

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Anitra Prempeh	:	
	:	
v.	:	C-2018-2642715
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On January 12, 2018, Anitra Prempeh (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,” and “I would like a payment agreement.”

On January 26, 2018, PECO filed an Answer with New Matter. In its Answer, PECO denies all material allegations of fact in the Complaint. Further, PECO avers that the Complainant is not entitled to a payment agreement as she has an active Chapter 13 bankruptcy proceeding in which PECO is a creditor. In its New Matter, PECO avers that the Commission

does not have jurisdiction over the Complainant's Complaint due to the fact that she has an active Chapter 13 bankruptcy case pending.

By Hearing Notice dated February 2, 2018, a hearing was scheduled for March 30, 2018, at 9:30 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.*"

I issued a Prehearing Order on February 13, 2018. The Prehearing Order directed the parties to comply with various procedural requirements and directed that a request to change the scheduled hearing date 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.

The hearing began on March 30, 2018, at 9:30 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 April 10, 2018, upon my receipt of the transcript.

FINDINGS OF FACT

1. The Complainant in this case is Anitra Prempeh.

2. The Respondent in this case is PECO Energy Company.
3. On January 12, 2018, the Complainant filed a Complaint with the Commission against the Respondent.
4. The Respondent filed an Answer on January 26, 2018.
5. By Hearing Notice dated February 2, 2018, the Commission scheduled this matter for an initial hearing on March 30, 2018, at 9:30 a.m.
6. The Commission sent the Hearing Notice to the Complainant by regular first-class mail to the address stated on the Complaint.
7. The Commission's Hearing Notice was never returned to the sender.
8. The Complainant failed to appear at the March 30, 2018, hearing.
9. 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 initial hearing in this case to the Complainant on February 2, 2018, 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 February 13, 2018, 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 she is 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 Anitra Prempeh at Docket No. C-2018-2642715 is granted;

2. That the Complaint of Anitra Prempeh against PECO Energy Company at Docket No. C-2018-2642715 is dismissed with prejudice; and

3. That the record at Docket No. C-2018-2642715 be marked closed.

Date: April 23, 2018

/s/
F. Joseph Brady
Administrative Law Judge