

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Linda Meade	:	
	:	
v.	:	C-2023-3041672
	:	
PECO Energy Company	:	

ORDER DENYING PETITION TO REOPEN THE RECORD

Procedural History

On July 7, 2023, Linda Meade (Complainant or Ms. Meade) filed a Formal Complaint with the Pennsylvania Public Utility Commission (“Commission”) against PECO Energy Company (“PECO” or “Company”) alleging that PECO shut off her service, there are incorrect charges on her bill, and she is having a reliability, safety, or quality problem with her service. As relief, Complainant requested that her electric service be restored, an audit be conducted on bills issued to her since 2013, and a payment arrangement be awarded to her.

On July 31, 2023, the Respondent filed an Answer with New Matter (Answer) denying all material allegations in the Complaint. In the Answer, PECO confirmed that the Complainant’s service was terminated on May 18, 2023, and indicated that the Complainant is no longer a PECO customer. Additionally, PECO indicated that the Complainant’s account was finalized on June 21, 2023, with a total balance of \$21,334.69 and requested that the complaint be dismissed.

In New Matter, PECO argued that the PUC has no jurisdiction to adjudicate the Complaint, and that the Complaint should be dismissed on the grounds of *res judicata* and failure to file the Complaint within the statutory limit for filing claims provided in the Public Utility

Code (Code).¹ The Answer was accompanied by a Notice to Plead, requiring the Complainant to file a response within 20 days of service. The Complainant did not file a response to the New Matter raised in the Answer.

Also on July 31, 2023, the Respondent filed Preliminary Objections on the grounds of: (a) lack of jurisdiction; and (b) legal insufficiency of the Complaint on the grounds of *res judicata* and failure to file the Complaint within the statutory limit for filing claims provided in the Code. The Preliminary Objections was accompanied by a Notice to Plead, requiring the Complainant to file a response within 20 days of service.² The Complainant did not file a response to the Preliminary Objections.

On September 19, 2023, the Commission issued a Motion Judge Assignment Notice, assigning this matter to me.

On October 4, 2023, I issued an Interim Order (Order on Preliminary Objections) granting in part and denying in part the Preliminary Objections raised by PECO. Pursuant to the Interim Order, certain issues and/or allegations raised by Ms. Meade were stricken from the Complaint³ and an evidentiary hearing was ordered to be scheduled to address the remaining allegations of unreasonable service and incorrect and/or high billing for electric service.

On October 13, 2023, an Initial Call-In Telephone Hearing Notice was issued advising the parties that a call-in telephonic hearing was scheduled for November 16, 2023, at 10:00 a.m.

¹ 66 Pa. Code §§ 101 et seq.

² Although the Notice to Plead indicated that a response was due in 20 days, Commission regulations specify that an answer to Preliminary Objections is due within 10 days of the date of service. 52 Pa Code 5.101(b), (f).

³ The claims and allegations stricken from the Complaint included the following: request for a Commission-issued payment arrangement, claims of unreasonable service for electric service provided to the Complainant arising on or before January 6, 2020, claims of incorrect and/or high billing for electric service provided to the Complainant arising on or before January 6, 2020, any claims arising prior to July 7, 2020, any request for refund of a payment made prior to July 7, 2019.

On November 3, 2023, Khadijah Scott, counsel for PECO, filed a Motion for Continuance of Hearing Date requesting a continuance of the hearing scheduled for November 16, 2023. On November 13, 2023, I issued an Interim Order (Order on Continuance) granting Respondent's Motion For Continuance.

On November 14, 2023, a Cancellation/Reschedule Hearing Notice was issued advising the parties that the initial call-in telephonic hearing scheduled for November 16, 2023, at 10:00 a.m. had been cancelled and rescheduled for November 30, 2023, at 10:00 a.m.

