



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE  
REFER TO OUR FILE

ISSUED: December 28, 2005

C-20055009

DALEENA BAGLEY  
1224 CURRAN STREET APT A  
PO BOX 64  
CHESTER PA 19013

Daleena Bagley  
v.  
PECO Energy Company

**DOCUMENT  
FOLDER**

TO WHOM IT MAY CONCERN:

Enclosed is a copy of the Initial Decision of Administrative Law Judge Wayne L. Weismandel. This decision is being issued and mailed to all parties on the above specified date.

If you do not agree with any part of this decision, you may send written comments (called Exceptions) to the Commission. Specifically, an original and nine (9) copies of your signed exceptions **MUST BE FILED WITH THE SECRETARY OF THE COMMISSION 2<sup>ND</sup> FLOOR, KEYSTONE BUILDING, 400 NORTH STREET, HARRISBURG, PA OR MAILED TO P.O. BOX 3265, HARRISBURG, PA 17105-3265, within **twenty (20) days** of the issuance date of this letter.** The signed exceptions will be deemed filed on the date actually received by the Secretary of the Commission or on the date deposited in the mail as shown on U.S. Postal Service Form 3817 certificate of mailing attached to the cover of the original document (52 Pa. Code §1.11(a)) or on the date deposited with an overnight express package delivery service (52 Pa. Code 1.11(a)(2), (b)). If your exceptions are sent by mail, please use the address shown at the top of this letter. A copy of your exceptions must also be served on each party of record. 52 Pa. Code §1.56(b) cannot be used to extend the prescribed period for the filing of exceptions/reply exceptions. A certificate of service shall be attached to the filed exceptions.

If you receive exceptions from other parties, you may submit written replies to those exceptions in the manner described above within **ten (10) days** of the date that the exceptions are due.

Exceptions and reply exceptions shall obey 52 Pa. Code 5.533 and 5.535 particularly the 40-page limit for exceptions and the 25-page limit for replies to exceptions. Exceptions should clearly be labeled as "EXCEPTIONS OF (name of party) - (protestant, complainant, staff, etc.)".

If no exceptions are received within **twenty (20) days**, the decision of the Administrative Law Judge may become final without further Commission action. You will receive written notification if this occurs.

Very truly yours,

James J. McNulty  
Secretary

Encls.  
Certified Mail  
Receipt Requested  
SS

LISA A LUTZ ESQUIRE  
PECO ENERGY COMPANY  
2301 MARKET STREET S23-1  
PO BOX 8699  
PHILADELPHIA PA 19101-8699

C-20055009 Daleena Bagley v. PECO Energy Company

Billing dispute.

DALEENA BAGLEY  
P O BOX 64  
1224 CURRAN STREET APT A  
CHESTER PA 19013

LISA A LUTZ ESQUIRE  
PECO ENERGY COMPANY  
2301 MARKET STREET S23-1  
PO BOX 8699  
PHILADELPHIA PA 19101-8699

*JLO 20/10*

DEC 22 2005

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Daleena Bagley

v.

PECO Energy Company

:  
:  
:  
:  
:

C-20055009

**INITIAL DECISION**

**DOCKETED**  
DEC 30 2005

Before  
Wayne L. Weismandel  
Administrative Law Judge

**DOCUMENT  
FOLDER**

**HISTORY OF THE PROCEEDING**

On July 22, 2005, Daleena Bagley (complainant) filed a formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (respondent), Docket Number C-20055009. The Complaint alleged that there were incorrect charges on the bill rendered by respondent.

The Complaint was served on the respondent on August 24, 2005.

On September 15, 2005, respondent filed its Answer (Answer). The Answer averred that all charges being billed to complainant were correct. The Answer further averred that complainant is enrolled in respondent's Customer Assistance Program (CAP).

By Hearing Notice dated October 5, 2005, an Initial Hearing was scheduled for November 16, 2005, and the case was assigned to Administrative Law Judge (ALJ) Ky Van Nguyen.

ALJ Nguyen issued a Prehearing Order dated October 11, 2005. The Prehearing Order advised the parties with respect to Commission procedure, requests for continuances, required numbers of proposed exhibits, the need for attorney representation, subpoena procedures, discovery, and the Commission's policy favoring settlement.

By Hearing Change Notice dated October 21, 2005, the scheduled Initial Hearing was changed from in-person to telephonic, and the case was reassigned from ALJ Nguyen to me.

As is my customary practice, I issued a Prehearing Order (Prehearing Order) dated October 21, 2005. The Prehearing Order advised the parties with respect to Commission procedure, requests for continuances, required numbers and marking of proposed exhibits, the need for attorney representation, subpoena procedures, discovery, and the Commission's policy favoring settlement. Finally, the Prehearing Order reminded the parties of the date and time of the scheduled hearing and of their responsibility to advise of a change in the telephone number at which they were to be contacted for the Hearing.

