

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Brooke Skowronski	:	
	:	
v.	:	C-2019-3014702
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On November 27, 2019, Brooke Skowronski (Complainant or Ms. Skowronski) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant states that she cannot keep up with her current payment arrangement due to medical reasons. The Complainant also alleges that her outstanding balance is incorrect because it contains charges for an address where she did not have service or reside. As relief, the Complainant requests that her payment arrangement be reinstated.

On December 16, 2019, PECO filed an Answer to the Complaint. In its Answer, PECO either admitted or denied the various averments of the Complaint. In particular, PECO averred that the Complainant's outstanding balance was \$3,848.04, and \$3,129.61 of this amount consisted of arrears that accrued under PECO's customer assistance program (CAP). PECO denied that the outstanding balance is incorrect.

Also, on December 16, 2019, PECO filed Preliminary Objections with an attached Notice to Plead. PECO averred that pursuant to 66 Pa.C.S. § 1405(c), the Commission is prohibited from establishing payment arrangements on CAP arrears. Thus, because the Complainant's outstanding balance contained CAP arrears, PECO's Preliminary Objections sought to have the Complaint dismissed for lack of subject matter jurisdiction.

The Complainant's Answer to PECO's Preliminary Objections was due no later than December 30, 2019. 52 Pa.Code §§ 5.61(a)(2), 5.101(f)(1), 1.56(a)(1) and (b). The Complainant did not file an Answer to PECO's Preliminary Objections.

By Motion Judge Assignment Notice dated January 23, 2020, the parties were informed that I was assigned as the Presiding Officer in this matter and responsible for resolving any issues which may arise during the preliminary phase of this proceeding.

On February 3, 2020, I issued an Order denying PECO's Preliminary Objections for failure to show that the Complainant would not be entitled to relief under any circumstance as a matter of law.

By Hearing Notice dated February 3, 2020, an Initial In-Person Hearing was scheduled for March 26, 2020, at 10:00 a.m. The Hearing Notice advised the parties of the location, date and time of the scheduled hearing and warned in italicized type: "*Attention: You may lose the case if you do not come to this hearing and present facts on the issues raised.*"

I issued a Prehearing Order on February 10, 2020. 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.”**

Due to the COVID-19 pandemic, the In-Person Hearing was changed to a telephonic hearing and rescheduled for June 24, 2020 at 10:00 a.m., by Initial Hearing Type Change/Rescheduled Notice issued on May 6, 2020.

The hearing began on June 24, 2020, as scheduled. Counsel for PECO was present with a witness and was prepared to proceed. The Complainant failed to call-in. The Complainant was given an additional ten minutes to call-in 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 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 June 25, 2020, upon my receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is Brooke Skowronski.
2. The Respondent is PECO Energy Company.
3. On November 27, 2019, the Complainant filed a Complaint with the Commission against the Respondent.
4. On December 16, 2019, the Respondent filed an Answer to the Complaint.

5. Also, on December 16, 2019, the Respondent filed Preliminary Objections with an attached Notice to Plead.

6. The Complainant did not file an Answer to PECO's Preliminary Objections.

7. By Motion Judge Assignment Notice dated January 23, 2020, I was assigned as the Presiding Officer in this matter.

8. On February 3, 2020, I issued an Order denying PECO's Preliminary Objections and ordering that a hearing be scheduled.

9. By Hearing Notice dated February 3, 2020, an Initial In-Person Hearing was scheduled for March 26, 2020, at 10:00 a.m.

10. On February 10, 2020, 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.

11. Due to the COVID-19 pandemic, the In-Person Hearing was changed to a telephonic hearing and rescheduled for June 24, 2020 at 10:00 a.m., by Initial Hearing Type Change/Rescheduled Notice issued on May 6, 2020.

12. Both Hearing Notices and the Prehearing Order were sent to the Complainant by regular first-class mail.

13. Neither the Hearing Notices nor the Prehearing Order were returned as undeliverable.

14. The Complainant failed to appear at the June 24, 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. *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (Pa. Cmwlth. 2016).

On May 6, 2020, the Commission sent notice of the Initial Hearing in this case to the Complainant by regular first-class mail. The Hearing Notice advised the parties of the location, date and time of the scheduled hearing and warned in italicized type: “*Attention: You may lose the case if you do not come to this hearing and present facts on the issues raised.*” In addition, I issued a Prehearing Order on February 10, 2020, also warning 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.**”

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 eligible for 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. *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 for 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 formal Complaint filed by Brooke Skowronski at Docket No. C-2019-3014702 is granted.
2. That the formal Complaint of Brooke Skowronski against PECO Energy Company at Docket No. C-2019-3014702 is dismissed without prejudice; and
3. That Docket No. C-2019-3014702 be marked closed.

Date: August 11, 2020

/s/
F. Joseph Brady
Administrative Law Judge