

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tanya Johnson	:	
	:	
v.	:	C-2017-2628540
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Darlene Davis Heep
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On September 25, 2017, Tanya Johnson filed a Complaint against PECO Energy Company. The Complaint states that Ms. Johnson would like a payment arrangement.

On October 20, 2017, PECO filed an Answer denying all material allegations of the Complaint. PECO also contends that under 66 Pa.C.S. Section 1405(c), the Complainant is not entitled to a Commission ordered payment arrangement because her \$626.90 balance is comprised of Customer Assistance Program arrears.

On October 31, 2017, a Hearing Notice was issued setting an Initial Hearing as part of the Call-of-the-Docket on December 12, 2017, beginning at 9:30 a.m. The Hearing Notice

advised the Complainant to arrive in the hearing room no later than 9:15 a.m. The Prehearing Order also 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 exists.

The hearing began on December 12, 2017, at 9:30 a.m. as scheduled. Counsel for PECO, Shawane Lee, Esquire, appeared with a witness and was prepared to proceed. Complainant was not present. A break was taken to allow the Complainant time to appear.

The hearing resumed at approximately 9:50 a.m. and Complainant had not arrived. Counsel for PECO moved that the matter be dismissed for failure to prosecute.

The record closed on December 13, 2017. This decision grants the Respondent's Motion to Dismiss the Complaint.

FINDINGS OF FACT

1. The Complainant in this case is Tanya Johnson.
2. PECO Energy Company is the Respondent.
3. On September 25, 2017, the Complainant filed this action.
4. The Respondent filed an Answer on October 20, 2017.
5. By Notice dated October 16, 2017, the Commission scheduled an initial hearing for December 12, 2017 at 9:30 a.m. and advised the Complainant to be present in the hearing room by 9:15 a.m.
6. The Commission sent the Notice of the hearing to Ms. Johnson by regular first-class mail to the address stated on the Complaint.

7. On November 30, 2017, a Prehearing Order was sent by first-class mail to the Complainant, advising her of the procedures applicable to the hearing and reminding her of the hearing date, time and location.

8. The Prehearing Order also stated, as follows:

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.

...

Changes are granted only in rare situations where good cause exists.

9. The Complainant failed to appear for the December 12, 2017 hearing.

10. None of the documents mailed to Complainant was returned as undeliverable.

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

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. *Mullane v. Central Hanover*

Bank and Trust Co., 339 U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950); *Dee-Dee Cab, Inc. v. Pa. Pub. Util. Comm'n*, 817 A.2d 593 (Pa. Cmwlth. 2003).

The OALJ scheduling unit issued notice of the hearing to the Complainant via first class mail to the address stated on the Complaint and the notice was not returned by Postal Authorities as undeliverable. It is presumed that the notice was received. *See 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). Therefore, the due process requirement of notice was met.

Ms. Johnson did not appear for the hearing and has not contacted the Commission. Under these circumstances, the Complainant has had ample opportunity to appear and be heard in this proceeding. 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 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 Tanya Johnson at Docket No. C-2017-2628540 is granted.

2. That the Complaint of Tanya Johnson against PECO Energy Company at Docket No. C-2017-2628540 is dismissed with prejudice.

3. That the docket at Docket No. C-2017-2628540 is marked closed.

Date: December 13, 2017

/s/
Darlene Davis Heep
Administrative Law Judge