**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Eric Lewis :

:

v. : F-2015-2468743

:

PECO Energy Company :

**INITIAL DECISION**

Before

Eranda Vero

Administrative Law Judge

This Initial Decision grants PECO Energy Company’s Motion to Dismiss the Complaint of Eric Lewis with prejudice because he failed to appear and prosecute the case.

history of the proceeding

On February 20, 2015, Eric Lewis (Mr. Lewis or Complainant) filed a formal Complaint against PECO Energy Company (PECO or Respondent) alleging that PECO had shut off his gas and electric service and requesting a payment arrangement on his account balance.

On March 16, 2015, PECO filed its Answer and New Matter, seeking the dismissal of the Complaint and striking of Complainant's requested relief as the Commission has no authority to grant a payment arrangement on Customer Assistance Program (CAP) arrears.

A Hearing Notice dated March 26, 2015, notified the parties that an initial hearing was scheduled for Tuesday, May 19, 2015, at 9:30 a.m. as part of the morning session of a call-of-the docket proceeding.

On April 7, 2015, the Respondent filed a Motion for Judgment on the Pleadings. The Respondent averred that the Complainant’s final balance with PECO is $3,620.48, of which $3,329.36 consists of CAP arrears. The Respondent asserts that under 66 Pa.C.S. § 1405(c), the Complainant is not entitled to a payment arrangement.

A Prehearing Order was issued on April 8, 2015, reminding the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

The Complainant did not file any response to the New Matter or to the Respondent’s Motion for Judgment on the Pleadings.

On May 4, 2015, I issued an Order granting, in part, and denying, in part, PECO’s Motion for Judgement on the Pleadings. In particular, the Order dismissed the portion of the Complaint requesting a payment arrangement on the $3,329.36 portion of Mr. Lewis final balance consisting of CAP arrears. The initial hearing would proceed as scheduled on the non-CAP portion of Mr. Lewis’ balance with PECO Energy Company.[[1]](#footnote-1)

The hearing convened as scheduled on May 19, 2015. Shawane Lee, Esq. appeared representing PECO Energy Company. Neither Complainant nor a counsel for the Complainant appeared at the hearing. The hearing convened at approximately 12:00 p.m., after I confirmed that the Complainant had not called, or otherwise shown good cause not to appear at the scheduled hearing.

Counsel for PECO moved to dismiss the Complaint with prejudice for lack of prosecution. That Motion is granted pursuant to the ordering paragraphs below. The record in this matter closed on May 19, 2015.

FINDINGS OF FACT

1. The Complainant is Eric Lewis, whose mailing address is 19 N. 4th Avenue, Coatesville, Pennsylvania 19320.

2. The Respondent is PECO Energy Company.

3. On February 20, 2015, Complainant filed a Formal Complaint with the Commission against PECO Energy Company alleging that PECO had shut off his gas and electric service and that he is unable to pay his utility bill to PECO. Complaint ¶ 4.

4. As relief, the Complainant requested a payment arrangement. Complaint ¶¶ 4 and 5.

5. On March 16, 2015, PECO filed its Answer and New Matter, seeking the dismissal of the Complaint and the striking of Complainant's requested relief as the Commission has no authority to grant a payment arrangement on CAP arrears.

6. A Hearing Notice dated March 26, 2015, notified the parties that an initial hearing was scheduled for Tuesday, May 19, 2015, at 9:30 a.m. as part of the morning session of a call-of-the docket proceeding.

7. On April 7, 2015, the Respondent filed a Motion for Judgment on the Pleadings stating, *inter alia*, that $3,329.36 of the Complainant’s $3,620.48 final balance with PECO consists of CAP arrears.

8. The Motion sought to dismiss the Mr. Lewis’ Complaint because the Commission has no authority to grant a payment arrangement on CAP arrears.

9. The Complainant did not file any response to the New Matter or to the Respondent’s Motion.

10. An Order dated May 4, 2015, granted, in part, and denied, in part, PECO’s Motion for Judgement on the Pleadings.

11. The Order dismissed the portion of the Complaint requesting a payment arrangement on the $3,329.36 portion of Mr. Lewis’ final balance consisting of CAP arrears.

