

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

Cynthia Santore Smith
v.
PECO Energy Company

Public Meeting held September 3, 2015
2446204-OSA
Docket No. F-2014-2446204

STATEMENT OF CHAIRMAN GLADYS M. BROWN

Before the Commission today is the Initial Decision in the above referenced case. Complainant, Cynthia Santore Smith, filed a Formal Complaint alleging incorrect charges on her electric bill; the bills were too high for a two story, two bedroom row home; and that there was large fluctuation in her billing amounts over a three month time frame.

According to the Initial Decision, a hearing on the matter was held on January 12, 2015. Complainant was not present at the hearing. The ALJ noted Complainant's failure to attend, stating: "[w]hen the Complainant called to request a continuance, she was advised to provide written documentation to explain why she could not attend the hearing." It is unclear from the record when Complainant called to request the continuance. The ALJ granted PECO's motion for dismissal with prejudice because of Complainant's failure to appear.

In her Exceptions, Complainant argues that she had the flu and that she "called your office and also sent a letter." To date, the ALJ has not received the letter that Complainant claims she sent to the OALJ in her Exceptions.

I note with some consternation that the Commission is regularly inundated with complaints that result in dismissal with prejudice due to a complainant's 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 adequate due process protections.

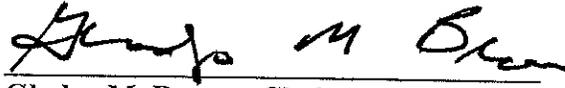
With that said, however, this case raises some concern over whether Complainant's due process rights were infringed upon when the Initial Decision suggests that Complainant's failure to appear was due to having the flu. Our regulations provide that a complainant generally waives the opportunity to participate in a hearing if he or she fails to appear or be represented after receiving notice of a hearing. However, this provision is specifically not applicable if the complainant's failure to appear is "unavoidable." See 52 Pa. Code § 5.245.

As a public agency, I believe we have a responsibility to protect and ensure these individuals are afforded due process. A majority of the complaints submitted to our Commission are by *pro se* complainants. Thus, it would not serve the public interest to continually dismiss

complaints with prejudice when a *pro se* complainant fails to appear, even after the complainant requested a continuance for circumstances that were unavoidable. Here, Complainant called the ALJ to request a continuance because she had the flu. It is my opinion that a dismissal without prejudice would be more appropriate in this case. However, ultimately I agree in the outcome of the decision to dismiss for failure to prosecute.

September 3, 2015

Date

A handwritten signature in black ink, appearing to read "Gladys M. Brown". The signature is written in a cursive style and is positioned above a horizontal line.

Gladys M. Brown, Chairman