

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kelly Evans	:	
	:	
v.	:	C-2017-2618541
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complaint of Kelly Evans against PECO Energy Company because she failed to appear for her hearing and prosecute her Complaint.

HISTORY OF THE PROCEEDING

On August 7, 2017, Kelly Evans (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,” “I would like a payment agreement,” and “Incorrect charges are on my bill.”

On August 25, 2017, PECO filed an Answer denying all material allegations of fact in the Complaint. PECO also contends that the Complainant participated in PECO’s Customer Assistance Program (CAP), that her balance totaled \$1,749.96, and that her balance is comprised

entirely of CAP arrears. The 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. PECO further avers that the Complainant has not responded to their requests to investigate her high bill concerns.

By Hearing Notice dated September 13, 2017, a hearing was scheduled for November 1, 2017, at 10:00 a.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.*"

On September 25, 2017, the Complainant filed a request for a continuance.

I issued a Prehearing Order on September 28, 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.

On November 2, 2017, I issued an Order granting the Complainant's request for a continuance.

By Hearing Cancellation/Reschedule Notice dated November 3, 2017, a hearing was rescheduled for December 19, 2017, at 10:00 a.m. Once again, the Hearing Cancellation/Reschedule 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.*"

The hearing began on December 19, 2017, at 10:00 a.m. as scheduled. Counsel for PECO was present with a witness and was prepared to proceed. The Complainant was not present.

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 closed on January 19, 2018, upon my receipt of the transcript.

FINDINGS OF FACT

1. The Complainant in this case is Kelly Evans.
2. The Respondent in this case is PECO Energy Company.
3. On August 7, 2017, the Complainant filed a Complaint with the Commission against the Respondent.
4. The Respondent filed an Answer on August 25, 2017.
5. By Hearing Notice dated September 13, 2017, the Commission scheduled this matter for an initial hearing on November 1, 2017, at 10:00 a.m.
6. On September 25, 2017, the Complainant filed a request for a continuance.
7. By Hearing Cancellation/Reschedule Notice dated November 3, 2017, a hearing was rescheduled for December 19, 2017, at 10:00 a.m.

8. The Commission sent the notice of the rescheduled hearing 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. The Complainant failed to appear at the December 19, 2017, hearing.

11. 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.Cmwlth. 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 November 3, 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 September 28, 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 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 they are 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 Kelly Evans at Docket No. C-2017-2618541 is granted;
2. That the Complaint of Kelly Evans against PECO Energy Company at Docket No. C-2017-2618541 is dismissed with prejudice; and
3. That the record at Docket No. C-2017-2618541 be marked closed.

Date: January 25, 2018

_____/s/_____
F. Joseph Brady
Administrative Law Judge