

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tangelia Clark	:	
	:	
v.	:	C-2019-3010003
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
F. Joseph Brady  
Administrative Law Judge

**INTRODUCTION**

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

**HISTORY OF THE PROCEEDING**

On May 16, 2019, Tangelia Clark (Complainant or Ms. Clark) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission) alleging that the utility was threatening to shut off her service or had already shut off her service, incorrect billing, and requesting a payment agreement.

On May 22, 2019, PECO filed an Answer to the Complaint alleging that the Complainant was enrolled in the Customer Assistance Program (CAP) and her outstanding balance is comprised of CAP arrears. Thus, PECO argues the Commission has no jurisdiction to order a payment agreement in this case and requests that the Complaint be dismissed.

By Hearing Notice dated May 29, 2019, a hearing was scheduled for July 2, 2019, at 1:30 p.m., and the matter was assigned to me. The matter was scheduled along with other cases as part of a Call of the Docket. I issued a Prehearing Order on May 30, 2019. Both the Hearing Notice and the Prehearing Order advised the parties of the location, date and time of the scheduled hearing, and warned in bold and underlined type: **“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.”**

The Call of the Docket began on July 2, 2019 at 1:30 p.m. as scheduled. This matter was called to proceed at 1:54 p.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 regulation, I am granting the Motion.

The record closed on July 15, 2019, upon my receipt of the transcript.

#### FINDINGS OF FACT

1. The Complainant is Tangelia Clark.
2. The Respondent is PECO Energy Company.
3. On May 16, 2019, the Complainant filed a Complaint with the Commission against the Respondent.
4. On May 22, 2019, the Respondent filed an Answer to the Complaint.
5. By Hearing Notice dated May 29, 2019, a hearing was scheduled for July 2, 2019, at 1:30 p.m.

6. On May 30, 2019, a Prehearing Order was sent to all parties.

7. Both the Hearing Notice and the Prehearing Order advised the parties of the location, date and time of the scheduled hearing, and warned in bold and underlined type: **“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.”**

8. Both the Hearing Notice and the Prehearing Order were sent to the Complainant by regular first-class mail.

9. Neither the Hearing Notice nor the Prehearing Order were returned as undeliverable.

10. The Complainant failed to appear at the July 2, 2019 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. *Id.*

On May 29, 2019, the Commission sent notice of the Initial Hearing in this case to the Complainant by regular first-class mail. In addition, I issued a Prehearing Order on May 30, 2019. Both the Hearing Notice and the Prehearing Order advised the parties of the location, date and time of the scheduled hearing, and warned in bold and underlined type: **“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.”**

To my knowledge, none of the documents mailed to the Complainant were returned as undeliverable. Accordingly, I must presume that this mail, which were sent in the ordinary course of business, were 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 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. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990). 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 burden of proof in this proceeding is on the Complainant. 66 Pa.C.S. § 332(a).

3. 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); *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).

4. 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).

5. 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 Tangelia Clark at Docket No. C-2019-3010003 is granted;

2. That the Complaint of Tangelia Clark against PECO Energy Company at Docket No. C-2019-3010003 is dismissed with prejudice; and

3. That Docket No. C-2019-3010003 be marked closed.

Date: September 20, 2019

\_\_\_\_\_  
/s/  
F. Joseph Brady  
Administrative Law Judge