, 2017, notified the parties that an initial hearing was scheduled in this matter for Thursday, April 13, 2017, at 9:30 a.m.

A 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.

The hearing convened as scheduled on April 13, 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 13, 2017.

FINDINGS OF FACT

1. The Complainant is Denise MacNeal, whose mailing address is 244 Pine Street, Glenolden, PA 19036.
2. The Respondent is PECO Energy Company.
3. On January 11, 2017, Ms. MacNeal filed a formal Complaint against PECO alleging that the utility is improperly asking her to assume responsibility for her deceased husband's outstanding balance.

4. As relief, Ms. MacNeal requested that the Commission order PECO to remove her husband's outstanding balance from her account or, in the alternative, establish an affordable payment arrangement on her behalf.

5. On January 31, 2017, the Respondent filed an Answer denying the material allegations of the Complaint.

6. A Hearing Notice dated March 8, 2017, notified the parties that an initial hearing was scheduled in this matter for Thursday, April 13, 2017, at 9:30 a.m.

7. A Prehearing Order was issued on March 28, 2017, advising the parties of the proper procedure to obtain a continuance to reschedule the hearing date.

8. 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.

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

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

DISCUSSION

In this formal Complaint, Ms. MacNeal alleged that the utility is improperly asking her to assume responsibility for her deceased husband's outstanding balance. As relief, Ms. MacNeal requested that the Commission order PECO to remove her husband's outstanding balance from her account or, in the alternative, 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 Notice and a Prehearing Order were mailed to Ms. MacNeal 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 has 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. MacNeal'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-2015-2509292 (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, Denise MacNeal 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-2015-509292 (Opinion and Order entered June 30, 2016).

5. Ms. MacNeal 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 Denise MacNeal at Docket No. F-2017-2584141 is granted.

2. That the Complaint filed by Denise MacNeal against PECO Energy Company at Docket No. F-2017-2584141 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