

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Melody Evans	:	
	:	
v.	:	C-2021-3026695
	:	
Pennsylvania Electric Company	:	

**INITIAL DECISION**

Before  
Charece Z. Collins  
Administrative Law Judge

**INTRODUCTION**

This decision grants a motion to dismiss for failure to prosecute because the Complainant failed to appear for the hearing at the designated date and time, despite being given notice of the hearing.

**HISTORY OF THE PROCEEDING**

On May 20, 2021, Melody Evans (“Complainant” or “Ms. Evans”) filed a formal complaint with the Pennsylvania Public Utility Commission (“Commission”) against Pennsylvania Electric Company (“Penelec”). In her complaint, Ms. Evans averred that Penelec turned her electricity off from 8:30 a.m. to 1:50 p.m. on April 22, 2021 with no prior notification. Ms. Evans claimed that the loss of electricity caused her to lose food in her freezer and made it difficult to leave her home through her garage to obtain medical care. Ms. Evans requested reimbursement of \$200 for the food that she lost in her freezer and that her “critical care paper” be sent to her.

Ms. Evans' complaint was served on Penelec on June 23, 2021. On July 13, 2021, Penelec filed a timely answer and new matter in response to Ms. Evans' complaint. In its answer, Penelec denied the allegations and averred that its actions were reasonable and performed in accordance with all applicable laws. In its new matter, which was accompanied by a notice to plead, Penelec averred that the Commission has no jurisdiction to award monetary damages and requested that Ms. Evans' complaint be dismissed with prejudice or denied in its entirety.

Also on July 13, 2021, Penelec filed preliminary objections, accompanied by a notice to plead, in response to Ms. Evans' complaint. In its preliminary objections, Penelec reiterated its argument that the Commission does not have authority to award damages and requested that the Commission strike Ms. Evans' request for monetary damages and prohibit Ms. Evans from introducing any testimony or exhibits at a hearing regarding alleged damages. Ms. Evans did not file a response to Penelec's preliminary objections.

On August 17, 2021, the Commission issued an initial telephonic hearing notice setting a formal call-in telephonic hearing for this matter for September 29, 2021 at 10:00 a.m. and assigning me as the presiding officer. In anticipation of the hearing, I issued a prehearing order on August 18, 2021, setting forth hearing information and the rules that would govern the proceeding.

Penelec's preliminary objections were granted via Order dated August 23, 2021. Ms. Evans' request for monetary damages was stricken from her complaint, but the Order indicated that she would be permitted to proceed with the remainder of her complaint at the evidentiary hearing.

The September 29, 2021 hearing was held as scheduled. Margaret Morris, Esquire appeared on behalf of Penelec with one witness and was ready to proceed. Ms. Evans did not call in for the hearing. The start of the hearing was delayed ten minutes to allow Ms. Evans additional time to call in. Ms. Evans did not contact the Commission to explain why she did not call in to the hearing. During the hearing, Ms. Morris made a motion to dismiss the

Complaint with prejudice for Complainant's failure to appear and prosecute her Complaint after having received notice of the hearing date and time. This Initial Decision grants the motion of Penelec made at the conclusion of the hearing to dismiss the complaint for failure to prosecute.

The record in this case consists of the transcript of ten pages that was submitted to the Commission on October 21, 2021. The record in this case closed on October 21, 2021 upon the filing of the hearing transcript with the Commission.

### FINDINGS OF FACT

1. The Complainant in this case is Melody Evans.
2. The Respondent in this case is Pennsylvania Electric Company.
3. The service address in this case is 1416 East 32<sup>nd</sup> St., Erie, PA 16504.
4. On May 20, 2021, Ms. Evans filed a formal complaint against Pennsylvania Electric Company.
5. The Complaint was served on Pennsylvania Electric Company on June 23, 2021.
6. On July 13, 2021, Pennsylvania Electric Company filed an answer to Ms. Evans' Complaint.
7. On July 13, 2021, Pennsylvania Electric Company filed preliminary objections to strike Ms. Evans' request for damages from the Complaint.
8. On August 17, 2021, a hearing notice was issued establishing an initial telephonic hearing in this matter for September 29, 2021 at 10:00 a.m. Tr. 5.

9. In anticipation of the September 29, 2021 hearing, a prehearing order was issued on August 18, 2021 reminding the parties of the hearing date and setting forth rules that would govern the proceeding. Tr. 5.

10. The hearing notice issued on August 17, 2021 stated that a party may lose the case if it does not take part in the hearing and present evidence on the issues raised.

