

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Malkia Hyden	:	
	:	
v.	:	C-2019-3011462
	:	
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 is dismissed for failure to prosecute.

HISTORY OF THE PROCEEDING

On July 11, 2019, Malkia Hyden (Complainant) filed a formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO, Company or Respondent). On the Complaint form, the Complainant placed a checkmark in the box indicating that PECO is threatening to shut off her service or has shut it off. She further added that PECO will not provide her service in the name of her business at her new business address at 54 East Baltimore Avenue, Clifton Heights, Pennsylvania (service address).

PECO filed an Answer on July 25, 2019. PECO stated in the Answer that it would not establish service at the service address in a business name because the Complainant

had an outstanding balance at the service address for a commercial account established in her name.

On July 29, 2019, a Hearing Notice was mailed to all parties, setting an Initial In-Person Hearing for September 23, 2019, at 10:00 a.m.

A Prehearing Order was issued and mailed to all parties on July 30, 2019, again informing the Complainant of the date of the hearing and providing procedural information. The Prehearing Order 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.

(Emphasis in original). Also, 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.

(Emphasis in the original).

The hearing began as scheduled on September 23, 2019 at 10:00 a.m. Shawane Lee, Esquire, was present on behalf of PECO. The Complainant was not present. At 10:20 a.m., the Complainant still had not arrived for the hearing. The Complainant had not called or otherwise contacted the Commission. Attorney Lee moved that the matter be dismissed for failure to prosecute.

The record closed on October 15, 2019, upon receipt of the transcript. PECO's Motion to Dismiss for Failure to Prosecute is ready for a decision.

FINDINGS OF FACT

1. The Complainant is Malkia Hyden, who is a PECO Energy Company customer in Clifton Heights, Pennsylvania.
2. PECO Energy Company is the Respondent.
3. On July 11, 2019, the Complainant filed this Complaint.
4. The Respondent filed an Answer on July 25, 2019.
5. On July 29, 2019, a hearing notice was mailed to all parties, setting an Initial In-Person Hearing for September 23, 2019, beginning at 10:00 a.m.
6. The hearing notice was mailed to the Complainant at the address provided in the Complaint.
7. A Prehearing Order was issued and mailed to all parties on July 30, 2019, again informing the Complainant of the date and time of the hearing and providing procedural information.
8. The Prehearing Order at page 2 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.” (Emphasis in original).
9. On the day of the hearing, PECO was present represented by counsel; the Complainant was not present when the hearing began at 10:00 a.m.

10. The Complainant's matter was called again at 10:20 a.m. and the Complainant was not present.

11. The Complainant has not contacted the Commission explaining her reason for her absence at the hearing.

12. Neither the Hearing Notice nor the Prehearing Order mailed to the Complainant were returned as undeliverable.

13. 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).

A Hearing Notice and a Prehearing Order were mailed to the Complainant. The Prehearing Order and the Hearing Notice contained the hearing location and time. These documents were mailed to the address provided by the Complainant in her Complaint and none of these documents was returned by the U.S. Postal Service to the Commission as undeliverable. It is therefore deemed that the Complainant received these documents and had notice of the date and time of the scheduled hearing. *Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 531, 317 A.2d 584 (1974).

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 despite being given notice of the date and time for the hearing. 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 the relief sought. 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; therefore, she failed to meet her burden of proving she is eligible for the relief she seeks 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 Malkia Hyden at Docket No. C-2019-3011462 is granted.

2. That the Complaint of Malkia Hyden against PECO Energy Company at Docket No. C-2019-3011462 is dismissed.

3. That Docket No. C-2019-3011462 be marked closed.

Date: November 6, 2019

/s/
Darlene Davis Heep
Administrative Law Judge