

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jonathan Ruiz Beltran	:	
	:	
v.	:	C-2016-2569045
	:	
Pennsylvania Electric Company	:	

INITIAL DECISION

Before
Dennis J. Buckley
Administrative Law Judge

This Initial Decision dismisses a formal Complaint brought by Jonathan Ruiz Beltran (Complainant) against Pennsylvania Electric Company (Penelec). Complainant failed to appear for the hearing in this case, so his Complaint must be dismissed.

HISTORY

On September 16, 2016, Complainant filed a formal Complaint against Penelec. In that Complaint, the Complainant alleges: that Penelec acted unreasonably in allowing his bill to exceed \$10,000; that he has never lived at the service address; that he is the victim of identity theft; and, that a prior payment arrangement granted by the Commission's Bureau of Consumer Services (BCS) is unreasonable and unaffordable. This case is an untimely appeal of that BCS determination at Case No. 3413756.

On October 20, 2016, Penelec filed an Answer to the Complaint in which Penelec addressed with specificity each allegation, denying the same.

On October 25, 2016, a hearing Notice was issued, setting December 7, 2016, as the date for a telephonic hearing in this case.

On October 31, 2016, a standard form prehearing Order was issued which included the explanation that failure to attend the scheduled hearing may result in judgment against the non-appearing party.

Prior to the hearing, Penelec requested a continuance due to unexpected unavailability of its witness. The request was not opposed, and on December 7, 2016, a hearing Notice was issued setting January 19, 2017, as the date for the rescheduled hearing.

On January 19, 2017, the hearing convened as scheduled, originating from the Commission's office in Harrisburg, Pennsylvania. Counsel for Penelec, Lauren M. Lepkoski, Esquire, appeared on behalf of Penelec. As will be explained in detail, below, Complainant did not appear, nor did Complainant contact the Office of Administrative Law Judge (OALJ) the day of the hearing or at any time thereafter up to the present to request a rescheduled hearing. Counsel for Penelec moved for dismissal of the Complaint for failure to prosecute, which Motion was taken under advisement.

The record in this case closed on February 8, 2017, with the filing of an eight page transcript from January 19, 2017. Complainant has never contacted the Commission to request a rescheduled hearing. This matter is ready for decision.

FINDINGS OF FACT

1. The Complainant in this case is Jonathan Ruiz Beltran who provided an address of 2101 Liberty Street, Apartment 1, Erie, Pennsylvania, on his Complaint.
2. The Respondent in this case is Pennsylvania Electric Company, a Commission jurisdictional electric distribution company.

3. On September 16, 2016, Complainant filed a formal Complaint.
4. On October 20, 2016, Penelec filed an Answer to the Complaint.
5. On October 31, 2016, a standard form Prehearing Order was issued.
6. The Prehearing Order was mailed to Complainant at the address that he provided on his Complaint.
7. The Prehearing Order was not returned by the United States Postal Service, and so is presumed to have been served on Complainant.
8. On January 19, 2017, a telephonic hearing convened as scheduled, originating from the Commission's office in Harrisburg, Pennsylvania.
9. Counsel for Penelec appeared at the hearing, but Complainant did not.

DISCUSSION

Pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a), the burden of proof is on the proponent of a rule or order. In this proceeding, the Complainant is the proponent of a rule or order. Therefore, Mr. Beltran had the burden of proving he is entitled to the relief requested in his Complaint.

The Commission satisfies the requirement of affording Complainant with administrative due process by providing timely notice of the hearing on the Complaint and the opportunity to be heard. *Schneider v. PA PUC*, 479 A.2d 10 (Pa. Cmwlth. Ct. 1984).

The hearing Notice, hearing Cancellation/Reschedule Notice, and the October 31, 2016 prehearing Order were mailed in the ordinary course of the Commission's business to Complainant at the address he provided on his Complaint and to counsel for Respondent at the

address listed on its Answer. The hearing Notice and the prehearing Order were not returned by the post office as undeliverable. In addition, Complainant had the duty to keep his mailing address current with the Secretary, in accord with 52 Pa. Code § 1.24 of the Commission's regulations. Complainant has not provided notice of an address change.

The undersigned attempted to contact the Complainant by telephone at the time set for the hearing in this matter, at both telephone numbers provided by the Complainant on his Complaint. I reached an answering machine or voicemail at the number listed as his home telephone number and left a message identifying myself, the reason for my call, and asked that Complainant contact me immediately. After several minutes, I repeated this process. Complainant never returned my call.

I next called the mobile phone number. It was very difficult to determine whether the number was even working, or whether my call had been dropped or connected, but I left a message for Complainant as I had on his home phone answering machine.

Counsel then moved for dismissal of the Complaint with prejudice for failure to prosecute. I took the Motion under advisement and adjourned the hearing.

After the hearing adjourned, I was called from the mobile phone number by a Ms. Cheatham who said that she was an acquaintance of Complainant's and had arranged for him to use her mobile phone, but that Complainant was not present. I reconvened the hearing, briefly, to put that on the record, and then adjourned the hearing.

In this proceeding, Complainant bears the burden of proving by a preponderance of the evidence that he is entitled to relief. 66 Pa.C.S. § 332(a). By failing to appear and present any evidence in support of his Complaint, Complainant has failed to meet this burden. Thus, the motion of Penelec to dismiss the Complaint for failure to prosecute will be granted, and the Complaint must be dismissed with prejudice. 52 Pa. Code § 5.245(a), *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995). Accordingly, the merits of the Complaint will not be addressed. *Jones v. The Peoples Natural Gas Company, d/b/a Dominion Peoples*, Docket No.

C-20054885 (Order entered February 14, 2006); and *Mya Lau v. PPL Electric Utilities Corp.*, Docket No. F-01816882 (Order entered October 19, 2005); *El-Ayazra v. West Penn Power Co.*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016).

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding. 66 Pa. C.S. § 701.
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. The Complainant, as the proponent of a rule or order has the burden of proof. 66 Pa. C.S. § 332(a).
4. When a Complainant fails to appear for a scheduled conference or hearing, the Complaint is to be dismissed with prejudice. *Jefferson v. UGI Utilities, Inc.*, Docket No. Z-00269892 (Order entered December 26, 1995).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion of Pennsylvania Electric Company for dismissal, with prejudice, of the Complaint filed against it by Jonathan Ruiz Beltran at Docket No. C-2016-2569045, for the failure of Mr. Beltran to appear and prosecute his Complaint at the January 19, 2017 hearing is granted.

2. That the Complaint of Jonathan Ruiz Beltran against Pennsylvania Electric Company at Docket No. C-2016-2569045 is dismissed, with prejudice, for the failure of Mr. Beltran to prosecute his Complaint.

3. That the Secretary's Bureau mark Docket No. C-2016-2569045 closed.

Date: March 26, 2017

_____/s/
Dennis J. Buckley
Administrative Law Judge