

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tiffany Cunningham	:	
	:	
v.	:	C-2019-3013018
	:	
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 September 12, 2019, Tiffany Cunningham (Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent). In the Complaint, Ms. Cunningham sought a payment arrangement.

On September 25, 2019, Respondent filed its Answer, denying the material averments of the Complaint and stating that the Complainant was not eligible for a payment arrangement on her balance.

On October 2, 2019, a Hearing Notice was mailed to all parties, setting an Initial In-Person Hearing for November 12, 2019, at 10:00 a.m., as part of a PECO Energy Company

Call-of-the-Docket. Additionally, the Hearing Notice advised the parties, “**If you are not present and prepared to go forward with your case when it is called, your case will be dismissed by the Administrative Law Judge.**” (emphasis in the original.)

The hearing began as scheduled on November 12, 2019, at 10:00 a.m. Edward Fisher, Esquire, was present on behalf of PECO. The Complainant was not present at 10:00 a.m.

Other scheduled matters were heard. A recess was taken and the undersigned checked with support staff to determine whether the Complainant had contacted the Commission. She had not.

At approximately 10:19 a.m., this matter was called again. The Complainant was not present. Counsel for PECO moved that the case be dismissed for failure to prosecute. I advised PECO that I would take this motion under advisement.

The record closed on December 19, 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 Tiffany Cunningham, who is a PECO Energy Company customer in Philadelphia, Pennsylvania.
2. PECO Energy Company is the Respondent.
3. On September 12, 2019, the Complainant filed this action.
4. The Respondent filed an Answer on September 25, 2019.
5. A hearing was set for November 12, 2019.

6. On October 2, 2019, a Hearing Notice was mailed to all parties, setting an Initial In-Person Hearing for November 12, 2019, beginning at 10:00 a.m. as part of the Call-of-the-Docket.
7. The Hearing Notice was mailed to the Complainant at the address provided in the Complaint.
8. The hearing began as scheduled on November 12, 2019, at 10:00 a.m.
9. On the day of the hearing, PECO was present and represented by counsel.
10. The Complainant was not present when the hearing began at 10:00 a.m.
11. A recess was taken, and the undersigned confirmed that the Complainant had not contacted the Commission.
12. The Complainant was not present when the hearing resumed at 10:19 a.m.
13. To date, the Complainant has not contacted the Commission about the hearing.
14. The Hearing Notice mailed to the Complainant was not returned as undeliverable.
15. 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 was mailed to the Complainant. The Hearing Notice was mailed to the address provided by the Complainant in her Complaint and was not returned by the U.S. Postal Service as undeliverable. It is therefore deemed that the Complainant 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 was notified of the scheduled hearing and did not appear for the hearing.

To date, the Complainant has not contacted the Commission or the undersigned regarding the 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) (*Jefferson*).

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 he or she is entitled to relief. 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; 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, did not present any evidence and, therefore, she failed to meet her burden of proving that she is eligible to the relief that is sought 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 Tiffany Cunningham at Docket No C-2019-3013018 is granted.
2. That the Complaint of Tiffany Cunningham against PECO Energy Company at Docket No. C-2019-3013018 is dismissed.
3. That Docket No. C-2019-3013018 be marked closed.

Date: February 11, 2020

/s/
Darlene Davis Heep
Administrative Law Judge