

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Lisa Humphrey	:	
	:	
v.	:	F-2017-2619614
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Angela T. Jones
Administrative Law Judge

INTRODUCTION

The undersigned through this decision dismisses the formal complaint (Complaint) filed in this matter for failure of the Complainant to appear at the hearing and prosecute the Complaint.

HISTORY OF THE PROCEEDING

On August 7, 2017, Complainant, Lisa Humphrey, filed a Complaint with the Pennsylvania Public Utility Commission (Commission or PUC) against PECO Energy Company (PECO or Company or Respondent). The Complainant explained that she has been unable to pay her electric bills due to her medical issues, deteriorating health and inability to work. She does not want her electric terminated and she requests a payment arrangement with more reasonable terms.

The Complaint was served on PECO electronically (eService) by the Commission's Secretary on August 16, 2017, according to the audit history of the docket. The eService is pursuant to the Waiver of Section 702 program, under which the Respondent waives the service

requirements in 66 Pa.C.S. § 702. The Complaint is a timely appeal of the informal complaint filed with the Commission's Bureau of Consumer Services (BCS) at Case No. 003521783.

On August 23, 2017, Shawane L. Lee, Esquire, counsel for the Respondent, filed an Answer to the Complaint. The Answer admitted that the Complainant sought a payment arrangement. The Answer provided that the Complainant is actively enrolled in the Company's customer assistance program (CAP) and is scheduled to recertify in the program on August 12, 2017. The Complainant's outstanding balance is comprised of CAP arrears.

The Complainant has filed three medical certificates: (1) June 5, 2015, (2) July 22, 2015, and (3) March 31, 2017. The Respondent averred that the Complainant has failed to make an equitable payment on her undisputed bills in compliance with 52 Pa.Code § 56.114(2)¹, and therefore, is not eligible to receive a third renewal of a medical certificate.

On May 3, 2017, the Complainant filed an informal complaint with the BCS at Case No. 003521783. On August 23, 2017, the BCS dismissed the informal complaint finding that the Complainant is enrolled in CAP and is not eligible for a Commission payment arrangement.² The BCS also concluded that the Complainant has had three medical certificates on the outstanding balance owed and pursuant to Commission regulations, the Respondent is not required to accept another medical certificate on this same outstanding balance.

The Respondent averred that the outstanding balance in the amount of \$952.28 is comprised of CAP arrears, and therefore, the Complainant is not entitled to a PUC ordered payment arrangement pursuant to 66 Pa.C.S. § 1405(c).³

¹ 52 Pa.Code § 56.114(2) states, in pertinent part, "when a customer has not met the obligation in § 56.116 to equitably make payments on all bills, the number of renewals for the customer's household is limited to two 30-day certification filed for the same set of arrearages...the public utility is not required to honor a third renewal of a medical certificate..."

² Because the Complainant is enrolled in CAP and the outstanding balance that she owes is comprised of CAP arrears, the Commission has no authority to provide a payment arrangement on a balance comprised of CAP arrears pursuant to 66 Pa.C.S. § 1405(c).

³ 66 Pa.C.S. § 1405(c) states, "Customer assistance program rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved by the commission."

The Respondent requested that the Commission find against the Complainant and dismiss the Complaint.

A Hearing Notice dated August 29, 2017, notified the parties that an initial in-person hearing was scheduled for Thursday, November 2, 2017, at 9:30 a.m. This Notice indicated that the case was assigned to the undersigned Administrative Law Judge (ALJ) as the presiding officer.

A Prehearing Order dated August 29, 2017, provided procedural rules and guidelines for the proceeding and emphasized the following:

- (1) a request to change the scheduled hearing should be sent at least five days prior to the hearing date;
- (2) the request for a hearing change is to be in writing and sent to all parties of record; and
- (3) a caution that Complainant may lose the case if she does not take part in the hearing and present evidence on the issues raised.

By telephone on October 31, 2017, the Complainant requested that the hearing be rescheduled. The undersigned sent by electronic mail (email) the substance of the request to Respondent's counsel. Respondent objected to the request.

By Order dated October 31, 2017, the request to reschedule the hearing was granted over the objection of the Respondent. The Order directed that the initial hearing be rescheduled as a call-in telephonic hearing unless the Complainant requested an in-person hearing in writing.

By Hearing Notice dated January 2, 2018, the initial hearing was rescheduled to a call-in telephonic hearing on Thursday, February 1, 2018.⁴ This Hearing Notice provided the telephone number and passcode needed to participate in the call-in telephonic hearing.

