

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nateshea Fenderson	:	
	:	
v.	:	C-2019-3012899
	:	
PECO Energy Company	:	

**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 5, 2019, Nateshea Fenderson<sup>1</sup> (Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO, Respondent or Company). In the Complaint, Ms. Fenderson alleges that PECO had already shut-off her utility service and that there was a violation of a previous Commission order. She seeks restoration of her services, reinstatement of her previous payment arrangement, a detailed accounting of her bills and payments, and notification of any payment arrangement issued or changed.

---

<sup>1</sup> The Complainant indicated upon filing that there was a Protection from Abuse Order (PFA) in place and this matter has been handled in accordance with PFA provisions.

On September 25, 2019, Respondent filed its Answer (Answer), denying the material averments of the Complaint. PECO also stated that the charges contested by the Complainant are the unpaid balance for services, that Complainant's balance was then \$16,376.95 and that most of the balance was comprised of charges accrued under the Customer Assistance Program (CAP). PECO further averred that the Commission could not award a payment arrangement for CAP charges, in accordance with 66 Pa. C.S. § 1405(c).

On September 27, 2019, a Hearing Notice was mailed to all parties, setting an Initial Call-In Telephonic Hearing for November 21, 2019 at 10:00 a.m.

On October 3, 2019, a Prehearing Order, setting forth the procedures for a telephonic hearing and reminding the parties of the hearing date and time, was mailed to all parties.

On November 18, 2019, the Complainant requested that the matter be continued. PECO did not object and the November 21, 2019, hearing was cancelled.

On November 19, 2019, a Cancel/Reschedule Hearing Notice was mailed to all parties setting a telephonic hearing for January 6, 2020, at 10:00 a.m.

On November 21, 2019, a Prehearing Order for the January 6, 2020 hearing was issued.

The hearing began as scheduled on January 6, 2020. The Complainant was present. Edward T. Fisher, Esquire, represented PECO. As the hearing began, the Complainant requested time to seek attorney representation. The hearing was continued.

A Further Telephonic Hearing Notice was issued on January 6, 2020, setting the hearing for March 3, 2020, by telephone.<sup>2</sup>

---

<sup>2</sup> By Order dated January 7, 2020, I formally granted the Complainant's request for a continuance.

The telephonic hearing began as scheduled at 10:00 a.m. on March 3, 2020. Edward Fisher, Esquire, appeared on behalf of PECO. The Complainant did not call in.

A short break was taken to allow the Complainant time to call in. At 10:16 a.m., the hearing resumed, and the Complainant had not made an appearance. PECO moved that the matter be dismissed for failure to prosecute; the motion was taken under advisement.

In late April 2020, a review of the record showed that the Hearing Notice had been sent to a previous address of the Complainant. As this matter is handled according to PFA guidelines, the Complainant's address was not publicly available or listed on public documents.

The Complainant was contacted at the telephone number provided in the Complaint and her current mailing address, telephone number and email address were confirmed.<sup>3</sup>

A Further Telephonic Cancel/Rescheduled Hearing Notice was issued on May 13, 2020, setting a telephonic hearing for July 14, 2020. This hearing notice contained the date, time and dial-in number and code for participation in the hearing and also advised the Complainant that she may lose the case if she did not participate.

On May 26, 2020, a Prehearing Order with the date, time and dial-in number and code for the hearing was emailed to the Complainant at the email address provided. The Order also advised the Complainant that the case would be dismissed if she did not call in and participate.

---

<sup>3</sup> The Commission's offices were closed beginning on March 16, 2020, pursuant to an Executive Order issued by the Pennsylvania Deputy Secretary for Human Resources and Management due to the COVID-19 pandemic. However, the Commission has continued working remotely. On March 20, 2020, the Commission entered an *Emergency Order re Suspension of Regulatory and Statutory deadlines, Modification to Filing and Service Requirements* at Docket No. M-2020-3019262, which provides that service by the Commission on parties will be exclusively electronic during the pendency of the Proclamation of Disaster Emergency.

The hearing began as scheduled on July 14, 2020, at 10:00 a.m. Counsel for PECO, Khadijah Scott, Esq.<sup>4</sup> was present and prepared to proceed. The Complainant did not call in. A recess was taken to allow the Complainant an opportunity to call in and to determine whether the Complainant had contacted the Commission.

The hearing resumed at 10:16 a.m. The Complainant had not contacted the Commission and was not present when the hearing resumed. Counsel for PECO moved that the matter be dismissed for failure to prosecute.

