

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Mary Morrow	:	
	:	F-2022-3030427
v.	:	
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complaint of Mary Morrow against PECO Energy Company with prejudice because she failed to prosecute her Complaint.

HISTORY OF THE PROCEEDING

On December 27, 2021, Mary Morrow (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 a checkmark in the box indicating that “[i]ncorrect charges are on my bill.” As relief, the Complainant indicated that she wants a credit on her bill for a \$112.00 bill she received in the summer of 2020.

On February 3, 2022, the Respondent filed an Answer denying all material allegations of fact in the Complaint. The Respondent further answered that the Company investigated the Complainant’s billing and meter concerns during two separate visits in October 2021, and that the Complainant’s bills and balance are correct.

By Initial Telephonic Hearing Notice dated February 8, 2022, an initial call-in telephonic hearing was scheduled for March 15, 2022 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 for the hearing 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 February 8, 2022. 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 March 15, 2022. Counsel for PECO called in to the hearing with a witness and was prepared to proceed. Ms. Morrow did not call in for the hearing, nor did she contact 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. Morrow's failure to call in for 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 March 21, 2022, the date the transcript was filed with the Commission.

FINDINGS OF FACT

1. The Complainant is Mary Morrow.
2. The Respondent is PECO Energy Company.
3. By Initial Telephonic Hearing Notice issued on February 8, 2022, a call-in telephonic hearing was scheduled for March 15, 2022, at 10:00 a.m.
4. On February 8, 2022, 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 served upon the Complainant at the address she provided on her formal Complaint.
6. Both the Hearing Notice and the Prehearing Order advised the parties that they must dial the provided toll-free number to participate in the scheduled hearing.
7. Neither the Hearing Notice nor the Prehearing Order served upon the Complainant were returned as undeliverable.
8. The Complainant failed to call in for the March 15, 2022 hearing.

9. On March 23, 2022, the Complainant contacted my legal assistant to advise that she did not call in for the scheduled hearing because she was not aware that she was required to call in 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, as well as how to call in for the hearing, yet she failed to appear. Therefore, it is appropriate to dismiss the Complaint.

The Commission mailed notice of the March 15, 2022 hearing in this case to the Complainant on February 8, 2022 to the address she provided in her Complaint. 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 mail 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 February 8, 2022, 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 mailed to the Complainant, was never returned as undeliverable. Accordingly, I must presume that this mail, which was sent in the ordinary course of business, and which explained that both parties must dial the provided toll-free number to participate in the scheduled hearing, 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).

I will note that the Complainant did not contact my office until March 23, 2022, more than one week after the scheduled hearing and after the record had closed, to explain that she

did not call in for the hearing because, she claimed, she was not aware that she was required to call in for the hearing. However, as previously noted, both the hearing scheduling notice and my Prehearing Order advised the parties that they must call in for the scheduled hearing. Moreover, the Complainant waited more than one week after the scheduled hearing date to contact my office to explain why she failed to attend the hearing. The Complainant's misunderstanding, coupled with her delay in contacting my office to explain her failure to call in for the scheduled hearing, does not constitute good cause for missing the scheduled hearing.

The Complainant did not call in for the scheduled hearing. Under the circumstances, 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 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).

