

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Patrice Cunningham

v.

PECO Energy Company

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F-2016-2574736

**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**

This decision dismisses a complaint for failure to appear and prosecute. On November 3, 2016, Patrice Cunningham (Complainant) filed a complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (Respondent). The complaint alleges that while the Complainant is on budget billing she believed her billing amount was too high and that she was being overcharged for her actual electric usage. As a result, the Complainant argued that the monthly budget amount she was being required to pay exceeded her income. The complaint requested that the Commission investigate the charges on her bill and to implement a payment arrangement that would be affordable to her.

The Respondent filed an answer on November 22, 2016. The answer admitted that the Respondent served the Complainant's residence and that the Complainant was enrolled in the Respondent's CAP program. However, the Respondent averred that the Complainant's allegations of high billing had been investigated by the Respondent and had been unfounded. In addition, the Respondent denied that the Complainant had been incorrectly charged for her electric usage and that the Complainant's budget amount was properly based upon an average of the Complainant's bills over a 12 month period. The answer requested that the Commission deny the complaint.

By notice dated January 24, 2017, the Commission scheduled this matter for an initial telephonic hearing on March 16, 2017 at 10:00 a.m. and assigned the case to me. A prehearing order was issued on January 26, 2017 addressing, inter alia, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

A telephonic hearing was conducted on March 16, 2017 at 10:00 a.m. The Complainant failed to appear for that hearing. The Complainant did not call the conference number shown on January 24, 2017 hearing notice at 10:00 a.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 were received from the Complainant stating that she would be unable to participate in the hearing. After verifying that the Complainant had not contacted OALJ in Harrisburg, the hearing commenced at approximately 10:00 a.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. 7. I advised the Respondent that I would take its motion under advisement. N.T. 8.

The record closed on April 1, 2017, 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 Patrice Cunningham.
2. The Respondent in this case is PECO Energy Company.
3. On November 3, 2016, the Complainant filed a complaint with the Commission against the Respondent.
4. The Respondent filed an answer on November 22, 2016.
5. By notice dated January 24, 2017, the Commission scheduled this matter for an initial telephonic hearing on March 16, 2017 at 10:00 a.m.
6. 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.
7. The Commission's hearing notice was never returned to the sender.
8. The Complainant failed to appear at the March 16, 2017 telephonic hearing.
9. 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. Id.

The Commission sent notice of the telephonic hearing in this case to the Complainant on January 24, 2017, by regular first-class mail to the address stated on the complaint. There is no evidence that this piece of mail was ever returned to the sender, the scheduling staff, or OALJ.

In addition, a prehearing order was issued on January 26, 2017, which, inter alia, directed the parties to contact the toll free conference number shown on the hearing notice in order to participate in the hearing. 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 appear for the scheduled hearing because she did not call the conference number shown on the January 24, 2017 hearing notice. 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 she is entitled to relief. By failing to appear and proffer any evidence to support her 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 Patrice Cunningham at F-2016-2574736 is granted.

2. That the complaint of Patrice Cunningham against PECO Energy Company at F-2016-2574736 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. F-2016-2574736 is marked closed.

Date: June 12, 2017

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/s/  
Benjamin J. Myers  
Administrative Law Judge