

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Mia McGuire <sup>1</sup>	:	
	:	
v.	:	C-2017-2627982
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
F. Joseph Brady  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Complaint of Mia McGuire against PECO Energy Company because she failed to appear for her hearing and prosecute her Complaint. MaryAnn Suarez appeared on behalf of Mia McGuire, but she failed to present proper proof that she has power of attorney for Mia McGuire. Moreover, Ms. Suarez is not an attorney, therefore, she does not have the authority to appear on behalf of the Complainant before the Commission.

**HISTORY OF THE PROCEEDING**

On September 25, 2017, Mia McGuire (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 alleges incorrect charges from PECO and disputes an Initial Decision issued on September 14, 2014, by

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<sup>1</sup> Originally, this case was improperly captioned: *MaryAnn Suarez v. PECO*, presumably based on the “Name” portion of the formal Complaint being filled in as: “Mary Ann Suarez/Mia McGuire.” However, it is clear from the remainder of the Complaint that Mia McGuire is the actual Complainant, which was confirmed at the outset of the hearing on January 9, 2018. (N.T. p. 4). As a result, the Order attached hereto amends the caption to read: *Mia McGuire v. PECO Energy Company*, Docket No. C-2017-2627982.

Administrative Law Judge (ALJ) David Salapa in the formal complaint of *McGuire v. PECO Energy Co.* at Docket No. F-2014-2427216.

This Complaint is an untimely appeal of the Commission's Bureau of Consumer Services (BCS) decision dated, August 11, 2016, at BCS No. 3466370, which dismissed the Complainant's informal complaint.

On October 10, 2017, PECO filed an Answer with New Matter to the Complaint denying all material allegations of fact in the Complaint. Furthermore, in both the Answer and New Matter, PECO contends that the claims of the Complainant are barred by the doctrine of *res judicata*, because the issues raised were decided by ALJ Salapa in the formal complaint of *McGuire v. PECO Energy Co.*, Docket No. F-2014-2427216 (Final Order entered November 12, 2014).

By Hearing Notice dated November 14, 2017, a hearing was scheduled for January 9, 2018, at 10:00 a.m., and the matter was assigned to me.

A Prehearing Order was issued on November 20, 2017. The Prehearing Order provided procedural rules and guidelines for the proceeding including the following:

6. Pursuant to 52 Pa.Code §§ 1.21 & 1.22, you may represent yourself, if you are an individual, or you may have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, represent you. However, if you are a partnership, limited liability company, corporation, trust, association, or governmental agency or subdivision, you must have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, represent you in this proceeding. Unless you are an attorney, you may not represent someone else. Attorneys shall insure that their appearance is entered in accordance with the provisions of 52 Pa.Code § 1.24(b).

The hearing convened on January 9, 2018 as scheduled. Counsel for PECO was present with a witness and was prepared to proceed. The Complainant was not present. MaryAnn Suarez was present and stated she was appearing on behalf of the Complainant.

Prior to going on the record, Ms. Suarez presented a document to me which she offered as proof that she has power of attorney on behalf of the Complainant. The document presented did not comply with the statutory requirements prescribed at 20 Pa.C.S. Chapter 56 in order to be legally recognized as granting Ms. Suarez power of attorney on behalf of the Complainant. Furthermore, Ms. Suarez is not an attorney. As a result, I found Ms. Suarez did not have the authority to appear on behalf of the Complainant before the Commission.

Ms. Suarez requested a continuance. The request was denied since Ms. Suarez does not have the authority to make such a request on behalf of the Complainant.

No witnesses were presented and no exhibits were introduced into the record.

The record closed on February 9, 2018, upon my receipt of the transcript.

#### FINDINGS OF FACT

1. The Complainant in this case is Mia McGuire. N.T. p. 4.
2. The Respondent in this case is PECO Energy Company.
3. On September 25, 2017, the Complainant filed a Complaint with the Commission against the Respondent.
4. On October 10, 2017, the Respondent filed an Answer with New Matter.
5. By notice dated November 14, 2017, the Commission scheduled this matter for an initial hearing on January 9, 2018, at 10:00 a.m.
6. A Prehearing Order was issued on November 20, 2017.
7. The Hearing Notice and Prehearing Order, both warned: *“Attention: You may lose this case if you do not take part in this hearing and present facts on the issues raised.”*

8. None of the documents mailed to Complainant at the address provided on her Complaint were returned to the Commission by the United States Postal Service as undeliverable.

