

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Eric Hudson

v.

PECO Energy Company

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C-2016-2555083

INITIAL DECISION

Before
Darlene D. Heep
Administrative Law Judge

INTRODUCTION

This decision dismisses the complaint filed in this matter for failure of the Complainant to appear for the hearing and prosecute the complaint.

HISTORY OF THE PROCEEDING

On July 7, 2016, Eric Hudson (“Complainant”) filed a formal complaint (“Complaint”) against PECO Energy Company (“PECO” or “Company” or “Respondent”). Checked on the Complaint form were the statements, “The utility is seeking to shut off my service or has already shut off my service,” “Incorrect charges on my bill” and, “I would like a payment arrangement.”

Complainant also checked the box for “Other” and under “Requested Relief,” there was a lengthy statement. In that statement, Complainant contended that his family was experiencing unexpected and significant financial hardship, that his children have illnesses that

require electric service for treatment and that he submitted an application for medical certification to maintain service but PECO did not process his request. As relief, he is seeking a detailed accounting of charges, assistance with a customer assistance program (“CAP”) application and a payment arrangement. Complainant’s balance is more than \$20,000.

On July 22, 2016, Shawane Lee, Esquire, counsel for PECO, filed an Answer, New Matter and Notice to Plead. All major allegations were denied. PECO averred in its New Matter that this is the Complainant’s second formal complaint against the Company in which he alleges that it denied a medical certificate, disputed termination for a past due balance, and requested assistance with a payment arrangement. PECO further averred that the matter should be dismissed in its entirety on the grounds of *res judicata*.

Complainant did not file a response to the New Matter.

On August 26, 2016, PECO filed a Motion for Judgment on the Pleadings. In the Motion, PECO contended that the Complaint should be dismissed in its entirety pursuant to the doctrine of *res judicata*. Complainant did not file a response.

On September 22, 2016, a Hearing Notice was mailed to all parties, setting the hearing for October 14, 2016, before Administrative Law Judge Fordham. On September 30, 2016, a Judge Change Notice assigned the matter to the undersigned for the October 14, 2016 hearing.

On October 4, 2016, the Commission was notified that Mr. Hudson had filed for bankruptcy. Also on October 4, 2016, the undersigned issued an Order staying the matter while the bankruptcy proceedings were pending.

On January 9, 2017, PECO notified the Commission that the bankruptcy action filed by Complainant was dismissed.

Subsequent to dismissal of the Complainant’s bankruptcy action, on January 31, 2017, an Order was issued granting the Motion for Judgment on the Pleadings with respect to

the claims pertaining to medical certification, the notice of shut off or the threat to shut of service, the request for account information through April 28, 2014, the request for a payment arrangement and the CAP application assistance. The Motion was denied with respect to Complainant's claim of incorrect charges as it pertains to charges since the previous Complaint was filed on April 28, 2014.

A telephonic hearing on the remaining issue was scheduled for April 7, 2017 at 10:00 a.m. in a Commission hearing room in Philadelphia. On February 8, 2017, a hearing notice was mailed to all parties specifying the date, time and location of the hearing.

Approximately two weeks before the hearing date, Complainant called the Office of Administrative Law Judge in Philadelphia (OALJ) and informed the Legal Assistant that he wanted an in-person hearing. Complainant and PECO were informed that they should appear in person. The day before the hearing, Complainant called and told the Legal Assistant that he wanted a telephonic hearing. Complainant was advised that he could participate by telephone.¹ The Legal Assistant confirmed that Complainant could be reached at the telephone number in the Commission's records.

At 10:00 a.m. on April 7, 2017, Shawane L. Lee, Esq. appeared in person on behalf of PECO prepared to proceed and present Theresa Ferrier as a witness for PECO. Complainant was called and there was no answer. A second call was made to Complainant and again there was no answer. A recess was taken to allow Complainant time to arrive.

At 10:21 a.m., the proceedings resumed, Complainant was again called and, again, Complainant did not answer. PECO moved that the Complaint be dismissed for failure to appear and prosecute.

About 11:30 a.m., Complainant called the OALJ and stated to the Legal Assistant that he could not attend the hearing because he had a medical emergency with his daughter and

¹ In preparation for a telephonic hearing, PECO had previously mailed participants copies of the Company's exhibits.

had taken her in for treatment. The Legal Assistant advised the Complainant that he should submit any request for rescheduling the hearing in writing and also submit any documentation in support of his absence.

On April 13, 2017, Complainant faxed to OALJ a letter stating, generally, that he was the sole caretaker for his daughter and had to address her medical issues. The letter did not show or state why he could not participate in the telephonic hearing on April 7, 2017.

In response to Complainant's request for rescheduling, PECO objected in a letter dated April 19, 2017. PECO averred that Mr. Hudson failed to appear for a hearing before ALJ Fordham and that he has filed 18 formal and informal complaints. The company also stated:

Now, the Complainant has filed the current formal complaint with the same exact dispute he raised in previous complaints. Once again, PECO is required to hold collection on the Complainant's balance. The Complainant has skillfully avoided termination by filing PUC cases and dismissed bankruptcies and has incurred a \$20,856.79 balance.

