



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

IN REPLY PLEASE  
REFER TO OUR FILE

April 1, 2015

Kelly M. Evans  
918 Mill Road, #1  
Bensalem, Pennsylvania 19020

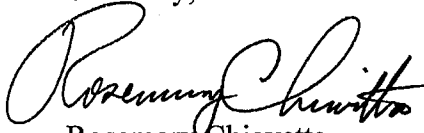
RE: Kelly M. Evans v. PECO  
Docket No. F-2014-2443191

Dear Ms. Evans:

I received your letter dated March 20, 2015, regarding your complaint at the above docket number. Please know that the Initial Decision, which I have attached a copy for your convenience, was mailed by certified mail to all parties in this case on January 14, 2015, along with a letter instructing the parties to file exceptions to the Judge's Decision if in disagreement with the Decision. The Initial Decision states you failed to answer the phone on the date and time set for your telephonic hearing on December 8, 2014, and that only your answering machine responded.

Therefore, the Commission's Final Order dismissing your complaint with prejudice was issued on March 10, 2015.

Sincerely,

  
Rosemary Chiavetta  
Secretary of the Commission

Enclosures  
CC: All Parties of Record

F-20014-2443191

3-20-15

To Whom it may Concern,  
 I received a letter in  
 Re: to my pecc issue.  
 Just received this letter.  
 I havent had a phone over  
 a month. I will not have a  
 phone till my S.S. Check 4-1-15.  
 So my case needs to be  
 Overlooked again.  
 The dismissed without  
 prejudice.  
 This motion should be dismissed.

You can call After April 1  
 Havent had no phone.  
 you can reach me by  
 WRITING please.  
 they say I am on  
 Rate.

RECEIVED

2015 MAR 30 AM 10:15

PA. P.U.C.  
SECRETARY'S BUREAU

Thank you  
 Kelly M. Evans  
 3-20-15

215 303 5419 - After 4-1-15

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Kelly M. Evans

v.

PECO Energy Company

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F-2014-2443191

**INITIAL DECISION**

Before  
Susan D. Colwell  
Administrative Law Judge

**HISTORY OF THE PROCEEDING**

The purpose of this Initial Decision is to dismiss a formal complaint for the failure of the complainant to appear and prosecute it.

On September 4, 2014, Kelly M. Evans (Complainant) filed a formal Complaint against PECO Energy Company (PECO or Respondent or Company) seeking a way to pay down her electric bill.

The formal Complaint was served electronically by the Commission's Secretary.<sup>1</sup>

On October 1, 2014, PECO filed its Answer and New Matter stating that Complainant was enrolled in PECO's customer assistance (CAP) program on November 8, 2008 under Tier D, and re-certified November 29, 2009 under Tier D. On July 10, 2013, she re-

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<sup>1</sup> PECO has signed a waiver of the Section 702 requirements for service of formal complaints, 66 Pa.C.S. § 702, and has agreed to accept electronic service instead under the Commission's Waiver of 702 program. The audit history in the Commission's electronic document handling system indicates that PECO was served on September 18, 2014.

enrolled under Tier E1, and her CAP rate changed to Tier D1 on August 5, 2013. She is a current CAP customer and her entire arrears of \$1,913.40 is CAP arrears. Further, this Complaint is an appeal from a BCS informal matter filed March 25, 2014, issued July 22, 2014, which did not grant a payment agreement because the arrearage is CAP. New matter reiterates Complainant's CAP history and avers that the law does not allow a PAR on a CAP arrearage.

A telephone hearing notice was issued on November 5, 2014 setting the hearing for December 8, 2014. My prehearing order was issued on November 6, 2014. Neither was returned as undeliverable.

On the day scheduled, the hearing was convened at 10:00 a.m. Respondent was represented by Shawane Lee, Esq., who had submitted proposed exhibits in advance and had a sponsoring witness ready to participate. Telephone calls to the number provided on the Complaint were placed at 10:00 a.m. and 10:15 a.m., but the call went to an answering machine both times.

The hearing was convened without the Complainant, and the Respondent moved to dismiss the Complaint for failure to prosecute. The hearing was completed and the record closed at the end of the hearing. A transcript was created.

The matter is now ripe for disposition.

