

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Florence and Crystal Mason	:	
	:	
v.	:	F-2018-2641892
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

This initial decision grants the Respondent’s Motion to Dismiss the Complainants’ formal Complaint (Complaint) for lack of prosecution because the Complainants failed to appear for the scheduled hearing in this matter.

HISTORY OF THE PROCEEDING

On January 2, 2018, Florence and Crystal Mason (Complainants) filed a formal Complaint against PECO Energy Company (PECO or Respondent) alleging that there were incorrect charges on their bills and that the Respondent was not properly applying payments and grants to their account.

On January 22, 2018, PECO filed its Answer denying the material allegations of the Complaint.

This Complaint is an appeal of an informal complaint at the Bureau of Consumer Services (BCS), Case No. 3552901, where a decision was issued on November 16, 2017. The BCS concluded that the Complainants were responsible for the charges on the account.

By Hearing Notice dated January 30, 2018, an initial hearing was scheduled for Tuesday, March 27, 2018, at 1:30 p.m., as part of a call of the docket, and the matter was assigned to me. The Hearing Notice advised the parties of the procedure for the hearing, as well as the date, time and location 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.”

A Prehearing Order was issued on January 31, 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 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 participate in the hearing, including the dismissal of the Complaint. It also explained that the Complainants bear the burden of proof to establish that the Respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that they are entitled to the relief requested in the Complaint.

On March 23, 2018, I was informed via correspondence from PECO that the Complainants were requesting a continuance of their case due to a medical condition. While PECO objected to the request, I granted the continuance via electronic mail dated March 26, 2018.

On May 1, 2018, a Hearing Cancellation/Reschedule Notice was issued, and the initial hearing was rescheduled for Wednesday, June 20, 2018 at 10:00 a.m.

The hearing convened as scheduled on June 20, 2018. Counsel for PECO was present with one potential witness and was prepared to proceed. The Complainants were not present and had not contacted this office to indicate whether they would or would not participate.

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 (Motion) pursuant to 52 Pa.Code § 5.245. In accordance with Commission policy, I am granting the Motion.

The record was closed on August 16, 2018, when I received a copy of the hearing transcript.

FINDINGS OF FACT

1. The Complainants in this case are Florence and Crystal Mason who reside at 1257 Cereby Street, Philadelphia, Pennsylvania 19111.
2. The Respondent in this proceeding is PECO Energy Company.
3. By Hearing Notice dated January 30, 2018, a hearing was scheduled for Tuesday, March 27, 2018, at 1:30 p.m., as part of a call of the docket, and the Complainants were advised that the Complaint would be dismissed if they failed to appear for the hearing.
4. Both parties were advised of the procedures for requesting a continuance of a scheduled hearing by Prehearing Order dated January 31, 2018.
5. The Complainants requested a continuance and were aware of the procedures to do so.

6. On May 1, 2018, a Hearing Cancellation/Reschedule Notice was issued and advised the parties that the initial hearing was rescheduled for Wednesday, June 20, 2018 at 10:00 a.m.

7. The Complainants were advised that the Complaint would be dismissed if they failed to appear for the scheduled hearing by the January 30, 2018 Hearing Notice and the January 31, 2018 Prehearing Order.

8. The Hearing Notices and Prehearing Order were not returned by the United States Postal Authorities as being undeliverable.

9. The Respondent appeared for the rescheduled hearing at the scheduled date and time by legal counsel and a potential witness and was prepared to proceed.

10. The Complainants failed to appear for the rescheduled hearing.

11. The Complainants did not settle or withdraw the Complaint nor obtain a continuance prior to the rescheduled hearing.

DISCUSSION

The Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, the Complainants have the burden of proof in this matter pursuant to 66 Pa.C.S. § 332(a).

To establish a sufficient case and satisfy the burden of proof, the Complainants must show that the Respondent public 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). 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, 602 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). That is, by presenting evidence

more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 194 Pa. Super. 278, 166 A.2d 96 (1960); *Murphy v. Dep't of Public Welfare*, 480 A.2d 382 (Pa.Cmwlth. 1984).

