

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Julie McCrey and Charles Holmes	:	
	:	
v.	:	C-2019-3009823
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
F. Joseph Brady  
Administrative Law Judge

**INTRODUCTION**

This Initial Decision dismisses the Complaint of Julie McCrey and Charles Holmes against PECO Energy Company because they failed to appear for their hearing and prosecute their Complaint.

**HISTORY OF THE PROCEEDING**

On May 7, 2019, Julie McCrey and Charles Holmes (Complainants) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission) alleging that they were being billed incorrectly.

On June 4, 2019, PECO filed an Amended Answer to the Complaint with New Matter<sup>1</sup> denying that there are incorrect charges on the Complainants' bill and requesting that the Complaint be dismissed. In its New Matter, PECO alleged that the Complainants were

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<sup>1</sup> PECO filed its original Answer to the Complaint on May 31, 2019.

precluded from filing complaints with the Commission pursuant to Julie McCrey v. PECO, Docket No. C-2015-2501451 (Final Order entered March 1, 2018). Accordingly, PECO requested that the Complaint be dismissed.

By Hearing Notice dated June 11, 2019, a hearing was scheduled for July 23, 2019, at 10:00 a.m., 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 italicized type: “*Attention: You may lose the case if you do not come to this hearing and present facts on the issues raised.*”

I issued a Prehearing Order on June 26, 2019. 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 underlined 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 hearing began on July 23, 2019, as scheduled. Counsel for PECO was present with a witness and was prepared to proceed. The Complainants were not present. The Complainants were given an additional 15 minutes to appear but failed to do so.

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 the Commission’s regulation, I am granting the Motion.

The record closed on September 4, 2019, upon my receipt of the transcript.

#### FINDINGS OF FACT

1. The Complainants are Julie McCrey and Charles Holmes.
2. The Respondent is PECO Energy Company.

3. On May 7, 2019, the Complainants filed a Complaint with the Commission against the Respondent.
4. On May 31, 2019, the Respondent filed an Answer to the Complaint.
5. On June 4, 2019, the Respondent filed an Amended Answer to the Complaint with New Matter.
6. By Hearing Notice dated June 11, 2019, a hearing was scheduled for July 23, 2019, at 10:00 a.m.
7. On June 26, 2019, a Prehearing Order was sent to all parties containing, *inter alia*, a warning of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing.
8. Both the Hearing Notice and the Prehearing Order were sent to the Complainants by regular first-class mail.
9. Neither the Hearing Notice nor the Prehearing Order were returned as undeliverable.
10. The Complainants failed to appear at the July 23, 2019 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. *Id.*

On June 11, 2019, the Commission sent notice of the Initial Hearing in this case to the Complainants by regular first-class mail. The Hearing Notice advised the parties of the

location, date and time of the scheduled hearing and warned in italicized type: “*Attention: You may lose the case if you do not come to this hearing and present facts on the issues raised.*” In addition, I issued a Prehearing Order on June 26, 2019, also warning in underlined 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 Complainants was returned as undeliverable. Accordingly, I must presume that this mail, sent in the ordinary course of business, was received by the Complainants. *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 Complainants did not appear for the hearing and have not contacted the Commission. Under these circumstances, the Complainants have had ample opportunity to appear and be heard in this proceeding. Therefore, the due process rights of the Complainants 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 parties bringing this Complaint, the Complainants bear the burden of proving by a preponderance of the evidence that they are 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 their Complaint, the Complainants have 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 Complainants. 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); *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).
4. The due process rights of the Complainants 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 Complainants have failed to meet their burden of proving that they are entitled to the relief that they seek 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 Julie McCrey and Charles Holmes at Docket No. C-2019-3009823 is granted;