On November 30, 2023, the hearing commenced as scheduled. Counsel for the Respondent and the Complainant appeared for the hearing. No testimony was taken; however, with me acting as settlement judge, the parties conducted off-the record settlement discussions. At the conclusion of their discussions, the parties indicated that they wished to continue the hearing to allow PECO to conduct a field inspection visit, to explore Ms. Meade's eligibility for PECO's Customer Assistance Program, and to allow Ms. Meade to consider a settlement offer made by PECO during their discussions.

On December 1, 2023, a Further Call-In Hearing Notice was issued advising the parties that a Further Call-In telephonic hearing was scheduled for February 5, 2024, at 10:00 a.m.

On December 8, 2023, a Prehearing Order was issued reminding the parties of the date and time of the Further Hearing, directing the parties to comply with various procedural requirements, and advising that the Complainant could lose the case for failure to participate in the Further Hearing or present facts on the issues raised.

On February 5, 2024, the Further Hearing commenced as scheduled. Counsel for the Respondent called in with two witnesses available to testify. The Complainant failed to call in to the Further Hearing. The Complainant was given additional time to call and participate in the Further Hearing but failed to do so.

No witnesses were presented, and no exhibits were introduced into the record. At the hearing, counsel for PECO moved that the Complaint be dismissed with prejudice for lack of prosecution pursuant to 52 Pa. Code § 5.245.

The Motion Judge Assignment Notice, the Order on Preliminary Objections, the Notice of Hearing, the Order on Continuance, the Prehearing Order, and the Notice of Further Hearing were all served to Complainant via eService; none of the documents was returned as undeliverable.

On January 24, 2024, in anticipation of the Further Hearing, counsel for PECO emailed its proposed exhibits to both me and Complainant. The proposed exhibits contained a cover letter which, in bold print, referred to the Further Hearing on February 5, 2024.

On February 5, 2024, the Further Hearing commenced as scheduled. Ms. Khadijah Scott, Esquire, appeared on behalf of PECO. Two witnesses for PECO also appeared and were prepared to testify. Tr. 16-17. Complainant did not appear. I recessed the Further Hearing and convened it again approximately ten minutes later in order to allow additional time for the Complainant to appear. Tr. 17. Since Complainant did not appear, the Further Hearing proceeded in her absence. No testimony was taken, and no exhibits were introduced. However, PECO noted that in her Complaint, Ms. Meade had raised issues that were previously litigated, that the Order on Preliminary Objections had limited the scope of the Further Hearing, and that she had reached out to Ms. Meade on January 24, 2024, to discuss a settlement offer but received no response. Tr. 18. Next, PECO moved to dismiss the Complaint with prejudice for the failure of the Complainant to appear and prosecute her Complaint, noting that the balance on the Complainant's account had reached \$18,000. Tr. 18-19. I took the motion under advisement. Pursuant to 52 Pa. Code § 5.431, the record closed at the conclusion of the hearing.⁴

⁴ Section 5.431 provides, "The record will be closed at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission." **52 Pa. Code § 5.431.**

On Friday, March 29, 2024,⁵ administrative staff of the Office of Administrative Law Judge (OALJ) forwarded to me an email from Complainant, in which she requested “a continuance of her case.” Further, Complainant implied that she had been unaware of the February 5, 2024, hearing, had only recently learned of the hearing from PECO and had received a shut-off notice from PECO and that shut off was scheduled for the following Monday, April 1, 2024. Counsel for PECO was copied on the email.

In light of the content and tenor of the Complainant’s email, I responded via email directly to the parties the same day, indicating that no decision would be made on the request until PECO has been given a reasonable opportunity to respond to the request. I also directed that PECO counsel to provide PECO’s response to the Complainant’s request at her earliest opportunity. I received an automated reply from PECO counsel indicating that she was out of the office, without access to email or voicemail, and would respond upon her return to the office on April 1, 2024. Consistent with the information included in the automated reply, I forwarded a copy of my email reply to the parties to an administrative assistant at PECO.

