

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**  
**Harrisburg, Pennsylvania 17105-3265**

**Chrystal Garber**  
v.  
**PECO Energy Company**

**Public Meeting: June 5, 2014**  
**2396173-ALJ**  
**Docket No. C-2013-2396173**

**JOINT MOTION OF COMMISSIONER JAMES H. CAWLEY AND  
COMMISSIONER GLADYS M. BROWN**

Before the Commission today is the Initial Decision in the above referenced case. Complainant, Chrystal Garber, filed a Formal Complaint alleging that there were incorrect charges on her bill, that she was not living at the service location when the bills were incurred, and that her mother had requested that service be discontinued but that the Respondent (PECO Energy Company) failed to honor that request.

According to the Initial Decision, a telephonic hearing was convened on March 25, 2014. An attempt to contact the Complainant at the telephone number provided in the Complaint was made. The Complainant was not available but a woman, Donna Garber, answered the phone. The woman indicated that her daughter, the named Complainant, was incarcerated. The woman also indicated that she had Power of Attorney for Complainant although no documentation of that Power of Attorney had been provided to the Administrative Law Judge (ALJ) prior to the scheduled hearing. The hearing proceeded in the Complainant's absence and the ALJ noted that the Complainant's failure to appear was unexcused. Respondent's motion for dismissal with prejudice was granted by the ALJ because of Complainant's failure to appear.

We note with some consternation that the Commission is regularly inundated with complaints that result in dismissal with prejudice due to complainants' failure to appear. This result is both costly and frustrating to all parties involved including the Commission and the respondents to the complaint. I also note that the Commission and specifically our ALJs frequently go beyond what is necessary to provide *pro se* complainants the opportunity to be heard and to receive due process.

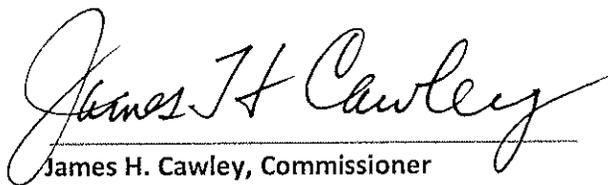
With that said, however, the decision in this case raises some question of due process in that there are statements in the Initial Decision that suggest that Complainant's failure to participate in the hearing at issue was due to her incarceration. Our regulations provide guidance for these situations in that they provide that a complainant generally waives the opportunity to participate in a hearing if the complainant fails to appear or be represented after receiving notice of a hearing. However, this provision is specifically not applicable if a complainant's failure to appear is unavoidable. See 52 Pa Code § 5.245.

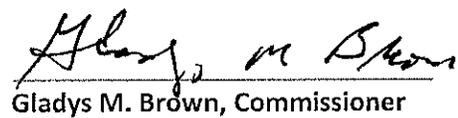
Although the record is not absolutely clear about the reason for the Complainant's failure to appear at the hearing in question, incarceration is unavoidable. Thus in order to maintain the

Complainant's due process, the disposition of this case should be modified and the case should be dismissed without prejudice.

**THEREFORE, WE MOVE THAT:**

1. The Initial Decision be modified consistent with this Motion.
2. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

  
James H. Cawley, Commissioner

  
Gladys M. Brown, Commissioner

Dated: June 5, 2014