#### FINDINGS OF FACT

1. Complainant is Kelly M. Evans, 918 Mill Road 1<sup>st</sup> Floor, Bensalem PA 19020.
2. Respondent is PECO Energy Company, a jurisdictional public utility providing residential electric service in the Commonwealth.

3. On November 5, 2014, a telephonic hearing notice was issued which scheduled the initial telephonic hearing for Monday, December 8, 2014.

4. On November 6, 2014, I issued a prehearing order which set forth some of the requirements for a formal hearing before the Commission.

5. Both the hearing notice and the prehearing order informed the parties that failure to participate in the hearing could result in the loss of the case.

6. On December 8, 2014, the hearing was convened at 10:15 a.m.

7. Respondent was represented by counsel and had submitted ten proposed exhibits and had a sponsoring witness ready to participate.

8. Telephone calls to the number provided on the Complaint were placed at 10:00 a.m. and 10:15 a.m.

9. No one answered the telephone at Complainant's number and the call went to an answering machine.

10. The telephone answering machine recording stated, "Hi, this is Kelly." The recordings apologized for not being able to answer the phone and directed that the caller leave a message and have a Merry Christmas.

11. No communication was received by the Office of Administrative Law Judge regarding rescheduling this hearing.

12. The Commission record does not contain a request to reschedule this hearing.

## DISCUSSION

The Complainant failed to answer the telephone at 10:00 a.m. and at 10:15 a.m. on December 8, 2014. Respondent moved to dismiss the Complaint for failure to prosecute it.

As the proponent of a rule or order in any Commission proceeding, Complainant has the burden of proof, 66 Pa.C.S. § 332, and therefore, the Complainant must prove her case by a preponderance of the evidence, or evidence which is more convincing than the evidence presented by the other parties. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.3d 854 (1950); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa.Cmwlth. 1990).

Additionally, any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence, which is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Mill v. Comm., Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. Ct.1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa.Cmwlth. Ct.1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Com. Bd. Of Review*, 166 A.2d 96 (Pa.Super. Ct.1960); *Murphy v. Comm., Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa.Cmwlth. Ct.1984).

The Commission is required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth.1984). 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 Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa. Cmwlth.1994), *appeal denied* 539 Pa. 696, 653 A.2d 1234 (1994).

The Hearing Notice and the Prehearing Order were sent to the address provided by the Complainant. Neither was returned as undeliverable. Therefore, Complainant is deemed

to have received these documents and had sufficient notice of the day, date and time of the scheduled hearing. Once notice of a hearing and the opportunity to be heard has been provided, it is the responsibility of the parties to appear and participate in the hearing. *Sentner v. Bell Tel. Co. of PA*, Opinion and Order entered October 25, 2003 at PUC Docket No. F-00161106.

Both the Hearing Notice and the Prehearing Order warned the parties that failure to participate could result in the dismissal of the case. No communication was received by the presiding officer or the Office of Administrative Law Judge, and therefore, the absence of the Complainant is unexcused.

Accordingly, Complainant has failed to sustain her burden of proving her case, and the Complaint is dismissed.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.
2. 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 Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa.Cmwlt.1994), *appeal denied* 539 Pa. 696, 653 A.2d 1234 (1994).
3. As the party seeking affirmative relief from the Commission, Complainant bears the burden of proof. 66 Pa.C.S. § 332(a).
4. Due process is provided when the parties are afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlt. 1984).



PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265

Kelly M. Evans

v.

PECO Energy Company

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F-2014-2443191

**FINAL ORDER**

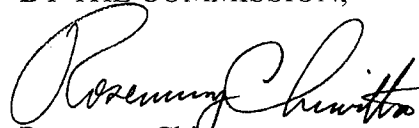
In accordance with the provisions of Section 332(h) of the Public Utility Code, 66 Pa. C.S. §332(h), the decision of Administrative Law Judge Susan D. Colwell dated December 8, 2014, has become final without further Commission action;

THEREFORE,

IT IS ORDERED:

1. That the motion of PECO Energy Company to dismiss the Complaint of Kelly M. Evans, filed at F-2014-2443191, is granted.
2. That the Formal Complaint filed by Kelly M. Evans against PECO Energy Company at PUC Docket No. F-2014-2443191 is dismissed with prejudice.
3. That the Secretary mark this docket closed.

BY THE COMMISSION,

  
Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ENTERED: March 10, 2015