

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Schwana Debnam	:	
	:	
v.	:	C-2019-3011361
	:	
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 July 3, 2019, Schwana Debnam (Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO, Respondent or Company) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, Ms. Debnam averred that PECO is threatening to shut off her service or has already shut it off and that she would like a payment arrangement.

On July 19, 2019, Respondent filed its Answer, denying the material averments of the Complaint and asserting that, under 66 Pa.C.S. § 1405, the Complainant is not entitled to a Commission-ordered payment arrangement because her balance is comprised of customer assistance program rates arrearages.

On July 22, 2019, a Hearing Notice was mailed to the Complainant and e-served on the Respondent, setting an in-person Call of the Docket Hearing for September 10, 2019, at 9:30 a.m.

On July 26, 2019, a Prehearing Order, setting forth the procedures for the hearing and reminding the parties of the hearing place, date and time, was mailed to the Complainant and e-served on the Respondent.

On the morning of the September 10, 2019 Call of the Docket Hearing, the Complainant called and stated that she had a death in the family and would like a continuance. The matter was sent for rescheduling.

On September 11, 2019, a Hearing Notice was mailed to the Complainant and e-served on the Respondent, setting an in-person Call of the Docket Hearing for October 22, 2019, at 9:30 a.m.

Due to a conflict in scheduling, on September 11, 2019, a Cancellation/Reschedule Hearing Notice was mailed to the Complainant and e-served on the Respondent, cancelling the October 22, 2019 Hearing and rescheduling it for October 29, 2019, at 9:30 a.m.

On September 25, 2019, Edward T. Fisher, Esq., filed a Notice of Appearance on behalf of PECO.

On October 25, 2019, PECO advised by emailed letter that the Company had received notice that the Complainant had filed a bankruptcy petition. There was no communication from the Complainant. The Complainant did not appear for the October 29, 2019 in-person Call of the Docket Hearing. (October 29, 2019 Tr. at 9).

On November 5, 2019, in light of the bankruptcy filing, an order was issued staying the proceeding and directing the Complainant and the Respondent to file status reports

every 90 days. A copy of the order was mailed to the Complainant and her bankruptcy attorney and e-served on the Respondent.

In response to the COVID-19 pandemic, on March 20, 2020, the Commission directed service to be electronic during the pendency of the Governor's Proclamation of Disaster Emergency. *See, Emergency Order re Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements*, M-2020-3019262, at 4 (March 20, 2020).

Efforts to contact the Complainant through the telephone number she provided in her Complaint in order to obtain an email address or invite her to sign up for e-service were unsuccessful. Therefore documents were sent to the Complainant by the United States Postal Service. (USPS).

On April 14, 2020, Khadijah Scott, Esq., filed a Notice of Appearance on behalf of PECO.

On May 22, 2020, July 22, 2020, and November 18, 2020, PECO advised by emailed letter to the undersigned that the bankruptcy filing of the Complainant was still pending.

On January 15, 2021, PECO advised by emailed letter that the Complainant's bankruptcy filing had been dismissed.

On February 5, 2021, a Telephonic Hearing Notice was issued setting a telephonic hearing for March 18, 2021. A Prehearing Order was issued on February 8, 2021, setting forth the procedures for a telephonic hearing and reminding the parties of the hearing date and time, and how to call into the hearing. The Notice and Prehearing Order were mailed to the Complainant and e-served on the Respondent.

On February 5, 2021, the hearing convened as scheduled. Attorney Fisher appeared on behalf of PECO. The Complainant did not appear. However, since a court reporter also did not appear, the hearing was rescheduled.

On March 25, 2021, a Telephonic Hearing Cancellation/Reschedule Notice was mailed to the Complainant and e-served on the Respondent rescheduling the telephonic hearing for May 4, 2021 at 10:00 a.m.

On March 31, 2021, a Prehearing Order was mailed to the Complainant and e-served on the Respondent setting forth the procedures for a telephonic hearing and reminding the parties of the hearing date and time, and how to call into the hearing to participate in it.

The telephonic hearing began as scheduled at 10:00 a.m. on May 4, 2021. Attorney Fisher appeared on behalf of PECO and was prepared to proceed. The Complainant did not appear by calling into the hearing.

A short break was taken to allow the Complainant time to call in. At about 10:17 a.m., the hearing resumed, and the Complainant had not made an appearance. Counsel for PECO moved that the matter be dismissed for failure to prosecute. This motion was taken under advisement.

The record closed on May 17, 2021, upon the date of entry of the transcript into the record. For the reasons set forth below, the Complaint will be dismissed.

FINDINGS OF FACT

1. The Complainant is Schwana Debnam.
2. The Respondent is PECO Energy Company.
3. On July 3, 2019, the Complainant filed this action against PECO.
4. The Respondent filed an Answer on July 19, 2019.

5. On July 22, 2019, a Hearing Notice was mailed to the Complainant and e-served on the Respondent, setting an in-person Call of the Docket Hearing for September 10, 2019, at 9:30 a.m.

6. On July 26, 2019, a Prehearing Order, setting forth the procedures for the July 22, 2019 hearing and reminding the parties of the hearing date and time, was mailed to the Complainant and e-served on the Respondent.

