

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Verlinda Armstrong

v.

Metropolitan Edison Company

:
:
:
:
:

C-2018-3005402

INITIAL DECISION

Before
Benjamin J. Myers
Administrative Law Judge

INTRODUCTION

This decision dismisses the complaint filed in this matter for failure of the Complainant to appear for the hearing and prosecute the complaint.

HISTORY OF THE PROCEEDING

On October 10, 2018, Verlinda Armstrong (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against Metropolitan Edison Company (Respondent). The complaint alleges that the Complainant had charges for electric service from a previous residence improperly added to the bill for her new residence and was requesting a more reasonable payment arrangement for her outstanding balance.

On November 5, 2018 the Respondent filed an answer and new matter to the complaint. The answer admitted or denied the various averments of the complaint but specifically denied that the Complainant was eligible for a payment arrangement as the Complainant had previously defaulted on several prior arrangements – including three which had been Commission-ordered. In addition, the Respondent indicated that the outstanding

balance from the Complainant's previous residence had been addressed in Docket No. F-2016-2549640 in which the parties had reached a settlement agreement. Respondent asserted that as part of that settlement, the Complainant had acknowledged responsibility for the outstanding balance associated with her previous residence and had agreed that the balance was correct. By way of new matter, the Respondent argued that because the Complainant had agreed to a settlement in the previous docket, it represented a full accord and satisfaction of the matter and amounts disputed as of the September 13, 2016 settlement date. Respondent requested that the complaint therefore be dismissed. The Complainant did not file a response to this new matter.

By notice dated December 13, 2018 the Commission scheduled this matter for an initial telephonic hearing on February 14, 2019 at 10:00 a.m. and assigned the case to me. A prehearing order was issued on December 17, 2018, addressing, inter alia, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

On January 8, 2019, counsel for the Respondent alerted the Office of Administrative Law Judge that the initial hearing had been scheduled on a date that counsel was unavailable and requested that the February 14, 2019 hearing be rescheduled. A hearing cancellation/reschedule notice was issued on January 8, 2019 thereby rescheduling the initial hearing in this matter to February 28, 2019 at 10:00 a.m.

None of the correspondence sent to the Complainant by the Office of Administrative Law Judge was returned as undeliverable by the postal authorities.

The telephonic hearing was conducted as scheduled on February 28, 2019. The Complainant failed to participate in the hearing. Additional time was given for the Complainant to call into the conference number to participate in the hearing; however, the Complainant never made contact. In addition, several attempts were made to call the Complainant at two different telephone numbers of record to obtain her participation. One of these numbers was no longer in service and upon calling the other, the call went directly to voicemail. The Complainant did not

call in to participate in the hearing and was not able to be reached at other telephone numbers of record despite several attempts to obtain her participation.

Upon commencement of the hearing, Margaret Morris, Esquire, counsel for the Respondent, moved to dismiss the complaint for failure to appear and prosecute. The Respondent was advised that its motion would be taken under advisement.

The record closed on February 28, 2019, at the conclusion of the hearing. The Complainant has had no communication with the Office of Administrative Law Judge subsequent to the February 28, 2019 hearing in this matter. This decision grants the Respondent's motion to dismiss the complaint.

FINDINGS OF FACT

1. The Complainant in this case is Verlinda Armstrong.
2. The Respondent in this case is Metropolitan Edison Company.
3. The Complainant's service address is 319 Spruce Street, West Reading, Pennsylvania.
4. On October 10, 2018, the Complainant filed a complaint with the Commission against the Respondent.
5. The Respondent filed an answer to the complaint and new matter on November 5, 2018.
6. By notice dated December 13, 2018 the Commission scheduled this matter for an initial telephonic hearing on February 14, 2019 at 10:00 a.m.

7. This notice was sent to the Complainant's correct address of record and was not returned as undeliverable by the postal authorities.

8. On December 17, 2018 a prehearing order was issued to the Complainant at this same address and was not returned as undeliverable by the postal authorities.

9. On January 8, 2019 counsel for the Respondent requested a change in hearing date due to unavailability.

10. By notice dated January 8, 2019 the February 14, 2019 initial telephonic hearing was cancelled and rescheduled for February 28, 2019.

11. This notice was again sent to the Complainant's correct address of record and was not returned as being undeliverable by the postal authorities.

12. Despite several attempts to obtain the Complainant's participation, the Complainant failed to participate in the February 28, 2019 telephonic hearing.

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.

The Commission sent notice of the telephonic hearing in this case to the Complainant on December 13, 2018 by regular first-class mail to the Complainant's address of record. This notice was never returned to the Commission as being undeliverable by the postal authorities.

A prehearing order was also issued on December 17, 2018 which provided the parties with information on how to participate in a hearing by telephone. The prehearing order, which was again mailed to the Complainant at her address of record, was never returned as being undeliverable by the postal authorities.

A second notice was sent to the Complainant on January 8, 2019 granting the Respondent's continuance request and rescheduling this matter for a telephonic hearing on February 28, 2019. This second notice was also mailed to the Complainant at her address of record and was never returned as being undeliverable by the postal authorities.

Given that none of the correspondence sent to the Complainant's address of record was ever returned as undeliverable, it must be presumed that this mail was received by the Complainant. 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 Complainant did not call into the conference number on February 28, 2019 to participate in the hearing despite being given additional time to do so. The Complainant also failed to participate in the hearing despite multiple attempts to reach the Complainant by telephone at the telephone numbers provided by her to the Commission. The Complainant has had a full and fair opportunity to appear and be heard in this proceeding; however, she has chosen not to do so. The due process rights of the Complainant have been fully protected. Sentner v. Bell Telephone Co. of Pa., Docket No. F-00161106 (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, the Complainant bears the burden of proving by a preponderance of the evidence that she is entitled to relief. By failing to participate and proffer any evidence to support her complaint, the Complainant has failed to meet this burden. Under these circumstances, the complaint should 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 of and the parties to this proceeding. 66 Pa.C.S. § 701.

2. The due process rights of the 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 participate in the hearing and proffer any evidence to support the complaint, the Complainant has failed to meet her burden of proving that she is entitled to the relief that she seeks from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Metropolitan Edison Company to dismiss the complaint for failure to prosecute is granted.

2. That the complaint of Verlinda Armstrong against Metropolitan Edison Company at Docket No. C-2018-3005402 is dismissed for failure of the Complainant to appear for the hearing and prosecute the complaint.

