

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Shenik Harvey	:	
	:	
v.	:	C-2018-3002514
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Alphonso Arnold, III
Special Agent

INTRODUCTION

This Initial Decision dismisses the Complaint with prejudice because the Complainant failed to appear for the telephonic hearing to prosecute her Complaint.

HISTORY OF THE PROCEEDING

On June 6, 2018, Shenik Harvey (Complainant or Ms. Harvey) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (Respondent or PECO). The Complainant stated that the utility is threatening to shut off her service or has already shut off her service, and that she would like a payment agreement.

The Respondent filed an Answer on June 20, 2018. The Respondent alleged that the Commission cannot provide the Complainant with a payment arrangement as her entire balance is comprised of customer assistance program arrearages.¹ The Answer requested that the Commission deny and dismiss the Complainant's Complaint.

¹ 66 Pa.C.S.A. § 1405 (c) **Customer assistance programs.**--Customer assistance program rates shall be timely paid and shall not be the subject of payment arrangements negotiated or approved by the commission.

Both parties in this matter have selected to accept electronic service in this Commission proceeding. By selecting electronic service (eService), the parties have agreed that being provided a notification of the filings as well as a link to the filings in this proceeding via electronic mail shall constitute valid legal service in lieu of service through first class mail. Therefore, all documents in this proceeding were served upon the parties electronically instead of by first class mail.²

By Hearing Notice served upon the parties on June 28, 2018, the Commission scheduled this matter for a call-in telephonic hearing on Friday, August 3, 2018, at 10:00 a.m. and assigned the case to me.

I issued a Prehearing Order, served upon the parties on June 26, 2018, addressing, inter alia, the method by which the parties could call-in to participate in the hearing, the procedures applicable to the hearing, and the method by which a party could request a change of the scheduled hearing date if the date was not convenient for them.

I conducted the telephonic hearing as scheduled on August 3, 2018. The Complainant was not present on the telephone conference line at 10:00 a.m. Attorney Shawane L. Lee was present on the telephone conference line on behalf of the Respondent with a witness and was ready to proceed with the hearing. The start of the hearing was delayed until approximately 10:15 a.m. to provide the Complainant with additional time to call-in to participate. The Complainant did not call-in to the hearing to participate. No communication was made to the Office of Administrative Law Judge on the Complainant's behalf explaining her absence. The hearing proceeded in the Complainant's absence at 10:15 a.m.

No witnesses were presented, and no exhibits were introduced for the record. Attorney Lee moved for the Complaint to be dismissed with prejudice for failure to prosecute.

² 52 Pa. Code § 1.53(b)(3) states that, "Service may be made electronically to filing users who have agreed to receive electronic service. Filing users will be sent an electronic mail notice informing them that a document was posted on the Commission's electronic filing system and providing a link to the document on the same day the document is posted."

The record³ closed on August 3, 2018, following the conclusion of the telephonic hearing. For the reasons discussed below, the Motion of PECO will be granted and the Complaint will be dismissed with prejudice.

FINDINGS OF FACT

1. The Complainant is Shenik Harvey.
2. The Respondent is PECO Energy Company.
3. The parties in this matter have selected to accept electronic service in this Commission proceeding. By selecting electronic service (eService), the parties have agreed that being provided a notification of the filings as well as a link to the filings in this proceeding via electronic mail shall constitute valid legal service in lieu of service through first class mail. Therefore, all documents in this proceeding were served upon the parties electronically instead of by first class mail.
4. By Hearing Notice, a hearing in this matter was scheduled for August 3, 2018, at 10:00 a.m.
5. The Audit History of the Commission's docketing system for this case indicates that the Commission served the Hearing Notice on the parties electronically on June 28, 2018.
6. By Prehearing Order, the parties were provided with the method by which a party could request a continuance of the hearing date, if needed.
7. The Audit History of the Commission's docketing system for this case indicates that the Commission served the Prehearing Order on the parties electronically on June 26, 2018.

³ The telephonic hearing was recorded by means of a tape recorder. No Court Reporter was present.

8. The Audit History of the Commission's docketing system for this case contains no notification that either the Hearing Notice or the Prehearing Order failed to be delivered electronically at the e-mail address provided by the Complainant.

9. The Complainant did not appear for the August 3, 2018 hearing.

10. The Complainant did not withdraw or settle her Complaint against PECO Energy Company, nor did she request a continuance of the hearing.

DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). To satisfy this burden, the Complainant must show that the named utility is responsible or accountable for the problem described in the Complaint. Patterson v. Bell Telephone Co. of Pa., 72 Pa. PUC 196 (1990); Feinstein v. Philadelphia Suburban Water Co., 50 Pa. PUC 300 (1976). This must be shown by a preponderance of the evidence, that is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa.Cmwlt. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992); Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

In this proceeding, Ms. Harvey filed a Complaint against PECO seeking legal relief in the form of a payment arrangement. As a result, the burden of proof is on Ms. Harvey to show that she is eligible for a payment arrangement.