9. The Complainant failed to appear at the January 9, 2018, hearing.

10. MaryAnn Suarez appeared at the January 9, 2018 hearing on behalf of the Complainant. N.T. p. 4.

11. MaryAnn Suarez is not an attorney.

12. At the hearing, MaryAnn Suarez claimed she had power of attorney on behalf of the Complainant. N.T. pp. 4-8.

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.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 hearing in this case to the Complainant on November 14, 2017. In addition, I issued a Prehearing Order on November 20, 2017, that provided procedural rules and guidelines for the proceeding including the following:

6. Pursuant to 52 Pa.Code §§ 1.21 & 1.22, you may represent yourself, if you are an individual, or you may have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, represent you. However, if you are a partnership, limited liability company, corporation, trust, association, or governmental agency or subdivision, you must have

an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, represent you in this proceeding. **Unless you are an attorney, you may not represent someone else.** Attorneys shall insure that their appearance is entered in accordance with the provisions of 52 Pa.Code § 1.24(b).

(emphasis added).

The hearing convened on January 9, 2018, as scheduled, but the Complainant was not present. Instead, MaryAnn Suarez appeared on behalf of the Complainant, and prior to going on the record, presented a document to me which she offered as proof that she has power of attorney on behalf of the Complainant.

The Regulations regarding what constitutes a legally binding power of attorney are set forth in detail at 20 Pa.C.S. Chapter 56. In this case, the document offered by Ms. Suarez, as proof of her power of attorney, was not signed by two individual witnesses (20 Pa.C.S. § 5601(b)(3)(ii)); did not contain a Notice (20 Pa.C.S. §5601(c)); and did not contain an acknowledgement by Ms. Suarez that she was the agent for Ms. McGuire (20 Pa.C.S. § 5601(d)). As a result, the document submitted by Ms. Suarez is not legally sufficient to confer power of attorney status upon her on behalf of the Complainant.

More importantly, even if Ms. Suarez provided a valid power of attorney, she still could not proceed in the place of Ms. McGuire. This issue was thoroughly addressed in *Betty Ricks v. PECO Energy Co.*, Docket No. C-2012-2321440 (Opinion and Order entered November 4, 2013), where it was held:

[A] power of attorney does not empower a non-attorney to represent an individual in a formal Commission proceeding. An individual person may represent himself or herself in formal proceedings before the Commission, but a power of attorney held by a lay person for another does not give the holder the ability to practice law. An attorney is required for the representation of another.

*Id.*; *Kohlman v. Western Pennsylvania Hospital*, 438 Pa. Super. 352, 652 A.2d 849 (1994), petition for allowance of appeal denied, 541 Pa. 640, 663 A.2d 692 (1995); see also, *Westmoreland County v. Rodgers, et al*, 693 A.2d 996 (Pa.Cmwlth. 1997), appeal denied, 717 A.2d 536 (1998) (party does not have the right to be represented by an individual not licensed to practice law in an administrative hearing).

In this case, a Hearing Notice and a Prehearing Order were mailed to Complainant at the address provided on her Complaint, and neither were returned to the Commission by the United States Postal Service as undeliverable. Thus, both are presumed to have been received. See *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 1994).

The Complainant was notified in both the Hearing Notice and Prehearing Order that she must appear herself or have a licensed attorney represent her. However, she did neither, and consequently, failed to appear at the scheduled hearing and prosecute her complaint. Under these circumstances, I find 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).

Furthermore, 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. 66 Pa.C.S. § 332(a). 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. In order to constitute a legally binding power of attorney, the power of attorney must be witnessed by two individuals, 18 years of age or older, who are not the agent designated in the power of attorney or the notary public, contain a Notice of the powers of the designated agent, and the designated agent must sign an acknowledgement of this designation. 20 Pa.C.S. §§ 5601(b)(c), and (d).

3. In formal Commission proceedings, individuals may represent themselves, or may have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, represent them. 52 Pa.Code §§ 1.21 & 1.22.

4. A power of attorney does not empower a non-attorney to represent an individual in a formal Commission proceeding. *Kohlman v. Western Pennsylvania Hospital*, 438 Pa. Super. 352, 652 A.2d 849 (1994), petition for allowance of appeal denied, 541 Pa. 640, 663 A.2d 692 (1995).

5. As the party seeking affirmative relief from the Commission, the burden of proof rests on the Complainant. 66 Pa.C.S. § 332(a).

6. 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).

7. 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).

8. 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 case caption in this matter is amended to read Mia McGuire v. PECO Energy Company, Docket No. C-2017-2627982;
2. That the Complaint of Mia McGuire against PECO Energy Company at Docket No. C-2017-2627982 is dismissed with prejudice for failure to prosecute; and
3. That the record at Docket No. C-2017-2627982 be marked closed.

Date: March 2, 2018

\_\_\_\_\_/s/  
F. Joseph Brady  
Administrative Law Judge