

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Danann Jones	:	
	:	
v.	:	F-2017-2629446
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On October 10, 2017, Danann Jones (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 alleged that her bills were high and requested an investigation into her service.

On November 7, 2017, PECO filed an Answer *nunc pro tunc* to the Complaint. In its Answer, PECO denied all material allegations of fact in the Complaint. PECO admitted that it provided service to the address stated in the Complaint. PECO further averred that they

investigated the Complainant's high bill concerns and concluded that they were unfounded. PECO requested that the Commission dismiss the Complaint.

By Hearing Notice dated January 19, 2018, a hearing was scheduled for March 21, 2018, 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.*"

On March 20, 2018, the Respondent requested a continuance due to impending severe weather.

On March 20, 2018, the Philadelphia Office of the Administrative Law Judge (OALJ) contacted the Complainant via telephone, wherein she informed us that her mailing address had changed to 107 S. 4th Street, Darby, PA 19023.

On March 20, 2018, I issued an Order granting the Respondent's Motion for a Continuance.

By Hearing Cancellation/Reschedule Notice dated March 20, 2018, a hearing was rescheduled for May 14, 2018 at 10:00 a.m. The Hearing Cancellation/Reschedule 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 March 23, 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 began on May 14, 2018, at 10:00 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 June 8, 2018, upon my receipt of the transcript.

FINDINGS OF FACT

1. The Complainant in this case is Danann Jones.
2. The Respondent in this case is PECO Energy Company.
3. On October 10, 2017, the Complainant filed a Complaint with the Commission against the Respondent.
4. The Respondent filed an Answer *nunc pro tunc* on November 7, 2017.
5. By Hearing Notice dated January 19, 2018, a hearing was scheduled for March 21, 2018.
6. On March 20, 2018, the Complainant informed the Commission that her mailing address had changed to 107 S. 4th Street, Darby, PA 19023.

7. By Hearing Cancellation/Reschedule Notice dated March 20, 2018, the hearing was rescheduled for May 14, 2018 at 10:00 a.m.

8. On March 23, 2018, a Prehearing Order was sent to all parties containing, *inter alia*, a warning of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing.

9. The Commission sent the March 20, 2018 Hearing Cancellation/ Reschedule Notice and the March 23, 2018 Prehearing Order to the Complainant by regular first-class mail to 107 S. 4th Street, Darby, PA 19023.

10. The Commission's March 20, 2018 Hearing Cancellation/ Reschedule Notice was never returned to the sender.

11. The Complainant failed to appear at the May 14, 2018 hearing.

12. 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 March 20, 2018, by regular first-class mail to the Complainant's new mailing address of 107 S. 4th Street, Darby, PA 19023. 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 March 23, 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 107 S. 4th Street, Darby, PA 19023, 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 Danann Jones at Docket No. F-2017-2629446 is granted;

2. That the Complaint of Danann Jones against PECO Energy Company at Docket No. F-2017-2629446 is dismissed with prejudice; and

3. That the docket at Docket No. F-2017-2629446 be marked closed.

Date: June 29, 2018

_____/s/
F. Joseph Brady
Administrative Law Judge