

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Melissa Clark	:	
	:	
v.	:	C-2019-3006986
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

INTRODUCTION

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

HISTORY OF THE PROCEEDING

On January 9, 2019, Melissa Clark (Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). On the Complaint form, the Complainant placed a checkmark in the box indicating “[t]he utility is threatening to shut off my service or has already shut off my service,” next to which the Complainant wrote that “[t]hey claim they are unable to give me a repayment arrangement while I am in bankruptcy proceedings.” As relief, the Complainant indicated that she wants “more time to be able to satisfy my bill or prevent PECO from shutting off service until March.”

On January 23, 2019, PECO filed an Answer denying all material allegations of fact in the Complaint. As New Matter, PECO indicated that the Complainant has an active Chapter 13 bankruptcy petition pending and, as such, the Commission does not have jurisdiction over the Complainant's request for a payment agreement.

By Hearing Notice dated February 26, 2019, a hearing was scheduled for April 11, 2019 at 9:00 a.m. and the matter was assigned to me.

I issued a Prehearing Order on March 4, 2019. 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.

On April 9, 2019, Shawane L. Lee, Esq., then counsel for PECO, sent me correspondence advising that the Complainant filed for Chapter 13 bankruptcy in the Eastern District of Pennsylvania on January 4, 2018, that PECO was listed as one of the creditors in the bankruptcy schedule, and that the bankruptcy was active. Ms. Lee maintained that the formal Complaint should be stayed by operation of Title 11 U.S.C. § 362 pending resolution of the Complainant's bankruptcy petition.

By Order dated April 9, 2019, I informed the parties that this matter was stayed by operation of federal law pending resolution of the Complainant's bankruptcy petition. I also directed the parties to file status reports with the Commission at this docket, with a copy to me and the opposing party, every sixty days thereafter, until the bankruptcy proceeding concluded.

By letter dated February 14, 2022, Khadijah Scott, Esq., counsel for PECO, informed me that Ms. Clark's bankruptcy was discharged on January 6, 2022.

By Order dated February 15, 2022, I informed the parties that the stay in effect since April 9, 2019, was lifted, and that a hearing would be scheduled to address the issues remaining in the Complaint.

By Initial Telephonic Hearing Notice dated February 15, 2022, an initial call-in telephonic hearing was scheduled for March 29, 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 another Prehearing Order on March 24, 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 29, 2022. Counsel for PECO called in for the scheduled hearing with a witness and was prepared to proceed. Ms. Clark did not call in for the scheduled hearing, and had not contacted my office to indicate that she would or would not appear for the hearing.

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. Clark's failure to call in for 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 consists of a 5-page transcript. The record closed on March 30, 2022 upon my receipt of the hearing transcript.

FINDINGS OF FACT

1. The Complainant is Melissa Clark.
2. The Respondent is PECO Energy Company.
3. By Initial Telephonic Hearing Notice dated February 15, 2022, a call-in telephonic hearing was scheduled for March 29, 2022, at 10:00 a.m.
4. On March 24, 2022, I issued a Prehearing Order that also advised the parties of the date and time of the scheduled telephonic hearing, as well as how to call in for the scheduled hearing.
5. The Hearing Notice and the Prehearing Order were e-served to the Complainant at the email address provided by Complainant in her Complaint.
6. Neither the Hearing Notice nor the Prehearing Order e-served to the Complainant were returned as undeliverable.

7. The Complainant failed to call in for the March 29, 2022 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 e-served notice of the March 29, 2022 hearing in this case to the Complainant on February 15, 2022. 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 notice was never returned to the sender or the scheduling staff for the Office of Administrative Law Judge (OALJ).

In addition, I issued a prehearing order dated March 24, 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 e-served to the Complainant, was never returned as undeliverable. Accordingly, I must presume that this mail, which was sent in the ordinary course of business, 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).

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

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.Cmwlt. 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).

