

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Howard Smith	:	
	:	
v.	:	C-2017-2626172
	:	
PECO Energy Company	:	

INITIAL DECISION

Before
F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision dismisses the Formal Complaint of Howard Smith against PECO Energy Company because he failed to appear for his hearing and prosecute his Complaint.

HISTORY OF THE PROCEEDING

On September 25, 2017, Howard Smith (Complainant) filed a Formal Complaint (Complaint) against PECO Energy Company (PECO or Respondent) with the Pennsylvania Public Utility Commission (Commission). In the Complaint, the Complainant indicated that the Respondent sent him a shut off notice and was not accepting any payments from him.

On October 10, 2017, PECO filed an Answer denying all material allegations of fact in the Complaint. PECO also contends that the Complainant participated in PECO's Customer Assistance Program (CAP) and that his total balance of \$626.90 is comprised entirely of CAP arrears. The Respondent requested that the Complaint be dismissed pursuant to

66 Pa.C.S. § 1405(c), because the Commission cannot grant the Complainant a payment arrangement on a CAP arrearage.

By Hearing Notice dated November 14, 2017, a hearing was scheduled for January 16, 2018 at 1:30 p.m., and the matter was assigned to me. I issued a Prehearing Order on November 21, 2017. Both the Hearing Notice and the Prehearing Order advised the parties of the location, date and time of the scheduled hearing, and warned in bold and underlined type: “**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.**”

The Call of the Docket¹ began on January 16, 2018 at 1:30 p.m. as scheduled. This matter was called to proceed at 1:56 p.m. Counsel for PECO was present and prepared to proceed. The Complainant was not present.

No witnesses were presented and no exhibits were introduced into the record. Respondent’s Counsel moved that the Complaint be dismissed with prejudice for lack of prosecution pursuant to 52 Pa. Code § 5.245. In accordance with Commission policy, I am granting the Motion.

The record closed on February 2, 2018, upon my receipt of the transcript.

FINDINGS OF FACT

1. The Complainant is Howard Smith.
2. The Respondent is PECO Energy Company.
3. On September 25, 2017, the Complainant filed a Complaint with the Commission against the Respondent.

¹ In a Call of the Docket, multiple cases are scheduled at the same time and called to be heard serially.

4. The Respondent filed an Answer on October 10, 2017.

5. By notice dated November 14, 2017, the Commission scheduled this matter for an initial hearing on January 16, 2018, at 1:30 p.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. On November 21, 2017, a Prehearing Order was sent to the Complainant by regular first-class mail to the address stated on the Complaint.

8. Neither the Hearing Notice nor the Prehearing Order were returned as undeliverable.

9. The Complainant failed to appear at the January 16, 2018 hearing.

10. The Complainant did not settle or withdraw his Complaint.

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.

On November 14, 2017, the Commission sent notice of the hearing in this case to the Complainant 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 the Office of Administrative Law Judge (OALJ) in Harrisburg.

In addition, I issued a Prehearing Order dated November 21, 2017, which, *inter alia*, warned both parties of potentially serious consequences if they failed to obtain a continuance and failed to attend the hearing. The prehearing order, which was mailed to the 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 the 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).

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 his 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 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).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of PECO Energy Company to dismiss the Complaint filed by Howard Smith at Docket No. C-2017-2626172 is granted;

2. That the Complaint of Howard Smith against PECO Energy Company at Docket No. C-2017-2626172 is dismissed with prejudice; and

3. That the record at Docket No. C-2017-2626172 be marked closed.

Date: February 21, 2018

/s/
F. Joseph Brady
Administrative Law Judge