Under cover letter dated November 8, 2005, respondent submitted three copies of four potential exhibits for possible use at the telephonic hearing.

The Initial Telephonic Hearing convened as scheduled on November 16, 2005. Respondent's attorney, Lisa A. Lutz, Esquire, was contacted at (215) 841-6841. Complainant was contacted at (610) 494-7016. Because complainant stated, when asked, that she had not received copies of respondent's potential exhibits, the telephonic hearing was continued and respondent instructed to re-send them in a manner that would require complainant to sign for their receipt. A transcript of the proceeding containing twenty-three pages was produced.

By letter dated November 16, 2005, received November 18, 2005, counsel for respondent advised that within minutes of the continuance of the telephonic hearing complainant contacted her and advised that she did, indeed, have copies of respondent's potential exhibits.

By Hearing Change Notice dated November 21, 2005, the telephonic hearing was rescheduled for 1:00 p.m. on December 21, 2005.

The rescheduled telephonic hearing convened as scheduled on December 21, 2005. Respondent's attorney, Lisa A. Lutz, Esquire, was contacted at (215) 841-6841. Respondent's potential witness was present with Ms. Lutz. Two attempts to contact complainant at (610) 494-7016 (the home, and only, telephone number appearing on the formal Complaint form), one at 1:00 p.m. and the other at 1:20 p.m., were both unanswered after ten rings on each occasion. When complainant was not available at 1:20 p.m., I advised Ms. Lutz that complainant was a "no-show" and that, in accordance with Commission precedent, the Complaint would be dismissed, with prejudice. A transcript of the proceeding was made. The record was closed at the end of the proceeding on December 21, 2005.

#### FINDINGS OF FACT

1. On July 22, 2005, complainant filed a formal Complaint against respondent averring that respondent's bill contained incorrect charges.
2. On September 15, 2005, respondent timely filed its Answer.
3. An Initial Telephonic Hearing on complainant's Complaint was scheduled for November 16, 2005, with both parties given notice thereof.
4. Complainant was advised that she would be contacted at telephone number (610) 494-7016 at 2:30 p.m. on November 16, 2005, to participate in the hearing by Hearing Change Notice dated October 21, 2005.
5. The Initial Telephonic Hearing convened as scheduled on November 16, 2005. Respondent's attorney, Lisa A. Lutz, Esquire, was contacted at (215) 841-6841.

Complainant was contacted at (610) 494-7016 (the home, and only, telephone number appearing on the formal Complaint form).

6. Because complainant stated, when asked, that she had not received copies of respondent's potential exhibits, the telephonic hearing was continued.

7. By Hearing Change Notice dated November 21, 2005, the telephonic hearing was rescheduled for 1:00 p.m. on December 21, 2005.

8. Respondent appeared, via telephone, for the rescheduled hearing at the scheduled time by legal counsel and a potential witness and was prepared to proceed.

9. Two attempts, at 1:00 p.m. and at 1:20 p.m., to contact complainant at (610) 494-7016, the home (and only) telephone number appearing on complainant's formal Complaint form, were both unanswered after ten rings on each occasion.

10. Complainant was advised of the date and time of the rescheduled telephonic hearing on her Complaint by Hearing Change Notice dated November 21, 2005.

11. Complainant was advised of the procedures for requesting a continuance of a scheduled hearing by Prehearing Order dated October 21, 2005.

12. Complainant was advised that "[t]his case will be dismissed if the customer fails to participate in the hearing and present evidence on the issues raised" by Prehearing Order dated October 21, 2005.

13. Complainant failed to appear, via telephone, for the scheduled hearing.

14. Complainant did not settle nor withdraw the Complaint nor obtain a continuance prior to the scheduled telephonic hearing.

## DISCUSSION

As the proponent of a rule or order, complainant has the burden of proof in this matter pursuant to 66 Pa.C.S. §332(a).

