

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Tony Jenco	:	
	:	
v.	:	C-2017-2627869
	:	
Pennsylvania Electric Company	:	

**INITIAL DECISION**

Before  
Mark A. Hoyer  
Deputy Chief Administrative Law Judge

This Initial Decision dismisses the formal complaint filed by Tony Jenco (Complainant) because he failed to appear for the initial call-in telephone hearing to prosecute his complaint and failed to satisfy his burden of proof.

**HISTORY OF THE PROCEEDING**

On October 2, 2017, Complainant filed a formal complaint with the Pennsylvania Public Utility Commission (Commission) against Pennsylvania Electric Company (Respondent or Penelec), at Docket No. C-2017-2627869. Complainant alleged that Penelec is threatening to shut off his service or has already shut off his service. Complainant requested a new payment arrangement based on household income and size. Penelec filed an answer on October 25, 2017, requesting that the complaint be dismissed with prejudice.

On November 17, 2017, a Call-In Telephone Hearing Notice was sent to Complainant and Penelec (the parties) scheduling an initial call-in telephone hearing for Wednesday, January 17, 2018, at 10:00 a.m. The Notice included the telephone number and PIN for calling into the hearing on the scheduled day. A Prehearing Order was issued by me on

November 29, 2017, setting forth the date and time of the initial call-in telephone hearing as well as the telephone number and PIN for calling into the scheduled hearing. The Prehearing Order further advised the parties, *inter alia*, that “[y]ou may lose this case, if you do not take part in this hearing and present evidence on the issues raised. 52 Pa.Code § 5.245.” Prehearing Order, p. 4.

On January 17, 2018, at 10:00 a.m., the presiding officer convened the call-in telephone hearing. Counsel for Respondent, Teresa Harrold, Esquire, was present and ready to proceed. Complainant was not present at the scheduled time for the hearing to begin. A call was placed to the telephone number Complainant listed on his complaint and a message was recorded advising him to call in to the hearing. The hearing reconvened at 10:24 a.m. and Complainant was not present and ready to proceed. The hearing proceeded in Complainant’s absence.

On the hearing record, counsel for Penelec made a motion to dismiss the complaint with prejudice for failure of Complainant to appear and failure to meet the burden of proof. The record consists of a 7-page hearing transcript of the initial call-in telephonic hearing held on January 17, 2018. The record was closed by Interim Order dated February 12, 2018.

#### FINDINGS OF FACT

1. On October 2, 2017, Complainant, Tony Jenco, filed a formal complaint against Respondent, Pennsylvania Electric Company.
2. A Call-In Telephone Hearing Notice was mailed to the parties on November 17, 2017, scheduling the initial call-in telephone hearing for Wednesday, January 17, 2018, at 10:00 a.m.
3. A Prehearing Order was issued on November 29, 2017.

4. The Call-In Telephone Hearing Notice and Prehearing Order were mailed to Complainant at the address provided on the complaint and were not returned to the Commission by the United States Postal Service as undeliverable.

5. Complainant was not present for the scheduled initial call-in telephone hearing on January 17, 2018.

6. No representative appeared on behalf of Complainant at the scheduled hearing or entered a notice of appearance in this proceeding.

7. Complainant did not file a petition to withdraw his complaint and no certificate of satisfaction has been filed with the Commission.

8. Complainant did not request a continuance of the January 17, 2018, initial call-in telephone hearing.

### 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 parties are accorded notice and the opportunity to appear and be heard. *Id.*

Notice of the scheduled initial call-in telephone hearing in this case was sent to Complainant on November 17, 2017, by regular first-class mail to the address stated in the complaint. This piece of mail was never returned to the sender, the scheduling staff for the Office of Administrative Law Judge in Harrisburg. In addition, I issued a Prehearing Order on November 29, 2017, that advised the parties, *inter alia*, that “[y]ou may lose this case, if you do not take part in this hearing and present evidence on the issues raised.” Prehearing Order, p. 4. This Order, which was also mailed to Complainant at the address stated on the complaint, was never returned. Accordingly, one must presume this mail, which was sent in the ordinary course

of business, was received by the addressee. Berkowitz v. Mayflower Securities, Inc., 455 Pa. 531, 317 A.2d 584 (1974); Meierdierck v. Miller, 394 Pa. 484, 147 A.2d 406 (1959); Samaras v. Hartwick, 698 A.2d 71 (Pa.Super. 1997); and Judge v. Celina Mutual Insurance Co., 303 Pa.Super. 221, 444 A.2d 658 (1982).

Neither Complainant nor a representative appeared for the scheduled call-in initial telephone hearing on January 17, 2018. Complainant's absence is unexplained. Complainant did not request a continuance of the hearing. Under these circumstances, it appears Complainant had ample opportunity to appear and be heard in this proceeding but failed to appear for the scheduled hearing. Therefore, the due process rights of Complainant have been fully protected. El-Ayazra v. West Penn Power Company, Docket No. F-2015-2509292 (Opinion and Order entered June 30, 2016); Sentner v. Bell Telephone Company of Pennsylvania, Docket No. F-00161106 (Order entered October 25, 1993); and 52 Pa.Code § 5.245(a).

As the party seeking affirmative relief from the Commission, Complainant bears the burden of proof. 66 Pa.C.S. § 332(a). By failing to appear and proffer any evidence to support his complaint, Complainant has failed to meet this burden. Complainant's failure to appear is unexcused. Complainant has waived the opportunity to participate in the hearing and this case may be dismissed with prejudice. 52 Pa.Code § 5.245(a); Jefferson v. UGI Utilities, Inc., Docket No. Z-00269892 (Opinion and Order entered December 26, 1995).

#### CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and the subject matter of this proceeding. 66 Pa.C.S. § 701.

2. 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).

3. The due process rights of Complainant have been fully protected in this proceeding.

4. By failing to appear and proffer any evidence to support his complaint, Complainant has failed to meet his burden of proving that he is entitled to the relief he seeks from the Commission. 66 Pa.C.S. § 332(a).

ORDER

THEREFORE,

IT IS ORDERED:

1. That the motion of Pennsylvania Electric Company to dismiss the complaint of Tony Jenco at Docket No. C-2017-2627869, made at the initial call-in telephone hearing on January 17, 2018, is granted.

2. That the complaint filed by Tony Jenco against Pennsylvania Electric Company at Docket No. C-2017-2627869 is dismissed with prejudice.

3. That the Docket in this proceeding, Docket No. C-2017-2627869, be marked closed.

Date: April 10, 2018

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/s/  
Mark A. Hoyer  
Deputy Chief Administrative Law Judge