

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Susan Tracy

v.

PECO Energy Company

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C-2016-2575963

**INITIAL DECISION**

Before  
Darlene Davis Heep  
Administrative Law Judge

**INTRODUCTION**

This decision dismisses the Complaint for failure to prosecute because Complainant did not appear for the hearing.

**HISTORY OF THE PROCEEDING**

On November 14, 2016, Susan Tracy (Ms. Tracy or Complainant) filed a formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company. In the Complaint, Ms. Tracy sought a payment arrangement and also checked a box on the Complaint Form stating that the utility is threatening to shut off her service or had already shut off her service.

On November 29, 2016, PECO filed an Answer denying all material allegations. PECO stated that Complainant's service was terminated on November 10, 2016 for a past due balance of \$8,448.31. PECO also averred that the majority of Complainant's balance is CAP arrears and therefore Complainant is not eligible for a payment arrangement on the CAP portion.

PECO further asserted, referencing *Susan Hewitt v. PECO Energy Company*, Docket No. F-2011-2273271, that although the Commission has the discretion to give Complainant a payment arrangement on the non-CAP arrearage, a payment arrangement should not be issued because Complainant has a poor payment history.

On December 9, 2016, a Hearing Notice was issued setting an Initial Hearing for February 2, 2017, at 9:30 a.m. as part of the Call of the Docket. A Pre-hearing Order issued on December 12, 2016, informed the Complainant that the matter could be dismissed if she did not appear, that any requests for continuance must be submitted in writing five days in advance and that a change of the hearing date would be granted only where good cause exists.

The Call of the Docket began as scheduled at 9:30 a.m. on February 2, 2017. Counsel for PECO, Shawane Lee, Eq. appeared at the hearing with witnesses and prepared to proceed. Complainant was not present. Ms. Lee stated that Complainant had contacted her office that morning and said that she was on her way to the hearing but had fallen on the ice. The matter was set aside and other Call of the Docket matters addressed.

At about 12:30 that afternoon, Complainant called the Commission and requested a continuance due to her fall. The request was granted.

On February 3, 2017, a Hearing Notice was mailed to the Complainant setting the hearing for 10:00 a.m. on April 19, 2017. Attorney Lee appeared on behalf of PECO at 10:00 a.m., as scheduled. Complainant was not present. A recess was taken to allow Complainant time to appear.

At 10:26 a.m., the hearing resumed and Complainant had not arrived. Counsel for PECO moved that the matter be dismissed for failure to prosecute.

The record closed on May 20, 2017, upon receipt of the transcript. This decision grants the Respondent's Motion to Dismiss the Complaint.

FINDINGS OF FACT

1. The Complainant in this case is Susan Tracy.
2. PECO Energy Company is the Respondent.
3. On November 14, 2016, the Complainant filed this action.
4. The Respondent filed an Answer on November 29, 2016.
5. By Notice dated December 9, 2016, the Commission scheduled an initial hearing for February 2, 2017, at 9:30 a.m.
6. The Commission sent the Notice of the hearing to Ms. Tracy by regular first-class mail to the address stated on the Complaint.
7. On December 12, 2017, a Prehearing Order was mailed to the Complainant and stated as follows:

**THIS CASE WILL BE DISMISSED IF THE CUSTOMER FAILS TO PARTICIPATE IN THE HEARING AND PRESENT EVIDENCE IN SUPPORT OF THE COMPLAINT.**

and

A request for a change of the scheduled hearing date must state the agreement or opposition of other parties, and must be submitted in writing no later than five (5) business days prior to the hearing. 52 Pa.Code § 1.15(b). Requests for changes of hearing dates must be sent to me and all parties of record.

...

Changes are granted only in rare situations where good cause exists.

8. On February 2, 2017, Complainant requested a continuance and that request was granted.

9. By Notice dated February 3, 2017, the Commission rescheduled the initial hearing for April 19, 2017, at 10:00 a.m.

10. The Complainant failed to appear for the April 19, 2017, hearing.

11. All hearing notices and prehearing orders were sent by first-class mail.

12. None of the documents mailed to Complainant were returned as undeliverable.

13. Complainant did not contact the Commission to request a continuance or to state that she could not attend the hearing on April 19, 2017.

14. Complainant has not contacted the Commission since the April 19, 2017, hearing date.

### 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.

Complainant received all notices by first-class mail and none of those notices was returned as undeliverable. Therefore, the due process requirement of notice was met.

The Complainant contacted the office and requested a continuance of the February 2, 2017, hearing date. That continuance was granted and the matter rescheduled for April 19, 2017.

Ms. Tracy did not appear for rescheduled hearing and has not contacted the Commission since. Under these circumstances, the Complainant has had ample opportunity to appear and be heard in this proceeding, but did not 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 her Complaint, the Complainant has failed to meet this burden. Therefore, 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).