Administrative agencies, like the Public Utility Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. Schneider v. Pa. Pub. Util. Comm'n, 479 A.2d 10 (Pa.Cmwlt. 1984).

Ms. Harvey did not participate in the August 3, 2018 hearing. The date and time of the hearing were provided in the Hearing Notice and the Prehearing Order. The method by

which Ms. Harvey could call-in to the hearing to participate in the hearing was provided in the Notice and Order. Furthermore, both the Notice and Order warned Ms. Harvey of the potential consequences that could result from choosing to not participate in the scheduled hearing, including dismissal of the Complaint.

The Hearing Notice and the Prehearing Order were served electronically on the Complainant in accordance with her selection to receive electronic service of all documents instead of receiving a paper copy in the mail. Eservice, in lieu of paper service, constitutes valid legal service. 52 Pa. Code § 1.53(b)(3). According to the Audit History of the Commission's docketing system for this case, the Commission served the Hearing Notice on the Complainant on June 28, 2018. According to the Audit History of the Commission's docketing system for this case the Commission served the Prehearing Order on the Complainant on June 26, 2018. The Audit History of the Commission's docketing system for this case contains no notification that either the Hearing Notice or the Prehearing Order failed to be delivered electronically at the e-mail address provided by the Complainant. Therefore, the Complainant is deemed to have received these documents and had sufficient notice of the day, date and time of the scheduled hearing. Andrea Morella v. PECO Energy Company, Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016); Bruce Zirkel v. Philadelphia Gas Works, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017). The Complainant's failure to appear is unexcused. The Complainant made no attempt to notify the presiding officer that she did not plan to participate in the scheduled August 3, 2018, hearing.

Under these circumstances, the Complainant had ample opportunity to appear and be heard in this proceeding but chose not to do so. Once notice of a hearing and the opportunity to be heard have been provided to the parties, it is the responsibility of both parties to appear and participate in the hearing. The due process rights of the Complainant have been fully protected. Sentner v. Bell Tel. Co. of Pa., Docket No. F-00161106 (Opinion and Order entered October 25, 1993). The Complainant did not appear, and the hearing proceeded in her absence. 66 Pa.C.S.A. § 332(f) and 52 Pa.Code § 5.245(a) provide that a party that fails to be represented at a scheduled hearing shall waive the opportunity to participate in the hearing.

(f) Actions of parties and counsel.--Any party who shall fail to be represented at a scheduled conference or hearing after being duly notified thereof, shall be deemed to have waived the opportunity to participate in such conference or hearing, and shall not be permitted thereafter to reopen the disposition of any matter accomplished thereat, or to recall for further examination of witnesses who were excused, unless the presiding officer shall determine that failure to be represented was unavoidable and that the interests of the other parties and the public would not be prejudiced by permitting such reopening or further examination. . . .

66 Pa.C.S.A. § 332(f).

(a) After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will:

(1) Be deemed to have waived the opportunity to participate in the conference or hearing.

(2) Not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing.

. . .

52 Pa. Code § 5.245(a).

As stated, the Complainant bears the burden of proving by a preponderance of the evidence that she is entitled to relief. By choosing not to participate in the hearing and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden.

The Respondent's counsel moved that the Complaint be dismissed with prejudice for failure to prosecute. The due process rights of the Complainant have been protected. The Complainant had notice of the scheduled hearing and failed to appear to prosecute her Complaint. Therefore, the Respondent's Motion to Dismiss the Complaint is granted. Accordingly, the Complaint in this matter will be dismissed in its entirety with prejudice. El-Ayazra v. West Penn Power Company, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); Volgstadt v. UGI Penn Natural Gas, Inc., Docket No. F-02266429 (Opinion and Order entered September 12, 2008) and Martin Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Opinion and Order entered December 26, 1995).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and parties to this proceeding. 66 Pa.C.S. § 701.
2. The burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).
3. Administrative agencies are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. Schneider v. Pa. Pub. Util. Comm'n, 479 A.2d 10 (Pa.Cmwlth. 1984).
4. Once notice of a hearing and the opportunity to be heard has been provided, it is the responsibility of the parties to appear and participate in the hearing. Sentner v. Bell Telephone Co. of Pennsylvania, Docket No. F-00161106 (Opinion and Order entered October 25, 1993).
5. Service may be made electronically to filing users who have agreed to receive electronic service. Filing users will be sent an electronic mail notice informing them that a document was posted on the Commission's electronic filing system and providing a link to the document on the same day the document is posted. 52 Pa. Code § 1.53(b)(3).
6. By failing to appear at her scheduled hearing, the Complainant waived her opportunity to participate in the hearing. 66 Pa.C.S.A. § 332(f); 52 Pa. Code § 5.245(a).
7. By failing to appear and proffer any evidence in support of the Complaint, the Complainant has failed to meet her burden of proof. 66 Pa.C.S. § 332(a).

