

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Jacque Whaumbush	:	
	:	
v.	:	C-2017-2622269
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
Conrad A. Johnson
Administrative Law Judge

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

HISTORY OF THE PROCEEDING

On August 30, 2017, Jacque Whaumbush (Complainant) filed a Complaint with the Pennsylvania Public Utility Commission (Commission) against PECO Energy Company (Respondent or PECO). Complainant checked the boxes on the Formal Complaint form stating 1) the utility is threatening service termination or has already terminated service, and 2) he would like a payment arrangement.

On September 19, 2017, Respondent filed an Answer averring in part that Complainant's wife, now deceased, had defaulted on a company payment arrangement while Complainant was residing at the property, and the current account balance is \$7,607.69. Also, Complainant had defaulted on a Commission payment arrangement granted to him on September 27, 2016. Therefore, Complainant was not entitled to an additional payment arrangement.

By notice dated October 25, 2017, the Commission scheduled this matter for a call-in telephonic hearing on December 1, 2017 at 10:00 a.m. and assigned the case to me. I issued a Prehearing Order dated October 25, 2017, addressing, *inter alia*, requests for continuance, subpoena procedures, attorney representation and the Commission's policy encouraging settlements.

I convened the telephonic hearing on December 1, 2017 at 10:02 a.m. Respondent was represented by Shawane L. Lee, Esquire. Respondent's witness, Regulatory Assessor Elsa Leung, was also present for the hearing. Complainant failed to appear for the hearing. Complainant did not call the conference number shown on the October 25, 2017 hearing notice at 10:00 a.m.

I recessed the hearing at 10:05 a.m. to permit additional time for Complainant to appear or to contact the Office of Administrative Law Judge (OALJ) in order to explain his absence. The telephonic proceeding remained open with counsel for Respondent and the court reporter in the telephonic hearing. I then left the hearing room to verify with the support staff for the OALJ in Pittsburgh that Complainant had not contacted the office to indicate that Complainant would be unable to participate in the telephonic hearing. My voice mail and email had no messages from Complainant stating that he would be unable to participate in the hearing.

After verifying that Complainant had not contacted OALJ in Pittsburgh, I returned to the hearing room and reconvened the hearing at approximately 10:27 a.m. Complainant had not called into the telephonic hearing. Accordingly, the hearing proceeded in Complainant's absence. Ms. Leung testified on behalf of PECO. Counsel for Respondent moved for dismissal of the Complaint for lack of prosecution. I informed counsel that the motion would be taken under advisement and an initial decision would be issued. The record was closed, and the hearing was adjourned at 10:36 a.m. on December 1, 2017.

At approximately 11:45 a.m. on December 1, 2017, Mr. Whaumbush called into the Pittsburgh OALJ and spoke with my legal assistant. Mr. Whaumbush stated he did not call

in earlier because he did not have any heat and he could not participate in a hearing while he was cold. I did not deem Mr. Whaumbush's excuse sufficiently compelling to warrant reopening the hearing. I directed my legal assistant to inform Mr. Whaumbush that he would receive a decision in the mail.

FINDINGS OF FACT

1. Complainant in this case is Jacque Whaumbush.
2. Respondent in this case is PECO Energy Company.
3. On August 30, 2017, Complainant filed a Complaint with the Commission against Respondent.
4. By notice dated October 25, 2017, the Commission scheduled this matter for an initial telephonic hearing on December 1, 2017, at 10:00 a.m.
5. The Commission sent notice of the telephonic hearing in this case to Complainant by regular first class mail to the address stated on the Complaint.
6. The Commission's hearing notice was never returned to the sender.
7. Complainant failed to appear at the December 1, 2017 telephonic hearing.
8. Complainant did not settle, withdraw or request a continuance of the matter.

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 with notice and the opportunity to be heard.

The Commission sent notice of the telephonic hearing in this case to Complainant on October 25, 2017, 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 OALJ in Pittsburgh.

In addition, I issued a Prehearing Order dated October 25, 2017, which, *inter alia*, provided the toll-free bridge number and the PIN in order for the parties to participate in the telephonic hearing. The Prehearing Order directed the parties to call into the hearing on the scheduled day and time. The Prehearing Order, which was mailed to Complainant at the address shown 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 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). Additionally, as noted above, Complainant called the Pittsburgh OALJ approximately an hour after the hearing had concluded, thereby confirming he had notice of the scheduled hearing.

Complainant did not appear for the hearing scheduled and convened on December 1, 2017, which was the date shown on the October 25, 2017 hearing notice. Under these circumstances, 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 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).

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, 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, Complainant has failed to meet this burden. Under these circumstances, the Complaint may 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 parties and subject matter of this proceeding. 66 Pa.C.S. § 701.

2. The due process rights of 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, 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).