⁴ On November 2, 2017, this proceeding was rescheduled as an initial in-person hearing on February 1, 2018 in error. The Hearing Notice on January 2, 2018 corrected the error of an in-person hearing to a call-in telephonic hearing.

By Prehearing Order dated January 3, 2018, the undersigned provided the procedure for a call-in telephonic hearing. This Prehearing Order provided the telephone number and passcode to be used to participate in the call-in telephonic hearing.

By facsimile on January 31, 2018, the undersigned received a communication from Philadelphia Councilwoman Jannie Blackwell who stated her office is assisting the Complainant. The communication stated that the Complainant just received proposed exhibits for this proceeding from the Respondent at 2 p.m. on January 31, 2018. The undersigned forwarded Councilwoman Blackwell's communication to the Respondent as a cautionary measure against ex-parte communications.

The call-in telephonic hearing convened as scheduled. The Complainant was not present. Attorney Lee as counsel for the Respondent was present along with one potential witness. The undersigned recessed to allow time for the Complainant to appear or to communicate a reasonable explanation as to why she could not be present at the scheduled hearing. The undersigned reconvened the hearing at approximately 10:10 a.m. The Complainant remained absent from the evidentiary hearing without communicating why she failed to appear.

Counsel for the Respondent moved to dismiss the Complaint with prejudice for lack of prosecution. The undersigned stated that the Respondent's motion would be considered and ruled upon in writing. The hearing was adjourned. The record closed on February 20, 2018, when the undersigned received the transcript for the proceeding.

To date, there has been no further communication from the Complainant. This matter is ripe for decision.

FINDINGS OF FACT

1. The Complainant is Lisa Humphrey, who is requesting a payment arrangement for electric service at 5636 Montrose Street, Philadelphia, Pennsylvania (service address).

2. The Complainant also requests that the Respondent not terminate her electric service at the service address.

3. The Respondent is PECO Energy Company, a jurisdictional public utility that provides electric and gas distribution service in the Commonwealth of Pennsylvania.

4. On August 7, 2017, the Complainant filed a Complaint with the Commission against the Respondent.

5. The Respondent filed its Answer on August 23, 2017, which admitted to the payment arrangement request.

6. A Hearing Notice dated January 2, 2018, was sent by regular first-class mail to the Complainant and scheduled a call-in telephonic evidentiary hearing for Thursday, February 1, 2018, at 10:00 a.m.

7. A Prehearing Order, dated January 3, 2018, advised the Complainant of the proper procedure to participate in the call-in hearing and to obtain a continuance to reschedule the hearing date.

8. None of the documents mailed to the Complainant were returned to the Commission by the United States post office as undeliverable.

9. Neither the Complainant nor any counsel representing the Complainant timely appeared at the scheduled hearing on February 1, 2018.

10. The Complainant did not settle or withdraw the Complaint.

DISCUSSION

In this Complaint, the Complainant requested a payment arrangement for electric service at the service address and requested that the Respondent not terminate her electric service. The issue in this proceeding is determined by whether the Complainant sustained her burden of proof. By failing to participate in the hearing, the Complainant was unable to meet this burden.

The party seeking affirmative relief from the Commission bears the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the Complaint to prevail. *Patterson v. Bell Tel. Co. of Pa.*, 72 Pa. PUC 196 (1990); *Feinstein v. Phila. Suburban Water Co.*, 50 Pa. PUC 300 (1976). This responsibility or accountability to the named utility must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992). A preponderance of the evidence is that which is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

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). Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 1994).

The Commission sent a Hearing Notice dated January 2, 2018, to the Complainant by regular first class mail to the address listed on the Complaint. This document was never returned to the sender, the scheduling staff of the Office of Administrative Law Judge (OALJ) in Harrisburg.

The undersigned issued a Prehearing Order dated January 3, 2018, which *inter alia*, instructed the parties that any request to change the scheduled hearing date should state the agreement or opposition of the other party and be submitted in writing no later than five days prior to the hearing. The Prehearing Order also stated the day, date, time and calling information for the scheduled call-in hearing. The Prehearing Order, which was mailed to the Complainant at the address shown in the Complaint, was never returned by the U.S. post office as undeliverable. Accordingly, it is presumed that this mailing, which was done through the ordinary course of business, was received by the Complainant. *Berkowitz v. Mayflower Securities, Inc.*, 317 A.2d 584 (Pa. 1974); *Meirerdierck 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 is deemed to have received these documents and had sufficient notice of the day, date and time of the scheduled hearing. The Complainant was notified of the scheduled hearing date and time, as well as how to contact the OALJ for the hearing. The Complainant made no attempt to notify the presiding officer that she did not plan to participate in the scheduled February 1, 2018, hearing.

