

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pamela Grimes	:	
	:	
v.	:	C-2018-3000571
	:	
Pennsylvania Electric Company	:	

INITIAL DECISION

Before
Benjamin J. Myers
Administrative Law Judge

INTRODUCTION

This decision dismisses the complaint filed in this matter for failure of the Complainant to appear for the hearing and prosecute the complaint.

HISTORY OF THE PROCEEDING

On March 16, 2018, Pamela Grimes (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania Electric Company (Respondent). The complaint alleges that the Complainant was experiencing reliability issues with her electric utility service, that there were incorrect charges on her bill, and that as a result of various health reasons she required a payment arrangement. The complaint requested that the Commission provide her with an additional opportunity to satisfy her outstanding account balance in light of all of the continuing health issues she and her husband face.

The Respondent filed an answer with new matter on April 9, 2018. The answer admitted that the Respondent provided the Complainant with electric service and that the

Complainant was requesting another payment arrangement. The answer, however, denied that the Complainant had experienced any incorrect charges on her bill or any reliability issues with her electric service. The Respondent argued that the Complainant should not be eligible for any payment arrangement as she had filed numerous complaints in the past asking for that same relief but had failed to prosecute those complaints. Respondent argued that each time the Complainant's service is pending termination, she simply files a complaint to delay that process but each time failed or refused to prosecute her complaint. Respondent also argued that a portion of the Complainant's account balance, which stood in excess of \$14,000, consisted of customer assistance program arrears which could not be subject to a payment arrangement.

The Respondent's new matter asserted that the Complainant had filed five informal and three formal complaints with the Commission since May 2015 and that all of these complaints had either been denied or dismissed. The Respondent argued that the Complainant's pattern of behavior - filing repeated complaints and then failing to prosecute these complaints - evidenced an abuse of the Commission's processes. The Respondent's answer and new matter requested that the Commission dismiss the complaint. The Complainant did not file a response to Respondent's new matter.

By notice dated April 30, 2018, the Commission scheduled this matter for an initial telephonic hearing on May 23, 2018 at 10:00 a.m. and assigned the case to me. A prehearing order was issued on May 1, 2018 addressing, inter alia, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

A telephonic hearing was conducted on May 23, 2018 at 10:00 a.m. The Complainant failed to appear for that hearing. The Complainant did not call the conference number shown on the April 30, 2018 hearing notice at 10:00 a.m.

It was verified with the support staff for the Office of Administrative Law Judge (OALJ) that the Complainant had not contacted that office to indicate that she would be unable to participate in the telephonic hearing. No voice mail or email messages were received from the

Complainant stating that she would be unable to participate in the hearing. After verifying that the Complainant had not contacted OALJ, the hearing commenced at approximately 10:00 a.m.

Upon commencement of the hearing, Margaret Morris, Esquire, counsel for the Respondent, moved to dismiss the complaint for failure to appear and prosecute. I advised the Respondent that I would take its motion under advisement.

The record closed on May 23, 2018 at the conclusion of the hearing. This decision grants the Respondent's motion to dismiss the complaint.

FINDINGS OF FACT

1. The Complainant in this case is Pamela Grimes.
2. The Respondent in this case is Pennsylvania Electric Company.
3. On March 16, 2018, the Complainant filed a complaint with the Commission against the Respondent.
4. The Respondent filed an answer on April 9, 2018.
5. By notice dated April 30, 2018, the Commission scheduled this matter for an initial telephonic hearing on May 23, 2018 at 10:00 a.m.
6. The Commission sent notice of the telephonic hearing to the Complainant by regular first-class mail to the address stated on the complaint.
7. The Commission's notice of hearing was never returned as being undeliverable by the postal authorities.
8. The Complainant failed to appear at the May 23, 2018 telephonic hearing.

9. The Complainant did not settle, withdraw or request a continuance of the matter.

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.Cmwlt. 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 telephonic hearing in this case to the Complainant on April 30, 2018, by regular first-class mail to the address stated on the complaint. This notice of hearing was never returned to OALJ as being undeliverable by the postal authorities.

In addition, a prehearing order was issued on May 1, 2018, which, inter alia, reminded the parties that they must call the toll-free number shown on the hearing notice to participate in the telephonic hearing and that failure to call the number and participate in the telephonic hearing would constitute a failure to appear. The prehearing order, which was also mailed to the Complainant at the address shown on the complaint, was never returned to OALJ as being undeliverable by the postal authorities. Accordingly, it must be presumed 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 scheduled hearing because she did not call the toll-free number shown on the April 30, 2018 hearing notice. Under these circumstances, it appears the Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. 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. Under these circumstances, 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.

In addition to moving to dismiss the Complainant's complaint, the Respondent has requested that the Complainant be prohibited from filing any more complaints with the Commission. Using the Commission's processes to avoid termination and avoid paying for utility service is an abuse of the Commission's administrative processes and will not be countenanced. The Commission has previously barred consumer complainants from filing further complaints with the Commission in order to protect the interests of other ratepayers. Seidenstricker v. Metropolitan Edison Co., Docket No. F-2008-2019388 (Opinion and Order entered July 28, 2009), Thomas v. Peoples Natural Gas Co., Docket No. C-2009-2102194 (Opinion and Order entered June 17, 2010), Mazza v. PECO Energy Co., Docket No. C-2012-2318472 (Opinion and Order entered April 23, 2014).

The Respondent is correct that filing repeated complaints simply to avoid or delay termination of a utility can rise to the level of such abuse. This is of particular concern when the Complainant has been scheduled for hearings in the past and, after being given multiple continuances in those matters, fails to prosecute her complaints. This matter is the third occasion where the Complainant has filed a formal complaint and has failed or refused to participate in the scheduled hearing. The Complainant is warned to refrain from misuse of the Commission's processes or face the possibility of being barred from filing further complaints.

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 Pennsylvania Electric Company to dismiss the complaint filed by Pamela Grimes at C-2018-3000571C-2018-3000571 is granted.

2. That the complaint of Pamela Grimes against Pennsylvania Electric Company at C-2018-3000571 is dismissed with prejudice for failure of the Complainant to appear for the hearing and prosecute the complaint.

3. That the docket at Docket No. C-2018-3000571 is marked closed.

Date: May 31, 2018

/s/
Benjamin J. Myers
Administrative Law Judge