

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

|                     |   |                |
|---------------------|---|----------------|
| Shirley Bradford    | : |                |
|                     | : |                |
| v.                  | : | F-2015-2493610 |
|                     | : |                |
| PECO Energy Company | : |                |

**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 July 13, 2015, Shirley Bradford (Ms. Bradford or Complainant) filed a formal Complaint (Complaint) with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO or Respondent). In the Complaint, Ms. Bradford 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 August 6, 2015, PECO filed an Answer denying all material allegations. PECO stated that the Complainant's service was terminated on November 12, 2014 for non-payment. PECO also averred that the Complainant is not entitled to a payment arrangement under 66

Pa.C.S. Section 1405(c) because the entire balance is comprised of Customer Assistance Program (CAP) arrears.

On August 14, 2015, a Hearing Notice was issued setting an Initial Hearing for October 13, 2015, at 9:30 a.m. as part of the Call of the Docket. A Pre-hearing Order issued on August 24, 2015, also contained the date and time of the scheduled hearing. The Pre-hearing Order also 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 of the hearing, and that a change of the hearing date would be granted only where good cause exists.

It was subsequently brought to the attention of the Commission that the Complainant filed Bankruptcy Petition #15-16688-mdc in the U.S. Bankruptcy Court, Eastern District of Pennsylvania. Pursuant to Section 362(a)(1) of Title 11 of the United States Code, 11 U.S.C.A. §362(a)(1), the filing of the Bankruptcy Petition by the Complainant operated as a stay with respect to the continuation of judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the filing of the Bankruptcy Petition. Therefore, this matter was held in abeyance pending completion of the bankruptcy matter.

In February of 2017, the Commission was informed that the bankruptcy petition filed by Ms. Bradford was dismissed. Consequently, a Hearing Notice was issued on February 8, 2017, setting the matter for hearing on April 18, 2017.

Attorney Shawane Lee appeared on April 18, 2017 on behalf of PECO, with a witness and was prepared to proceed. The Complainant was not present. A short recess was taken to allow the Complainant time to appear.

The hearing resumed and the Complainant had not arrived. Counsel for PECO moved that the matter be dismissed for failure to prosecute.

The record closed on May 24, 2017, upon receipt of the transcript. This decision grants PECO's Motion to Dismiss the Complaint.

## FINDINGS OF FACT

1. The Complainant in this case is Shirley Bradford.
2. PECO Energy Company is the Respondent.
3. On July 13, 2015, the Complainant filed this action.
4. The Respondent filed an Answer on August 6, 2015.
5. By Notice dated August 14, 2015, the Commission scheduled an initial hearing in this matter for October 13, 2015, at 9:30 a.m.
6. A Pre-hearing Order was mailed to all parties on August 24, 2015, advising the Complainant of the date, time and location of the hearing and also informing her that the matter would be dismissed if she did not appear and present evidence in support of her claim.
7. The Complainant subsequently filed a bankruptcy petition.
8. The October 13, 2015, hearing was cancelled and this matter was held in abeyance pending finality of the bankruptcy action.
9. In February of 2017, the Commission was informed that the bankruptcy petition filed by the Complainant had been dismissed.
10. A Rescheduled Hearing Notice was sent to the Complainant on February 8, 2017, setting the matter for hearing on April 18, 2017 at 10:00 a.m.
11. The Complainant failed to appear for the April 18, 2017, hearing.

12. All hearing notices and the prehearing order were sent to the Complainant by first-class mail to the address she provided on her Complaint.

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

14. The Complainant did not contact the Commission to request a continuance or to state that she could not attend the hearing on April 18, 2017.

15. The Complainant has not contacted the Commission since the April 18, 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.

The 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.

Ms. Bradford did not appear for the 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).

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).

### ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of PECO Energy Company to dismiss the Complaint filed by Shirley Bradford at Docket No. F-2015-2493610 is granted.

2. That the Complaint of Shirley Bradford against PECO Energy Company at Docket No. F-2015-2493610 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-2015-2493610 is marked closed.

Date: June 29, 2017

/s/  
Darlene Davis Heep  
Administrative Law Judge