

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Grace Roberts	:	
	:	
v.	:	F-2018-3001072
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On April 5, 2018, Grace Roberts (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 boxes indicating: “The utility is threatening to shut off my service or has already shut off my service;” “Incorrect charges are on my bill;” and “Other” – wherein the Complainant requested that her service be restored.

On May 2, 2018, PECO filed an Answer *nunc pro tunc*. In its Answer, PECO denies all material allegations of fact in the Complaint. Further, PECO avers it terminated service to the Complainant on June 6, 2017, for a past due balance of \$6,488.95. PECO also

avers that it finalized the Complainant's account effective July 7, 2017 and charged off a final unpaid balance of \$8,921.71. PECO avers the Complainant must pay this outstanding balance before it will restore service.

By Hearing Notice dated May 9, 2018, a hearing was scheduled for June 14, 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.*"

By Hearing Cancellation/Reschedule Notice dated May 16, 2018, the hearing was rescheduled for June 27, 2018.

I issued a Prehearing Order on May 29, 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.

By Hearing Cancellation/Reschedule Notice dated June 21, 2018, the hearing was rescheduled for August 6, 2018.

The hearing began on August 6, 2018 as scheduled. Counsel for PECO was present with a witness and was prepared to proceed.

A person ostensibly believed to be the Complainant appeared at the hearing; however, when questioned by the undersigned ALJ, she refused to acknowledge that she was the Complainant, Grace Roberts. Tr. 4-6.

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 August 24, 2018, upon my receipt of the transcript.

FINDINGS OF FACT

1. The Complainant in this case is Grace Roberts.
2. The Respondent in this case is PECO Energy Company.
3. On April 5, 2018, the Complainant filed a Complaint with the Commission against the Respondent.
4. On May 2, 2018, the Respondent filed an Answer *nunc pro tunc*.
5. By Hearing Cancellation/Reschedule Notice dated June 21, 2018, the Commission scheduled this matter for an initial hearing on August 6, 2018.
6. The Complainant failed to appear at the August 6, 2018 hearing.
7. The Complainant did not settle or withdraw her Complaint.

DISCUSSION

As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof pursuant to 66 Pa.C.S. § 332(a). To establish a sufficient case and satisfy the burden of proof, the Complainant must show that the Company is responsible or accountable for the problem described in the Complaint. *Patterson v. Bell Telephone Company of Pennsylvania*,

72 Pa. PUC 196 (1990). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Complainant's evidence must be more convincing, by even the smallest amount, than that presented by the Company. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, this Commission's decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980).

Administrative agencies, like the 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. Cmwlth. 1984). 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 (Order entered October 25, 1993).

Additionally, the Commission's Regulations at 52 Pa.Code §§ 5.245 (a) and (c), provide as follows:

§ 5.245. Failure to appear, proceed or maintain order in proceedings.

- (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.
 - (3) Not be permitted to recall witnesses who were excused for further examination.

* * * * *

- (c) If the Commission or the presiding officer finds, after notice and opportunity for hearing, that the actions of a party, including an intervenor, in a proceeding obstruct the orderly conduct of the proceeding and are inimical to the public interest, the Commission or the presiding officer may take appropriate action, including dismissal of the complaint, application, or petition, if the action is that of complainant, applicant, or petitioner.

52 Pa.Code §§ 5.245 (a) and (c).

The Complainant was provided with proper notice of the hearing and the opportunity to appear and be heard. A person ostensibly believed to be the Complainant appeared at the hearing; however, when questioned by the undersigned ALJ, she refused to acknowledge that she was the Complainant, Grace Roberts. Tr. 4-6. This person was instructed that if she refused to enter her appearance, the case would be dismissed. Tr. 4. Nevertheless, this person continued to refuse to confirm whether or not she was Grace Roberts. Moreover, this person became obstinate and combative, even going so far as to make the statement to the undersigned ALJ: “This is my court. I own the court. You are working for me.” Tr. 5.

I construed this person’s refusal to acknowledge that she was the Complainant, Grace Roberts, as a willful refusal to proceed with the hearing and a failure to prosecute the Complaint. I also find this person’s actions obstructed the orderly conduct of the proceeding and were inimical to the public interest. Accordingly, the Complaint should be dismissed with prejudice.

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. As the proponent of a rule or order, the Complainant in this proceeding bears the burden of proof. 66 Pa.C.S. § 332(a).

3. Administrative agencies, like the 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. 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 (Order entered October 25, 1993).

5. If the Commission or the presiding officer finds, after notice and opportunity for hearing, that the actions of a party, including an intervenor, in a proceeding obstruct the orderly conduct of the proceeding and are inimical to the public interest, the Commission or the presiding officer may take appropriate action, including dismissal of the complaint, application, or petition, if the action is that of complainant, applicant, or petitioner. 52 Pa.Code § 5.245(c).

6. 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 Grace Roberts at Docket No. F-2018-3001072 is granted;

2. That the Complaint of Grace Roberts against PECO Energy Company at Docket No. F-2018-3001072 is dismissed with prejudice; and

3. That Docket No. F-2018-3001072 be marked closed.

Date: October 10, 2018

/s/
F. Joseph Brady
Administrative Law Judge