

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Judith Benvenger

v.

PECO Energy Company

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C-2018-3005286

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 Judith Benvenger with prejudice because she failed to appear and prosecute the case.

HISTORY OF THE PROCEEDING

On October 9, 2018, Judith Benvenger (Ms. Benvenger or Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) alleging that the utility is threatening to shut off her electric service, that there are incorrect charges on her bills from PECO, and that she is having a reliability, safety or quality problem with her electric service. As relief, the Complainant requests that the Respondent correct the billing issues and issue her a refund.

In her Complaint, Ms. Benvenger indicated that a court has granted a “Protection from Abuse” (PFA) order for her personal safety or welfare. She did not attach a copy of the PFA order to the pleading.

On October 31, 2018, PECO filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.

On November 7, 2018, the Commission received Ms. Benvenger’s reply to PECO’s Answer.

A Hearing Notice dated November 8, 2018, notified the parties that an initial hearing was scheduled in this matter for Wednesday, December 12, 2018, at 10:00 a.m.

On November 26, 2018, Ms. Benvenger mailed the Hearing Notice back to the Commission with several handwritten notes.

A Prehearing Order dated November 20, 2018, reminded the parties of the date and time of the scheduled hearing, informed them of the procedures applicable to this proceeding, and directed the submission of documents prior to the hearing. In particular, the Prehearing Order instructed Ms. Benvenger to submit a copy of the PFA order one week before the scheduled hearing. As of the date of this Initial Decision, Ms. Benvenger has not submitted a copy of her PFA order.

On November 28, 2018, Ms. Benvenger mailed the Prehearing Order back to the Commission with several handwritten notes. In her notes, Ms. Benvenger indicated that she would not be attending the hearing in this matter.

The hearing convened as scheduled on December 12, 2018. Shawane Lee, Esq. appeared representing PECO. Neither Complainant nor a counsel for the Complainant appeared at the hearing. The hearing reconvened at approximately 10:29 a.m. after I confirmed that the

Complainant had not called, or otherwise shown good cause not to appear at the scheduled 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 the hearing transcript on January 15, 2019.

FINDINGS OF FACT

1. The Complainant is Judith Benvenger.
2. The Respondent is PECO Energy Company.
3. On October 9, 2018, Ms. Benvenger filed a Complaint against PECO alleging that the utility is threatening to shut off her electric service, that there are incorrect charges on her bills from PECO, and that she is having a reliability, safety or quality problem with her electric service.
4. As relief, the Complainant requests that the Respondent correct the billing issues and issue her a refund.
5. On October 31, 2018, the Respondent filed an Answer denying the material allegations of the Complaint.
6. A Hearing Notice dated November 8, 2018, notified the parties that an initial hearing was scheduled in this matter for Wednesday, December 12, 2018, at 10:00 a.m.
7. A Prehearing Order was issued on November 20, 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.

8. 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.

9. Ms. Benvenger mailed the Hearing Notice, and Prehearing Order back to the Commission with several handwritten notes and comments on each document.

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

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

DISCUSSION

In this formal Complaint, Ms. Benvenger alleged that the utility is threatening to shut off her electric service, that there are incorrect charges on her bills from PECO, and that she is having a reliability, safety or quality problem with her electric service. As relief, the Complainant requests that the Respondent correct the billing issues and issue her a refund.

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, and a Prehearing Order were mailed to Ms. Benvenger 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 her on November 26 and 28, 2018. In her notes submitted on November 28, 2018, Ms. Benvenger indicated that she would not be attending the hearing in this matter.

Neither the Complainant nor a representative licensed to practice law in this Commonwealth appeared at the hearing on her behalf. To date, there has been no further communication from 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. Ms. Benvenger's 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, Judith Benvenger 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. Ms. Benvenger 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 Judith Benvenger at Docket No. C-2018-3005286 is granted.

2. That the formal Complaint filed by Judith Benvenger against PECO Energy Company at Docket No. C-2018-3005286 is dismissed with prejudice for failure to prosecute.

3. That the Secretary's Bureau should mark this matter closed.

Date: March 5, 2019

_____/s/
Eranda Vero
Administrative Law Judge