

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Myesha Brown

v.

PECO Energy Company

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:
:
:
:

C-2019-3009486

INITIAL DECISION ON REMAND

Before
Eranda Vero
Administrative Law Judge

INTRODUCTION

This decision denies the Complaint of Myesha Brown because the Complainant failed to appear at the scheduled hearing on remand and prosecute her Complaint.

HISTORY OF THE PROCEEDING

On April 26, 2019, Myesha Brown (Ms. Brown or Complainant) filed a formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO, Company or Respondent) alleging that the utility is threatening to shut off her electric service and that she is unable to pay her electricity bills. As relief, Ms. Brown requested that the Commission establish an affordable payment arrangement on her behalf.

On May 1, 2019, PECO filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.

A Hearing Notice dated May 8, 2019, notified the parties that an initial hearing was scheduled as part of the afternoon session of a call of the docket hearing on Tuesday, June 4, 2019, at 1:30 p.m.

A Prehearing Order was issued on May 28, 2019, reminding the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

The hearing convened as scheduled on June 4, 2019. At the beginning of the hearing, the parties indicated their desire to engage in settlement discussions. Tr. 4. I granted their request and recessed the hearing. During the settlement discussions, the parties were able to resolve all the issues raised in the Complaint. When the hearing reconvened, the terms of the settlement were read into the record and Ms. Brown requested permission to withdraw her present Complaint against PECO. Tr. 4-5.

The Respondent did not object to Ms. Brown's request for leave to withdraw her Complaint.

On October 2, 2019, I issued an Initial Decision granting Myesha Brown's on-the-record request to withdraw her Complaint.

On November 1, 2019, Ms. Brown filed Exceptions to the Initial Decision stating, "I'm not withdrawing my complaint due to the fact that I still haven't got any help or true assistance with my original concern. I feel like nothing has change and I can't comply with PECO's recommendation."

On November 18, 2019, counsel for PECO filed Reply Exceptions alleging that, in filing of the Exceptions, the Complainant was attempting to delay this matter and to use the Commission's appeals process to avoid paying her electric bill. PECO further averred that it would be prejudiced by the reopening of this case.

On August 26, 2021, the Commission issued an Opinion and Order which granted the Complainant's Exceptions, reversed the Initial Decision, and remanded the matter to the Office of Administrative Law Judge for further proceedings as deemed necessary.

A Hearing Notice dated August 27, 2021, informed the parties that an initial call-in telephonic hearing on remand was scheduled in this matter on October 14, 2021, at 10:00 a.m. The Hearing Notice stated, "You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised."

On September 26, 2021, I issued a Prehearing Order. The Prehearing Order directed the parties to comply with various procedural requirements and warned in bold type: **"You may lose the case if you do not take part in this hearing and present evidence on the issues raised."**

The initial hearing on remand convened as scheduled. Angela M. Lorenz, Esq. appeared representing the Respondent. The Complainant failed to call-in. The Complainant was given an additional 17 minutes to call-in but failed to do so.

Counsel for PECO moved that the Complaint be dismissed for lack of prosecution pursuant to 52 Pa. Code § 5.245. That Motion is granted pursuant to the ordering paragraphs below.

The record in this matter closed on November 12, 2021, 30 days after the hearing.

FINDINGS OF FACT

1. The Complainant is Myesha Brown.
2. The Respondent is PECO Energy Company.

3. On April 26, 2019, Ms. Brown filed a formal Complaint against PECO alleging that the utility is threatening to shut off her electric service and that she is unable to pay her electricity bills to PECO.

4. As relief, Ms. Brown requested that the Commission establish an affordable payment arrangement on her behalf.

5. On May 1, 2019, PECO filed an Answer denying all material allegations of fact and conclusions of law in the Complaint.

6. An evidentiary hearing convened as scheduled on June 4, 2019, wherein the parties informed me that they had reached a settlement agreement resolving all the issues raised in the Complaint.

7. During the June 4, 2019, hearing, Ms. Brown requested permission to withdraw her Complaint against PECO.

8. On October 2, 2019, I issued an Initial Decision granting Myesha Brown's on-the-record request to withdraw her Complaint.

