

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Deborah A. Redman	:	
	:	
v.	:	C-2019-3013582
	:	
Pennsylvania Electric Company	:	

INITIAL DECISION

Before
Mary D. Long
Administrative Law Judge

A formal complaint filed by a customer of an electric distribution company is dismissed because the complainant failed to appear for the hearing without good cause.

HISTORY OF THE PROCEEDING

On October 15, 2019, Deborah A. Redman (Complainant) filed a Formal Complaint against Pennsylvania Electric Company (Penelec) alleging a safety and reliability issue. Specifically, the Complainant alleges that Penelec refuses to remove a Chinese wisteria which she claims, among other things, is life-threatening and a danger to the power lines. According to the Complainant, the wisteria vines and runners on the power lines cause daily interruptions to her electricity service. She also complains that she has been improperly billed for interrupted service and that Penelec employees have mocked her. As relief, she requests that the Commission direct Penelec to kill the wisteria; notify the Complainant every month regarding the status of the wisteria; and compensation in the amount of \$600,000.

On November 6, 2019, Penelec filed an Answer and New Matter. Penelec's Answer denied the material allegations of the Complaint. In New Matter, Penelec requested that the Complaint be referred to the Commission's mediation unit.

On December 16, 2019, the Complainant filed a Response to Respondent's Answer and Opposition to Respondent's Request for Mediation and Motion for Summary Judgment. Penelec filed a response to the Motion for Summary Judgment on January 6, 2020. By notice dated January 16, 2020, the motion was assigned to me for disposition.

On January 30, 2020, I denied the Complainant's motion for summary judgment. After reviewing the Complainant's motion and Penelec's answer, I determined that the relevant facts were disputed and that a hearing was necessary. I also denied the Complainant's request to transfer the Complaint to "a lay body of Meadville/Erie residents willing to hear it,"¹ because the Commission does not have the authority to transfer a complaint to another tribunal.² I also directed that the Complaint shall be scheduled for a hearing by telephone.

By notice dated February 3, 2020, a telephonic hearing was scheduled to take place on March 24, 2020. A prehearing order was also issued on February 3, 2020, which provided instructions for calling to participate in the hearing and also explained the procedures for the conduct of the hearing.

On February 21, 2020, the Complainant filed a "Notice of Inability to Attend Hearing and Repeat Request for Transfer to a Neutral Group." On March 3, 2020, I received Complainant's Motion for Recusal of Administrative Law Judge. By Interim Order entered March 4, 2020, the Complainant's motion for recusal was denied. Additionally, the Complainant was directed to provide specific information and documentation substantiating her disability, as well as the specific accommodation which she is seeking with as much specificity as possible,

¹ Complainant's Opposition to Respondent's Request for Mediation and Motion for Summary Judgment, ¶ 4.

² Interim Order Denying Motion for Summary Judgment (January 30, 2020).

along with any documentation supporting such request, to counsel for Penelec and to me, on or before Friday, March 13, 2020. No documentation supporting the Complainant's request was received.

On March 10, 2020, I received "Complainant's Notice of Inability to Participate Due to Flu." On March 16, 2020, Governor Wolf had issued a state of emergency in Pennsylvania in an effort to mitigate the spread of COVID-19 in Pennsylvania, impacting Commission operations. Accordingly, the Complainant's notice was treated as a motion for a continuance. By Interim Order entered March 16, 2020, the March 24, 2020 hearing was cancelled, and the matter continued until the Office of Administrative Law Judge could resume operation remotely.

On April 21, 2020, the Office of Administrative Law Judge (OALJ) generated a hearing notice scheduling a hearing by telephone to take place on May 21, 2020. This notice was served on the Complainant by email to the email address provided by the Complainant on her Formal Complaint and also on her letterhead. The OALJ email also included instructions for registering for the Commission's e-filing service and for providing exhibits by email to the ALJ. A prehearing order was also served by email which included the same instructions. Both the hearing notice and the prehearing order provided the toll-free conference bridge number and PIN as well as the time and date of the hearing. OALJ did not receive a notification that the emails were undeliverable.

On May 19, 2020, counsel for Penelec forwarded to me by email, copying the Complainant, three documents that she received by first-class mail from the Complainant. One, dated May 12, 2020, is titled "First Supplement to Complaint Against FirstEnergy and Penelec" which notes alleged damage to a neighboring property by the wisteria. The second, dated May 13, 2020, is titled "Notice that Complainant Did not Receive a Prehearing Order Scheduling a May 2020 Hearing." The third document, dated May 14, 2020, is titled "Complainant's Notice

of Inability to Attend May 2020 Hearing and Repeat Request to Transfer Matter to a Neutral Group.”³

Counsel’s May 19, 2020 email also included the Complainant. I responded to the email and notified the parties that the hearing scheduled for May 21, 2020 would proceed as scheduled. I did not receive a notice that the email was undeliverable.

The hearing convened as scheduled. Penelec appeared and was represented by Margaret A. Morris, Esquire, along with four witnesses. Ms. Morris made a motion to dismiss the Complaint due to the Complainant’s failure to appear, which was taken under advisement. The record closed at the conclusion of the hearing.

