

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Nyra Simon	:	
	:	
v.	:	C-2021-3029186
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Marta Guhl
Administrative Law Judge

INTRODUCTION

The Complainant did not appear for the hearing and the formal complaint is dismissed for failure to prosecute.

HISTORY OF THE PROCEEDING

On October 14, 2021, Nyra Simon (Complainant) filed a formal complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO, Company or Respondent). On the Complaint form, the Complainant states that there are incorrect charges on her bills, that she was having issues with the reliability, safety and quality of her utility service and that her bills were inflated.

PECO filed an Answer on November 11, 2021.¹ PECO denied all material allegations of fact.

¹ The Formal Complaint was served on PECO by the Secretary's Bureau on October 21, 2021.

On November 17, 2021, an Initial Call-In Telephonic Hearing Notice was served upon all parties, setting an Initial Telephonic Hearing for January 20, 2022, at 10:00 a.m. and the matter was assigned to me. The Hearing Notice indicated the following:

[y]ou 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.

A Prehearing Order was served upon all parties on November 22, 2021, again informing the Complainant of the date and time of the hearing and providing procedural information. The first paragraph of the Prehearing Order also advised the Complainant that:

FAILURE TO APPEAR: 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.

Also, in the second paragraph, the Prehearing Order advised that:

CONTINUANCES. You may request a continuance of the hearing if you have a good reason. Continuances will be granted only for good cause. To request a continuance, you must submit a written request (a “motion”) at least five (5) days before the hearing.

The hearing began on January 20, 2022, at 10:20 a.m., to allow the Complainant additional time to call-in for the hearing. Khadijah Scott, Esquire, called in on behalf of PECO. The Complainant did not call in for the hearing. Counsel for PECO made an oral Motion to Dismiss for Failure to Prosecute.

The record closed on January 27, 2022, upon the filing of the transcript with the Secretary’s Bureau. PECO’s Motion to Dismiss for Failure to Prosecute is ready for a decision.

FINDINGS OF FACT

1. The Complainant is Nyra Simon.
2. The Respondent is PECO Energy Company.
3. On October 14, 2021, the Complainant filed this action.
4. The Respondent filed an Answer on November 11, 2021.
5. On November 17, 2021, a Hearing Notice was issued on all parties, setting an Initial Call-In Telephonic Hearing for January 20, 2022, at 10:00 a.m.
6. The Hearing Notice was served on the parties of record electronically to the email addresses provided by the parties in the pleadings.
7. A Prehearing Order was issued to all parties on November 22, 2021, again informing the Complainant of the date and time of the hearing and providing procedural information.
8. The Prehearing Order was served electronically on the parties to the email addresses provided by the parties in the pleadings.
9. On the day of the hearing, PECO was present and represented by counsel.
10. The Complainant did not call in for the hearing.
11. None of the documents sent to the parties were returned as undeliverable to the Office of Administrative Law Judge (OALJ).

12. The Complainant did not request a continuance or provide a statement of "good cause" for her absence on the scheduled hearing date.

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). The essential elements of due process in an administrative proceeding are notice and an opportunity to be heard. *J.P. v. Dep't of Human Servs.*, 150 A.3d 173 (Pa. Cmwlth. 2016). Notice sent to a party electronically and not returned as undeliverable is presumed to have been received. *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). Further, service which is not indicated undeliverable is considered presumed to be received by the parties. *Berkowitz v. Mayflower Sec., Inc.*, 317 A.2d 584 (Pa. 1974) (*Berkowitz*); *Geary v. Verizon Pa. Inc.*, Docket No. C-2009-2118625 (Opinion and Order entered September 16, 2010).

A Hearing Notice and a Prehearing Order were sent to the Complainant. The Prehearing Order and the Hearing Notice contained information regarding the date, time and call-in information for the hearing. These documents were served upon the Complainant and none of these documents were returned as undeliverable. It is therefore deemed that the Complainant received these documents and had notice of the date and time of the scheduled hearing. *Berkowitz*.

As the Commission noted in *Strydio v. PPL Elec. Utils. Corp.*, Docket No. C-2017-263304, p. 6 (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," (*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. To date, the Complainant

has not contacted the Commission or the undersigned regarding this hearing. 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. As the party bringing this Complaint, the Complainant bears the burden of proving by a preponderance of the evidence that she is entitled to relief. By failing to appear and proffer any evidence to support the Complaint, the Complainant has failed to meet this burden. The Complaint will 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 subject matter and the parties to this proceeding. 66 Pa.C.S. § 701.

2. The Complainant received notice of the hearing. *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).

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).

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

5. The Complainant did not participate in the hearing, failed to appear for the hearing and did not present any evidence and, therefore, she failed to meet her burden of proving entitlement to the relief that is sought from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PECO Energy Company to dismiss the Complaint filed by Nyra Simon at Docket No. C-2021-3029186 is granted.
2. That the Complaint of Nyra Simon against PECO Energy Company at Docket No. C-2021-3029186 is dismissed with prejudice.
3. That Docket No. C-2021-3029186 be marked closed.

Date: April 25, 2022

_____/s/
Marta Guhl
Administrative Law Judge