

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Krista McKiernan

v.

PECO Energy Company

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C-2019-3013161

INITIAL DECISION

Before
Darlene Davis Heep
Administrative Law Judge

INTRODUCTION

The complaint is dismissed for the failure of the Complainant to appear for the hearing and prosecute the complaint.

HISTORY OF THE PROCEEDING

On September 25, 2019, Krista McKiernan (Complainant) filed a formal complaint against PECO Energy Company (PECO) with the Pennsylvania Public Utility Commission (Commission) concerning her gas and electric service. In the complaint, Ms. Kiernan alleges that there are incorrect charges on her PECO bill, that PECO did not credit her with payments made and that PECO is threatening to shut off her service. The Complainant filed the complaint electronically and receives eService.

On October 15, 2019, PECO filed its answer, denying the material averments of the complaint. PECO also stated that the company did not receive the payments Complainant alleges were made.

On October 21, 2019, an Initial In-Person Hearing Notice was issued setting a Hearing for December 17, 2019. On October 23, 2019, a Prehearing Order was issued setting out various procedural matters.

By Motion for Continuance of Hearing Date filed on October 28, 2019, PECO requested that this matter be rescheduled. PECO's continuance request was granted.

On December 6, 2019, a Cancel/Reschedule Hearing Notice was issued setting an in-person hearing for January 30, 2020.

On January 28, 2020, Ms. Kiernan made a written request for continuance of the hearing due to family medical reasons. Complainant's continuance request was granted.

By Hearing Cancellation/Reschedule Notice dated January 28, 2020, the hearing was rescheduled for March 12, 2020.

Following Commission work from home orders related to the COVID-19 pandemic, the hearing was cancelled and rescheduled. A Change/Rescheduled Hearing Notice was issued on May 5, 2020 scheduling a telephonic hearing for June 25, 2020 at 10:00 a.m. The Notice included the toll-free telephone number to call in for the hearing and contact information for the Commission staff.

On May 22, 2020, a Prehearing Order was issued that addressed various procedural matters that would be applicable to the hearing, reminded the parties of the date, time and call-in telephone number of the hearing, and provided an email address to forward proposed exhibits to the assigned legal assistant prior to the hearing.

The telephonic hearing convened at 10:00 a.m. on June 22, 2020 as scheduled. PECO was represented by Kadajah Scott, Esquire, with PECO witness Senior Assessor Renee Tarpley on the call prepared to testify. The Complainant did not call in. A recess was taken to allow the Complainant additional time to call in.

The hearing reconvened at 10:16 a.m. The Complainant was not present. Counsel for PECO moved that the matter be dismissed for failure to prosecute. The motion was granted pending a written decision.

The record closed on July 16, 2020, upon receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is Krista McKiernan of Pottstown, Pennsylvania.
2. The Respondent is PECO Energy Company (PECO).
3. On September 25, 2019, the Complainant filed a formal complaint against PECO.
4. The Respondent filed an answer on October 15, 2019.
5. The Complainant signed up for and receives Commission notices through eService.
6. On October 21, 2019, an Initial In-Person Hearing Notice was issued setting a hearing for December 17, 2019.
7. On October 23, 2019, a Prehearing Order was issued setting out various procedural matters that would be applicable to the hearing.
8. By Motion for Continuance of Hearing Date filed on October 28, 2019, PECO requested that this matter be rescheduled; this Motion was granted.
9. On December 6, 2019, a Cancel/Reschedule Hearing Notice was issued setting an in-person hearing for January 30, 2020.

10. On January 28, 2020, Ms. Kiernan made a written request for continuance of the January 30, 2020 hearing due to family medical reasons; this continuance request was granted.

11. By Hearing Cancellation/Reschedule Notice dated January 28, 2020, the hearing was rescheduled for March 12, 2020.

12. Following Commission work from home orders related to the COVID-19 pandemic, the March 12, 2020 hearing was cancelled and rescheduled.

13. A Type Change/Rescheduled Hearing Notice was issued on May 5, 2020 setting a telephonic hearing for June 25, 2020 at 10:00 a.m.

14. The Type Change/Rescheduled Hearing Notice included the toll-free telephone number to call in for the hearing and contact information for the Commission staff.

15. On May 22, 2020, a Prehearing Order was issued which reminded the parties of the date, time and call-in telephone number for the hearing, addressed various procedural matters which would be applicable to the hearing and provided an email address to forward proposed exhibits to the assigned legal assistant prior to the hearing.

16. The hearing convened at 10:00 a.m. on June 22, 2020 as scheduled; PECO was represented by an attorney.

17. The Complainant did not call in at 10:00 a.m. on June 22, 2020, when the hearing convened as scheduled.

18. After the Complainant did not call into the June 22, 2020 hearing at 10:00 a.m., a recess was taken to allow the Complainant additional time to call in; the hearing reconvened at 10:16 a.m., and the Complainant was not present.

19. Counsel for PECO moved that the matter be dismissed for failure to prosecute.

20. The hearing Notices eServed to the Complainant stated:

“At the above date and time, you must call into the hearing. If you fail to do so, your case will be dismissed. You will not be called by the Presiding Officer.”

and

“Attention: You may lose the case if you do not take part in this hearing and present facts on the issues raised.”

(Emphasis in originals).

21. The Prehearing Orders eServed to the Complainant advised:

“THIS COMPLAINT MAY BE DISMISSED IF THE COMPLAINANT FAILS TO PARTICIPATE IN THE HEARING AND PRESENT EVIDENCE IN SUPPORT OF THE COMPLAINT.”

(Emphasis in original).

22. Both documents, the hearing Notice and the Prehearing Order, which were eServed to the Complainant, were not returned as undeliverable.

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.Cmwlt. 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.Cmwlt. 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 Cty. Bd. of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlt. 1994).

Additionally, notice electronically served to a party with no notification that service failed is presumed received. *Zirkel v. Philadelphia Gas Works*, Docket No. C-2016-

2561176 (Final Order entered April 7, 2017); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered January 31, 2017); and *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Final Order entered December 19, 2019).

The hearing Notice and Prehearing Order for the June 22, 2020 hearing, both containing the date, time and call-in information, were eServed to the Complainant and neither document was returned as undeliverable. Therefore, it is deemed that the Complainant had notice of the date and time and participation information for the hearing. *Zirkel, Morella, Hu.*

As the Commission noted in *Strydio v. PPL Electric Util. Corp.*, 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 Util. Corp.*, 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. Additionally, the hearing Notice advised the Complainant that her case could be dismissed if she did not call in and participate in the hearing.

To date, the Complainant has not contacted the Commission or the undersigned regarding her absence from the hearing. Thus, 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).

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. The Complainant was advised in the hearing Notice and the Prehearing Order that she could lose the case if she did not participate in the hearing or present facts on the issues presented. By failing to appear and proffer any evidence to support the complaint, the Complainant has failed to meet this burden. Consequently, the complaint will be dismissed. *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); *El-Ayazra v. West Penn Power Co.*, 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 Cty. Bd. of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 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 for the relief 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 formal complaint filed by Krista McKiernan at Docket Number C-2019-3013161 is granted.

