

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Scott Benner	:	
	:	
v.	:	C-2016-2543519
	:	
PECO Energy Company	:	

**INITIAL DECISION**

Before  
Dennis J. Buckley  
Administrative Law Judge

**INTRODUCTION**

This decision dismisses a formal Complaint for failure to appear and prosecute.

**HISTORY OF PROCEEDING**

On May 5, 2016, Scott Benner (Complainant) filed a formal Complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (PECO or Respondent). The Complaint requested that the Commission order a payment arrangement (PAR).

The Respondent filed an Answer *nunc pro tunc* on June 1, 2016. The Answer admitted that the Respondent provided service to the Complainant at the address stated in the Complaint. The Answer denied that Complainant was entitled to a further PAR in that Complainant had defaulted on a prior Commission-ordered PAR and had consistently failed to meet payment obligations. The Answer requested that the Commission dismiss the Complaint.

By notice dated July 20, 2016, the Commission scheduled this matter for an initial telephonic hearing on August 19, 2016 at 10:00 a.m. and assigned the case to me. I issued a prehearing order dated July 25, 2016, addressing, *inter alia*, requests for continuance, the potential consequences of non-appearance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

I conducted a telephonic hearing on August 19, 2016, at 10:00 a.m. as scheduled. The Complainant failed to appear for that hearing. I attempted to call the Complainant at approximately 10:00 a.m. at the telephone number shown on the hearing notice. I received a recorded message that the line had been disconnected.

Upon commencement of the hearing, Shawane L. Lee, Esquire, counsel for the Respondent, stated that PECO had received the same disconnect message when it attempted to contact Complainant before the hearing, and that Complainant had not replied to e-mails from PECO. Ms. Lee then moved to dismiss the Complaint for failure to appear and prosecute. N.T. 6. I advised her that I would take the motion under advisement. N.T. 6.

The record closed on September 22, 2016, the date the transcript was filed with the Secretary's Bureau. This decision grants the Respondent's motion to dismiss the Complaint.

#### FINDINGS OF FACT

1. The Complainant in this case is Scott Benner.
2. The Respondent in this case is PECO Energy Company.
3. On May 5, 2016, the Complainant filed a Complaint with the Commission against the Respondent.
4. The Respondent filed an Answer on June 1, 2016.

5. On July 25, 2016, a prehearing order was issued setting forth the potential result of failure to appear by a party.

6. The prehearing order was never returned to the Office of Administrative Law Judge by the Complainant.

7. By notice dated July 20, 2016, the Commission scheduled this matter for an initial telephonic hearing on August 19, 2016 at 10:00 a.m.

8. The Commission sent notice of the telephonic hearing in this case to the Complainant by regular first-class mail to the address stated on the Complaint.

9. The Commission's hearing notice was never returned to the sender.

10. The Complainant failed to appear at the August 19, 2016 telephonic 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.

The Commission sent notice of the telephonic hearing in this case to the Complainant on July 20, 2016, by regular first-class mail to the address stated on the Complaint. To my knowledge this piece of mail was never returned to the sender, the scheduling staff for the Office of Administrative Law Judge in Harrisburg. In addition, I issued a prehearing order dated July 25, 2016, which, *inter alia*, directed the parties that if a party was not available, that party might lose the case. This order, which was also mailed to the Complainant at the address stated on the Complaint, was never returned. 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.*, 444 A.2d 658 (Pa.Super. 1982).

The Complainant did not appear for the scheduled hearing because he was not available at the telephone number listed on the telephonic hearing notice, the line having been disconnected. The Complainant had ample opportunity to appear and be heard in this proceeding, but voluntarily chose not to do so. Therefore, the due process rights of the Complainant have been fully protected. *Sentner v. Bell Telephone Co. of Pa.*, Docket No. F-00161106 (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 he is entitled to relief. By failing to appear and proffer any evidence to support his complaint, the Complainant has failed to meet this burden. Under these circumstances, the Complaint should be dismissed with prejudice. *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (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. § 702.

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 (Order entered October 25, 1993); 52 Pa.Code § 5.245(a).

3. By failing to appear and proffer any evidence to support his Complaint, the Complainant has failed to meet his burden of proving that he is entitled to the relief that he 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 Scott Benner at Docket No. C-2016-2543519 is granted.

2. That the Complaint of Scott Benner against PECO Energy Company at Docket No. C-2016-2543519 is dismissed with prejudice for failure to appear and prosecute.

3. That the docket at Docket No. C-2016-2543519 is marked closed.

Date: December 20, 2016

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/s/  
Dennis J. Buckley  
Administrative Law Judge