

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Donna McCrary	:	
	:	
v.	:	C-2018-3005214
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Complaint of Donna McCrary against PECO Energy Company because she failed to appear for her hearing and prosecute her Complaint.

HISTORY OF THE PROCEEDING

On October 4, 2018, Donna McCrary (Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission) requesting an explanation of why she was on both the Customer Assistance Program (CAP) and budget billing.

On October 29, 2018, PECO filed an Answer denying all material allegations of fact in the Complaint. Further, PECO averred the Complainant is actively enrolled in its Customer Assistance Program (CAP) and requested the Complaint be dismissed.

By Hearing Notice dated November 1, 2018, a hearing was scheduled for December 18, 2018, at 9:30 a.m., as part of a Call of the Docket, and the matter was assigned to me. The Hearing Notice advised the parties of the location, date and time of the scheduled hearing and warned in bold and underlined type: “**Attention: You must be available in the hearing room when your case is called by the presiding Administrative Law Judge. If you are not present and prepared to go forward with your case when it is called, your case will be dismissed by the Administrative Law Judge.**”

A Prehearing Order was issued on November 14, 2018. The Prehearing Order directed the parties to comply with various procedural requirements and directed that a request to change the scheduled hearing should be sent to me at least five days prior to the hearing date, be in writing and state the agreement or opposition of the other party. It also warned in bold type: “**If the customer is not present and prepared to go forward with the case when it is called, the case will be dismissed by the Administrative Law Judge.**”

The Call of the Docket hearings began on December 18, 2018, as scheduled. This matter was called to proceed at 9:47 a.m. Counsel for PECO was present with a witness and was prepared to proceed. The Complainant was not present.

No witnesses were presented, and no exhibits were introduced into the record. Counsel for PECO moved that the Complaint be dismissed with prejudice for lack of prosecution pursuant to 52 Pa. Code § 5.245. In accordance with Commission policy, I am granting the Motion.

The record closed on January 3, 2018, upon my receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is Donna McCrary.
2. The Respondent is PECO Energy Company.

3. On October 4, 2018, the Complainant filed a Complaint with the Commission against the Respondent.
4. On October 29, 2018, the Respondent filed an Answer to the Complaint.
5. By Hearing Notice dated November 1, 2018, a hearing was scheduled for December 18, 2018, at 9:30 a.m.
6. The Hearing Notice advised the parties of the location, date and time of the scheduled hearing and warned in bold and underlined type: “**Attention: You must be available in the hearing room when your case is called by the presiding Administrative Law Judge. If you are not present and prepared to go forward with your case when it is called, your case will be dismissed by the Administrative Law Judge.**”
7. On November 14, 2018, a Prehearing Order was sent to all parties containing, *inter alia*, the following warning in bold type: “**If the customer is not present and prepared to go forward with the case when it is called, the case will be dismissed by the Administrative Law Judge.**”
8. The Hearing Notice and the Prehearing Order were sent to the Complainant by regular first-class mail.
9. None of the documents mailed to the Complainant were returned as undeliverable.
10. The Complainant failed to appear at the December 18, 2018 hearing.
11. The Complainant did not settle or withdraw her Complaint.

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.

On November 1, 2018, the Commission sent notice of the initial hearing in this case to the Complainant by regular first-class mail. The Hearing Notice advised the parties of the location, date and time of the scheduled hearing and warned in bold and underlined type: **“Attention: You must be available in the hearing room when your case is called by the presiding Administrative Law Judge. If you are not present and prepared to go forward with your case when it is called, your case will be dismissed by the Administrative Law Judge.”**

In addition, I issued a Prehearing Order on November 14, 2018, which contained, *inter alia*, the following warning in bold type: **“If the customer is not present and prepared to go forward with the case when it is called, the case will be dismissed by the Administrative Law Judge.”**

To my knowledge, none of the documents mailed to the Complainant were returned as undeliverable. Accordingly, I must presume 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.*, 449 A.2d 658 (Pa. Super. 1982).

The Complainant did not appear for the hearing and has not contacted the Commission. 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 29, 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 of and the parties to this proceeding. 66 Pa.C.S. § 701.
2. Notice properly mailed to a party's last known address and not returned by the post office is presumed to have been received. *Berkowitz v. Mayflower Securities, Inc.*, 317 A.2d 584 (Pa. 1974); *Meirerdierck v. Miller*, 147 A.2d 406 (Pa. 1959); *Samaras v. Hartwick*, 698 A.2d 71 (Pa. Super. 1997); *Judge v. Celina Mutual Insurance Co.*, 449 A.2d 658 (Pa. Super. 1982).
3. 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 29, 1993); 52 Pa. Code § 5.245(a).
4. 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 Donna McCrary at Docket No. C-2018-3005214 is granted;
2. That the Complaint of Donna McCrary against PECO Energy Company at Docket No. C-2018-3005214 is dismissed with prejudice; and
3. That Docket No. C-2018-3005214 be marked closed.

Date: January 30, 2019

_____/s/
F. Joseph Brady
Administrative Law Judge