

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

NORMAN JOHNSON

**PUBLIC MEETING OF APRIL 20, 2023
3033484-ALJ
DOCKET NO. C-2022-3033484**

v.

PECO ENERGY COMPANY

STATEMENT OF VICE CHAIRMAN STEPHEN M. DeFRANK

On June 29, 2022, Norman Johnson (Mr. Johnson or Complainant) filed a Formal Complaint (Complaint) alleging that PECO Energy Company (PECO) was threatening to terminate his electric service or had already done so. Mr. Johnson seeks to have a payment arrangement reinstated in a manner that would allow him to afford his electric bill on his fixed income. In its Answer and New Matter, PECO avers, *inter alia*, that Mr. Johnson's balance consists of customer assistance program (CAP) arrears and, as such, PECO argues that Mr. Johnson is not entitled to a Commission-approved payment arrangement pursuant to 66 Pa.C.S. § 1405(c).¹ Mr. Johnson did not respond to the New Matter.

By Initial Call-In Telephonic Hearing Notice dated September 26, 2022, a telephonic hearing was scheduled for November 22, 2022 before Administrative Law Judge (ALJ) Arlene D. Ashton. On November 8, 2022, Mr. Johnson contacted the Office of Administrative Law Judge (OALJ) and advised a legal assistant that he had undergone surgery, was recuperating in a nursing facility, and would most likely be unable to participate in the hearing. On November 9, 2022, the legal assistant contacted Mr. Johnson to determine if he wished to request a continuance. Mr. Johnson did not request a continuance and indicated that he could try to participate in the hearing from the nursing facility.

Shortly thereafter, OALJ received a document sent *via* facsimile from the Director of Social Service of the rehabilitation center where Mr. Johnson was staying. The communication described Mr. Johnson's medical condition and indicated that "due to his current condition, Mr. Johnson does not have a discharge date [and] . . . will not be able to attend his court hearing." The document did not suggest that the Director of Social Service of the rehabilitation center was authorized to represent Mr. Johnson as counsel or in any other legal capacity. The document also did not provide a discharge date or request a continuance of the hearing.

The hearing convened as scheduled on November 22, 2022, and Mr. Johnson did not appear. During the hearing, PECO's counsel moved that the Complaint be dismissed for lack of prosecution.²

¹ Section 1405(c) of the Public Utility Code provides that CAP rates shall be timely paid and not be the subject of payment arrangements negotiated or approved by the Commission.

² See 52 Pa. Code § 5.245(a), which provides that a party who fails to be represented at a scheduled hearing will be deemed to have waived the opportunity to participate in the hearing, not be permitted thereafter to reopen the disposition of the matter, and not be permitted to recall witnesses who were excused for further examination.

After the conclusion of the hearing at 10:23 am, ALJ Ashton learned that around 10:20 am, an OALJ legal assistant received a call from an unidentified female asking how to call into the hearing. The call-in information was provided and shortly thereafter, the female called again and indicated that there was no one on the line. She further indicated that Mr. Johnson would undergo surgery later that day and a continuance of the hearing was necessary.

On February 2, 2023, OALJ issued the Initial Decision of ALJ Ashton, which dismissed the Complaint for lack of prosecution. The Complaint is not dismissed with prejudice.

Based on the facts of this proceeding, it appears that Mr. Johnson's absence from the hearing was unavoidable due to exigent circumstances related to his medical condition. In this situation and because the Complaint was not dismissed with prejudice, I would like to alert the Complainant of the possibility of filing a new formal complaint should he desire to pursue his allegations.³ I also remind the Complainant to follow the instructions provided in an ALJ's prehearing order, especially those governing requests to continue a hearing.

April 20, 2023
Date



Stephen M. DeFrank
Vice Chairman

³ I would also like to draw the Complainant's attention to the three-year statute of limitations set forth at 66 Pa.C.S. § 3314(a), which precludes recovery under the Public Utility Code if an action is brought three years after the date on which liability arose. Additionally, Section 1312 of the Public Utility Code bars a party from obtaining a refund unless a complaint is filed within four years from the date of the disputed charge. 66 Pa.C.S. § 1312(a).