

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Mary Shultz

v.

PECO Energy Company

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F-2019-3013833

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On October 25, 2019, Mary Shultz (Complainant) filed a formal Complaint (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,” “I would like a payment agreement,” “[i]ncorrect charges are on my bill,” and “I am having a reliability, safety or quality problem with my utility service.” The Complainant also alleged that a foreign wiring issue exists at her address. The Complainant is challenging her responsibility for her bill.

On November 18, 2019, the Respondent filed an Answer denying all material allegations of fact in the Complaint. The Respondent maintained that the Complainant currently has an outstanding balance of \$10,766.42 and that she is responsible for the entirety of this balance. The Respondent further maintained that the Complainant is not entitled to a Commission-issued payment agreement on her balance pursuant to 66 Pa.C.S. § 1405(c) since she participated in PECO's Customer Assistance Program (CAP) and her balance is comprised of CAP arrears.

By Hearing Notice dated November 21, 2019, a hearing was scheduled for January 21, 2020 at 10:00 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 italicized and underlined 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 November 22, 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 warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing. 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.

By Cancellation/Reschedule Hearing Notice dated January 21, 2020, the matter was rescheduled for March 4, 2020 at 10:00 a.m. The Hearing Notice advised the parties of the location, date and time of the scheduled hearing and again warned in italicized and underlined type: "Attention: *You may lose the case if you do not come to this hearing and present facts on the issues raised.*"

By Cancellation/Reschedule Hearing Notice dated March 4, 2020, the matter was rescheduled as an Initial Telephonic Hearing for April 2, 2020 at 10:00 a.m. The Hearing Notice advised the parties of the date and time of the scheduled hearing, as well as how to call in, and

warned in bold and underlined type: “**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 Administrative Law Judge.**”

I issued Prehearing Order #2 on March 5, 2020. Prehearing Order #2 advised the parties of the date and time of the scheduled hearing, as well as how to call in for the hearing. Prehearing Order #2 also 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. 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.

Due to statewide Commission office closures resulting from the COVID-19 pandemic, the April 2, 2020 hearing was cancelled. The hearing was cancelled by Cancellation Notice dated March 17, 2020.

By Cancellation/Reschedule Hearing Notice dated May 8, 2020, the matter was rescheduled as an Initial Telephonic Hearing for June 16, 2020 at 10:00 a.m. The Hearing Notice advised the parties of the date and time of the scheduled hearing, as well as how to call in, and warned in bold and underlined type: “**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 Administrative Law Judge.**”

I issued Prehearing Order #3 on May 14, 2020. Prehearing Order #3 advised the parties of the date and time of the scheduled hearing, as well as how to call in for the hearing. Prehearing Order #3 also directed the parties to comply with various procedural requirements and directed that a request to change the scheduled hearing should be emailed to my legal assistant at least five days prior to the hearing date 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. 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.

The telephonic hearing convened as scheduled on June 16, 2020. Counsel for PECO was present with a witness and was prepared to proceed. Ms. Shultz was not present and did not contact the Office of Administrative Law Judge (OALJ) to indicate that she would or would not 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. Shultz's failure to call in at the 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 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 22, 2020 upon my receipt of the hearing transcript.

FINDINGS OF FACT

1. The Complainant in this case is Mary Shultz.
2. The Respondent in this case is PECO Energy Company.
3. On October 25, 2019, the Complainant filed a Complaint with the Commission against the Respondent.
4. The Respondent filed an Answer on November 18, 2019.
5. By Cancellation/Reschedule Hearing Notice dated May 8, 2020, the Commission scheduled this matter for a call-in telephonic hearing on June 16, 2020 at 10:00 a.m.

6. The Commission's Hearing Notice was mailed to the Complainant at her mailing address provided in her Complaint and was never returned to the sender.

7. The Complainant did not request a continuance of the June 16, 2020 hearing.

8. The Complainant failed to call in for the June 16, 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.

The Commission sent notice of the June 16, 2020 hearing in this case to the Complainant on May 8, 2020, by regular first-class mail to the address stated on the Complaint. This notice informed the parties of the date and time of the hearing, as well as how to call in for the hearing. To my knowledge this piece of mail was never returned to the sender, the scheduling staff for the OALJ in Harrisburg.

In addition, I issued a prehearing order dated May 14, 2020, which, *inter alia*, warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to appear and participate in the hearing. The prehearing order, which was mailed to the Complainant at the address shown on the Complaint, was never returned. Accordingly, 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 call in for the scheduled hearing. Under the circumstances, 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 eligible for the 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. *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 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 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 Complaint filed at Docket No. F-2019-3013833 is granted;
2. That the Complaint of Mary Shultz against PECO Energy Company at Docket No. F-2019-3013833 is dismissed without prejudice; and
3. That the Secretary mark this docket closed.

Date: September 21, 2020

_____/s/
Christopher P. Pell
Deputy Chief Administrative Law Judge