

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tauheed Davenport	:	
	:	
v.	:	C-2021-3026397
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complaint of Tauheed Davenport against PECO Energy Company because she failed to prosecute her Complaint.

HISTORY OF THE PROCEEDING

On May 3, 2021, Tauheed Davenport (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,” and “[i]ncorrect charges are on my bill.” Under the “requested relief” section of the Complaint form, the Complainant reiterated her request for a payment plan and also advised that PECO was charging her for services from an alternative supplier despite not switching from PECO as her supplier.

On June 29, 2021, the Respondent filed an Answer denying all material allegations of fact in the Complaint.

By Hearing Notice issued on June 30, 2021, a call-in telephonic hearing was scheduled for August 5, 2021, at 10:00 a.m., and the matter was assigned to me. The Hearing Notice advised the parties of the date and time of the scheduled hearing as well as how to call in and warned of the following:

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.

I issued a Prehearing Order on June 30, 2021. The Prehearing Order also advised the parties of the date and time of the scheduled hearing as well as how to call in for the hearing. Additionally, 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.

The hearing convened as scheduled on August 5, 2021. Counsel for PECO was present with a witness and was prepared to proceed. Ms. Davenport was not present and had not contacted my office 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. Davenport’s failure to appear at the location, date, and time of the scheduled hearing as evidence that she did not wish to participate in the hearing.

At 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 August 11, 2021, the date the transcript was filed with the Commission.

FINDINGS OF FACT

1. The Complainant is Tauheed Davenport.
2. The Respondent is PECO Energy Company.
3. By Initial Telephonic Hearing Notice issued on June 30, 2021, a call-in telephonic hearing was scheduled for August 5, 2021, at 10:00 a.m.
4. On June 30, 2021, I issued a Prehearing Order that also advised the parties of the date and time of the scheduled hearing.
5. The Hearing Notice and the Prehearing Order were emailed to the Complainant at the email address she provided on her formal Complaint.
6. Neither the Hearing Notice nor the Prehearing Order emailed to the Complainant were returned as undeliverable.
7. The Complainant failed to call in for the August 5, 2021 hearing.
8. The Complainant has not contacted the Commission to explain her failure to appear for the 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). However, this due process requirement is satisfied when the parties are provided notice and the opportunity to appear and be heard. *Id.* The Complainant had adequate

notice of the time and date of the hearing, yet she failed to appear or explain why she could not attend the hearing at the scheduled time. Therefore, it is appropriate to dismiss the Complaint.

The Commission emailed notice of the August 5, 2021 hearing in this case to the Complainant on June 30, 2021 to the email address she provided in her Complaint.¹ 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 email was never returned to the sender, the scheduling staff for the Office of Administrative Law Judge (ALJ).

In addition, I issued a Prehearing Order dated June 30, 2021, 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 also emailed to the Complainant, was never returned as undeliverable. Accordingly, I must presume that this mail, which was sent in the ordinary course of business, was received by the Complainant. *Morella v. PECO Energy Co.*, Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016); *Zirkel v. Phila. Gas Works*, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017).

The Complainant did not call in for the scheduled hearing. Under the circumstances, it appears 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 Tel. 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 entitled to her requested relief. By failing to participate and proffer any evidence to support her Complaint, the Complainant has failed to meet her burden. Under these

¹ Due to the COVID-19 Pandemic and the Governor's emergency declaration, PUC offices were closed at the time of the Complainant's hearing. Notices and Prehearing Orders were e-served where possible and emailed to parties who had not signed up for e-service. In this instance, documents were e-served on the Respondent and emailed to the Complainant.

circumstances, the Complaint should 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.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of the dispute. 66 Pa.C.S. § 701.

2. The due process rights of the Complainant have been fully protected. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa.Cmwlth. 1984).

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 entitled to the relief that she seeks from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Tauheed Davenport against PECO Energy Company at Docket C-2021-3026397, is dismissed without prejudice; and

2. That the Secretary mark this docket closed.

Date: September 2, 2021

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