The record closed on July 16, 2020 upon receipt of the transcript. For the reasons set forth below, the Complaint will be dismissed.

#### FINDINGS OF FACT

1. The Complainant is Nateshea Fenderson.
2. The Respondent is PECO Energy Company (PECO).
3. On September 9, 2019, the Complainant filed this action against PECO.
4. The Respondent filed an Answer on September 25, 2019.
5. On January 6, 2020, a Further Call-In Telephonic Hearing Notice for a hearing on March 3, 2020, was mailed to all parties.
6. The January 6, 2020 hearing notice stated that the hearing would be held at 10:00 a.m. on March 3, 2020, and provided the call-in number and code.
7. On January 7, 2020, an Order granting the Complainant's requested continuance was mailed to the parties.

---

<sup>4</sup> Attorney Scott filed a Notice of Appearance on April 21, 2020.

8. The hearing began as scheduled at 10:00 a.m. on March 3, 2020.

9. Attorney Edward Fisher representing PECO called in to the hearing with a witness and was prepared to proceed.

10. The Complainant did not call in to the March 3, 2020 hearing and a 15-minute break was taken to allow her time to call.

11. The hearing resumed at 10:16 a.m. and the Complainant had not called in; counsel for PECO moved that the matter be dismissed for failure to prosecute and this motion was taken under advisement.

12. In late April 2020, a review of the record showed that the notice for the March 3, 2020, hearing had been sent to a previous address of the Complainant.

13. A Commission Legal Assistant contacted the Complainant at the telephone number provided in the Complaint and the Complainant's current mailing address, telephone number and email address were confirmed.

14. A Further Telephonic Cancel/Rescheduled Hearing Notice was issued on May 13, 2020, setting a telephonic hearing for July 14, 2020.

15. The Complainant was served the Hearing Notice by email to the email address that she provided, and it was not returned as undeliverable.

16. The Hearing Notice was also mailed to the Complainant at the updated mailing address that she provided.

17. This Hearing Notice contained the date, time and dial-in number and code for participation in the hearing and also advised the Complainant that she may lose the hearing if she did not participate.

18. A Prehearing Order issued on May 26, 2020, also contained the date, time and dial-in number and code for the hearing on July 14, 2020, and also advised the Complainant that the case would be dismissed if she did not call in and participate.

19. The May 26, 2020 Prehearing Order was sent to the email address provided by the Complainant.

20. The hearing began as scheduled on July 14, 2020, at 10:00 a.m.

21. Counsel for PECO, Khadijah Scott, Esq., was present and prepared to proceed.

22. The Complainant did not call in by 10:00 a.m. for the hearing on July 14, 2020, and a recess was taken to allow the Complainant an opportunity to call in, and to determine whether the Complainant had contacted the Commission.

23. The Complainant was not present when the hearing resumed at 10:16 a.m. and Counsel for PECO moved that the matter be dismissed for failure to prosecute.

24. The July 14, 2020 hearing concluded at 10:19 a.m.

25. The Complainant did not request a continuance or provide a statement of good cause for her absence on the scheduled hearing date.

26. None of the documents electronically served to the Complainant was 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.Cmwlth. 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.Cmwlth. 2016). 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) (*Zirkel*); *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Final Order entered January 31, 2017) (*Morella*); and *Hu v. PECO Energy Co.*, Docket No. C-2019-3012075 (Final Order entered December 19, 2019).

The Notice and Prehearing Order for the July 14, 2020 hearing were sent to the Complainant at the email address that she provided. The Notice and Order were not returned as undeliverable. It is therefore deemed that the Complainant had notice of the date and time of the scheduled July 14, 2020 hearing. *Zirkel, Morella* .

As the Commission noted in *Strydio v. PPL Electric Utilities Corp.*, 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 Utilities 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 and Prehearing Order 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 the hearing. 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 her case if she did not

participate in the hearing or present facts on the issues raised. 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. Therefore, the Motion of PECO Energy Company to dismiss the matter for failure to prosecute will be granted.

### 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 County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlth. 1994), *appeal denied*, 653 A.2d 1234 (Pa. 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 Tel. 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 Complaint filed by Nateshea Fenderson at Docket Number C-2019-3012899 is granted.
2. That the Complaint of Nateshea Fenderson against PECO Energy Company at Docket Number C-2019-3012899 is dismissed.
3. That Docket Number C-2019-3012899 be marked closed.

Date: October 15, 2020

\_\_\_\_\_/s/  
Darlene Davis Heep  
Administrative Law Judge