On April 1, 2024, PECO Counsel responded to my email, with a copy to the Complainant. PECO objected to the continuance of the matter, averring that the Complainant had not provided good cause for her request. In support PECO’s position, counsel observed that: (a) during the initial hearing, PECO offered the Complainant a 24-month payment agreement with waiver of late payment charges in the amount of \$3706.30; (b) the matter was continued to facilitate a high bill field visit by a PECO representative; and (c) a field visit took place on December 8, 2023. PECO counsel also indicated that on December 1, 2023, a representative of PECO’s CAP department contacted the Complainant to discuss PECO’s CAP and assist the Complainant with an application for the program. Further, counsel indicated that she and her administrative assistant had endeavored to contact the Complainant via email on January 24, 2024, that the emails were not returned as undeliverable, and that the Complainant failed to respond to either email message from PECO. Finally, counsel stated that PECO remained available to discuss the Complainant’s account.

⁵ Friday, March 29, 2024, was the Friday preceding Easter Sunday.

In response to PECO's objection, on April 1, 2024, Complainant followed up with two more emails to me, copying counsel, stating that:

I disagree with your findings. I followed through on CAP , and PECO denied my application. I then pursued LIHEP, CRISIS and UESF, which my UESF request is processing now. I received a letter from PECO a week and 1/2 ago denying my CAP application. In addition, there was no agreement offered to me!"

The Complainant also indicated that:

PUC was not the only email missed in my feed. Verizon actually reset my Network this week due to numerous email losses. I am trying to use my laptop email, my keyboard does not have a light, it is difficult to see keys. Until I can afford another, I will just struggle with this one, more reliable than my phone.

Finally, she also complained generally about PECO's bills.

Discussion

As noted above, the record closed in this matter at the conclusion of the evidentiary hearing pursuant to Section 5.431 of the Commission's regulations, which provides, in relevant part:

§ 5.431. Close of the record.

(a) The record will be closed at the conclusion of the hearing unless otherwise directed by the presiding officer or the Commission.

* * *

52 Pa. Code § 5.431(a).

In light of Complainant's *pro se* status and in the interests to secure the just, speedy, and inexpensive determination of this matter, Complainant's informal petition via email

will be construed as a petition to reopen the record.⁶ Section 5.571 of the Commission's regulations permits a presiding officer to reopen the record where an initial decision has not been issued. Specifically, Section 5.571 provides, in relevant part:

§ 5.571. Reopening prior to a final decision.

(a) At any time after the record is closed but before a final decision is issued, a party may file a petition to reopen the proceeding for the purpose of taking additional evidence.

* * *

(d) The record may be reopened upon notification to the parties in a proceeding for the reception of further evidence *if there is reason to believe that conditions of fact or of law have so changed as to require, or that the public interest requires, the reopening of the proceeding.*

(1) The presiding officer may reopen the record if the presiding officer has not issued a decision or has not certified the record to the Commission.

* * *

52 Pa. Code § 5.571(a), (d)(1) (emphasis added).

After careful review, I find that there is insufficient reason to believe that conditions of fact or of law have changed as to require, or that the public interest requires, the reopening of the record in this proceeding.

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). This due process requirement is satisfied when the parties are provided with notice and an opportunity to be heard. *Id.* The Complainant avers that she did not receive the Notice of Further Hearing, or any communication served to her by PECO referencing the date of the Further Hearing, which were served on separate dates. The Notice of Further Hearing clearly stated the date and time of the Further Hearing and how to request a continuance, if necessary.

⁶ See 52 Pa. Code § 1.2(a), (d) (providing that a presiding officer may disregard an error or defect of procedure which does not affect the substantive rights of the parties, in order to secure the just, speedy, and inexpensive determination of action, as well as proving for a liberal construction of this provision with particularity in proceedings involving *pro se* litigants).

Moreover, both the Hearing Notice and Prehearing Order stated the consequences of the failure to appear and provided as follows:

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.

Hearing Notice, p. 2; Prehearing Order, p. 1 (emphasis in originals).