Under these circumstances, the Complainant had ample opportunity to appear and be heard in this proceeding, but chose not to do so. Once notice of a hearing and the opportunity to be heard have been provided to the parties, it is the responsibility of both parties to appear and participate in the hearing. The due process rights of the Complainant have been fully protected. *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

Section 332(a) of the Public Utility Code (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 choosing not to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden.

The failure of the Complainant to appear at this scheduled hearing is unexcused. By her failure to attend the hearing and present evidence on the issue raised, the Complainant failed to sustain her burden of proof.

As the Commission stated in *Mumma v. PPL Electric Utilities Corp.*, Docket No. C-00014869 (Opinion and Order entered January 24, 2002), “It is well-established law that once timely notice of a hearing and the opportunity to be heard have been provided, it is the responsibility of the parties to be present and participate in the hearing.” See, *Schneider v. Pa. Pub. Util. Comm’n*, 479 A.2d 10 (Pa.Cmwlth. 1984); *Plummer v. Columbia Gas of Pa., Inc.*, Docket No. Z-00847836 (Opinion and Order entered September 27, 2001). The Pennsylvania Commonwealth Court has made it clear that in administrative hearings, “a party’s own negligence is not sufficient good cause as a matter of law for failing to appear at a ... hearing.” *Eat “N Park Hospitality Group, Inc. v. Unemployment Compensation Board of Review*, 970 A.2d 492, 494 (Pa.Cmwlth. 2008).

The Respondent’s counsel moved that the Complaint be dismissed with prejudice for failure to prosecute. The due process rights of the Complainant have been protected. The Complainant had notice of the scheduled hearing and failed to appear to prosecute her Complaint.

Due to the waste of the Commission’s and Respondent’s time, money and energy occasioned by the Complainant’s failure to appear at a hearing of which she had notice, this Complaint will be dismissed with prejudice in accordance with well-established Commission precedent. *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); *Evans v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00957229 (Opinion and Order entered July 12, 1996); *King v. PECO Energy Co.*, Docket No. C-00967919 (Opinion and Order entered January 16, 1997); *Kenny v. PPL Electric Utilities Corp.*, Docket No. C-20042399 (Final Order entered October 13, 2004); *Jones v. The Peoples Natural Gas Co. d/b/a Dominion Peoples*, Docket No. C-20054885 (Opinion and Order entered February 14, 2006); *El-Ayazra v. West Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016).

The Complainant waived the opportunity to participate in the hearing by failing to appear. This case will be dismissed. 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 the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. Notice properly mailed to a party's last known address and not returned by the post office is presumed to have been received. *Berkowitz v. Mayflower Securities, Inc.*, 317 A.2d 584 (Pa. 1974); *Meirerdierck 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).
3. By Hearing Notice dated January 2, 2018, the Complainant had notice of the day, date, calling information, and time of the scheduled hearing. 52 Pa.Code § 5.201(a).
4. Once notice of a hearing and the opportunity to be heard have been provided, it is the responsibility of the parties to appear and participate in the hearing. *Sentner v. Bell Telephone Co. of Pennsylvania*, Docket No. F-00161106 (Order entered October 25, 1993).
5. As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).
6. The due process rights of the Complainant have been fully protected because the Complainant was afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlth. 1984).
7. A formal Complaint may be dismissed if, after notice and an opportunity to be heard, a Complainant fails to appear and prosecute the Complaint. *Mumma v. PPL Electric Utilities Corp.*, Docket No. C-00014869 (Opinion and Order entered January 24, 2002).

8. The Complainant, Lisa Humphrey, failed to sustain her burden of proof.
66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion by Shawane Lee, Esquire on behalf of PECO Energy Company to dismiss the formal complaint of Lisa Humphrey at Docket No. F-2017-2619614 for lack of prosecution is granted.
2. That the formal complaint filed by Lisa Humphrey against PECO Energy Company at Docket No. F-2017-2619614 is dismissed in its entirety with prejudice.
3. That the Docket No. F-2017-2619614 is to be marked closed.

Dated: March 6, 2018

/s/
Angela T. Jones
Administrative Law Judge