

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Valerie Grant	:	
	:	
v.	:	F-2017-2619802
	:	
PECO Energy Company	:	

INITIAL DECISION
(Non-Confidential)

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 for the hearing and prosecute the Complaint.

HISTORY OF THE PROCEEDING

On August 2, 2017, Complainant, Valerie Grant, filed a Complaint with the Pennsylvania Public Utility Commission (Commission or PUC) against PECO Energy Company (PECO or Company or Respondent). The Complainant checked the box on the Complaint form which stated, “I would like a payment agreement.” The Complainant requests the PUC to order the Respondent to restore both her electric and gas services. The Complainant stated that her family is facing a hardship. The Complainant alleged that a court has granted a protection from abuse (PFA) order for her personal safety or welfare.¹ The Complaint is a timely appeal of the

¹ The Complainant failed to sustain her burden that a PFA order was in effect. In an abundance of caution to protect the rights of the Complainant, the undersigned has issued a confidential and non-confidential decision.

informal complaint at Case No. 0035352000 filed with the Commission's Bureau of Consumer Services (BCS).

The Complaint was served on PECO electronically (eService) by the Commission's Secretary on August 17, 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.

On August 29, 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 Respondent averred that the Complaint should be dismissed pursuant to 66 Pa.C.S. § 1405(d).²

On April 30, 2013, the Complainant filed an informal complaint with the BCS at Case No. 003091156 requesting a payment arrangement on her \$1,065.86 balance. On May 3, 2013,³ the BCS granted a payment agreement with the following terms: (1) monthly budget bill of \$159.00, and (2) \$18.00 per month toward arrears. The Complainant defaulted on the payment agreement.

On June 13, 2017, the Complainant filed an informal complaint with the BCS at Case No. 003535200 requesting a payment arrangement on her \$4,336.31 balance. On July 11, 2017, the BCS dismissed the informal complaint because the Complainant had a prior payment agreement that she did not satisfy, and therefore, found the Complainant ineligible for a Commission-issued payment agreement.

² 66 Pa.C.S. § 1405(d) states,
Absent a change in income, the commission shall not establish or order a public utility to establish a second or subsequent payment arrangement if a customer has defaulted on a previous payment arrangement established by a commission order or decision. A public utility may, at its discretion, enter into a second or subsequent payment arrangement with a customer.

³ In the Answer, the date of the BCS decision is May 3, 2017, but the exhibit 3 shows the date as May 3, 2013. The Answer has a typographical error for the date of the BCS decision.

As of the date of the Respondent's Answer, the Complainant's balance was \$4,336.31. The Respondent averred pursuant to 66 Pa.C.S. § 1405(d) the Complainant is not entitled to a Commission-issued payment arrangement because she defaulted on a prior BCS agreement and has not demonstrated a significant change in circumstance or income.

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

A Hearing Notice dated September 1, 2017, notified the parties that an initial in-person hearing was scheduled for Thursday, November 2, 2017, at 1:30 p.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 31, 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.

The evidentiary hearing convened as scheduled. The Complainant was not present; however, the Complainant sent by facsimile a request for a continuance because she was experiencing a stomach virus. Attorney Lee as counsel for the Respondent was present along with one potential witness. Attorney Lee objected to the requested continuance and moved to dismiss the Complaint with prejudice. I adjourned the hearing and stated that I would consider the Respondent's motion and rule on it in writing.

By Order dated November 7, 2017, the undersigned granted the Complainant's requested continuance. The undersigned also granted the Complainant's request to schedule a telephonic hearing.

By Hearing Notice dated November 16, 2017, the proceeding was rescheduled for Monday, February 5, 2018, at 10:00 a.m. for an Call-In Telephonic Hearing.

By Amended Order #3, dated December 4, 2017,⁴ the undersigned provided the day, date, time, phone number and pass code, for the scheduled Call-In Telephonic Hearing. The amended Order #3 also provided the procedural rules for the hearing.

The Call-In Telephonic Hearing convened as scheduled. Attorney Lee was present and accompanied by one potential witness. The Complainant was not present. The undersigned took a brief recess to allow time for the Complainant to call-in or to provide a reasonable excuse why she was not able to call-in timely. The Call-In Telephonic Hearing reconvened at 10:20 a.m. The Complainant failed to call-in. Attorney Lee moved to dismiss the Complaint with prejudice for failure to prosecute. I stated that I would rule on the motion in writing and then adjourned.

The transcript of this Complaint consists of 16 pages of transcribed testimony. The record closed on February 28, 2018, when the undersigned received the transcript.

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

FINDINGS OF FACT

1. The Complainant is Valerie Grant, who is requesting a payment arrangement for electric and gas services at **[BEGIN CONFIDENTIAL]**
[END CONFIDENTIAL] (service address).

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

⁴ Order #3 was first issued on November 15, 2017; however, it had an incorrect date for the day of the hearing.

3. On August 2, 2017, the Complainant filed a Complaint with the Commission against the Respondent.
4. The Respondent filed its Answer on August 29, 2017, which admitted to the payment arrangement request.
5. A Hearing Notice dated November 16, 2017, was sent by regular first-class mail to the Complainant and scheduled a Call-In Telephonic Hearing for Monday, February 5, 2018, at 10:00 a.m.
6. Amended Order #3, dated December 4, 2017, advised the Complainant of the proper procedure to participate in the call-in hearing and to obtain a continuance to reschedule the hearing date.
7. None of the documents mailed to the Complainant was returned to the Commission by the United States post office as undeliverable.
8. Neither the Complainant nor any counsel representing the Complainant timely appeared at the scheduled hearing on February 5, 2018.
9. The Complainant did not settle or withdraw the Complaint.

DISCUSSION

In this Complaint, the Complainant requests a payment arrangement for electric and gas services and restoration of both services at her service address. 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.Cmwlt. 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.Cmwlt. 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.Cmwlt. 1994).

The Commission sent a Hearing Notice dated November 16, 2017, 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 Amended Order #3, dated December 4, 2017, 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 Amended Order #3 also stated the day, date, time and calling information for the scheduled call-in hearing. The Amended Order #3, 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 whatsoever to notify the presiding officer that she did not plan to participate in the scheduled February 5, 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 has 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 November 16, 2017, 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 has 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, Valerie Grant, 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 Valerie Grant at Docket No. F-2017-2619802 for lack of prosecution is granted.
2. That the formal complaint filed by Valerie Grant against PECO Energy Company at Docket No. F-2017-2619802 is dismissed in its entirety with prejudice.
3. That the Docket No. F-2017-2619802 is to be marked closed.

Dated: March 8, 2018

/s/
Angela T. Jones
Administrative Law Judge