FINDINGS OF FACT

1. The Complainant is Deborah A. Redman.
2. The Respondent is Pennsylvania Electric Company, a jurisdictional public utility.
3. The Complainant did not call the conference number at 10:00 a.m. on May 21, 2020, to participate in the scheduled evidentiary hearing.
4. The Complainant did not contact the Commission to explain her failure to appear for the hearing.
5. The hearing notice and prehearing order were emailed to the Complainant to the email address provided on the Formal Complaint and the Complainant’s correspondence letterhead.

³ The Complainant served each of these documents by first-class mail to me and to the Secretary’s Bureau. Due to the Covid-19 emergency, the Commission has not been able to timely process first-class mail. However, each of these documents were scanned by counsel for Penelec and were forwarded to the Commission’s Secretary’s Bureau. These documents have been added to the docket.

6. Neither of the emails containing the hearing notice nor the prehearing order were returned as undeliverable.

DISCUSSION

Administrative agencies, such as the Commission, are required to provide due process to the parties appearing before them.⁴ However, this due process requirement is satisfied when the parties are provided notice and the opportunity to appear and be heard.⁵ The Complainant had adequate notice of the time and date of the hearing, yet she failed to appear or explain why she could not attend the hearing at the scheduled time. Therefore, it is appropriate to dismiss the Complaint.

A hearing notice and prehearing order were sent to the Complainant. Paragraph 10 of the prehearing order informed the Complainant that if she failed to appear for the hearing she could lose her case.⁶ The prehearing order also provided instructions for contacting the Commission to request a change of the scheduled hearing date. The hearing notice and the prehearing order were emailed to the Complainant at the email address she provided on her Formal Complaint and also on her correspondence letterhead. Neither were returned as undeliverable. Notice mailed to a party's last known address and not returned by the post office is presumed to have been received.⁷ Therefore, the Complainant is deemed to have received these documents and to have had sufficient notice of the Commission's procedures and notice of the call-in procedure, date and time of the scheduled hearing.

⁴ *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwth. 1984).

⁵ *Id.*

⁶ *See also* 52 Pa.Code § 5.245.

⁷ *Berkowitz v. Mayflower Securities, Inc.*, 455 Pa. 531, 317 A.2d 584 (1974); *Chartiers Industrial and Commercial Dev. Auth. v. Allegheny County Bd. of Property Assessment Appeals and Rev.*, 645 A.2d 944 (Pa.Cmwth. 1994); *Geary v. Verizon Pennsylvania Inc.*, Docket No. C-2009-2118625 (Commission Opinion and Order entered September 16, 2010).

Section 332(a) of the Public Utility Code⁸ places the burden of proof upon the proponent of a rule or order. As the proponent of a rule or order, the Complainant has the burden of demonstrating that the facts alleged in her Complaint are true and that she is entitled to the relief that she requested. By not appearing for the scheduled hearing to present evidence, the Complainant failed to meet this burden of proof. Consequently, the Complaint must be dismissed.

Additionally, the Complainant states in her May 14, 2020 Notice of Inability to Attend Hearing and Repeat Request to Transfer Matter to a Neutral Group, that she “will never be able to participate in a hearing of any kind given that she is living in sewage.” She goes on to explain the hardship caused by the blockage of her sewer system which she attributes to the wisteria. She repeats her request for an “accommodation” by having this matter “transferred to a neutral body.”

As explained in my order disposing of the Complainant’s motion for summary judgment, the Commission does not have the authority to transfer a complaint to a “neutral body.” The Commission’s regulations found in Chapter 5 of Title 52 of the Pennsylvania Code provide for the resolution of formal complaints via evidentiary hearings presided over by Commission-employed ALJs. The regulations do not provide for any of the alternate dispute resolution processes Complainant suggests.

The regulation at 52 Pa.Code § 5.21 provides, “The filing of a formal complaint entitles the complainant to a formal hearing before the Commission except that the Commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest.” Here, given the Complainant’s statement that she will never be able to participate in a hearing of any kind, the Commission can not consider her request for relief.

In conclusion, the Complainant was notified of the scheduled hearing call-in procedure, date, and time, as well as how to contact the Office of Administrative Law Judge, but failed to appear without explanation. Although the Complainant claimed to have not received the

⁸ 66 Pa.C.S. § 332(a).

prehearing order, she was nevertheless aware of the hearing as evidenced by her Notice of Inability to Participate. Under these circumstances, the Complainant had an opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. The due process rights of the Complainant have been fully protected. The Complaint is dismissed.⁹ However, due to the unusual circumstances caused by the Covid-19 state of emergency and modified Commission procedures, the Complaint is dismissed without prejudice.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of the dispute. 66 Pa.C.S. § 701.

2. The due process rights of the Complainant have been fully protected. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlt. 1984).

3. By failing to appear at the scheduled hearing, the Complainant has waived her claims and has failed to sustain her burden of proof. 66 Pa.C.S. § 332; 52 Pa.Code § 5.245.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion to dismiss the Complaint of Deborah A. Redman at Docket No. C-2019-3013582, is granted.

⁹ 66 Pa.C.S. § 332(f).

