

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Keary Willis	:	
	:	
v.	:	F-2018-3003082
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision grants PECO Energy Company’s Motion to Dismiss the formal Complaint (Complaint) of Keary Willis with prejudice because she failed to appear and prosecute the case.

HISTORY OF THE PROCEEDING

On June 25, 2018, Keary Willis (Ms. Willis or Complainant) filed a Complaint against PECO Energy Company (Respondent or PECO) with the Pennsylvania Public Utility Commission (Commission) alleging that the utility is threatening to shut off her electric service, that the utility enrolled her in its Consumer Assistance Program (CAP) without her permission, and that she is unable to make payments on utility bills to PECO. As relief, Ms. Willis requested that the Commission establish a payment arrangement on her behalf.

The Complaint was filed as a timely appeal of the Commission's Bureau of Consumer Services (BCS) decision, at BCS Case # 3604491.

On July 16, 2018, Respondent filed an Answer denying the material allegations of the Complaint.

A Hearing Notice dated July 26, 2018, notified the parties that an in-person initial hearing was scheduled for Wednesday, September 19, 2018, at 10:00 a.m.

On September 4, 2018, Complainant submitted a written request for a continuance of the scheduled hearing, citing medical reasons for requesting a new hearing date.

On September 7, 2018, PECO's counsel indicated that the Respondent did not object to Ms. Willis' request.

A Hearing Notice dated September 11, 2018, notified the parties that the September 19, 2018 hearing was cancelled and that the in-person initial hearing was rescheduled for Tuesday, October 30, 2018, at 10:00 a.m.

A Prehearing Order was issued on September 12, 2018, reminding the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

On October 24, 2018, I received, via fax, a written communication from Lisa Willis, who identified herself as the sister of Keary Willis. The communication requested a continuance of the hearing scheduled for October 30, 2018, and included a letter purporting to be from Keary Willis' doctor, Wane Gibbons, M.D.

Because I found the authenticity of the doctor's letter suspicious, I denied the request for a second continuance of the hearing. However, in order to accommodate any medical

hardships that Keary Willis might be experiencing at the time, I allowed her to attend the upcoming hearing via telephone.

On or about October 26, 2018, a woman who identified herself as Lisa Willis contacted the Commission's Philadelphia Office inquiring about the request for a continuance of the October 30, 2018 hearing in the present matter. When she was informed that the request was not granted and that the hearing would take place as scheduled, she responded that she would not attend the hearing. Tr. 6-7.

On October 29, 2018, I received, via fax, a written communication from Keary Willis. The communication reiterates the request for continuance of the hearing as well as the allegations contained in the Complaint.

The hearing convened as scheduled on October 30, 2018. Shawane Lee, Esq., appeared representing PECO. I contacted Keary Willis at the telephone number entered in her formal Complaint, 215-285-XXXX. The call was picked up by a woman, who identified herself as Lisa Willis and informed me that the Complainant was not available for the hearing having just left to attend a therapy session. Lisa Willis informed me that she was Keary Willis' caretaker and that the Complainant attended therapy sessions three times a week. Tr. 3. Yet, when asked when the Complainant's therapy session would be over, Lisa Willis was unable to provide any information. *Id.* Neither Complainant nor a counsel for the Complainant appeared at the hearing. Counsel for PECO moved to dismiss the Complaint with prejudice for lack of prosecution. That Motion is granted pursuant to the ordering paragraphs below.

The record was closed upon receipt of my copy of the hearing transcript on December 3, 2018.

FINDINGS OF FACT

1. The Complainant is Keary Willis, whose mailing address is Crittenden Street, Apt. # 212, Philadelphia, PA 19118.

2. The Respondent is PECO Energy Company.

3. On June 25, 2018, Keary Willis filed a Complaint against PECO alleging that the utility is threatening to shut off her electric service, that the utility enrolled her in its CAP without her permission, and that she is unable to make payments on utility bills to PECO.

4. As relief, Keary Willis requested that the Commission establish a payment arrangement on her behalf.

5. On July 16, 2018, the Respondent filed an Answer denying the material allegations of the Complaint.

6. A Hearing Notice dated July 26, 2018, notified the parties that an in-person initial hearing was scheduled for Wednesday, September 19, 2018, at 10:00 a.m.

7. On September 4, 2018, Complainant submitted a written request for a continuance of the scheduled hearing, citing medical reasons for requesting a new hearing date.

8. On September 7, 2018, PECO's counsel indicated that the Respondent did not object to Keary Willis' request.

9. A Hearing Notice dated September 11, 2018, notified the parties that the September 19, 2018 hearing was cancelled and that the in-person initial hearing was rescheduled for Tuesday, October 30, 2018, at 10:00 a.m.

10. A Prehearing Order was issued on September 12, 2018, reminding the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

11. On October 24, 2018, Lisa Willis submitted on behalf of Keary Willis a second request for a continuance of the scheduled hearing.

