

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Renee Faust	:	
	:	
v.	:	C-2019-3012782
	:	
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 of Renee Faust with prejudice because she failed to appear and prosecute the case.

**HISTORY OF THE PROCEEDING**

On September 3, 2019, Renee Faust (Ms. Faust or Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) alleging that there are incorrect charges on her utility bills from PECO. As relief, the Complainant requests that the Commission review her account and instruct PECO to issue corrected bills.

On September 17, 2019, PECO filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.

A Hearing Notice dated September 19, 2019, notified the parties that an initial hearing was scheduled in this matter for October 22, 2019, at 9:30 a.m. A Prehearing Order issued on October 7, 2019, 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.

On October 21, 2019, the day before the hearing, Ms. Faust contacted the Commission's Philadelphia Office via telephone and orally requested a continuance of the scheduled hearing. Ms. Faust was instructed to submit her request in writing and to inform the Respondent of her request.

At the time of the scheduled hearing, Ms. Faust had not submitted her request in writing. The hearing convened as scheduled on Tuesday, October 22, 2019. Angela Lorenz, Esq., appeared representing PECO. Neither the 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. I informed Ms. Lorenz of Ms. Faust's call on October 21<sup>st</sup> and instructed her that I would hold PECO's Motion in abeyance until Ms. Faust was provided with an opportunity to explain her reasons for failing to appear at the scheduled hearing.

By Order dated October 26, 2019, I instructed Ms. Faust to submit a written request for a continuance of the scheduled hearing by no later than November 4, 2019. The Order instructed that Ms. Faust's written request for continuance must clearly state her reasons for failing to appear at the October 22, 2019 hearing and be accompanied by any and all supporting documentations substantiating her claim regarding her inability to attend the October 22, 2019 hearing.

As of the date of this Initial Decision, Ms. Faust has not complied with the instructions of the October 26, 2019 Order regarding the submittal of a written request for a continuance of the scheduled hearing.

The record was closed upon receipt of the hearing transcript on November 4, 2019.

FINDINGS OF FACT

1. The Complainant is Renee Faust, whose mailing address is 6525 N. Woodstock Street, Philadelphia, PA 19138.
2. The Respondent is PECO Energy Company.
3. On September 3, 2019, Ms. Faust filed a Complaint against PECO alleging that there are incorrect charges on her utility bills from PECO.
4. As relief, the Complainant requests that the Commission review her account and instruct PECO to issue corrected bills.
5. On September 17, 2019, the Respondent filed an Answer denying the material allegations of the Complaint.
6. A Hearing Notice dated September 19, 2019, notified the parties that an initial hearing was scheduled in this matter for October 22, 2019, at 9:30 a.m.
7. A Prehearing Order was issued on October 7, 2019, 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. The October 7, 2019 Prehearing Order instructed the parties that any requests for a change of the scheduled hearing date must state the agreement or opposition of other parties and should be submitted in writing no later than five (5) days prior to the hearing. 52 Pa.Code § 1.15(b).

9. The October 7, 2019 Prehearing Order instructed the parties that changes of the scheduled hearing date are granted only in rare situations where good cause exists.

10. The Hearing Notice and the Prehearing Order advised the parties that a party may lose the case if they fail to appear at the scheduled hearing.

11. On October 21, 2019, Renee Faust contacted the Commission's Philadelphia Office via telephone and orally requested a continuance of the scheduled hearing.

12. Ms. Faust was instructed to submit her request in writing and to inform the Respondent of her request.

13. At the time of the scheduled hearing, Ms. Faust had not submitted her request in writing.

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

15. An Order dated October 26, 2019, instructed Ms. Faust to submit a written request for a continuance of the scheduled hearing by no later than November 4, 2019.

16. The October 26, 2019 Order further instructed Ms. Faust that a written request for continuance must clearly state her reasons for failing to appear at the October 22, 2019 hearing and be accompanied by any and all supporting documentations substantiating her claim regarding her inability to attend the October 22, 2019 hearing.

17. As of the date of this Initial Decision, Ms. Faust has not complied with the instructions of the October 26, 2019 Order regarding the submittal of a written request for a continuance of the scheduled hearing.

18. 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. Faust alleged that there are incorrect charges on her utility bills from PECO. As relief, the Complainant requested that the Commission review her account and instruct PECO to issue corrected bills.

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. Faust at the address listed on her formal Complaint form. Both documents advised that a party may lose the case if they fail to appear at the scheduled hearing. Neither the Hearing Notice nor the Prehearing Order 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 her oral request for a continuance of the hearing. More specifically, on October 21, 2019, the day before the hearing, Ms. Faust contacted the Commission's Philadelphia Office via telephone and orally requested a continuance of the scheduled hearing. Ms. Faust was instructed to submit her request in writing and to inform the Respondent of her request. These instructions complied with Commission's regulations at 52 Pa.Code § 1.15(b) and were included in Paragraph #1 of the Prehearing Order dated October 7, 2019. In particular, Paragraph # 1 of the Prehearing Order reads:

1. A request for a change of the scheduled hearing date must state the agreement or opposition of other parties and should be submitted in writing no later than five (5) days prior to the hearing. 52 Pa Code § 1.15(b). Requests for changes of hearing dates must be sent to me and all parties of record. My correct address is:

Administrative Law Judge Eranda Vero  
Pennsylvania Public Utility Commission  
801 Market Street, Suite 4063  
Philadelphia, PA 19107  
Telephone: (215) 560-2105

**Changes are granted only in rare situations where good cause exists.**

(Emphasis in the original).

At the time of the scheduled hearing, Ms. Faust had not submitted her request in writing. The hearing convened as scheduled on Tuesday, October 22, 2019. Angela Lorenz, Esq., appeared representing PECO. Neither the 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.

I informed Ms. Lorenz of Ms. Faust's call on October 21<sup>st</sup> and instructed her that I would hold PECO's Motion in abeyance until Ms. Faust was provided with an opportunity to explain her reasons for failing to appear at the scheduled hearing. Tr. 5-6.

By Order dated October 26, 2019, I instructed Ms. Faust to submit a written request for a continuance of the scheduled hearing by no later than November 4, 2019. The Order instructed Ms. Faust that any written request for continuance must clearly state her reasons for failing to appear at the October 22, 2019 hearing and be accompanied by any and all supporting documentations substantiating her claim regarding her inability to attend the October 22, 2019 hearing.

To date, Ms. Faust has not complied with the instructions of the October 26, 2019 Order regarding the submittal of a written request for a continuance of the scheduled hearing. There is no further information about the Complainant regarding this hearing. In view of the above, I find Ms. Faust's failure to appear at the scheduled hearing to be 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. Faust'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, Renee Faust 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. A request for a change of the scheduled hearing date must state the agreement or opposition of other parties and should be submitted in writing no later than five (5) days prior to the hearing. 52 Pa Code § 1.15(b).
5. Only for good cause shown will requests for continuance be considered. 52 Pa Code § 1.15(b).

6. 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.

7. Ms. Faust has failed to meet her burden of proving that she is entitled to the relief sought from the Commission. 66 Pa.C.S.A. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PECO Energy Company to dismiss the formal Complaint of Renee Faust at Docket No. C-2019-3012782 is granted.

2. That the formal Complaint filed by Renee Faust against PECO Energy Company at Docket No. C-2019-3012782 is dismissed with prejudice.

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

Date: February 3, 2020

\_\_\_\_\_/s/\_\_\_\_\_  
Eranda Vero  
Administrative Law Judge