

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nakia Stevenson	:	
	:	
v.	:	C-2017-2616197
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complaint of Nakia Stevenson against PECO Energy Company because she failed to prosecute her Complaint.

HISTORY OF THE PROCEEDING

On July 26, 2017, Nakia Stevenson (Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed checkmarks in boxes indicating “[t]he utility is threatening to shut off my service or has already shut off my service” and “I would like a payment agreement.”

On August 7, 2017, Respondent filed an Answer denying all material allegations of fact in the Complaint. Respondent further responded that the Complainant participated in PECO’s Customer Assistance Program (CAP), that her balance totaled \$1,460.65, and that her balance is comprised entirely of CAP arrears. Respondent requested that the Complainant’s Complaint be

dismissed pursuant to 66 Pa.C.S. § 1405(c) because the Commission cannot grant the Complainant a payment arrangement on a CAP arrearage.

By Hearing Notice dated August 10, 2017, a hearing was scheduled for September 26, 2017 at 1:00 p.m., and the matter was assigned to me. The Hearing Notice advised the parties of the location, date and time of the scheduled hearing and warned in italicized type: “*Attention: You may lose the case if you do not come to this hearing and present facts on the issues raised.*”

I issued a Prehearing Order on August 14, 2017. The Prehearing Order directed the parties to comply with various procedural requirements and directed that a request to change the scheduled hearing should be sent to me at least five days prior to the hearing date, be in writing and state the agreement or opposition of the other party. It warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing. It also explained that the Complainant bears the burden of proof to establish that the respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that she is entitled to the relief requested in the Complaint.

By facsimile received on September 21, 2017, the Complainant requested a postponement of the September 26, 2017 hearing due to personal issues. PECO did not object to the request, and it was granted.

By Hearing Cancellation/Reschedule Notice dated September 28, 2017, the hearing was rescheduled for November 13, 2017 at 10:00 a.m.

On the morning of November 13, 2017, the Complainant called to request a second postponement. Complainant requested a second postponement of her hearing, alleging that she forgot about her hearing and instead went to work. Complainant advised that she could not leave work for her hearing. The Complainant was informed that her last-minute request for a second postponement was denied and that the hearing would proceed as scheduled.

The hearing convened as scheduled on November 13, 2017. Counsel for PECO was present with a witness and was prepared to proceed. Ms. Stevenson was not present.

Because a customer who files a complaint before the Commission has an affirmative duty to make himself or herself available to participate in hearings on the complaint, I deemed Ms. Stevenson's failure to appear at the location, date and time of the rescheduled hearing as evidence that she did not wish to participate in the hearing.

No witnesses were presented and no exhibits were introduced into the record. Respondent's counsel moved that the Complaint be dismissed with prejudice for lack of prosecution pursuant to 52 Pa. Code § 5.245. In accordance with Commission policy, I am granting the Motion.

The record was closed at the end of the hearing on November 13, 2017.

FINDINGS OF FACT

1. The Complainant in this case is Nakia Stevenson.
2. The Respondent in this case is PECO Energy Company.
3. On July 26, 2017, the Complainant filed a Complaint with the Commission against the Respondent.
4. The Respondent filed an Answer on August 7, 2017.
5. By notice dated August 10, 2017, the Commission scheduled this matter for an initial hearing on September 26, 2017 at 1:00 p.m.
6. By facsimile received on September 21, 2017, the Complainant requested a postponement of the September 26, 2017 hearing.

7. By Hearing Cancellation/Reschedule Notice dated September 28, 2017, the hearing was rescheduled for November 13, 2017 at 10:00 a.m.

8. The Commission sent notice of the rescheduled hearing in this case to the Complainant by regular first-class mail to the address stated on the Complaint.

9. The Commission's Hearing Cancellation/Reschedule Notice was never returned to the sender.

10. On the morning of the rescheduled hearing, November 13, 2017, the Complainant requested a postponement of her hearing.

11. The Complainant was advised that her request for a second postponement was denied and that the hearing would proceed as scheduled.

12. The Complainant failed to appear at the November 13, 2017 hearing.

13. The Complainant did not settle or withdraw her Complaint.

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 rescheduled hearing in this case to the Complainant on September 28, 2017, by regular first-class mail to the address stated on the Complaint. To my knowledge this piece of mail was never returned to the sender, the scheduling staff for the Office of Administrative Law Judge (OALJ) in Harrisburg.

In addition, I issued a prehearing order dated August 14, 2017, which, *inter alia*, warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing. The prehearing order, which was mailed to the Complainant at the address shown 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 even though she was informed that her late request for a second hearing postponement was denied. Under the circumstances, 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 her requested relief. By failing to appear and proffer any evidence to support her Complaint, the Complainant has failed to meet her burden. 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 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 at Docket No. C-2017-2616197 is granted;
2. That the Complaint of Nakia Stevenson against PECO Energy Company at Docket No. C-2017-2616197 is dismissed with prejudice; and
3. That the Secretary mark this docket closed.

Date: December 5, 2017

/s/
Christopher P. Pell
Deputy Chief Administrative Law Judge