PUC Commissioner Pamela A. Witmer recently warned PECO about this very issue in the Daniel Vermeychuk v. PECO matter at Docket No. C-2013-2388323 (November 5, 2015). Commissioner Witmer stated that "the Complainant was not only ignoring his obligation to pay his bills but was actively employing various strategies to avoid paying in a timely manner." Commissioner Witmer pointed out:

It is critically important to the customers, who are ultimately left footing the bills for such abuses, that our utilities act vigilantly to prevent them, continue to take steps to identify them, and mitigate their effects as quickly as possible. I remind PECO and all of our regulated utilities of this responsibility.

PECO April 13, 2017 letter.

Complainant was called on or about May 4, 2017, and informed that additional information was needed. After a week and nothing additional was provided by the Complainant, the Legal Assistant sent an email to Complainant advising him that he had until close of business on May 16, 2017, to provide additional information. Complainant forwarded general information concerning his daughter and documents regarding a physician visit in January of

2017. He again did not provide any information specific to his not answering the phone or being available on the day of the hearing, April 7, 2017.

The record closed on May 16, 2017.

FINDINGS OF FACT

1. Eric Hudson (“Complainant”) is a PECO Energy Company electric and gas customer at 15 Greenleaf Court, Thorndale, Pennsylvania 19372.
2. PECO Energy Company is the Respondent, an energy company under the jurisdiction of the Commission.
3. On July 7, 2016, Complainant filed a Complaint against PECO Energy Company containing several allegations and seeking a payment arrangement.
4. PECO filed a Motion for Judgment on the Pleadings on August 26, 2017.
5. On September 22, 2016, a Hearing Notice was mailed to all parties, setting the hearing for October 14, 2016 before Administrative Law Judge Fordham.
6. On September 30, 2016, a Judge Change Notice assigned the matter to the undersigned for the October 14, 2016 hearing.
7. On October 4, 2016, the Commission was notified that Mr. Hudson had filed for bankruptcy and an Order stayed the matter while the bankruptcy proceedings were pending.
8. On January 9, 2017, PECO notified the Commission that the bankruptcy action filed by the Complainant was dismissed.

9. On January 31, 2017, the PECO Motion for Judgment on the Pleadings was granted in part and denied in part.

10. On February 8, 2017, a Hearing Notice was mailed to all parties scheduling a telephonic hearing on the remaining issues for April 7, 2017 at 10:00 a.m.

11. Approximately two weeks after the Hearing Notice was issued, Complainant contacted the OALJ and stated that he wanted an in-person hearing.

12. Complainant and PECO were advised that the hearing would be held in-person.

13. On the day before the hearing, Complainant contacted the OALJ and stated that he wanted a telephonic hearing and Complainant was informed that he would be called for the hearing the following day.

14. PECO appeared in-person for the hearing, with a witness and was prepared to proceed.

15. Complainant did not appear telephonically or in-person for the hearing.

16. At the start of the hearing on April 7, 2017, Complainant was called twice at the telephone number in the Commission's records and he did not answer.

17. After waiting for about twenty minutes, Complainant was called again at the same telephone number and he did not answer.

18. Subsequent to the hearing date, Complainant was informed on three occasions that he needed to provide information pertaining to his failure to appear for the hearing on April 7, 2017.

19. Complainant has not submitted information pertaining to his failure to appear for the hearing on April 7, 2017.

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.

Complainant received notice and had ample opportunity to appear and be heard. The hearing was changed from telephonic to in-person and again to telephonic at Complainant's request. The Complainant contacted the office after the hearing and stated that he would like a continuance. The Complainant was informed then and at least three times subsequently that he needed to submit information relative to his failure to appear on April 7, 2017. He failed to do so.

A Hearing Notice was sent to Complainant on February 8, 2017, advising him that a telephonic hearing on his claims would be heard on April 7, 2017. It is not disputed that he had received notice of the hearing on April 7, 2017. It is also not disputed that he did not answer the telephone when called for the telephonic hearing.

Complainant avers that he was unable to participate in the hearing because he had to address medical issues of his daughter.² When he first called after the hearing and spoke to a Legal Assistant, he stated that he had taken his daughter for medical assistance. The documents submitted by Complainant reflect general medical information concerning his daughter but show a medical appointment in January of 2017, not on April 7, 2017, the date of the scheduled hearing.

² Medical records concerning Complainant's daughter were reviewed *in camera*, contain sensitive personal information and will not be made a part of this public record.

Complainant had opportunity to appear and be heard in this proceeding, but chose not to do so. Complainant was given ample opportunity to provide support to excuse his failure to appear. H did not. 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). There is nothing in the record to support a finding that “good cause exists” to reschedule the hearing. See 52 Pa. Code § 1.15.

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 (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 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).
3. By failing to appear for the hearing and proffer any evidence to support the 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).

