

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Patricia Majewski	:	
	:	
v.	:	C-2019-3014431
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Christopher P. Pell  
Deputy Chief Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the formal Complaint (Complaint) of Patricia Majewski against PECO Energy Company because she failed to prosecute her Complaint.

**HISTORY OF THE PROCEEDING**

On November 19, 2019, Patricia Majewski (Complainant) filed a Complaint against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant placed checkmarks in boxes indicating “[t]he utility is threatening to shut off my service or has already shut off my service” and “I would like a payment agreement.” Under the “requested relief” section the Complainant indicated that she needs assistance with her utilities.

On December 5, 2019, the Respondent filed an Answer denying all material allegations of fact in the Complaint. The Respondent answered that PECO has placed the Complainant on two prior payment arrangements which she failed to keep. The Respondent further

answered that the Complainant first enrolled in PECO's Customer Assistance Program (CAP) on December 15, 2005, was last recertified for CAP on June 29, 2017, and that her current outstanding balance of \$942.38 is comprised in part of CAP arrears. The Respondent maintained that, since the Complainant's balance is comprised of CAP arrears, she is not entitled to a Commission-ordered payment arrangement pursuant to 66 Pa.C.S. § 1405(c).

The parties have selected to accept electronic service in this Commission proceeding. By selecting electronic service ("eService"), the parties have agreed that being provided with a notification of the filings as well as a link to the filings in this proceeding via e-mail shall constitute valid legal service in lieu of service through first class mail. Therefore, all documents in this proceeding were served electronically to the parties instead of by first class mail.<sup>1</sup>

By Hearing Notice dated December 9, 2019, a hearing was scheduled for January 31, 2020 at 10:00 a.m., and the matter was assigned to me.<sup>2</sup>

I issued a Prehearing Order on December 10, 2019. The Prehearing Order advised the parties that an Initial Hearing was scheduled for Friday, January 31, 2020, at 10:00 a.m. 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 warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing. Specifically, the Prehearing Order at paragraph 14 advised in bold and capitalized print the following:

**THIS CASE WILL BE DISMISSED IF THE CUSTOMER FAILS TO PARTICIPATE IN THE HEARING AND**

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<sup>1</sup> Service may be made electronically to filing users who have agreed to receive electronic service. Filing users will be sent an electronic mail notice informing them that a document was posted on the Commission's electronic filing system and providing a link to the document on the same day the document is posted. 52 Pa. Code § 1.53(b)(3).

<sup>2</sup> Although the parties both elected to accept electronic service, the audit history on the Commission's electronic docketing system does not show that the hearing notice was served electronically to the parties.

**PRESENT EVIDENCE IN SUPPORT OF THE COMPLAINT.**

It also explained that the Complainant bears the burden of proof to establish that the Respondent violated its tariff, the Public Utility Code, or a Commission Order or regulation, and that she is entitled to the relief requested in the Complaint.<sup>3</sup>

On January 7, 2020, Edward T. Fisher, Esq., entered his appearance on behalf of PECO in this matter.

The hearing convened as scheduled on January 31, 2020. Counsel for PECO was present with a witness and was prepared to proceed. Ms. Majewski was not present and had not contacted this office to indicate whether she would appear.

Because a customer who files a complaint before the Commission has an affirmative duty to make himself or herself available to participate in hearings on the complaint, I deemed Ms. Majewski's failure to appear at the location, date and time of the scheduled hearing as evidence that she did not wish to participate in the hearing.

No witnesses were presented and no exhibits were introduced into the record. Respondent's counsel 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 February 24, 2020 upon my receipt of the transcript.

**FINDINGS OF FACT**

1. The Complainant in this case is Patricia Majewski.
2. The Respondent in this case is PECO Energy Company.

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<sup>3</sup> The audit history on the Commission's electronic docketing system demonstrates that the Prehearing Order was electronically served to the parties on December 10, 2019.

3. The parties have selected to accept electronic service in this Commission proceeding. By selecting electronic service (eService), the parties have agreed that being provided with a notification of the filings as well as a link to the filings in this proceeding via e-mail shall constitute valid legal service in lieu of service through first class mail. Therefore, all documents in this proceeding were served electronically to the parties, unless otherwise noted, instead of by first class mail.

3. On November 19, 2019, the Complainant filed a Complaint with the Commission against the Respondent.

4. The Respondent filed an Answer on December 5, 2019.

5. By Hearing Notice dated December 9, 2019, the Commission scheduled this matter for an in-person hearing on January 31, 2020 at 10:00 a.m.

6. The audit history on the Commission's electronic docketing system does not demonstrate that the December 9, 2019 Hearing Notice was served electronically to the parties.

7. By Prehearing Order dated December 10, 2019, the parties were informed that an Initial Hearing was scheduled for Friday, January 31, 2020, at 10:00 a.m.

8. The December 10, 2019 Prehearing Order also informed the parties of various procedures applicable to the hearing, and warned them of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing

9. The audit history on the Commission's electronic docketing system demonstrates that the Prehearing Order was electronically served to the parties on December 10, 2019.

10. The Complainant did not request a continuance of the January 31, 2020

hearing.

11. The Complainant failed to appear for the January 31, 2020 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.

Although I am unable to confirm that the December 9, 2019 Hearing Notice was electronically served on the parties, I am able to confirm that my December 10, 2019 Prehearing Order was electronically served on the parties on December 10, 2019. My Prehearing Order informed the parties of the date and time of the Initial Hearing and also warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to appear and participate in the hearing. Since this Prehearing Order was electronically served on the parties on December 10, 2019, I must presume that this mail, which was sent in the ordinary course of business, was 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 scheduled hearing. Under the circumstances, it appears the Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. 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 her requested relief. By failing to participate and proffer any evidence to support her Complaint, the Complainant has failed to meet her burden. Under these circumstances, 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. 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).

3. 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 entitled 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 at Docket No. C-2019-3014431 is granted;

2. That the Complaint of Patricia Majewski against PECO Energy Company at Docket No. C-2019-3014431 is dismissed with prejudice; and

3. That the Secretary mark this docket closed.

Date: April 14, 2020

/s/

Christopher P. Pell  
Deputy Chief Administrative Law Judge