On March 29, 2024, 7 weeks after the record closed, Complainant contacted OALJ and stated that she missed the Further Hearing because she had not been aware of the Further Hearing. However, at the Initial Hearing held on November 30, 2023, the parties’ indicated that they had reached a tentative settlement and request a continuance to finalize their agreement. Tr. 10. When granting the requested continuance, I informed both parties that I would continue the matter to allow the parties time to finalize their settlement discussions. In addition, I informed the parties that:

[A] hearing will be scheduled for late January or early February. If the parties are able to reach a final agreement and to settle all of the issues that led to the filing of the complaint, a certificate of satisfaction may be filed. That indicates that the parties have reached a final agreement, and it will be sent into the Secretary's office and any party who disagrees can have 10 days from receipt of that document to say you are not satisfied.

Tr. 11. Moreover, Ms. Meade explicitly confirmed her understanding of the next steps to be followed after the Initial Hearing. Tr. 11.

PECO counsel has argued that Complainant did not demonstrate good cause for a continuance of this matter, noting that it already litigated many of the issues in the Complaint and that the Complainant had been unresponsive to outreach from counsel and another PECO representative prior to the Further Hearing.

Based on the record, I am constrained to conclude that the Complainant's reasons for missing the hearing are insufficient. Initially, Complainant verbally acknowledged that she understood that absent a full settlement of the matter, a hearing would be scheduled for late January or early February 2024. Despite that acknowledgement and her ability to reach out to OALJ at any time after November 30, 2023, she did not do so, nor did she respond to efforts by PECO to reach her prior to February 5, 2024. Instead, she waited until March 29, 2024, a date seven full weeks after the scheduled hearing date and the last business day before the scheduled shut off of her service, to contact OALJ and PECO concerning a continuance or re-opening of the record.

Significantly, the only explanation Complainant offered as to why she waited to contact OALJ or PECO is poor cell phone service and/or inadequate computer equipment. The Complainant's effort to place responsibility for her failure to appear at the Further Hearing on her cell phone service provider or computer equipment is not convincing.

The Hearing Notice, the Further Hearing Notice and the Prehearing Order clearly provided clear instructions on how to request a continuance, emphasized the need to do so promptly, and stated the potential consequences of failure to appear at an evidentiary hearing. Thus, Complainant was afforded notice and an opportunity to be heard with respect to the allegations in her Complaint.

I recognize that Complainant is appearing *pro se* in this proceeding. Traditionally, the Commission has been hesitant to rule unfavorably against *pro se* litigants based on technical grounds and has stated that all litigants, particularly *pro se* litigants, should be afforded a meaningful opportunity to be heard. *See, e.g., Amir v. PECO Energy Co.*, C-2010-2190024 (Order entered Jan. 13, 2011); *Destefano v. Peoples Natural Gas Co.*, 56 Pa. P.U.C. 489 (1982); and *Halpern v. Bell Tele. Co. of Pa.*, C-00923950 (October 19, 1992). Compliance with the terms of multiple hearing Notices and a Prehearing Order is, however, more than just a technical issue. Those directives are not a nullity, and compliance with clearly set forth procedural rules and directives is an essential part of affording due process of law to both parties. The orderly resolution of the many cases that come before the Commission depends on reasonable diligence

by the parties to litigation. *Forti v. PPL Elec. Utils. Corp.*, C-202-3015285 (Opinion and Order entered November 19, 2020).

Conclusion

For the reasons discussed above, there is no reason to believe that conditions of fact or of law in this matter have so changed as to require, or that the public interest requires, the reopening of the proceeding. Therefore, Complainant's petition to reopen the record is denied. An Initial Decision will be separately prepared and served on the parties.

Date: April 1, 2024

_____/s/
Arlene Ashton
Administrative Law Judge

C-2023-3041672 – LINDA MEADE v. PECO ENERGY COMPANY

LINDA MEADE



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