12. The Order sustained the portion of the Complaint requesting a payment arrangement on the non-CAP portion of Mr. Lewis’ balance with PECO Energy Company.

13. A Prehearing Order was issued on April 8, 2015, reminding the parties of the date and time of the scheduled hearing, informing them of the procedures applicable to this proceeding, and directing the submission of documents prior to the hearing.

14. None of the documents mailed to Complainant at the address provided on his Complaint was returned to the Commission by the United States Postal Service as undeliverable.

15. The Complainant failed to appear at the scheduled hearing.

16. The Complainant did not settle or withdraw this Complaint prior to the scheduled hearing date or obtain a continuance.

DISCUSSION

In this formal Complaint, Mr. Lewis alleged that PECO had shut off his gas and electric service and requested a payment arrangement on his account balance. As the party seeking affirmative relief from the Commission, the burden of proof rests on the Complainant. 66 Pa.C.S.A. § 332(a).

Administrative agencies, like the Public Utility Commission, are required to provide due process to the parties appearing before them. This requirement is satisfied when the parties are afforded notice and the opportunity to appear and be heard. *Schneider v. Pa. Pub. Util. Comm’n.,* 479 A.2d 10 (Pa. Cmwlth. 1984). Notice mailed to a party’s last known address and not returned by the post office is presumed to have been received. *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa. Cmwlth. 1994).

A Hearing Notice and a Prehearing Order were mailed to Mr. Lewis at the address listed on his formal Complaint form. Neither document was returned to the Commission as undeliverable by the post office. Therefore, the Complainant was deemed to have received these documents and had sufficient notice of the day, date and time of the scheduled hearing. Neither the Complainant nor a representative licensed to practice law in this Commonwealth appeared at the hearing. To date, there is no further information about the Complainant regarding this hearing. His failure to appear is unexcused.

Once notice of a hearing and the opportunity to be heard has been provided, it is the responsibility of the parties to appear and participate in the hearing. *Craig Sentner v. Bell Telephone Co. of Pennsylvania*, Docket No. F-00161106, (Opinion and Order entered October 25, 1993). The Complainant waived the opportunity to participate in the hearing by failing to appear. Mr. Lewis’ Complaint will be dismissed with prejudice. 52 Pa.Code § 5.245(a); *Martin W. Jefferson v. UGI Utilities, Inc.*, 1995 Pa. PUC LEXIS 159.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S.A. § 701.
2. As the Complainant, Eric Lewis had the burden of proof and failed to carry that burden. 66 Pa.C.S.A. § 332(a).

3. Notice mailed to a party’s last known address and not returned by the post office is presumed to have been received. *Chartiers Industrial and Commercial Development Authority v. Allegheny County Board of Property Assessment Appeals and Review*, 645 A.2d 944 (Pa. Cmwlth. 1994).

4. By failing to appear and be heard on this Complaint, Complainant waived the opportunity to participate in the hearing. 52 Pa.Code § 5.245(a); *Martin W. Jefferson v. UGI Utilities, Inc*., 1995 Pa. PUC LEXIS 159.

5. Mr. Lewis has failed to meet his burden of proving that he is entitled to the relief he is seeking from the Commission.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of PECO Energy Company to dismiss the formal Complaint of Eric Lewis at Docket No. F-2015-2468743 is granted.

2. That the Complaint filed by Eric Lewis against PECO Energy Company at Docket No. F-2015-2468743 is dismissed with prejudice for failure to prosecute.

3. That the Secretary’s Bureau should mark this matter closed.

Date: June 18, 2015 /s/

Eranda Vero

Administrative Law Judge

1. The Order offered Mr. Lewis the opportunity to notify me in writing prior to the hearing date of May 19, 2015, if he no longer wished to prosecute his Complaint. No communication was received from Mr. Lewis prior to the hearing date. [↑](#footnote-ref-1)