

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Laura Cann	:	
	:	
v.	:	F-2017-2603158
	:	
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 May 8, 2017, Lara Cann (Ms. Cann 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. Cann stated that the utility was threatening to shut off her service, that her budget bill increased from \$95 per month to \$300 per month and that when the number of people in her household increased, the amount of the required payment did not change. This is a timely appeal of the Bureau of Consumer Services decision, Case Number 3515313.

On May 22, 2017, PECO filed an Answer denying all material allegations and asserting that the Complainant defaulted on a previously issued payment arrangement.

On June 6, 2017, a Hearing Notice was issued setting an Initial Hearing for July 20, 2017 at 10:00 a.m.

A Prehearing Order issued on June 9, 2017, reminded the parties of the hearing date and time. The Prehearing Order also informed the Complainant that the matter could be dismissed if she did not appear, that any requests for a 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 Prehearing Order also advised the Complainant to arrive in the hearing room at 9:45 a.m.

The hearing began as scheduled at 10:00 a.m. on July 20, 2017. Counsel for PECO appeared at the hearing with witnesses and was prepared to proceed. Complainant was not present. The hearing was delayed to give Complainant time to appear. The Complainant arrived at 10:20 a.m.

A recess was taken so that the parties could discuss settlement. The parties reported that they had reached a settlement in principle and a Certificate of Satisfaction would be filed upon final settlement.

On October 23, 2017, it was reported that the matter did not settle and by notice dated December 1, 2017, it was scheduled for further hearing on January 19, 2018.

The Complainant did not appear for the further hearing. PECO counsel appeared with a witness and was prepared to proceed. At 10:15 a.m., counsel for PECO moved that the matter be dismissed for failure to prosecute.

The record closed on February 2, 2018, 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 Laura Cann, who is a gas and electric customer of PECO at 638 Darby Terrace in Darby, Pennsylvania.

2. PECO Energy Company is the Respondent.

3. On May 8, 2017, the Complainant filed this action.

4. The Respondent filed an Answer on May 22, 2017.

5. By Notice dated June 6, 2017, the Commission scheduled an initial hearing for July 20, 2017, at 10:00 a.m.

6. The Commission sent the Notice of the hearing to Ms. Cann by regular first-class mail to the address stated on the Complaint.

7. On June 9, 2017, a Prehearing Order was mailed to the Complainant, which reminded her of the hearing date, time and location 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. The Complainant appeared for the hearing on June 20, 2017.
9. The parties settled the matter in principle and PECO was to submit a Certificate of Satisfaction upon final settlement of the matter.
10. On October 23, 2017, it was reported that the matter did not settle.
11. By notice dated December 1, 2017, the matter was scheduled for further hearing on January 19, 2018.
12. All hearing notices and prehearing orders were sent by first-class mail.
13. None of the documents mailed to Complainant was returned as undeliverable.
14. The Complainant failed to appear for the January 19, 2018, hearing.
15. Complainant did not contact the Commission to request a continuance or to state that she could not attend the hearing.
16. Complainant has not contacted the Commission following the January 19, 2018, hearing.

#### 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.

Ms. Cann did not appear for the scheduled 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. 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. 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 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 Laura Cann at Docket No. F-2017-2603158 is granted.
2. That the Complaint of Laura Cann against PECO Energy Company at Docket No. F-2017-2603158 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-2017-2603158 is marked closed.

Date: April 10, 2018

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/s/  
Darlene Davis Heep  
Administrative Law Judge