

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tiffany Butterfield	:	
	:	
v.	:	C-2018-3000859
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the formal Complaint of Tiffany Butterfield against PECO Energy Company because she failed to prosecute her Complaint.

HISTORY OF THE PROCEEDING

On April 2, 2018, Tiffany Butterfield (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 the boxes marked “[t]he utility is threatening to shut off my service or has already shut off my service” and “I would like a payment agreement.” The Complainant indicated that she can afford a \$200.00 monthly payment agreement.

On April 20, 2018, Respondent filed an Answer denying all material allegations of fact in the Complaint.

By Hearing Notice dated April 23, 2018, a hearing was scheduled for May 15, 2018, at 9:00 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 bold and underlined type:

“Attention: You must be available in the hearing room when your case is called by the presiding Administrative Law Judge. If you are not present and prepared to go forward with your case when it is called, your case will be dismissed by the Administrative Law Judge.”

I issued a Prehearing Order on April 26, 2018. The Prehearing Order directed the parties to comply with various procedural requirements and directed that a request to change the scheduled hearing 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 convened as scheduled on May 15, 2018. Counsel for PECO was present with a witness and was prepared to proceed. Ms. Butterfield was not present, and had not contacted the Office of Administrative Law Judge (OALJ) to indicate that she would or would not appear.

Because a customer who files a complaint before the Commission has an affirmative duty to make himself or herself available to participate in hearings on the complaint, I deemed Ms. Butterfield’s failure to appear at the location, date and time of the scheduled hearing as evidence that she did not wish to participate in the hearing.

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 was closed at the end of the hearing on May 15, 2018.

FINDINGS OF FACT

1. The Complainant in this case is Tiffany Butterfield.
2. The Respondent in this case is PECO Energy Company.
3. On April 2, 2018, the Complainant filed a Complaint with the Commission against the Respondent.
4. The Respondent filed an Answer on April 20, 2018.
5. By Hearing Notice dated April 23, 2018, the Commission scheduled this matter for an initial hearing on May 15, 2018 at 9:00 a.m.
6. The Commission's Hearing Notice was never returned to the sender.
7. The Complainant did not request a continuance of her hearing.
8. The Complainant failed to appear for the May 15, 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 April 23, 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 OALJ in Harrisburg.

In addition, I issued a prehearing order dated April 26, 2018, which, *inter alia*, warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to appear and participate in 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 scheduled hearing. Under the 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 her requested relief. By failing to participate and proffer any evidence to support her Complaint, the Complainant has failed to meet her 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.

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 at Docket No. C-2018-3000859 is granted;

2. That the Complaint of Tiffany Butterfield against PECO Energy Company at Docket No. C-2018-3000859 is dismissed with prejudice; and

3. That the Secretary mark this docket closed.

Date: June 21, 2018

/s/
Christopher P. Pell
Deputy Chief Administrative Law Judge