

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Christie Jordan	:	
	:	
v.	:	C-2018-3004873
	:	
Pennsylvania Electric Company	:	

INITIAL DECISION

Before
Emily I. DeVoe
Administrative Law Judge

INTRODUCTION

This decision dismisses the Complaint filed in this matter due to Complainant’s failure to appear for the hearing and prosecute the Complaint.

HISTORY OF THE PROCEEDING

On September 18, 2018, Christie Jordan (Complainant) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania Electric Company (Respondent). Complainant averred, *inter alia*, she operates a business located at 1116A 12th Street, Altoona, PA 16601 (service location); Respondent provides electric service for the service location; she made a payment of \$774.50 on her business’s electric account; and Respondent applied the payment to the wrong account. As relief, Complainant requested the payment be applied to the correct account.

On October 12, 2018, Respondent filed an Answer and New Matter, averring, *inter alia*, Respondent provides electric service to the service location; the account number for

the service location is x7444; account x7444 was established in the name of Christie Jordan at the service location on March 14, 2018; a previous account, account x1429, was in effect for the service location from December 21, 2017 to March 13, 2018; Christie Jordan was listed as an authorized contact for account x1429; a payment of \$764.55 was made on March 14, 2018 to account x1429, via a self-serve online payment; and the March 14, 2018 payment was properly applied according to the payor's account designation instructions.

By Notice dated January 24, 2019, the Commission scheduled this matter for a telephonic hearing on Tuesday, March 12, 2019, at 10:00 a.m., and assigned the case to me. The Notice advised the Parties I would initiate the hearing by calling each of the Parties. The Notice provides, "Attention: *You may lose the case if you do not take part in this hearing and present facts on the issues raised.*" (emphasis in original). The January 24, 2019 Notice was sent by regular first-class mail to the address Complainant listed for herself on the Complaint, and it was not returned as undeliverable.

I issued a Prehearing Order dated January 29, 2019, addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation, and the Commission's policy encouraging settlements. The Prehearing Order provides, "**You must be available when contacted by the Administrative Law Judge or your case will be dismissed.**" (emphasis in original). The Prehearing Order was sent by regular first-class mail to the address Complainant listed for herself on the Complaint, and it was not returned as undeliverable.

By Notice dated February 5, 2019, the Commission rescheduled the hearing for Wednesday, March 27, 2019 at 10:00 a.m. Like the January 24, 2019 Notice, the February 5, 2019 Notice advised the Parties I would initiate the hearing by calling each of the Parties and read, "Attention: *You may lose the case if you do not take part in this hearing and present facts on the issues raised.*" (emphasis in original). The February 5, 2019 Notice was sent by regular first-class mail to the address Complainant listed for herself on the Complaint, and it was not returned as undeliverable.

I convened the telephonic hearing on March 27, 2019, at approximately 10:00 a.m. Respondent's counsel, Ms. Morris, was available when I called her. At 10:05 a.m., I called Complainant at the number listed for her on the Complaint. I got Complainant's voicemail, and I left a voicemail message advising Complainant I was calling her for the hearing and that I would call back in approximately ten minutes. I checked with my legal assistant to see if Complainant had contacted my office regarding the hearing. She had not. I called Complainant a second time at 10:19 a.m., got her voicemail, and left another voicemail message advising Complainant that the hearing would proceed in her absence.

Respondent did not offer any testimony or evidence, but rather made a Motion to Dismiss (Motion) due to Complainant's failure to appear at the hearing. I informed counsel that I would take the Motion under advisement. I adjourned the hearing, and the hearing record closed March 27, 2019.

FINDINGS OF FACT

1. Complainant in this case is Christie Jordan.
2. Respondent in this case is Pennsylvania Electric Company, a jurisdictional public utility.
3. The service address is 1116A 12th Street, Altoona, PA 16601.
4. On September 18, 2018, Complainant filed a Complaint with the Commission against Respondent.
5. By Notice dated January 24, 2019, the Commission scheduled this matter for an initial telephonic hearing on Tuesday, March 12, 2019, at 10:00 a.m.
6. The Commission sent the Notice by regular first-class mail to the address Complainant listed for herself on the Complaint.

7. Complainant's copy of the Notice was not returned as undeliverable.
8. On January 29, 2019, a Prehearing Order was issued.
9. The Prehearing Order was sent by regular first-class mail to the address Complainant listed for herself on the Complaint.
10. Complainant's copy of the Prehearing Order was not returned as undeliverable.
11. By Notice dated February 5, 2019, the Commission rescheduled the hearing to Wednesday, March 27, 2019.
12. The February 5, 2019 Notice was sent by regular first-class mail to the address Complainant listed for herself on the Complaint.
13. The February 5, 2019 Notice advised the Parties the Administrative Law Judge (ALJ) would call them at the scheduled date and time for the hearing.
14. The February 5, 2019 Notice advised the Parties they may lose their case if they did not take part in the March 27, 2019 hearing and present facts on the issues raised in the Complaint.
15. Complainant's copy of the Notice rescheduling the hearing was not returned as undeliverable.
16. Complainant was not available when called by the ALJ on March 27, 2019.
17. Complainant did not contact the Office of the Administrative Law Judge (ALJ) to request a continuance.

18. Complainant did not settle or withdraw this matter.

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). This due process requirement is satisfied, however, when the administrative agency provides the parties notice and the opportunity to be heard.

By Notice dated February 5, 2019, the Commission rescheduled this matter for a hearing to be held on March 27, 2019 at 10:00 a.m. The Commission mailed a copy of the February 5, 2019 Notice by regular first-class mail to the address listed for Complainant in the Complaint.

Complainant's copy of the February 5, 2019 Notice was not returned as undeliverable. Since it was mailed in the ordinary course of business, I must presume Complainant received it. *Berkowitz v. Mayflower Securities, Inc.*, 317 A.2d 584 (Pa. 1974); *Meierdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa.Super. 1997); *Judge v. Celina Mutual Insurance Co.*, 449 A.2d 658 (Pa.Super. 1982).

The February 5, 2019 Notice advised the Parties they must be available when called for the hearing, and they may lose their case if they did not participate.

I called Complainant at the scheduled date and time for the hearing. The first time I called, I got Complainant's voicemail, and I left a message advising her I was calling for the hearing and that I would call back in ten minutes. I checked with my legal assistant to see if Complainant had contacted my office regarding the hearing. At no point did Complainant contact my office regarding her unavailability for the hearing. I called Complainant a second time approximately ten minutes later. I got her voicemail again and left a message that the hearing would proceed in her absence.

Under these circumstances, Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. Therefore, the due process rights of Complainant have been fully protected. *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-00161101 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

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, Complainant bears the burden of proving by a preponderance of the evidence that it she entitled to relief. By failing to appear and proffer any evidence to support the Complaint, Complainant has failed to meet this burden. Under these circumstances, the Complaint may be dismissed with prejudice. *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 parties and subject matter of this proceeding. 66 Pa.C.S. § 701.

2. The due process rights of Complainant have been fully protected in this proceeding. *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

3. By failing to appear for the hearing and proffer any evidence to support the Complaint, Complainant has failed to meet her burden of proving she is entitled to the relief she seeks from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Pennsylvania Electric Company to dismiss the Complaint of Christie Jordan at Docket No. C-2018-3004873 for failure to prosecute is granted.
2. That the Complaint of Christie Jordan against Pennsylvania Electric Company at Docket No. C-2018-3004873 is dismissed.
3. That the Secretary's Bureau shall mark Docket No. C-2018-3004873 as closed.

Date: April 15, 2019

/s/
Emily I. DeVoe
Administrative Law Judge