12. The Order dated October 25, 2018 denied the request for a second continuance of the hearing but allowed the Complainant to attend the upcoming hearing via telephone.

13. None of the documents mailed to Complainant at the address provided in her Complaint were returned to the Commission by the United States Postal Service as undeliverable.

14. On October 29, 2018, I received, via fax, a written communication from Keary Willis. The communication reiterates the request for continuance of the hearing as well as the allegations contained in the Complaint.

15. The Complainant failed to appear at the scheduled hearing.

16. The Complainant did not settle or withdraw this Complaint prior to the scheduled hearing date or obtain a continuance.

DISCUSSION

In this formal Complaint, Keary Willis alleges that PECO is threatening to shut off her electric service, that PECO enrolled her in its CAP without her permission, and that she is unable to make payments on utility bills to the Respondent. As relief, Keary Willis requested that the Commission establish a payment arrangement on her behalf.

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

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.Cmwlth. 1984). 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 September 11, 2018, a Prehearing Order dated September 12, 2018, and an Order dated October 25, 2018 were mailed to Keary Willis at the address listed on her formal Complaint form. None of these documents was returned to the Commission as undeliverable by the post office. Therefore, the Complainant was deemed to have received these documents and had sufficient notice of the day, date and time of the scheduled hearing. In addition to the constructive notice, the Complainant also had actual notice of the day, date and time of the scheduled hearing as evidenced by the communications received from Keary Willis and Lisa Willis.

On October 24, 2018, the Commission's Philadelphia Office received a written communication from Lisa Willis, who identified herself as the sister of Keary Willis. The communication requested a continuance of the hearing scheduled for October 30, 2018, and included a letter purporting to be from Keary Willis' doctor, Wane Gibbons, M.D.

Upon close review, I found the authenticity of the doctor's letter suspicious. Its letterhead was missing the city, state, and zip code of the medical office that issued it. It included a telephone number with a Harrisburg area code and a fax number with a Philadelphia area code. When the telephone number was dialed, the call was picked up by an answering machine, which did not identify the owner and could receive no voice messages as it appeared full. The letter, which was addressed "To Whom It May Concern" and "strongly encourage(d) [the reader that] any appointments, etc., be rescheduled" after November 30, 2018, was carbon copied to the board of directors of the medical facility. This letter provided such detailed information on Keary Willis' medical condition as to be in violation of HIPAA (Health Insurance Portability and Accountability Act of 1996) if it was indeed prepared by a health care provider.

Because I found the authenticity of the doctor's letter suspicious, I denied the request for a second continuance of the hearing by Order dated October 25, 2018. However, in order to accommodate any medical hardships that Keary Willis might be experiencing at the time, I allowed the Complainant to attend the upcoming hearing via telephone.

On or about October 26, 2018, Lisa Willis contacted the Commission's Philadelphia Office inquiring about the request for a continuance of the October 30, 2018, hearing in the present matter. When she was informed that the request was not granted and that the hearing would take place as scheduled, she responded that she would not attend the hearing. Tr. 6-7.

On October 29, 2018, the Commission's Philadelphia Office received a written communication from Keary Willis. The communication reiterated the request for continuance of the hearing as well as the allegations contained in the Complaint.

The hearing convened as scheduled on October 30, 2018. Shawane Lee, Esq., appeared representing PECO. I contacted Keary Willis at the telephone number entered in her formal Complaint, 215-285-XXXX. The call was picked up by a woman, who identified herself as Lisa Willis and informed me that the Complainant was not available for the hearing having just left to attend a therapy session. Lisa Willis informed me that she was Keary Willis' caretaker and that the Complainant attended therapy sessions three times a week. Tr. 3. Yet, when asked when the Complainant's therapy session would be over, Lisa Willis was unable to provide any information. *Id.* 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.

Once notice of a hearing and the opportunity to be heard have 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). The Complainant waived the opportunity to participate in the hearing by

failing to appear. Keary Willis' Complaint will be dismissed with prejudice. 52 Pa.Code § 5.245(a); *Jefferson v. UGI Utilities, Inc.*, 1995 Pa. PUC LEXIS 159.

CONCLUSIONS OF LAW

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

2. As the Complainant, Keary Willis had the burden of proof. 66 Pa.C.S.A. § 332(a).

3. 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).

4. By failing to appear and be heard on this Complaint, Complainant waived the opportunity to participate in the hearing. 52 Pa.Code § 5.245(a); *Jefferson v. UGI Utilities, Inc.*, 1995 Pa. PUC LEXIS 159.

5. Keary Willis has failed to meet her burden of proving that she is entitled to the relief sought from the Commission.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PECO Energy Company to dismiss the formal Complaint of Keary Willis at Docket No. F-2018-3003082 is granted.
2. That the formal Complaint filed by Keary Willis against PECO Energy Company at Docket No. F-2018-3003082 is dismissed with prejudice for failure to prosecute.
3. That the Secretary's Bureau should mark this matter closed.

Date: February 27, 2019

_____/s/_____
Eranda Vero
Administrative Law Judge