

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Deborah Budd	:	
	:	
v.	:	C-2017-2610539
	:	
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 Deborah Budd because the Complainant failed to appear and prosecute her Complaint.

**HISTORY OF THE PROCEEDING**

On June 6, 2017, Deborah Budd (Ms. Budd 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 had refused to transfer a payment arrangement from her previous address and was requesting the full payment of the outstanding balance before placing the service at the new address under her name. As relief, Ms. Budd requested that PECO allow her to receive electric and gas service at her new address under her name and under the terms of her previous payment arrangement.

On July 11, 2017, Respondent filed an Answer denying the material allegations of the Complaint.

A Hearing Notice dated July 21, 2017, notified the parties that an initial hearing was scheduled in this matter for Wednesday, August 30, 2017, at 10:00 a.m.

A Prehearing Order was issued on August 9, 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.

Several days before the in-person hearing, counsel for PECO informed me that the Respondent had learned that Ms. Budd was deceased. Because no death certificate was located or submitted for the Complainant, I allowed the Respondent to appear at the scheduled hearing via telephone.

The hearing convened as scheduled on August 30, 2017. Shawane L. Lee, Esq. appeared via telephone representing PECO Energy Company. Neither Complainant nor a counsel for the Complainant appeared at the hearing. I attempted to contact the Complainant at the telephone number listed in her formal Complaint form. Josephine Martin answered my telephone call. She identified herself as Ms. Budd's mother, and confirmed that Ms. Budd was deceased. There was no indication from Ms. Martin or Ms. Budd's estate that they wished to prosecute Ms. Budd's present Complaint against PECO.

After giving my condolences to Ms. Martin, I proceeded with the hearing in Ms. Budd's absence. Counsel for PECO moved to dismiss the Complaint with prejudice for lack of prosecution.

On September 5, 2017, the Hearing Notice dated July 21, 2017, was returned to the Commission as undeliverable with the notation: "Return to Sender. Not deliverable as addressed. Unable to forward."

The record was closed upon receipt of the transcript on September 26, 2017.

## FINDINGS OF FACT

1. The Complainant is Deborah Budd, who resided at Sharon Avenue, 1<sup>st</sup> Floor, Sharon Hill, PA 19079.

2. The Respondent is PECO Energy Company.

3. On June 6, 2017, Ms. Budd filed a formal Complaint against PECO alleging that the utility had refused to transfer a payment arrangement from her previous address and was requesting the full payment of the outstanding balance before placing the service at the new address under her name.

4. As relief, Ms. Budd requested that PECO allow her to receive electric and gas service at her new address under her name and under the terms of her previous payment arrangement.

5. On July 11, 2017, Respondent filed an Answer denying the material allegations of the Complaint.

6. A Hearing Notice dated July 21, 2017, notified the parties that an initial hearing was scheduled in this matter for Wednesday, August 30, 2017, at 10:00 a.m.

7. A Prehearing Order was issued on August 9, 2017, advising the parties of the proper procedure to obtain a continuance to reschedule the hearing date.

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

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

## DISCUSSION

In her formal Complaint, Ms. Budd alleged that PECO had refused to transfer a payment arrangement from her previous address and was requesting the full payment of the outstanding balance before placing the service at the new address under her name. As relief, Ms. Budd requested that PECO allow her to receive electric and gas service at her new address under her name and under the terms of her previous payment arrangement. 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). 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. *Craig Sentner v. Bell Telephone Co. of Pennsylvania*, Docket No. F-00161106, Opinion and Order entered October 25, 1993, 52 Pa. Code § 1.24(a). Furthermore, Section 332(f) of the Public Utility Code, 66 Pa. C.S.A. § 332(f) provides in relevant part: "Any party who shall fail to be represented at a scheduled conference or hearing after being duly notified thereof, shall be deemed to have waived the opportunity to participate in such conference or hearing, and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat ..."

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). In the present case, the Hearing Notice was returned by the United States Postal Service as undeliverable after the date of the hearing. However, the Prehearing Order was not returned and, by personally calling the Complainant at the telephone number provided in her formal Complaint, I provided her with the opportunity to be heard or to at least request a

continuance of the hearing. Neither Complainant nor a counsel for the Complainant appeared at the hearing.

Unfortunately, this case is not simply a "failure to prosecute." Several days before the in-person hearing, counsel for PECO informed me that the Respondent had learned that Ms. Budd was deceased. When I attempted to contact the Complainant at the telephone number listed in her formal Complaint form, the Complainant's mother, Ms. Martin, answered the call and confirmed that Ms. Budd was deceased. There was no indication from Ms. Martin or Ms. Budd's estate that they wished to prosecute Ms. Budd's present Complaint against PECO. However, no death certificate was located or submitted for the Complainant.

After considering the totality of the evidence and the circumstances in this case, I find that the Complainant waived the opportunity to participate in the hearing by failing to appear. Ms. Budd'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.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter in this proceeding.
2. The Complainant, Deborah Budd had the burden of proof in this case but was unable to go forward or to carry that burden. 66 Pa. C.S. § 332(a).
3. 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.
4. Ms. Budd 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 Deborah Budd at Docket No. C-2017-2610539 is granted.
2. That the complaint filed by Deborah Budd against PECO Energy Company at Docket No. C-2017-2610539 is dismissed with prejudice for failure to prosecute.
3. That the record at Docket No. C-2017-2610539 is marked closed.

Date: December 19, 2017

\_\_\_\_\_/s/\_\_\_\_\_  
Eranda Vero  
Administrative Law Judge