

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Shawn Jackson

v.

PECO Energy Company

:
:
:
:

F-2017-2621813

INITIAL DECISION

Before
Darlene Davis Heep
Administrative Law Judge

INTRODUCTION

This decision dismisses the Complaint for failure to prosecute because Complainant did not appear for the hearing.

HISTORY OF THE PROCEEDING

On August 28, 2017, Shawn Jackson filed a Complaint against PECO Energy Company. The Complaint states that the utility is threatening to shut off his service and that Complainant would like a payment arrangement.

On September 18, 2017, PECO filed an Answer denying all material allegations. PECO also contends that under 66 Pa.C.S. Section 1405(c), the Complainant is not entitled to a Commission ordered payment arrangement because the Complainant's \$5,213.92 balance is comprised of Customer Assistance Program arrears.

On October 16, 2017, a Hearing Notice was mailed to the Complainant setting an Initial Hearing as part of the Call-of-the-Docket on December 12, 2017, beginning at 9:30 a.m. The Hearing Notice advised the Complainant to arrive in the hearing room no later than 9:15 a.m. The hearing notice also informed the Complainant, in bold type, that the case will be dismissed if the Complainant is not present and prepared to go forward at the scheduled time.

The hearing began on December 12, 2017, at 9:30 a.m. as scheduled. Counsel for PECO, Shawane Lee, Esquire, appeared with a witness and prepared to proceed. Complainant was not present. A break was taken to allow the Complainant time to appear.

The hearing resumed at approximately 9:50 a.m. and Complainant had not arrived. Counsel for PECO moved that the matter be dismissed for failure to prosecute.

The record closed on December 13, 2017. This decision grants the Respondent's Motion to Dismiss the Complaint.

FINDINGS OF FACT

1. The Complainant in this case is Shawn Jackson.
2. PECO Energy Company is the Respondent.
3. On August 28, 2017, the Complainant filed this action.
4. The Respondent filed an Answer on September 18, 2017.
5. By Notice dated October 16, 2017, the Commission scheduled an initial hearing for December 12, 2017, at 9:30 a.m. and advised the Complainant to be present in the hearing room by 9:15 a.m.

6. The Commission sent the notice of the hearing to the Complainant by regular first-class mail to the address stated on the Complaint.

7. The Hearing Notice also stated:

If you are not present and prepared to go forward with your case when it is called, your case will be dismissed by the Administrative Law Judge.

8. The Complainant failed to appear for the hearing.

9. Documents mailed to the Complainant were not returned as undeliverable.

10. The Hearing Notice mailed to the Complainant provided the telephone number and fax number for the presiding officer and the Complainant did not contact the Commission to request a continuance.

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. *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950); *Dee-Dee Cab, Inc. v. Pa. Pub. Util. Comm'n.*, 817 A.2d 593 (Pa. Cmwlth. 2003).

Complainant was sent the Hearing Notice by first-class mail and it was not returned as undeliverable. It is presumed that the notice was received. *See 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). Therefore, the due process requirement of notice was met.

The Complainant did not appear for the hearing and has not contacted the Commission. Under these circumstances, the Complainant has had ample opportunity to appear and be heard in this proceeding. 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).

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 the Complaint, the Complainant has failed to meet this burden. Therefore, 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 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 the burden of proving entitlement to the relief sought 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 Shawn Jackson at Docket No. F-2017-2621813 is granted.
2. That the Complaint of Shawn Jackson against PECO Energy Company at Docket No. F-2017-2621813 is dismissed with prejudice.
3. That the docket at Docket No. F-2017-2621813 be marked closed.

Date: December 13, 2017

/s/
Darlene Davis Heep
Administrative Law Judge