

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Alexander Holden IV	:	
	:	
v.	:	C-2017-2587517
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Eranda Vero
Administrative Law Judge

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

HISTORY OF THE PROCEEDING

On February 6, 2017, Alexander Holden IV (Mr. Holden or Complainant) filed a formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) alleging that the utility has improperly refused to enroll him in its In-Program Arrearage program after he moved to a different address. As relief, Mr. Holden requests that PECO reinstate him in the program thus allowing him to obtain service under his name at his new address.

On February 17, 2017, PECO filed an Answer denying the material allegations of the Complaint.

A Hearing Notice dated March 10, 2017, notified the parties that an initial hearing was scheduled for Wednesday, April 12, 2017, at 10:00 a.m., and assigned the matter to Administrative Law Judge (ALJ) Angela T. Jones.

On March 17, 2017, ALJ Jones issued a Prehearing Order advising 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.

A Hearing Change / Judge Change Notice was issued on March 21, 2017, notifying the parties that the initial hearing was rescheduled for Thursday, April 13, 2017, at 1:30 p.m., and that the matter was assigned to me.

A second Prehearing Order was issued on March 29, 2017, advising 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 hearing convened as scheduled on April 13, 2017. Shawane L. Lee, Esq. appeared representing PECO Energy Company. Neither Complainant nor a counsel for the Complainant appeared at the hearing. The hearing reconvened at approximately 1:53 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 13, 2017.

FINDINGS OF FACT

1. The Complainant is Alexander Holden IV, whose mailing address is 5713 Lansdowne Avenue, 1st Floor Apartment, Philadelphia, PA 19131.
2. The Respondent is PECO Energy Company.
3. On February 6, 2017, Mr. Holden filed a formal Complaint against PECO alleging that the utility has improperly refused to enroll him in its In-Program Arrearage program after he moved to a different address.
4. As relief, Mr. Holden requests that PECO reinstate him in the program thus allowing him to obtain service under his name at his new address.
5. On February 17, 2017, PECO filed an Answer denying the material allegations of the Complaint.
6. A Hearing Notice dated March 10, 2017, notified the parties that an initial hearing was scheduled for Wednesday, April 12, 2017, at 10:00 a.m., and assigned the matter to ALJ Angela T. Jones.
7. On March 17, 2017, ALJ Jones issued a Prehearing Order advising 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.
8. A Hearing Change / Judge Change Notice was issued on March 21, 2017, notifying the parties that the initial hearing was rescheduled for Thursday, April 13, 2017, at 1:30 p.m., and that the matter was assigned to me.

9. A second Prehearing Order was issued on March 29, 2017, advising 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.

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

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

12. 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. Holden alleged that the utility has improperly refused to enroll him in its In-Program Arrearage program after he moved to a different address. As relief, Mr. Holden requests that PECO reinstate him in the program thus allowing him to obtain service under his name at his new address.

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 Change / Judge Change Notice dated March 21, 2017, and a Prehearing Order dated March 29, 2017, were mailed to Mr. Holden informing him of the time and place of the evidentiary hearing rescheduled for April 13, 2017. These documents were mailed to Mr. Holden 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. Holden's Complaint will be dismissed with prejudice. 52 Pa. Code § 5.245(a); *Martin W. Jefferson v. UGI Utilities, Inc.*, 1995 Pa. PUC LEXIS 159; *El-Ayazra v. West Penn Power Company*, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016).

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, Alexander Holden IV 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; *El-Ayazra v. West Penn Power Company*, Docket No. F-2015-250-2509292 (Opinion and Order entered June 30, 2016).

5. Mr. Holden 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 Alexander Holden IV at Docket No. C-2017-2587517 is granted.

2. That the formal Complaint filed by Alexander Holden IV against PECO Energy Company at Docket No. C-2017-2587517 is dismissed with prejudice for failure to prosecute.

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

Date: August 04, 2017

/s/
Eranda Vero
Administrative Law Judge