

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nakia Stevenson	:	
	:	
v.	:	C-2018-3001415
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Darlene Davis Heep
Administrative Law Judge

INTRODUCTION

The Complainant did not appear for the hearing and the formal Complaint (Complaint) is dismissed for failure to prosecute.

HISTORY OF THE PROCEEDING

On April 23, 2018, Nakia Stevenson (Complainant or Ms. Stevenson) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO or Respondent). The Complainant is a gas and electric customer of PECO.

In the Complaint, Ms. Stevenson stated that the utility is threatening to shut off her service and that she would like a payment arrangement.

On May 9, 2018, PECO filed an Answer denying all material allegations of fact and conclusions of law in the Complaint. PECO also stated that on February 13, 2017, the

Complainant enrolled in PECO's Customer Assistance Program ("CAP") Fixed Credit Option and remained enrolled in CAP at the time of the filing. PECO averred in the Answer that the Complainant's balance was \$2,729.66 and comprised entirely of arrears accumulated under the CAP program. Therefore, PECO stated, because the arrears are entirely CAP arrears, as provided in 66 Pa.C.S. § 1405(c), the Complainant is not entitled to a Commission ordered payment arrangement

On June 11, 2018, a Hearing Notice was issued setting an Initial Hearing as part of a Call of the Docket on July 31, 2018, 9:30 a.m.

A Prehearing Order was issued on June 21, 2018, informing the Complainant of the date of the hearing and providing procedural information. The Prehearing Order also advised the Complainant that:

A request for a change of the scheduled hearing date must state the agreement or opposition of other parties, and must be submitted in writing no later than five (5) business days prior to the hearing. . . Changes are granted only in rare situations where good cause exists.

And, in Bold Print, the Prehearing Order advised that:

THIS CASE WILL BE DISMISSED IF THE CUSTOMER FAILS TO PARTICIPATE IN THE HEARING AND PRESENT EVIDENCE IN SUPPORT OF THE COMPLAINT.

The Call of the Docket hearings convened as scheduled on July 31, 2018. Shawane Lee, Esquire, was present to represent PECO, along with a witness, and was prepared to proceed at 9:30 a.m. as scheduled. Complainant was not present when the hearing began.

Other matters were called and heard. At 12:30 p.m., this matter was again called for hearing. The Complainant was not present. Counsel for PECO moved that the matter be dismissed and the Motion was taken under advisement.

The record in this matter closed on August 15, 2018, upon receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is Nakia Stevenson, who is a gas and electric PECO customer at 221 Kerlin Street, Chester, Pennsylvania.
2. PECO Energy Company is the Respondent.
3. On April 23, 2018, the Complainant filed this action.
4. The Respondent filed an Answer on May 9, 2018.
5. By Hearing Notice dated June 11, 2018, the Commission scheduled an Initial Hearing for July 31, 2018, as part of a Call of the Docket hearing.
6. The Hearing Notice was mailed to the Complainant at the address that she provided in the Complaint.
7. A Prehearing Order was issued on June 21, 2018, and mailed to the Complainant's address as listed in the Complaint, informing the Complainant of the date, time and location of the hearing and providing procedural information.
8. The Prehearing Order informed Ms. Stevenson that her case would be dismissed if she failed to participate in the hearing and present evidence in support of her Complaint.
9. The Prehearing Order also advised the Complainant that:

A request for a change of the scheduled hearing date must state the agreement or opposition of other parties, and must be submitted in writing no later than five (5) business days prior to the hearing. . . Changes are granted only in rare situations where good cause exists.

10. The hearing convened at 9:30 a.m. on July 31, 2018, and Shawane Lee, Esquire, was present to represent PECO, along with a witness, and prepared to proceed.

11. When the hearing began and the Complainant was not present other matters were called and heard.

12. When the Complainant's case was called again at approximately 12:30 p.m., the Complainant was not present.

DISCUSSION

Ms. Stevenson filed a Complaint with the Commission alleging that PECO had shut off or threatened to shut off her service and that she would like a payment arrangement. 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). The essential elements of due process in an administrative proceeding are notice and an opportunity to be heard. *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (2016). Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 1994).

A Hearing Notice dated June 11, 2018, and a Prehearing Order dated June 21, 2018, containing the date, time and location of the hearing were mailed to the Complainant at the address that she provided to the Commission on her formal Complaint form. None of these documents was returned by the U.S. Postal Service to the Commission as undeliverable. Therefore, the Complainant is deemed to have received these documents and had sufficient notice of the day, date and time of the scheduled hearing.

As the Commission noted in *Strydio v. PPL Electric Utilities Corporation*, 2018 Pa. PUC LEXIS 258, *8, Docket No. C-2017-263304, p. 6 (Opinion and Order entered July 18, 2018) "[o]nce notice of a hearing and the opportunity to be heard have been provided by the Commission, it is the responsibility of the parties to appear and participate in the hearing," citing *Mumma v. PPL Electric Utilities Corporation*, Docket No. C-00014869 (Order entered January 24, 2002); *Sentner v. Bell Tel. Co. of PA*, Docket No. F-00161106 (Order entered October 25, 1993). Neither the Complainant nor a representative licensed to practice law in this Commonwealth appeared at the hearing on her behalf. To date, there is no further information about the Complainant regarding this hearing. Her failure to appear is unexcused. The Complainant waived the opportunity to participate in the hearing by failing to appear. 52 Pa.Code § 5.245(a); *Jefferson v. UGI Utilities, Inc.*, 1995 Pa. PUC LEXIS 159 (Opinion and Order entered December 26, 1995).

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 the 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 and the parties to this proceeding. 66 Pa.C.S. § 701.

2. The Complainant received notice of the hearing. *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 1994), appeal denied, 653 A.2d 1234 (Pa. 1994).

3. The due process rights of the Complainant have been fully protected in this proceeding. *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (2016); *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

4. As the party seeking affirmative relief from the Commission, the Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).

5. The Complainant did not participate in the hearing, failed to appear for the hearing and did not present any evidence. Therefore, she failed to meet her burden of proving entitlement to the relief that is sought 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 Nakia Stevenson at Docket No. C-2018-3001415 is granted.

2. That the Complaint of Nakia Stevenson against PECO Energy Company at Docket No. C-2018-3001415 is dismissed with prejudice for failure of the Complainant to appear for the hearing and prosecute the Complaint.

3. That Docket No. C-2018-3001415 is marked closed.

Date: August 24, 2018

/s/
Darlene Davis Heep
Administrative Law Judge