

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Simona Walsh

v.

PECO Energy Company

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C-2016-2538015

INITIAL DECISION

Before
Darlene Davis Heep
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On March 28, 2016, Simona Walsh (Ms. Walsh or Complainant) filed a formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company. In the Complaint, Ms. Walsh stated that she did not want a Smart Meter, or AMI meter, installed at her home due to health concerns.

On April 18, 2016, PECO filed an Answer denying all material allegations. PECO also stated that the company was required to install AMI meters in accordance with Act 129 and the Implementation Plan approved by the Commission.

PECO also filed a Preliminary Objection on April 18, 2016. The Preliminary Objection was granted in part and denied in part and the remaining claim regarding the Complainant's health concerns was set for hearing.

By Hearing Notice dated March 1, 2017, the matter was set for hearing on June 13-14, 2017.

On May 17, 2017, PECO requested a continuance due to the unavailability of one of its expert witnesses. The request for a continuance was granted and the hearing was scheduled to be held September 27-28, 2017.

The hearing convened as scheduled at 10:00 a.m. on September 27, 2017. Counsel for PECO appeared at the hearing prepared to proceed with witness Bryan Uber, PECO Senior Supervisor for Customer Field Operations Back Office, as well as three expert witness, namely Glenn Pritchard, PECO Manager of Advance Grid Operation; Dr. Christopher Davis, Ph.D.; and Dr. Mark Israel, M.D. Complainant was not present.

After a recess, Ms. Walsh did not appear for the hearing. PECO moved that the matter be dismissed for failure to prosecute.

The record closed on October 16, 2017 upon receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is Simona Walsh.
2. PECO Energy Company is the Respondent.
3. On March 28, 2016, the Complainant filed this action.
4. The Respondent filed an Answer on April 18, 2016.

5. A hearing notice dated March 1, 2017 was mailed to the Complainant noting that the hearing would be held June 13-14, 2017.

6. On May 17, 2017, PECO requested a continuance due to the unavailability of one of its expert witnesses.

7. An Order granting the request for continuance was issued and mailed to the Complainant on May 18, 2017.

8. The May 18, 2017 Order also stated that the hearing would be held September 27-28, 2017.

9. A Hearing Notice dated May 23, 2017 was mailed to the parties and stated that the hearing was set for September 27-28, 2017 at 10:00 a.m.

10. A Prehearing Order mailed to the parties on June 7, 2017 contained a statement that the hearing would be held September 27-28, 2017.

11. The June 7, 2017 Prehearing Order also stated:

You must be available in the hearing room when your case is called by the presiding Administrative Law Judges. If the customer is not present and prepared to go forward with the case when it is called, the case will be dismissed by the Administrative Law Judges . . .

THIS CASE WILL BE DISMISSED IF THE CUSTOMER FAILS TO PARTICIPATE IN THE HEARING AND PRESENT EVIDENCE IN SUPPORT OF THE COMPLAINT.

and

A request for a change of the scheduled hearing date must state the agreement or opposition of other parties, and must be submitted in writing no later than five (5) business days prior to the hearing. 52 Pa.Code § 1.15(b). Requests for changes of hearing dates must be sent to me and all parties of record.

12. Ms. Walsh was not present when the hearing convened as scheduled at 10:00 a.m. on September 27, 2017.

13. Counsel for PECO appeared at the hearing with several witnesses and was prepared to proceed.

14. A recess was taken to allow the Complainant time to appear.

15. During the recess, the Legal Assistant to the undersigned called the telephone number provided by the Complainant four times and there was no answer. (Tr.4).

16. At approximately 10:25 a.m., the hearing resumed and Ms. Walsh was not present.

17. The hearing adjourned at 10:27 a.m.

18. All hearing notices and prehearing orders were sent to the Complainant by first-class mail.

19. Documents mailed to the Complainant were not returned as undeliverable.

20. Complainant did not contact the Commission to request a continuance or to state that she could not attend the hearing.

21. Complainant has not contacted the Commission since the September 27, 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.

Documents mailed to the Complainant that contained the date of the hearing – the Hearing Notice, the Continuance Order and the Prehearing Order – were not returned by the postal service as undeliverable. Therefore, it is presumed that the Complainant received these documents. *Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 531, 317 A.2d 584 (1974); *Meierdierck v. Miller*, 394 Pa. 484, 147 A.2d 406 (1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. 1997); *Judge v. Celina Mutual Insurance Co.*, 303 Pa. Super. Ct. 221, 444 A.2d 658 (1982). Notice of the hearing was mailed to and received by the Complainant and therefore the due process requirement of notice was met.

The Complainant did not appear for the hearing and has not contacted the Commission since the date of the hearing. The hearing convened as scheduled and the Complainant was not present.

Attempts to reach the Complainant on the date of the hearing through the telephone number that she provided to the Commission were unsuccessful. A recess was taken to allow the Complainant time to appear, but she did not. The due process rights of the Complainant have been fully protected because she has had ample opportunity to appear and be heard 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).

Finally, Section 332(a) of the Public Utility Code, places the burden of proof upon the proponent of any request for relief. 66 Pa.C.S. § 332(a). 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. 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.

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 Simona Walsh at Docket No. C-2016-2538015 is granted.

2. That the Complaint of Simona Walsh against PECO Energy Company at Docket No. C-2016-2538015 is dismissed with prejudice for failure of the Complainant to appear for the hearing and prosecute the Complaint.

