

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Henrietta Tucker	:	
	:	
v.	:	C-2019-3011179
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complaint of Henrietta Tucker against PECO Energy Company because she failed to appear for her hearing and prosecute her Complaint.

HISTORY OF THE PROCEEDING

On June 21, 2019, Henrietta Tucker (Complainant or Ms. Tucker) filed a Formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission) wherein she stated that the utility is threatening to shut off her electric service. As relief, Ms. Tucker requested that PECO accept a new medical certificate on her behalf, and that it issue a more reasonable payment arrangement for her.

On July 2, 2019, PECO filed an Answer to the Complaint denying all material allegations of fact in the Complaint.

By Hearing Notice dated July 9, 2019, a hearing was scheduled for August 20, 2019, at 9:30 a.m., and the matter was assigned to me. The Hearing Notice advised the parties of the location, date and time of the scheduled hearing and warned in bold and underlined type: **“Attention: ...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).

I issued a Prehearing Order on July 23, 2019. The Prehearing Order directed the parties to comply with various procedural requirements and directed that a request to change the scheduled hearing should be sent to me at least five days prior to the hearing date, be in writing and state the agreement or opposition of the other party. It also warned in underlined bold type: **“If the customer is not present and prepared to go forward with the case when it is called, the case will be dismissed by the Administrative Law Judge.”**

On August 19, 2019, Ms. Tucker submitted a written request for a continuance due to a flare up of her medical condition. PECO had no objection to Ms. Tucker’s request. By Order dated August 26, 2019, Ms. Tucker’s request for a continuance of the hearing was granted.

A Hearing Notice dated August 28, 2019, informed the parties that the hearing was rescheduled for October 22, 2019, at 9:30 a.m. This Hearing Notice again advised the parties that if they were not present and prepared to go forward with the case when it is called, the case would be dismissed by the Administrative Law Judge.

I issued a second Prehearing Order on October 7, 2019, again warning the customer that if she was not present and prepared to go forward with the case when it was called, her case would be dismissed.

On October 21, 2019, Ms. Tucker’s daughter submitted on behalf of her mother a written request for continuance of the hearing due to a medical emergency. Her written request was presented to counsel for PECO, who indicated that Respondent had no objection to the request.

By Hearing Cancellation/Reschedule Notice dated November 13, 2019, the hearing was rescheduled for December 20, 2019, at 10:00 a.m. The Hearing Cancellation/Reschedule Notice advised the parties of the location, date and time of the scheduled hearing and warned in bold and underlined type: **“Attention: ...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).

I issued a third Prehearing Order on December 9, 2019. Ordering Paragraph No. 9 of this Prehearing Order warned the parties in bold capital letters: **“YOU MAY LOSE THIS CASE, IF YOU DO NOT TAKE PART IN THIS HEARING AND PRESENT EVIDENCE ON THE ISSUES RAISED. 52 Pa. Code §5.245.”** (Emphasis in the Original).

The hearing began on December 20, 2019, as scheduled. Counsel for PECO was present with a witness and was prepared to proceed. The Complainant was not present. The Complainant was given an additional 25 minutes to appear but failed to do so.

No witnesses were presented, and no exhibits were introduced into the record. Counsel for PECO moved that the Complaint be dismissed with prejudice for lack of prosecution pursuant to 52 Pa. Code § 5.245. In accordance with Commission policy, I am granting the Motion.

The record closed on January 15, 2020, upon my receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is Henrietta Tucker.
2. The Respondent is PECO Energy Company.
3. On June 21, 2019, the Complainant filed a Complaint with the Commission against the Respondent.

4. On July 2, 2019, the Respondent filed an Answer to the Complaint.

5. By Hearing Cancellation/Reschedule Notice dated November 13, 2019, the hearing was rescheduled for December 20, 2019, at 10:00 a.m.

6. On December 9, 2019, a Prehearing Order was sent to all parties containing, *inter alia*, a warning of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing.

7. Both the Hearing Cancellation/Reschedule Notice and the Prehearing Order were sent to the Complainant by regular first-class mail.

8. Neither the Hearing Cancellation/Reschedule Notice nor the Prehearing Order were returned as undeliverable.

9. The Complainant failed to appear at the December 20, 2019 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.

On November 13, 2019, the Commission sent notice of the initial hearing in this case to the Complainant by regular first-class mail. The Hearing Cancellation/Reschedule Notice advised the parties of the location, date and time of the scheduled hearing and warned in underlined and bold type: **“Attention: ...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).

In addition, I issued a Prehearing Order on December 9, 2019. Ordering Paragraph No. 9 of this Prehearing Order warned the parties in bold capital letters: “**YOU MAY LOSE THIS CASE, IF YOU DO NOT TAKE PART IN THIS HEARING AND PRESENT EVIDENCE ON THE ISSUES RAISED. 52 Pa. Code §5.245.**” (Emphasis in the Original).

None of the documents mailed to the Complainant were returned as undeliverable. Accordingly, I must presume that these documents, which were sent in the ordinary course of business, were 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 appear for the hearing and has not contacted the Commission. Under these circumstances, the Complainant has had ample opportunity to appear and be heard in this proceeding. Therefore, 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 appear and proffer any evidence to support her Complaint, the Complainant has failed to meet this burden. Therefore, the Complaint should be dismissed with prejudice. *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. Notice properly mailed to a party's last known address and not returned by the post office is presumed to have been received. *Berkowitz v. Mayflower Securities, Inc.*, 317 A.2d 584 (Pa. 1974); *Meirerdierck 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).

3. 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).

4. By failing to appear for the hearing and proffer any evidence to support the Complaint, the Complainant has failed to meet her burden of proving that she is eligible 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 PECO Energy Company to dismiss the Complaint filed by Henrietta Tucker at Docket No. C-2019-3011179 is granted;

2. That the Complaint of Henrietta Tucker against PECO Energy Company at Docket No. C-2019-3011179 is dismissed with prejudice; and

3. That Docket No. C-2019-3011179 be marked closed.

Date: February 14, 2020

/s/
Eranda Vero
Administrative Law Judge