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). However, this due process requirement is satisfied when the parties are provided notice and the opportunity to appear and be heard. *Id.*

Notice of the June 20, 2018, hearing in this case was sent to the Complainants on May 1, 2018, by regular first-class mail to the address stated on the Complaint. This piece of mail was never returned to the sender, the scheduling staff for the Office of Administrative Law Judge in Harrisburg. The Prehearing Order was also never returned to the sender. Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. *Meierdierck v. Miller*, 394 Pa. 484, 147 A.2d 406 (1959); *Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 531, 317 A.2d 584 (1974). Therefore, the Complainants are deemed to have received these documents and had sufficient notice of the location, date and time of the scheduled hearing.

The Complainants were notified of the scheduled hearing date, time, and location. Despite this, they made no attempt whatsoever to notify me that they did not plan to appear for the hearing. Under these circumstances, it appears the Complainants had ample opportunity to be heard in this proceeding, but voluntarily chose not to do so. Therefore, the due process rights of the Complainants have been fully protected.

By not appearing for the scheduled hearing, the Complainants failed to bear their burden of proof. Consequently, the Complaint must be dismissed.

Under Section 5.245 of the Pennsylvania Code, if the presiding officer finds, after notice and opportunity for hearing, that the actions of a party 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, if the action is that of complainant. 52 Pa.Code § 5.245(c). As the Commission stated in *Mumma v. PPL Electric Utilities Corp.*, Docket No. C-00014869 at 8 (Opinion and Order entered January 28, 2002), “It is well-established law that once timely notice of a hearing and the opportunity to be heard have been provided, it is the responsibility of the parties to be present and participate in the hearing.” See, *Schneider v. Pa. Pub. Util. Comm’n*, 479 A.2d 10 (Pa.Cmwlth. 1984); *Plummer v. Columbia Gas of Pa., Inc.*, Docket No. Z-00847836 (Opinion and Order entered September 27, 2001). The Pennsylvania Commonwealth Court has made it clear that in administrative hearings, “a party’s own negligence is not sufficient good cause as a matter of law for failing to appear at a . . . hearing.” *Eat’N Park Hospitality Group, Inc. v. Unemployment Compensation Board of Review*, 970 A.2d 492, 494 (Pa.Cmwlth. 2008).

Due to the waste of the Commission’s and Respondent’s time, money, and energy occasioned by the Complainants’ failure to appear at a hearing of which they had notice, this Complaint will be dismissed with prejudice in accordance with well-established Commission precedent. *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); *Evans v. Bell Atlantic-Pennsylvania, Inc.*, Docket No. C-00957229 (Opinion and Order entered July 12, 1996); *King v. PECO Energy Co*, Docket No. C-00967919 (Opinion and Order entered January 16, 1997); *Kenny v. PPL Electric Utilities Corporation*, Docket No. C 20042399 (Final Order entered October 13, 2004); *Jones v. Peoples Natural Gas Company*, Docket No. C-20054885 (Opinion and Order entered February 14, 2006); *El-Ayazra v. West Penn Power Company*, Docket No. F-2509292 (Opinion and Order entered June 30, 2016).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and subject matter of this proceeding. 66 Pa.C.S. § 701.

2. Pursuant to 66 Pa.C.S. § 332(a), the burden of proof in this proceeding is upon the Complainants.

3. By failing to appear at the scheduled hearing and failing to present any evidence, the Complainants have failed to satisfy their burden of proof.

4. Notice properly mailed to a party's last known address and not returned is presumed to have been received. *Meierdierck v. Miller*, 394 Pa. 484, 147 A.2d 406 (1959); *Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 531, 317 A.2d 584 (1974).

5. The Complainants had notice of the date, location and time of the scheduled hearing.

6. The due process rights of Complainants have been fully protected in this proceeding. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

7. A formal Complaint may be dismissed if, after notice and opportunity to be heard, a Complainant fails to appear and prosecute the Complaint. 52 Pa.Code § 5.245(c). *See also Mumma v. PPL Electric Utilities Corp.*, Docket No. C-00014869 (Opinion and Order entered January 28, 2002).

8. The failure of the Complainants to appear for a scheduled hearing of which they had notice warrants dismissal of the Complaint with prejudice. *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of PECO Energy Company to dismiss the Complaint filed at Docket No. F-2018-2641892 is granted;
2. That the Complaint of Florence and Crystal Mason against PECO Energy Company at Docket No. F-2018-2641892 is dismissed with prejudice; and
3. That Docket No. F-2018-2641892 be marked closed.

Date: October 18, 2018

_____/s/
Marta Guhl
Administrative Law Judge