

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Henrietta Tucker	:	
	:	
v.	:	C-2018-3001993
	:	
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 May 14, 2018, Henrietta Tucker (Complainant or Ms. Tucker) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO or Respondent).

In the Complaint, Ms. Tucker checked the box indicating that the utility was threatening to shut off her service or had already shut off her service. In a handwritten notation on the complaint form, Ms. Tucker stated that this was an appeal of a Bureau of Consumer Services decision, No. 3606656 and that her account was currently in shut off status. In the Requested Relief section, Ms. Tucker stated that she would like to adjust her payment arrangement and make it more affordable. She also stated that she visited PECO in April of

2018 to obtain a copy of her shut off notice but was told by PECO that they could not give her a copy and therefore she was unable to apply for a Low Income Home Energy Assistance Program or CRISIS grant.

On May 31, 2018, PECO filed an Answer denying all material allegations of fact and conclusions of law in the Complaint. PECO also stated that on April 10, 2018, the Complainant was given a ten-day shut off notice for a past due balance of \$3,025.49.

On June 5, 2018, a Hearing Notice was issued and mailed to all parties setting an Initial Hearing for July 31, 2018, at 9:30 a.m. The hearing was assigned to the undersigned.

A Prehearing Order was issued and mailed to all parties on June 15, 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.

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 matter was rescheduled and on July 18, 2018, a Hearing Notice was mailed to all parties rescheduling the Initial Hearing for 9:30 a.m. on September 12, 2018.

At 9:30 a.m. on September 12, 2018, this matter was called for hearing as part of a PECO Call-of-the-Docket. Shawane Lee, Esq., appeared on behalf of PECO prepared to proceed as scheduled. The Complainant was not present. A recess was taken to allow the

Complainant time to arrive and to check with support staff to determine whether the Complainant had contacted the Commission.

At 9:50 a.m., the hearing reconvened. Ms. Tucker had not arrived. A review of the record was conducted. PECO moved that the matter be dismissed for failure to prosecute and that motion was taken under advisement. The hearing adjourned at 10:03 a.m. The Complainant never appeared for the scheduled hearing.

The record closed upon receipt of the transcript on September 24, 2018.

FINDINGS OF FACT

1. The Complainant is Henrietta Tucker, who was a PECO electric customer in Philadelphia, Pennsylvania.
2. PECO Energy Company is the Respondent.
3. On May 14, 2018, the Complainant filed this action.
4. The Respondent filed an Answer on May 31, 2018.
5. By Hearing Notice issued June 5, 2018, the Commission scheduled an Initial Hearing for July 31, 2018, beginning at 9:30 a.m.
6. The Hearing Notice was mailed to the Complainant at the address provided in the Complaint.
7. A Prehearing Order was issued on June 15, 2018 and mailed to the Complainant's address as listed in the Complaint.

8. The Prehearing Order informed the Complainant of the date, time and location of the hearing and provided procedural information.

9. The Prehearing Order informed the Complainant that the case would be dismissed if she failed to participate in the hearing and present evidence in support of her Complaint.

10. The Prehearing Order also stated,

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.

11. The matter was rescheduled and on July 18, 2018, a Hearing Notice was mailed to all parties rescheduling the Initial Hearing for 9:30 a.m. on September 12, 2018.

12. On the day of the hearing at 9:30 a.m. as scheduled, PECO was present represented by counsel and the Complainant did not appear.

13. A recess was taken to allow the Complainant time to arrive and to check whether Ms. Tucker had contacted the Commission about the hearing; there were no messages from or contact by the Complainant.

14. At approximately 9:50 a.m., the hearing reconvened; the Complainant had not arrived.

15. After a review of the record, counsel for PECO moved that the matter be dismissed for failure to prosecute, which was taken under advisement.

16. The Complainant was not present when the hearing adjourned at approximately 10:03 a.m.

17. None of the documents mailed to the Complainant was returned as undeliverable.

18. The Complainant did not request a continuance or provide a statement of "good cause" for her absence on the scheduled hearing date.

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). 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 (Pa. Cmwlth. 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); *Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 531, 317 A.2d 584 (1974).

Two Hearing Notices and a Prehearing Order were mailed to the Complainant. All documents mailed to the Complainant, including the Notice of the rescheduled hearing, contained the date, time and location of the hearing and all were mailed to the Complainant at the address that she provided to the Commission on the formal Complaint form. None of these documents was returned by the U.S. Postal Service to the Commission as undeliverable. The Complainant is therefore deemed to have received these documents and to have 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). The Complainant did not appear for the hearing as scheduled and as she was notified. To date, the Complainant has not contacted the Commission or the undersigned regarding this hearing. The Complainant has 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. The Complaint will be dismissed. *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 (Pa.Cmwlth. 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, and 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 Henrietta Tucker at Docket No. C-2018-3001993 is granted.
2. That the Complaint of Henrietta Tucker against PECO Energy Company at Docket No. C-2018-3001993 is dismissed.
3. That Docket No. C-2018-3001993 is marked closed.

Date: December 18, 2018

/s/
Darlene Davis Heep
Administrative Law Judge