11. The prehearing order issued on August 18, 2021 stated, among other things, “You may lose the case if you do not take part in this hearing and present evidence on the issues 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.”

12. The hearing notice and the prehearing order were served via email to Ms. Evans at the email address that she provided in her complaint: [melodyevans7680@yahoo.com](mailto:melodyevans7680@yahoo.com).

13. Neither the hearing notice nor the prehearing order was returned to the Commission as undeliverable. Tr. 5.

14. The hearing was held as scheduled on September 29, 2021.

15. The start of the hearing was delayed 10 minutes to accommodate any potential delay of Ms. Evans. Tr. 4-5.

16. Ms. Evans failed to call in for the September 29, 2021 hearing, and no one appeared on behalf of Ms. Evans. Tr. 5.

17. Ms. Evans has not contacted the Commission to explain her failure to appear for the hearing. Tr. 7-8.

## DISCUSSION

Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990). “Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950). The offense must be a violation of the Public Utility Code, the Commission’s regulations or an outstanding order of the Commission. 66 Pa.C.S. § 701. In her Complaint, Ms. Evans requested reimbursement of \$200 for the food that she lost in her freezer and that her “critical care paper” be sent to her. Therefore, Ms. Evans has the burden of proof in this proceeding.

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.

No one appeared on behalf of Ms. Evans at the date and time set for the hearing in this case, despite being provided notice of the hearing. Commission regulations address circumstances when a party fails to appear in a proceeding. Section 5.245 of the Code provides:

**§ 5.245. Failure to appear, proceed or maintain order in proceedings.**

(a) After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will:

(1) Be deemed to have waived the opportunity to participate in the conference or hearing.

(2) Not be permitted thereafter to reopen the disposition of the matter accomplished at the conference or hearing.

(3) Not be permitted to recall witnesses who were excused for further examination.

52 Pa. Code § 5.245(a).

The hearing notice and prehearing order were served upon Ms. Evans at the email address she provided in her Complaint. The documents were not returned to the Commission as undeliverable. Accordingly, it must be presumed that these documents sent to Ms. Evans in the ordinary course of business were received by Ms. Evans. Zirkel v. Phila. Gas Works, Docket No. C-2016-2561176 (Opinion and Order entered January 27, 2017); Morella v. PECO Energy Co., Docket No. C-2016-2553416 (Opinion and Order entered November 16, 2016). Of note, the hearing notice and the prehearing order stated that, if a party fails to participate in the hearing, the hearing may proceed without that party and a decision may be entered against that party. Furthermore, counsel for Penelec indicated during the hearing the numerous efforts that the Company also took to provide Ms. Evans with notice of the hearing. Tr. 6-7.

No one appeared on behalf of Ms. Evans at the time of the hearing, nor did she request a postponement or continuance of the hearing. As such, Ms. Evans had notice and an opportunity to be heard in this proceeding but chose not to appear. Therefore, Ms. Evans' due process rights have been fully protected. Sentner v. Bell Tel. Co. of Pa., Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa. Code § 5.245(a).

During the hearing, counsel for Penelec moved to have the complaint dismissed with prejudice for lack of prosecution. Tr. 7. By failing to appear and present any evidence in support of her complaint, Ms. Evans has failed to carry her burden. Ms. Evans also did not contact the Commission at any time on or after September 29, 2021 to explain why she did not appear at the September 29, 2021 hearing. Therefore, it is appropriate to dismiss the complaint. Jefferson v. UGI Utils., Inc., Docket No. Z-00269892 (Order entered December 26, 1995). Accordingly, the merits of the complaint need not be addressed in this Initial Decision.

## CONCLUSIONS OF LAW

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

2. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

3. “Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

4. 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 when the parties are accorded notice and the opportunity to be heard. Id.

5. After being notified, a party who fails to be represented at a scheduled conference or hearing in a proceeding will: 1) Be deemed to have waived the opportunity to participate in the conference or hearing; 2) Not be permitted thereafter to reopen the disposition of a matter accomplished at the conference or hearing; and 3) Not be permitted to recall the witnesses who were excused for further examination. 52 Pa. Code § 5.245(a).

6. Ms. Evans’ due process rights have been fully protected. Sentner v. Bell Tel. Co. of Pa., Docket No. F-00161106 (Order entered October 25, 1993); *see also*, 52 Pa. Code § 5.245(a).

7. By failing to appear for the hearing and proffer any evidence to support her Complaint, Ms. Evans 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).