7. On the morning of the September 10, 2019 Call of the Docket, the Complainant called and stated that she had a death in the family and would like a continuance and the matter was sent for rescheduling.

8. On September 11, 2019, a Hearing Notice was mailed to the Complainant and e-served on the Respondent, setting an in-person Call of the Docket Hearing for October 22, 2019 at 9:30 a.m.

9. On September 11, 2019, due to a conflict in scheduling, a Cancellation/Reschedule Hearing Notice was mailed to the Complainant and e-served to the Respondent, cancelling the October 22, 2019 hearing and rescheduling an in-person Call of the Docket Hearing for October 29, 2019, at 9:30 a.m.

10. On September 25, 2019, Edward T. Fisher, Esquire, filed a Notice of Appearance on behalf of PECO.

11. On October 25, 2019, PECO advised by emailed letter that the company had received notice that the Complainant has filed a Bankruptcy Petition.

12. On November 5, 2019, an order was issued staying the proceeding and directing the Complainant and the Respondent to file status reports every 90 days until the bankruptcy proceeding concluded.

13. In response to the COVID-19 pandemic, on March 20, 2020, the Commission directed service to be electronic during the pendency of the Governor's Proclamation of Disaster Emergency. *See, Emergency Order re Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements*, M-2020-3019262, at 4 (March 20, 2020).

14. Efforts to obtain the email address for the Complainant, by telephone calls to the telephone number provided by the Complainant in her Complaint, were unsuccessful; therefore, documents were sent to the Complainant by USPS to the address provided by the Complainant in the Complaint.

15. On April 14, 2020, Khadijah Scott, Esq., filed a Notice of Appearance on behalf of PECO.

16. On May 22, 2020, July 22, 2020, and November 18, 2020, PECO advised by letter emailed to the undersigned that the bankruptcy filing of the Complainant was still pending.

17. On January 15, 2021, PECO advised by letter emailed to the undersigned that the Complainant's bankruptcy filing had been dismissed.

18. On February 5, 2021, a Telephonic Hearing Notice was mailed to the Complainant and e-served on the Respondent setting a telephonic hearing for March 18, 2021.

19. On February 8, 2021, a Prehearing Order was mailed to the Complainant and e-served on the Respondent setting forth the procedures for a telephonic hearing and reminding the parties of the hearing date and time.

20. Counsel for PECO was present, but the Complainant did not appear for the March 18, 2021 telephonic hearing; however, since no court reporter appeared also, the hearing was rescheduled.

21. On March 25, 2021, a Telephonic Hearing Cancellation/Reschedule Notice rescheduling the telephonic hearing for May 4, 2021 at 10:00 a.m., was mailed to the Complainant and e-served on the Respondent.

22. The March 25, 2021 Telephonic Hearing Cancellation/Reschedule Notice advised as follows:

FAILURE TO APPEAR: You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised. Your case may be dismissed “with prejudice” which means that you will be barred from filing another complaint raising the same claim(s) and issue(s) presented in the dismissed complaint.

23. On March 31, 2021, a Prehearing Order, setting forth the procedures for a telephonic hearing and reminding the parties of the hearing date and time, was mailed to the Complainant and e-served to the Respondent.

24. The Prehearing Order issued on March 31, 2021, stated in bold, underlined print, as follows:

If you fail to call in, your case may be dismissed. You will not be called by the Administrative Law Judge.

25. The telephonic hearing began as scheduled at 10:00 a.m. on May 4, 2021.

26. The Complainant did not call in to the hearing.

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

28. None of the documents mailed to the Complainant were 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).

The Notice and Prehearing Order for the May 4, 2021 hearing were sent to the Complainant at the mailing address that she provided in her Complaint. The Notice and Order were not returned as undeliverable.¹ It is therefore deemed that the Complainant had notice of the date and time of the scheduled hearings. *Berkowitz v. Mayflower Sec., Inc.*, 455 Pa. 531, 317 A.2d 584 (1974); *Meierdierck v. Miller*, 394 Pa. 484, 147 A.2d 406 (1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. 1997); *Judge v. Celina Mut. Ins. Co.*, 303 Pa. Super. 221, 449 A.2d 658 (1982).

As the Commission noted in *Strydio v. PPL Elec. Utils. 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 Elec. Utils. 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.

¹ While the March 18, 2021 hearing was rescheduled because a court reporter did not appear, it is noteworthy that the Complainant also did not appear for the March 18, 2021 hearing. Also, the Notice and Prehearing Order stating the date, time and dial in number for the March 18, 2021 telephonic hearing that were mailed to the Complainant at the mailing address provided by the Complainant were not returned as undeliverable. Additionally, none of the previous notices or prehearing orders that were mailed to the Complainant were returned as undeliverable.

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 Utils., 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 Utils., Inc.*, Docket No. Z 00269892 (Opinion and Order entered December 26, 1995); *El-Ayazra v. W. 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. Due to the COVID-19 conditions at the time of the proceedings, the matter will be dismissed without prejudice.

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 Indus. and Com. Dev. Auth. v. Allegheny Cnty. Bd. of Prop. Assessment Appeals & Review*, 645 A.2d 944 (Pa.Cmwlth. 1994), *app. den.*, 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).

