

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Dontia Richardson	:	
	:	F-2021-3027375
v.	:	
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On June 11, 2021, Dontia Richardson (Complainant or Ms. Richardson) 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 the boxes marked “[i]ncorrect charges are on my bill” and “[o]ther.” The Complainant also alleged that there is a foreign load situation at her home.

On August 9, 2021, the Respondent filed an Answer denying all material allegations of fact in the Complaint.

By Hearing Notice dated August 16, 2021, a call-in telephonic hearing was scheduled for September 28, 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 August 17, 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 September 28, 2021. Counsel for PECO was present with a witness and was prepared to proceed. Ms. Richardson was not present, and had not contacted this 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. Richardson’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.

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 September 29, 2021, the date the transcript was filed with the Commission.

FINDINGS OF FACT

1. The Complainant is Dontia Richardson.
2. The Respondent is PECO Energy Company.
3. By Initial Telephonic Hearing Notice dated August 16, 2021, a call-in telephonic hearing was scheduled for September 28, 2021, at 10:00 a.m.
4. On August 17, 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 to the Commission as undeliverable.
7. The Complainant failed to call in for the September 28, 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 September 28, 2021 hearing in this case to the Complainant on August 16, 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 (OALJ).

In addition, I issued a prehearing order dated August 17, 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 email, which was sent in the ordinary course of business, was received by the Complainant. *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).

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

¹ Hearing Notices and Prehearing Orders are e-served where possible and emailed to parties who have not signed up for e-service. In this instance, documents were e-served on the Respondent and emailed to the Complainant.

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 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 Dontia Richardson against PECO Energy Company at Docket F-2021-3027375, is dismissed without prejudice; and
2. That the Secretary mark this docket closed.

Date: November 20, 2021

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