

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tamika Butler

v.

PECO Energy Company

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C-2016-2559356

**INITIAL DECISION**

Before  
Benjamin J. Myers  
Administrative Law Judge

**INTRODUCTION**

This decision dismisses the complaint filed in this matter for failure of the Complainant to appear for the hearing and prosecute the complaint.

**HISTORY OF THE PROCEEDING**

On August 1, 2016, Tamika Butler (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (Respondent). The complaint alleges that the electric and gas utilities to the Complainant's home were threatened to be shut off or had already been shut off. The Complainant indicated that she was on public assistance and requested that the Commission place her on a payment plan for her utilities. The Complainant also made reference in the complaint to "emergency medical forms."

The Respondent filed an answer and new matter on August 17, 2016. The answer admitted that the Respondent had been notified that her utility services were to be shut off. However, the answer denied that the Complainant was eligible for a Commission-ordered

payment plan because the Complainant's entire outstanding balance consisted of Customer Assistance Program (CAP) arrears. The new matter further argued that the Complainant was actively enrolled in the CAP program and that the Complainant's entire account balance consisted of CAP arrears and that as such, she would not be eligible for a Commission-ordered payment arrangement under the law.

On September 8, 2016 the Respondent filed a motion for judgment on the pleadings. In this motion, Respondent argued that no factual dispute existed between the parties as to the Complainant's circumstances and account status. Respondent argued that since the Complainant's entire account balance consisted of CAP arrears and the payment arrangement sought by the Complainant could not be granted by the Commission, its motion for judgment on the pleadings should be granted and the complaint dismissed with prejudice.

On October 7, 2016 this matter was assigned to the undersigned as a motion judge. On October 13, 2016 an order was issued granting in part and denying in part the motion for judgment on the pleadings. This order found that the motion was granted relative to the request for a payment arrangement and as such the portions of the complaint relating to that relief were dismissed. It was however held that as the complaint averred the existence of "emergency medical forms," the motion was denied and a hearing limited to the issue of what "emergency medical forms" the Complainant was referencing or had submitted to the Respondent would be conducted.

By notice dated October 14, 2016 the Commission scheduled this matter for an initial telephonic hearing on November 30, 2016 at 1:00 p.m. and assigned the case to the undersigned. A prehearing order was also issued on October 14, 2016, addressing, inter alia, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

A telephonic hearing was conducted on November 30, 2016 at 1:00 p.m. The Complainant failed to appear for that hearing. Despite two attempts to contact the Complainant by telephone, Complainant did not answer the telephone number of record for her shown on the October 14, 2016 hearing notice at 1:00 p.m.

It was verified with the support staff for the Office of Administrative Law Judge (OALJ) in Harrisburg that the Complainant had not contacted that office to indicate that the Complainant would be unable to participate in the telephonic hearing. No voice mail or email messages from the Complainant stating that she would be unable to participate in the hearing were ever received. After verifying that the Complainant had not contacted OALJ in Harrisburg, the hearing commenced at approximately 1:11 p.m.

Upon commencement of the hearing, Shawane Lee, Esquire, counsel for the Respondent, moved to dismiss the complaint for failure to appear and prosecute. N.T. 8. The Respondent was advised that its motion would be taken under advisement. N.T. 9.

The record closed on December 22, 2016, the date the transcript was filed with the Secretary's Bureau. This decision grants the Respondent's motion to dismiss the complaint.

#### FINDINGS OF FACT

1. The Complainant in this case is Tamika Butler.
2. The Respondent in this case is PECO Energy Company.
3. On August 1, 2016, the Complainant filed a complaint with the Commission against the Respondent.
4. The Respondent filed an answer and new matter on August 17, 2016.
5. On September 8, 2016, the Respondent filed a motion for judgment on the pleadings.
6. On October 13, 2016, an order was issued granting in part and denying in part the Respondent's motion.

7. By notice dated October 14, 2016, the Commission scheduled this matter for an initial telephonic hearing on November 30, 2016 at 1:00 p.m.

8. The Commission sent notice of the telephonic hearing in this case to the Complainant by regular first-class mail to the address stated on the complaint.

9. The Commission's hearing notice was never returned to the sender.

10. A prehearing order was issued on October 14, 2016 providing additional information to the parties regarding the hearing.

11. This prehearing order was not returned to the Commission as being undeliverable by the postal authorities.

12. The Complainant failed to appear at the November 30, 2016 telephonic hearing.

13. The Complainant did not settle, withdraw or request a continuance of the matter.

### DISCUSSION

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, however, when the administrative agency provides the parties notice and the opportunity to be heard.

The Commission sent notice of the telephonic hearing in this case to the Complainant on October 14, 2016, by regular first-class mail to the address stated on the complaint. This piece of mail was never returned to the sender, the scheduling staff for OALJ in Harrisburg.

In addition, an order on Respondent's motion for judgment on the pleadings was issued on October 13, 2016 which confirmed that this matter would be scheduled for a hearing. A prehearing order was issued on October 14, 2016 which, inter alia, directed the parties to notify OALJ if the telephone numbers where they could be reached at the time of the hearing had changed. The prehearing order, which was mailed to the Complainant at the address shown on the complaint, was never returned. Accordingly, it must be presumed that this mail, which was sent in the ordinary course of business, was received by the Complainant. Berkowitz v. Mayflower Securities, Inc., 317 A.2d 584 (Pa. 1974); Meierdierck v. Miller, 147 A.2d 406 (Pa. 1959); Samaras v. Hartwick, 698 A.2d 71 (Pa.Super. 1997); Judge v. Celina Mutual Insurance Co., 444 A.2d 658 (Pa.Super. 1982).

The Complainant did not answer the telephone number of record for her shown on the October 14, 2016 hearing notice at 1:00 p.m. Under these circumstances, it appears the Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. Therefore, the due process rights of the Complainant have been fully protected. Sentner v. Bell Telephone Co. of Pa. Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

Finally, Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), places the burden of proof upon the proponent of any request for relief. As the party bringing this complaint, the Complainant bears the burden of proving by a preponderance of the evidence that they are entitled to relief. By failing to appear and proffer any evidence to support their complaint, the Complainant has failed to meet this burden. Under these circumstances, the complaint should be dismissed with prejudice. Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Opinion and Order entered December 26, 1995); El-Ayazra v. West Penn Power Company, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); 52 Pa.Code § 5.245.

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa.C.S. § 701.

2. The due process rights of the Complainant have been fully protected in this proceeding. Sentner v. Bell Telephone Co. of Pa., Docket No. F-00161106 (Opinion and Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

3. By failing to appear for the hearing and proffer any evidence to support the complaint, the Complainant has failed to meet her burden of proving that she is entitled to the relief that she seeks from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of PECO Energy Company to dismiss the complaint filed by Tamika Butler at Docket No. C-2016-2559356 is granted.

2. That the complaint of Tamika Butler against PECO Energy Company at Docket No. C-2016-2559356 is dismissed with prejudice for failure of the Complainant to appear for the hearing and prosecute the complaint.

3. That the docket at Docket No. C-2016-2559356 is marked closed.

Date: December 28, 2016

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/s/  
Benjamin J. Myers  
Administrative Law Judge