

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Fran Mestichelli	:	
	:	
v.	:	C-2019-3012541
	:	
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 Fran Mestichelli with prejudice because she failed to appear and prosecute the case.

HISTORY OF THE PROCEEDING

On August 29, 2019, Fran Mestichelli (Ms. Mestichelli or Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) alleging that she is unable to pay her outstanding balance with PECO and that the utility is threatening to shut off her electric service. As relief, the Complainant requests the Commission’s assistance in keeping her electric service on.

On September 11, 2019, PECO filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.

A Hearing Notice dated September 13, 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, Fran Mesticelli's daughter contacted the Commission's Philadelphia Office via telephone and orally requested a continuance of the scheduled hearing on behalf of her mother, citing a health-related emergency as the reason for the request. She was instructed to submit her request in writing and to inform the Respondent of her request.

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

By Order dated October 28, 2019, I instructed Ms. Mesticelli to submit a written request for a continuance of the scheduled hearing by no later than November 8, 2019. The Order instructed that Ms. Mesticelli'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. Mesticelli has not complied with the instructions of the October 28, 2019 Order regarding the submittal of a written request for a continuance of the scheduled hearing.

The record was closed on November 11, 2019.

FINDINGS OF FACT

1. The Complainant is Fran Mesticelli, whose mailing address is 2335 S. 4th Street, Philadelphia, PA 19148.
2. The Respondent is PECO Energy Company.
3. On August 29, 2019, Ms. Mesticelli filed a Complaint against PECO alleging that she is unable to pay her outstanding balance with PECO and that the utility is threatening to shut off her electric service.
4. As relief, the Complainant requested the Commission's assistance in keeping her electric service on.
5. On September 11, 2019, the Respondent filed an Answer denying the material allegations of the Complaint.
6. A Hearing Notice dated September 13, 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, the Complainant's daughter contacted the Commission's Philadelphia Office via telephone and orally requested a continuance of the scheduled hearing.

12. The Complainant's daughter 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. Mesticelli had not submitted her request in writing.

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

15. An Order dated October 28, 2019 instructed Ms. Mesticelli to submit a written request for a continuance of the scheduled hearing by no later than November 8, 2019.

16. The Order dated October 28, 2019 instructed Ms. Mesticelli 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 documentation substantiating her claim regarding her inability to attend the October 22, 2019 hearing.

17. As of the date of this Initial Decision, Ms. Mestichelli has not complied with the instructions of the October 28, 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. Mestichelli alleged that she is unable to pay her outstanding balance with PECO and that the utility is threatening to shut off her electric service. As relief, the Complainant requested the Commission's assistance in keeping her electric service on.

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. Mestichelli at the address listed on her formal Complaint form. Both documents advised the parties that they 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 the oral request made on her behalf for a continuance of the hearing. More specifically, on October 21, 2019, Fran Mesticelli's daughter contacted the Commission's Philadelphia Office via telephone and orally requested a continuance of the scheduled hearing on behalf of her mother, citing a health-related emergency as the reason for the request. She 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. Mesticelli had not submitted her request in writing. The hearing convened as scheduled on Tuesday, October 22, 2019. Angela Lorenz, Esq., appeared representing PECO. Neither 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. Mesticelli's daughter's call on October 21st and instructed her that I would hold PECO's Motion in abeyance until Ms. Mesticelli was provided with an opportunity to explain her reasons for failing to appear at the scheduled hearing. Tr. 4-5.

By Order dated October 28, 2019, I instructed Ms. Mesticelli to submit a written request for a continuance of the scheduled hearing by no later than November 8, 2019. The Order instructed Ms. Mesticelli 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 documentation substantiating her claim regarding her inability to attend the October 22, 2019 hearing.

To date, Ms. Mesticelli has not complied with the instructions of the October 28, 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. Mesticelli'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. Mesticelli'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, Fran Mesticelli 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. Mestichelli 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 Fran Mestichelli at Docket No. C-2019-3012541 is granted.

2. That the formal Complaint filed by Fran Mestichelli against PECO Energy Company at Docket No. C-2019-3012541 is dismissed with prejudice for failure to prosecute.

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

Date: February 7, 2020

_____/s/
Eranda Vero
Administrative Law Judge