9. On November 1, 2019, Ms. Brown filed Exceptions to the Initial Decision.

10. On November 18, 2019, counsel for PECO filed Reply Exceptions.

11. On August 26, 2021, the Commission issued an Opinion and Order which granted the Complainant's Exceptions, reversed the Initial Decision, and remanded the matter to the Office of Administrative Law Judge for further proceedings as deemed necessary.

12. A Hearing Notice dated August 27, 2021, informed the parties that an initial call-in telephonic hearing on remand was scheduled in this matter on October 14, 2021, at 10:00 a.m.

13. The Hearing Notice stated, “You may lose the case if you do not take part in this hearing and present evidence on the issue(s) raised.”

14. A Prehearing Order issued on September 26, 2021, directed the parties to comply with various procedural requirements and warned in bold type: “**You may lose the case if you do not take part in this hearing and present evidence on the issues raised.**”

15. The Hearing Notice and the Prehearing Order were sent to the Complainant by electronic mail at the email address listed in the Complaint, pursuant to Commission orders related to the COVID-19 pandemic.¹

16. Neither the August 27, 2021 Hearing Notice nor the September 26, 2021 Prehearing Order were returned as undeliverable.

17. The Complainant failed to appear at the October 14, 2021 hearing on remand.

18. The Complainant did not request a continuance or withdraw the Complaint.

DISCUSSION

In this Complaint, Ms. Brown alleged that the Respondent is threatening to shut off her electric service and that she is unable to pay her electricity bills. As relief, Ms. Brown requested that the Commission establish an affordable payment arrangement on her behalf. As

¹ The Commission issued an Order on March 20, 2020, which provides that service by the Commission on parties will be exclusively electronic during the pendency of the 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). By Order entered September 15, 2021, the Commission used its general regulatory authority to waive the service requirements set forth in the Commission’s regulations at 52 Pa. Code §§ 1.53 and 1.54 thereby continuing to permit electronic service by the Commission on all parties, regardless of whether a particular party has agreed to electronic service. *See, Waiver of Regulations Regarding Service Requirements*, M-2021-3028321, at 6-7 (September 15, 2021).

the party seeking affirmative relief from the Commission, the burden of proof rests on the Complainant. 66 Pa.C.S. § 332(a).

Administrative agencies, like the Public Utility Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984).

During the period of the Governor's Disaster Emergency Declaration in response to the COVID-19 pandemic, the Commission directed service to be electronic. Here, email was the method of delivery of notice for the hearing and prehearing order. Service was made pursuant to the Commission's Order issued on March 29, 2020, which provides that service by the Commission on parties will be exclusively electronic during the pendency of the 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 29, 2020); *see also, Waiver of Regulations Regarding Service Requirements*, M-2021-3028321, at 7 (September 15, 2021). Notice electronically served to a party with no notification that service failed is presumed received. *Zirkel v. Phila. 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).

None of the emails sent by the Commission to the Complainant were returned as undeliverable. It is therefore deemed that the Complainant had notice of the date and time and participation information for the October 14, 2021, hearing on remand. *Zirkel; Morella*.

As the Commission noted in *Strydio v. PPL Elec. Utils. Corp.*, 2018 Pa. PUC LEXIS 258, 8, Docket No. C-2017-2633043 (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." Opinion and Order, at 6 (*citing, Mumma v. PPL Elec. Utils. Corp.*, Docket No. C-00014869 (Opinion and Order entered

January 24, 2002)); *Sentner v. Bell Tel. Co. of Pa.*, Docket No. F-00161106 (Opinion and Order entered October 25, 1993).

The Complainant was notified of the scheduled hearing and did not appear for the hearing. Additionally, the August 27, 2021, Hearing Notice and the September 26, 2021, Prehearing Order advised the Complainant that the case could be dismissed for failure to call-in and participate in the hearing. Thus, 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. 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 on this basis as well. *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 subject matter of and the parties to this proceeding. 66 Pa.C.S. § 701.

2. The Complainant received notice of the hearing. *Chartiers Indus. & Com. Dev. Auth. v. Allegheny Cnty. Bd. of Prop. Assessment Appeals & Review*, 645 A.2d 944 (Pa. Cmwlth. 1994), *appeal 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).