To establish a sufficient case and satisfy the burden of proof, complainant must show that the respondent public utility is responsible or accountable for the problem described in the Complaint. Patterson v. Bell Telephone Company of Pennsylvania, 72 Pa. PUC 196 (1990), Feinstein v. Philadelphia Suburban Water Company, 50 Pa. PUC 300 (1976). Such a showing must be by a preponderance of the evidence. Samuel J. Lansberry, Inc. v. Pa. Public Utility Comm'n, 134 Pa. Commw. 218; 221-222, 578 A.2d 600; 602 (1990), *alloc. den.* in 602 A.2d 863 (1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. Se-Ling Hosiery v. Marquies, 364 Pa. 45, 70 A.2d 854 (1950). Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. Mill v. Commw., PA Public Utility Comm'n, 67 Pa. Commw. 597, 447 A.2d 1100 (1982), Edan Transportation Corp. v. PA Public Utility Comm'n, 154 Pa. Commw. 21, 623 A.2d 6 (1993), 2 Pa.C.S. §704. Substantial evidence has been defined as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. Bethenergy Mines, Inc. v. Workmen's Compensation Appeal Bd. (Skirpan), 531 Pa. 287, 612 A.2d 434 (1992). More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk and Western Ry. v. Pa. Public Utility Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Compensation Bd. of Review, 194 Pa. Super. 278, 166 A.2d 96 (1960); Murphy v. Commonwealth, Dep't. of Public Welfare, White Haven Center, 85 Pa. Commw. 23, 480 A.2d 382 (1984).

By not appearing for the scheduled telephonic hearing, complainant obviously failed to bear the burden of proof. Consequently, the Complaint must be dismissed.

Due to the waste of both Commission's and respondent's time, money, and energy occasioned by complainant's failure to appear at a hearing of which she had notice<sup>1</sup>, the dismissal will be with prejudice. Martin W. Jefferson v. UGI Utilities, Inc., Docket Number Z-00269892, Opinion and Order adopted October 26, 1995, entered December 26, 1995.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to, and the subject matter of, this proceeding.
2. Pursuant to 66 Pa.C.S. §332(a), the burden of proof in this proceeding is upon complainant.
3. Notice properly mailed to a party's last known address and not returned by the post office is presumed to have been received.
4. By failing to appear at the scheduled hearing and failing to present any evidence, complainant has failed to satisfy the burden of proof.
5. Failure by a complainant to appear for a scheduled hearing of which the complainant had notice warrants dismissal of the Complaint with prejudice.

---

<sup>1</sup> Notice mailed to a party's last known address and not returned by the post office is presumed to have been received. Chartiers Industrial and Commercial Development Auth. v. Allegheny Cty. Bd. of Property Assessment Appeals and Review, 165 Pa. Commw. 671, 645 A.2d 944 (1994), *alloc. den.*, 539 Pa. 696, 653 A.2d 1234 (1994), Berkowitz v. Mayflower Securities, Inc., 455 Pa. 531, 317 A.2d 584 (1974), John D. Stewart, Jr. v. Columbia Gas of Pennsylvania, Inc., Docket Number C-00957041, Opinion and Order adopted March 28, 1996, entered May 10, 1996.

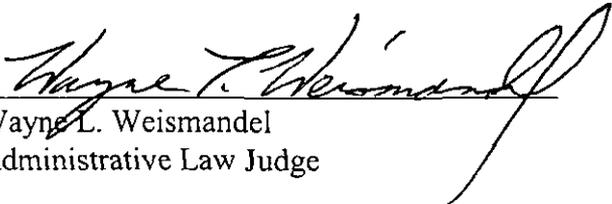
ORDER

THEREFORE,

IT IS ORDERED:

1. That the Complaint of Daleena Bagley against PECO Energy Company at Docket Number C-20055009 is dismissed, with prejudice.
2. That the record at Docket Number C-20055009 be marked closed.

Date: December 22, 2005

  
\_\_\_\_\_  
Wayne L. Weismandel  
Administrative Law Judge

2. Article Number



7160 3901 9843 0829 4457

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee)  Yes

1. Article Addressed to:

C-20055009 ID  
Lisa Lutz Esq.

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly) \_\_\_\_\_ B. Date of Delivery 1/3/06

C. Signature Zilma Rodriguez  Agent  Addressee

D. Is delivery address different from item 1?  Yes  No  
If YES, enter delivery address below: \_\_\_\_\_

PS Form 3811, March 2005

Domestic Return Receipt

2. Article Number



7160 3901 9843 0829 4501

3. Service Type **CERTIFIED MAIL**

4. Restricted Delivery? (Extra Fee)  Yes

1. Article Addressed to:

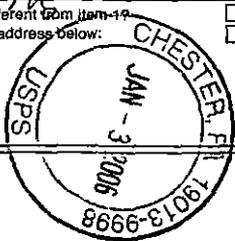
C-20055009 ID  
Daleena Bagley

**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly) \_\_\_\_\_ B. Date of Delivery 1/3/06

C. Signature [Signature]  Agent  Addressee

D. Is delivery address different from item 1?  Yes  No  
If YES, enter delivery address below: \_\_\_\_\_



PS Form 3811, March 2005

Domestic Return Receipt