

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Robin Callahan

v.

PECO Energy Company

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C-2017-2635820

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On November 29, 2017, Robin Callahan (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 indicating “[t]he utility is threatening to shut off my service or has already shut off my service,” “I would like a payment agreement,” and “[o]ther.” Under the “requested relief” section, the Complainant indicated that she was recently diagnosed with a chronic illness and that her illness causes her to miss work. The Complainant reiterated her request for a payment agreement due to a decrease in income.

On December 5, 2017, Respondent filed an Answer denying all material allegations of fact in the Complaint. Respondent further answered that on November 8, 2017, the Commission issued an Opinion and Order on a previous formal Complaint filed by the Complainant at Docket No. C-2016-2535479. The Commission noted in the Opinion and Order that the Complainant had already received two Commission-issued payment arrangements and dismissed the Complainant's request for an additional payment agreement. Respondent indicated that the Complainant's balance totaled \$4,370.45 and asserted that, pursuant to 66 Pa.C.S. § 1405(d), the Complainant is not entitled to a Commission-issued payment agreement.

By Hearing Notice dated December 14, 2017, a hearing was scheduled for February 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 December 15, 2017. 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.

On February 8, 2018, I received a continuance request from the Complainant in which she indicated her employer refused to grant her time off to attend the hearing. Complainant asked for the hearing to be rescheduled for after March 1, 2018. Since it did not appear that the Complainant had provided a copy of her postponement request to PECO as required by my December 15, 2017 Prehearing Order, I forwarded the request to Shawane L.

Lee, Esq., counsel for PECO, who indicated PECO had no objection to the request. Accordingly, I granted the request.

By Hearing Cancellation/Reschedule Notice dated February 15, 2018, the hearing was rescheduled for May 2, 2018 at 10:00 a.m.

On April 30, 2018, I received a faxed letter from the Complainant requesting a postponement of the May 2, 2018 hearing due to a death in her family. Since it did not appear that the Complainant had provided a copy of her postponement request to PECO, I forwarded the request to Ms. Lee. I subsequently received a response from Ms. Lee indicating that PECO did not object to granting the Complainant's request.

By Order dated May 1, 2018, I granted the Complainant's second continuance request.

By Hearing Cancellation/Reschedule Notice dated May 2, 2018, the hearing was rescheduled for July 10, 2018 at 10:00 a.m.

The hearing convened as scheduled on July 10, 2018. Counsel for PECO was present with a witness and was prepared to proceed. Ms. Callahan was not present, and had not contacted this office 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. Callahan'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 July 10, 2018.

FINDINGS OF FACT

1. The Complainant in this case is Robin Callahan.
2. The Respondent in this case is PECO Energy Company.
3. On November 29, 2017, the Complainant filed a Complaint with the Commission against the Respondent.
4. The Respondent filed an Answer on December 5, 2017.
5. By Hearing Cancellation/Reschedule Notice dated May 2, 2018, the Commission scheduled this matter for a hearing on July 10, 2018 at 10:00 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 July 10, 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 hearing in this case to the Complainant on May 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 December 15, 2017, 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-2017-2635820 is granted;

2. That the Complaint of Robin Callahan against PECO Energy Company at Docket No. C-2017-2635820 is dismissed with prejudice; and

3. That the Secretary mark this docket closed.

Date: July 10, 2018

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